Kluwer Mediation Blog

Singapore Developments – Settlement Agreements and Division of Matrimonial Property

Joel Lee (National University of Singapore, Faculty of Law) · Sunday, September 14th, 2014

I would like to spend this month's entry reporting on the recent developments in the Singapore Court of Appeal. The case of Surindar Singh s/o Jaswant Singh v Sita Jaswant Kaur [2014] SGCA 37 make a number of pronouncements about the status of settlement agreements brought about by mediation in the context of the division of matrimonial assets.

The facts can be stated briefly. The parties had been married for 35 years and obtained an interim judgement for divorce before turning to the ancillary matters of maintenance and division of matrimonial assets. The parties resolved these ancillary matters through mediation and the settlement agreement provided that the settlement was subject to the approval of the court. This consent order was never obtained because the parties could not agree on the terms of the draft consent order.

At the High Court, it was held that the settlement agreement was valid. However, it was not conclusive because of the operation of section 112(2) of the Woman's Chapter (Cap 353, 2009 Rev Ed). As such, The High Court overrode the agreement of the parties and divided the matrimonial assets in proportions different from what was agreed. This matter was then appealed to the Court of Appeal of Singapore.

The first issue before the Court of Appeal was whether the settlement agreement was binding. The court opined that this was to be determined by the common law requirements of contract formation subject to whether there were any vitiating factors. On the facts, the court agreed with the court below that there was a binding agreement and that it had not been discharged, terminated or renounced in any manner.

The second issue was whether the court was bound to give full effect to the settlement agreement. This was an important consideration for Singapore because of the operation of the Women's Charter. Presumably, in other jurisdictions, a valid settlement agreement would be given effect unless there was the intervening operation of either statute, regulation or public policy. Section 112 of the Charter, provides for the court to order the "just and equitable" division of matrimonial assets having regard to "all the circumstances of the case". Section 112(2) provides a list of non-exhaustive considerations, one of which provides "any agreement between the parties with respect to the ownership and division of matrimonial assets made in contemplation of divorce". After overcoming the technical argument that this agreement was entered into after divorce and was therefore not "in contemplation of divorce", the court held that it has the discretion not to give full

effect to an agreement entered into by divorced parties with regard to the distribution of their assets. Put another way, the High Court was well within its powers not to give full effect to the settlement agreement and had the discretion to determine what weight to give to the settlement agreement.

This third issue then was how much weight should have been accorded to the settlement agreement? On this point, the Court made a distinction between prenuptial and postnuptial agreements, of which this agreement was an example of the latter. Of postnuptial agreements, there were two kinds; the first was an agreement entered into with a view to staying together, and the second an agreement entered into with the dissolution of marriage in mind. In the latter type of postnuptial agreement, the court held that it would accord this type of an agreement significant weight. Of course, the weight to be accorded would depend on the precise circumstances of the case.

The court held that where parties have, with the benefit of legal advice, come to a fair agreement, significant weight should be attached to that agreement as "the parties to a marriage are in the best position to determine what is a just and equitable division of the matrimonial assets based on their own assessment of each party's direct and indirect contributions to the marriage and their knowledge of the extent and value of the assets."

This case is noteworthy for 2 reasons.

First, it demonstrates that a mediated settlement can be, in certain circumstances, a significant if not conclusive factor in the division of matrimonial assets. For parties and lawyers intending to negotiate a post-nuptial agreement, referring the matter to mediation may well provide a practical and perhaps tactical advantage.

Secondly, and this is the more significant point, this case can be seen as an endorsement by the Court of Appeal of the use of mediation in family matters. To quote:

"Whilst the end of a marriage may be legally brought about by the issue of an interim judgment, the marriage will not end in truth until all outstanding matters are settled and the parties are free to walk away and rebuild their lives. This cannot happen as long as they are disputing the division of the assets and having to rebut each other's cases in relation to the same. That process often breeds contention and bitterness. Thus, it would be in both parties' interests if they could come to a negotiated solution without resorting to determination by the courts which would resuscitate old complaints and acrimonious feelings. The process also takes time and can be costly. Such solutions can be facilitated by mediation."

As the younger generation might say, Word.

This entry was posted on Sunday, September 14th, 2014 at 12:01 am and is filed under Domestic Courts, Family Mediation, Legal Issues, Legal Practice, Settlement Agreements, Singapore
You can follow any responses to this entry through the Comments (RSS) feed. You can skip to the end and leave a response. Pinging is currently not allowed.