



**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN
[PETISYEN PERCERAIAN BA-33-136-03/2021]**

Dalam Perkara Seksyen 53, 54, 77,
88 dan 93 Akta Membaharui
Undang-Undang (Perkahwinan Dan
Perceraian) 1976

ANTARA

CHIN LI YUNG (P)

...PEMPETISYEN

DAN

MAN FOOK WENG (L)

...RESPONDEN

JUDGMENT

INTRODUCTION

[1] This is an application for ancillary relief (enclosure 9) filed by the Petitioner Wife (“PW”) supported by her affidavit (enclosure 10), for injunctive relief against the Respondent Husband (“RH”) to restrain him from withdrawing monies/assets from several bank/trust accounts, custody, care and control (CCC) of the child of the marriage and her maintenance.

[2] The cause papers and written submissions are as follows:

- (a) Notice of Application for ancillary relief filed by PW on 08.04.2021 (enclosure 9);

- (b) PW's affidavit in support affirmed by Chin Li Yung on 08.04.2021 (enclosure 10);
- (c) RH's affidavit in reply affirmed by Man Fook Weng on 05.05.2021 (enclosure 12);
- (d) PW's affidavit in reply affirmed by Chin Li Yung on 21.05.2021 (enclosure 15);
- (e) RH's affidavit in reply (2) filed by Man Fook Weng on 03.06.2021 (enclosure 18);
- (f) PW's affidavit in reply (2) affirmed by Chin Li Yung on 13.07.2021 (enclosure 22);
- (g) PW's affidavit in reply (2) affirmed by Chin Li Yung on 23.07.2021 (enclosure 23);
- (h) RH's affidavit in reply (2) affirmed by Man Fook Weng on 26.07.2021 (enclosure 24).

Submissions/replies by PW and RH.

[3] On 21.09.2021, after perusing the cause papers and hearing the submissions of counsels, I allowed the PW's application (enclosure 9) with no order as to costs. Part of the my decision (relevant to this appeal), ie,:

“(1). The injunctive order that RH is estopped from transferring and/or withdrawing from the accounts:

1. Maybank- Joint account no: 112857011760;
2. Maybank- Joint account no: 112857083881;
3. Peti Keselamatan Bersama di Affin Taman Kinrara Puchong;

4. ASNB account no. 000011776093; and

(2).Money in their joint Fixed Deposit Account No: 212857015486 for the amount RM 46,757.30 be returned and banked into a new account in the name of the Petitioner Wife and Respondent Husband.”

Dissatisfied with the above decision, RH had filed this appeal, and my reasons are as follows:

BRIEF FACTS

The relevant facts for this appeal are as follows:

[4] PW and RH were legally married on 31.05.2008 and are blessed with a child named Man Yue Ning, born on 06.08.2013, who is now eight years old (“the said child”). According to PW, their marriage has irretrievably broken down. On 23.03.2021, she filed a single Divorce Petition under s. 53 Law Reform (Marriage and Divorce) Act 1976 (“LRA”) in this Court for their marriage to be dissolved, CCC and maintenance of the said child, her maintenance, and several other prayers.

[5] On 08.04.2021, PW had filed an application for ancillary relief (encl.9) supported by her affidavit (encl. 10) for an order that:

“1. *Perintah tegahan (‘injunction’) menahan perpindahan dan/atau pengeluaran oleh Responden selaras dengan Seksyen 102(1)(ii) Akta Membaharui Undang-Undang (Perkahwinan & Perceraian) 1976 sehingga pelupusan tindakan ini:-*

1.1. Maybank-No.Akaun Bersama: 112857011760;

1.2. Maybank-No.Akaun Bersama: 112857083881;

- 1.3. *Peti Keselamatan Bersama di Affin Tmn Kinrara Puchong;*
- 1.4. *ASNB Account No. 000011776093;*
2. *Wang di Maybank No. Akaun Simpanan Tetap Bersama: 212857015486 sebanyak RM46,757-30 dipulangkan dan diletakkan di akaun baru di atas nama Pempetisyen dan Responden;*
3. *Bayaran nafkah anak interim sebanyak RM800 sebulan semasa kes ini dilupuskan oleh Mahkamah pada atau sebelum 7hb setiap bulan kepada dibayar ke akaun Maybank dengan No. Akaun: 1148 3301 5584 selaras dengan S92 dan S93 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976;*
4. *Hak jagaan kawalan dan pemeliharaan secara interim anak MAN YUE NING (P) (No. Sijil Kelahiran: CX 02241) selaras S88 Akta Membaharui Undang- Undang (Perkahwinan dan Perceraian) 1976 diberikan kepada Pempetisyen sementara menunggu prosiding perceraian dilupuskan oleh Mahkamah hanya akses akan diberikan kepada Responden pada waktu 11.30pagi hingga 4 petang bagi setiap dua hujung minggu (Hari Sabtu dan Hari Ahad) secara berselang-seli. Responden mesti memberikan notis kepada Pempetisyen selama 24 jam sebelum akses diberikan secara SMS dan/atau WhatsApp;*
5. *Bayaran nafkah isteri sebanyak RM800 sebulan semasa kes ini dilupuskan oleh Mahkamah pada atau sebelum 7hb setiap bulan kepada dibayar ke akaun Maybank dengan No. Akaun 1148 3301 5584 selaras dengan S77 Akta*

Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976;

6. *Kos;*
7. *Apa-apa relief yang dianggap sesuai dan manfaat oleh Mahkamah.”*

[6] PW, in her affidavit, averred that:

- (a) On 23.12.2020, she received a letter from RH’s mother (exhibit CLY-3:encl.10) asking her to leave and vacate the matrimonial home.
- (b) On 30.12.2020, RH contacted her via WhatsApp, informing her that he did not want to live with her anymore and allowed her to leave the matrimonial home with the said child.
- (c) Together with the said child, she eventually moved out on 10.01.2021.
- (d) On 16.03.2021, she found out that he had withdrawn from their joint Fixed Deposit account: 212857015486, RM 46,757.30 without informing her. She is now unable to access the said account (screenshot of the account exhibit CLY-7:encl. 10).
- (e) She prays for this amount of RM 46,757.30 to be returned and banked into a new joint account.

[7] She fears that RH will withdraw from the following joint accounts pending the determination of the Divorce Petition, which she claimed are matrimonial assets, and pray that he is restrained from doing so:

1. Maybank- Joint account no: 112857011760(“Maybank-Acc1”);
2. Maybank- Joint account no: 112857083881;
3. Peti Keselamatan Bersama di Affin Taman Kinrara Puchong;
4. ASNB account no. 000011776093

[8] RH, in his reply, averred that:

- (a) The house they were living in belongs to his mother (registered title “MFW-1”).
- (b) He did not deny that his mother sent PW an eviction letter, and RH claimed that he is renting this house from his mother (rental agreement “MFW-2”).
- (c) For Maybank-Acc1, they (RH and PW) bought an Apartment Ten Kiara (“said apartment”) on 21.08.2019 for RM556,020.00.
- (d) They had to pay a deposit of 20%, which amounts to RM111,204.00 equally shared by both of them, with each having to contribute RM55,602.
- (e) They respectively took out their EPF money, with PW taking out RM56,175.82 (with an excess of RM573.82), and he took out RM110,630.18 (with an excess of 55,028.18), which summed up to RM166,806.00.
- (f) The said amount was deposited into this Maybank-Acc1.

- (g) She took out RM9,000.00 from this account to buy a car leaving the balance of RM 46,757.30, which he claimed belonged to him.

SUBMISSION BY PETITIONER WIFE (PW)

[9] She submitted that, RH did not deny unilaterally withdrawing the RM46,757-30 from their joint account (212857015486), without informing and getting her agreement to it. He must, therefore, return the said money and bank it into a new account under their joint names. The fact that he admitted unilaterally withdrawing the said money from their joint account had effectively denied her rights to it and cited s. 102 LRA. She asserts that the Court is empowered to revoke that transaction that leads to a disposition of matrimonial assets, which denies her rights to it.

[10] The sum of RM46,757-30, which RH unilaterally withdrew, is a matrimonial asset pending its division and the determination of the divorce petition. She cited *Ang Sae Ming v. Chow Foong Yien* [2018] 1 LNS 701, HC where *Ng Li Lin v. Ting Tian Hwa* [2017] 4 CLJ 522, HC, was quoted:

“[25] Section 102 of the Law Reform (Marriage and Divorce) Act 1976, gives the court power to grant an injunction preventing such disposition, or if any disposition has been made within the preceding three years, with such an object on the part of the spouse making the disposition, to set aside that disposition. A spouse, therefore, has a remedy in family law to protect their interest in assets acquired during their marriage.

...

[30] In family law, it is trite that a spousal claim to a share in the matrimonial home is indeterminate until the Court makes an

order for division of the matrimonial assets and properties, and the time to do so is when the Court makes a decree of divorce or judicial separation. The Federal Court in interpreting s. 76(1) and (3) of the Law Reform (Marriage And Divorce) Act 1976 confirmed this in Manokaram Subramaniam v. Ranjit Kaur Nata Singh [2008] 6 CLJ 209... ”

[22] The unilateral action of RW in making the aforesaid withdrawals, retaining the said money in her own personal account, and holding it out as ransom for the transfer of the matrimonial property to her by PH can be seen as an act of depriving PH of any rights concerning the said money in this matrimonial proceeding. Consequently, such disposition by RW can be set aside, and order is granted that all money withdrawn from the said accounts to be returned to their respective accounts, which are now protected by the ad-interim injunction granted on the 26th of December 2017, pending the final determination of this petition for judicial separation. ”

[11] She argued that the facts of her case are similar to *Ang Sae Ming (supra)* and asked that the Court order the return of the said money. For all the other accounts, pending the determination of the divorce petition, she also applied for an injunctive order to prevent RH from transferring or having any dealings in:

- (i) Maybank- No.Akaun Bersama: 112857011760;
- (ii) Maybank- No.Akaun Bersama: 112857083881;
- (iii) Peti Keselamatan Bersama di Affin Taman Kinrara Puchong; and
- (iv) ASNB Account No. 000011776093.



She argued that RH has the access, passwords, and the key to access those accounts, while she does not. The fact that he unilaterally withdrew money from their joint account is testimony to the fact there is a real and imminent danger that dissipation of matrimonial assets before the determination of the divorce petition can happen, to her detriment. On the 09.01.2021, when she asked for the key to the safety deposit box, which has only one key, he refused to give it to her. He told her that her jewelry pieces were kept in that safety deposit box (WhatsApp chat in exhibit “CLY-22”).

SUBMISSION OF RESPONDENT HUSBAND (RH)

[12] RH referred to *Keet Gerald Francis Noel John v. Mohd Noor* [1995] 1 MLJ 1993, CA held:

“To summarise, a Judge hearing an application for an interlocutory injunction should undertake an inquiry along the following lines:-

First, he must ask himself whether the totality of the facts presented before him discloses a bona fide serious issue to be tried. He must, when considering this question, bear in mind that the pleadings and evidence are incomplete at that stage. Above all, he must refrain from making any determination on the merits of the claim or any defence to it. It is sufficient if he identifies with precision the issues raised on the joinder and decides whether these are serious enough to merit a trial. If he finds, upon a consideration of all the relevant material before him, including submissions of counsel, that no serious question is disclosed, that is an end of the matter, and the relief is refused. On the other hand, if he does find that there are serious questions to be tried, he should move on to the next step of his inquiry;

*Second, having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. In making his assessment, he must consider all relevant matters, including the practical realities of the case before him. He must weigh the harm that the injunction would produce by its grant against the harm that would result from its refusal. He is entitled to take into account, inter alia, the relative financial standing of the litigants before him. If, after weighing all matters, he concludes that the plaintiff would suffer greater injustice if relief is withheld, he would be entitled to grant the injunction, especially if he is satisfied that the plaintiff is in a financial position to meet his undertaking in damages. Similarly, if he concludes that the defendant would suffer the greater injustice by granting an injunction, he would be entitled to refuse relief. Of course, cases may arise where the injustice to the plaintiff is so manifest that the Judge would be allowed to dispense with the usual undertaking as to damages (see: *Cheng Hang Guan v. Perumahan Farlim (Penang) Sdn. Bhd.* 1988] 1 CLJ 435 (Rep); [1988] 3 MLJ 90). Apart from such cases, the Judge is entitled to take into account the plaintiff's ability to meet his undertaking in damages should the suit fail, and, in appropriate cases, may require the plaintiff to secure his undertaking, for example, by providing a bank guarantee;*

Thirdly, the Judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and intended to maintain the status quo....”

[13] RH further argued that, there are no serious issues to be tried, and the balance of convenience does not lie in PW's favor. Since the opening of Maybank 1 and Maybank 2 until now, he has maintained

the same responsibly. There is no reason for him to now give control to PW and/or take any money outside from Maybank 1 and Maybank 2 as well as the ASNB accounts which RH intends to transfer the ASNB account to the said child after she attains the age of twenty-one. As for the Safety Deposit Box, he submitted that only jewelry and an English version of the Marriage Certificate are in it. From the opening of that safety deposit box account, he has paid a fee of RM350 per year for it. He also agrees to divide the jewelry with PW equally. Granting an injunction on the disputed accounts will cause confusion and difficulty as parties still have to make a monthly payment of RM1,200.00 each to the bank for the Kinrara apartment using monies credited into the Maybank 1 account. Maybank 1 and Maybank 2 accounts are linked to his credit cards, and such transactions are reflected there, and these are his personal information. By granting this injunction, all of his financial transactions (linked to his credit cards) but connected with Maybank 1 and Maybank 2 cannot be carried out.

[14] PW has not adduced anything compelling other than that he might dissipate the matrimonial assets. The accusation that he might withdraw and/or take any immovable property such as the jewelry is yet to be proven, and it is purely speculative. He argued that if he had the intention to do it, he would have already done it (which is denied). There was no undertaking for damages given by the PW in this application, thus rendering it unsustainable. She also failed to disclose her financial information to support such an undertaking. She had claimed that he would cause irreparable damage to her if the injunction were denied, but she failed to disclose the damage she would suffer. He submitted in the circumstances that damages would be an adequate remedy for PW rather than granting her an injunction in enclosure 9 In *SV Beverages Holdings Sdn Bhd & Ors v. Kickapoo (M) Sdn Bhd* [2008] 4 MLJ 187, CA)

“[43] ...Learned counsel for the respondent submitted that the respondent had been in the market since 1996 and had built for itself a good market reputation and market share of the product. It had also spent huge sums in investment ever since it was appointed as the exclusive licensee for the said beverages in Malaysia and Singapore. By the time the action is heard and determined by the High Court, the respondent would be in financial ruin. It was contended that if the injunction was not granted, the respondent could not be restored to its original position as the pioneer of the said beverages in Malaysia and Singapore, even if it were to succeed at the trial and that it would by then, have lost its goodwill, all its customers and distributors. Thus, it was submitted that damages would not be an adequate remedy for the respondent. We disagree. From the affidavit evidence available in this case, we could not find sufficient evidence which could be relied on to say that respondent would suffer irreparable damages. On the contrary, from the amended statement of claim, it is clear that for all the torts that it had pleaded against the appellants, the relief which the respondent was asking for were damages for which monetary compensation would be an adequate remedy. It is a settled principle that specific relief is generally declined by a court of equity where monetary compensation is an adequate remedy [see Perbadanan Setiausaha Kerajaan Selangor & Ors v. Metroway Sdn Bhd & Anor [2003] 3 MLJ 522 per Gopal Sri Ram JCA].”

[15] On the issue of the withdrawal of RM46,757.30, RH disagrees that RM46,757.30 must be returned and/or banked into a new joint account under their names, arguing that he purchase price of the Kinrara apartment was RM 556,020.00 (“Purchase Price”). The deposit for the apartment was RM 111,204.00. To purchase the Kinrara apartment, they had to pay a 20% deposit to be shared

equally. PW withdrew RM56,175.82 from her EPF account for the deposit of apartment Kinrara. He withdrew RM110,630.18 from his EPF Account for the said deposit of apartment Kinrara. All the monies were credited into the Maybank Account 1. They agreed that they would make an equal payment of 50:50, making each party's contribution RM55,602.00 respectively. Therefore PW had an excess payment of RM573.82, which belongs to her, while he made excess payment of RM55,028.18, which belongs to him. From his excess payment of RM55,028.18, he used RM9,000.00 to purchase his car (PW is using), leaving a balance of RM46,028.18, which is his solely. This excess sum of his does not constitute matrimonial assets for division between the parties.

[16] As for damages and delay in seeking an injunction, RH argued that if it is true that PW would suffer irreparable harm or damages from his actions, she should have taken prompt action. The Supreme Court in *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors* [1995] 1 MLJ 241, SC, said:

“Having disposed of the troublesome issue, we would now proceed to consider the real issue in this appeal, ie., whether the interlocutory injunction issued on the 2nd of April 1993 and dissolved on the 27th of August 1993 should be restored. We would first deal with the question of delay. As with all equitable reliefs, the delay is a relevant factor in interlocutory proceedings for injunctive relief. An important maxim regarding delay is that equity aids the vigilant, and not those who sleep on their rights; ‘vigilantibus, non dormientibus, jura subeniunt.’ The essence of an application for interlocutory injunction is that it should be made with promptitude. It is said that the Court will not grant an interlocutory injunction if the plaintiff having sufficient notice of the defendant’s intention to commit the act sought to be restrained is guilty of unreasonable delay in

applying to the Court. The illustration of this principle is to be found in the case of Salisbury v. Metropolitan Railway Co [1870] 22 LT 839. The cases of Hj Wan Habib Syed Mahmud [1986] 2 MLJ 198 and Chung Khiaw Bank Ltd [1968] 1 MLJ 299 cited above are Malaysian authorities on the same point. It must be pointed out, however, that not all delay is bad delay or, to be precise, inexcusable, as it may be explained or inevitable.

Salmon LJ in Allen v. Sir Alfred McAlpine & Sons Ltd [1968] 2 QB 229; [1968] 1 All ER 543; [1968] 2 WLR 366 set out three factors that are relevant in considering whether delay should be allowed as a ground to refuse an interlocutory injunction. These factors are at [1968] 2 QB 229 at p 268; [1968] 1 All ER 543 at p 561; [1968] 2 WLR 366 at p 390. Salmon LJ said:

... In order for such an application to succeed, the defendant must show:

(1) that there has been an inordinate delay. It would be highly undesirable and indeed impossible to attempt to lay down a tariff – so many years or more on one side of the line and a lesser period on the other. What is or is not inordinate delay must depend upon the facts of each particular case. These vary infinitely from case to case, but the inordinate delay should not be too difficult to recognize when it occurs.

(2) that this inordinate delay is inexcusable. As a rule, until a credible excuse is made out, the natural inference would be that it is inexcusable.

(3) that the defendants are likely to be seriously prejudiced by the delay. This may be prejudice at the trial of the issue between themselves and the plaintiff, or

between each other, or between themselves and the third parties. In addition to any inference that may properly be drawn from the delay itself, prejudice can sometimes be directly proved. As a rule, the longer the delay, the greater the likelihood of serious prejudice at the trial. ”

She waited for five months to file this application for an injunction. She was merely waiting for him to withdraw the said money and use such evidence to support her application for an injunction. In *Leo Pharmaceutical Product Ltd A/S (Lovens Kemiske Fabrik Production Saktieselskab) v. Kotra Pharma (M) Sdn Bhd* [2002] MLJU 154, HC:

“On the 21st of May 1999, the plaintiff instructed its solicitors to notify the defendant of its alleged acts of infringement. So the plaintiff was aware of the defendant’s use of the words “AXCEL FUSIDIC” and “AXCEL FUSI-CORTE” on or before the 21st of May 1999. The plaintiff had on the 24th of November 2000, i.e., some 18 months later, issued another letter demanding that the defendant cease the alleged infringement. On the 18th of May 2001, after a lapse of some 24 months, the plaintiff filed the instant writ action. The instant application was filed one month later, ie, the 8th of June 2001. This delay has been conceded by the plaintiff on the ground that the plaintiff required time:

In my considered opinion, it appears to me that the grounds proffered for the plaintiff’s aforesaid delay is that the plaintiff was either doubtful or uncertain of the defendant’s alleged infringement. The delay occasioned by the plaintiff is considerable and cannot lend support to the plaintiff’s application. The relief sought by the plaintiff is equitable in nature, and it is trite law that delay defeats equity. ”

If it were true that PW would suffer harm from his purported action, she would have immediately applied for the injunctive order. Instead,



she seeks this injunction as a means to place him in difficulties. He submits that he would be prejudiced if the injunctive order was granted.

THE LAW

[17] Section 76 of the Law Reform (Marriage and Divorce) Act 1976 (Act 164) (“LRA”) provides as follows:

76. Power for Court to order division of matrimonial assets

- (1) The Court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage or the sale of any such assets and the division between the parties of the proceeds of the sale.*
- (2) In exercising power conferred by subsection (1) the Court shall have regard to:*
 - (a) The extent of the contributions made by each party in money, property, or work towards the acquiring of the assets;*
 - (aa) The extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family;*
 - (b) Any debts owing by either party which were contracted for their joint benefit;*
 - (c) The needs of the minor children, if any, of the marriage;*



(d) *The duration of the marriage,*

and subject to those considerations, the Court shall incline towards equality of division.

(3)(Deleted)

(4)(Deleted)

(5) *For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.*

This section relates to the power of the court to order division of matrimonial assets acquired during the marriage upon granting a decree of divorce or judicial separation

[18] Section 102 LRA provides the power for court to set aside and prevent dispositions of assets:

“102. Power for court to set aside and prevent dispositions intended to defeat claims to maintenance

(1) *Where:*

(a) *any matrimonial proceeding is pending;*

(b) *an order has been made under section 76 and has not been complied with;*

(c) *an order for maintenance has been made under section 77 or 93 and has not been rescinded; or*

(d) *maintenance is payable under any agreement to or for the benefit of a spouse or former spouse or child,*

The court shall have power on application -

(i) If it is satisfied that any disposition of property has been made by the spouse or former spouse or parent of the person by or on whose behalf the application is made, within the preceding three years, with the object on the part of the person making the disposition of reducing his or her means to pay maintenance or of depriving his or her spouse of any rights in relation to that property, to set aside the disposition; and

(ii) If it is satisfied that any disposition of property is intended to be made with any such object, to grant an injunction preventing that disposition.

(2) For the purposes of this section:

“disposition”

includes a sale, gift, lease, mortgage or any other transaction whereby ownership or possession of the property is transferred or encumbered but does not include a disposition made for money or money’s worth to or in favour of a person acting in good faith and in ignorance of the object with which the disposition is made;

“property”

means property of any nature, movable or immovable, and includes money.”

This section relates to the power of the court in granting injunctive relief to address any purported disposition of immovable and/or movable assets that falls within the intent of the said section as in the present case and consequently therefore it empowers the court to grant injunctive relief under such circumstances.

FINDINGS OF THIS COURT

[19] PW in enclosure 9 seeks injunctive relief against RH to restrain him from withdrawing monies from several bank/trust accounts, which she argued are matrimonial assets of the marriage. It is not denied that he had withdrawn from one of their Joint Fixed Deposit accounts: 212857015486, a sum of RM 46,757.30 without informing her, which he arbitrarily claims is his. Having unilateral access (passwords and key) and control over these accounts, she fears that he will dissipate the funds from other accounts pending the determination of the Divorce Petition in light of his action with their joint fixed deposit account above. She seeks the return of the withdrawn money and an order to restrain RH from further dealings with the other accounts until this Court addresses the division of matrimonial assets and ensures that her rights are not compromised on those assets.

[20] Section 76 LRA empowers the Court to order for division of property involving two people, i.e., the husband and the wife. The LRA had confined the assets to include assets acquired by the spouses during the marriage in section 76(1) and extended it to include assets owned before the marriage by one party, which have been substantially improved during the marriage by the other party or by their joint efforts in s.76(5). In *Yap Yen Piow v. Hee Wee Eng* [2017] 1 MLJ 17, CA, the Court of Appeal had promulgated the meaning of matrimonial asset by classifying matrimonial assets into a matrimonial property which will fall under section 76(1) and non-matrimonial property, which will fall under section 76(3) and/or 76(5) LRA. Whether it is a matrimonial or non-matrimonial property, both will fall under the caption of matrimonial assets. Matrimonial assets are generally subject to equality of division as can be seen in *Devi Vejaya Raman v. Krisna Murthi Govindasamy* [2017] 1 LNS 494, HC, Dr.Choo Kah Seng J said, the court shall incline towards equality of division and this connotes our law recognizes both husband and wife

ought to have equal sharing of the division of matrimonial assets when a marriage comes to an end.

[21] S.102 LRA is evident in its intent when it also provides that where any matrimonial proceeding is pending, the Court shall have power on application, if it is satisfied that the spouse has made any disposition of property with the object of depriving his or her spouse of any rights concerning that property, to set aside the disposition and if it is satisfied that any disposition of property is intended to be made with any such object, to grant an injunction preventing that disposition. In *Ng Li Lin v. Ting Tian Hwa v. Tiang Tian Hwa* [2017] 4 CLJ) 552, HC, Vazeer Alam Mydin Meera J said:

“[25] Section 102 of the Law Reform (Marriage and Divorce) Act 1976, gives the court power to grant an injunction preventing such disposition, or if any disposition has been made within the preceding three years, with such an object on the part of the spouse making the disposition, to set aside that disposition. A spouse, therefore, has a remedy in family law to protect his or her interest in assets acquired during his or her marriage.

....

*[30] In family law, it is trite that a spousal claim to a share in the matrimonial home is indeterminate until the Court makes an order for division of the matrimonial assets and properties, and the time to do so is when the Court makes a decree of divorce or judicial separation. The Federal Court in interpreting s. 76(1) and (3) of the Law Reform (Marriage And Divorce) Act 1976 confirmed this in *Manokaram Subramaniam v. Ranjit Kaur Nata Singh* [2008] 6 CLJ 209....”*

[22] The Court is also empowered to act under s.102 LRA to preserve matrimonial assets of any nature, movable or immovable. It includes money from disposition, including a sale, gift, lease, or mortgage, and any transaction whereby ownership or possession of the asset is transferred or encumbered. It is common in a fractured marriage to pre-empt or frustrate the outcome of the divorce proceeding, to take steps to deal with and/or transfer assets out of the reach of the other spouse. Often, actions may have been taken by the dissipating spouse gradually over time, without even the other realizing it has happened. Protection and preservation of matrimonial assets are essential to ensure future order of the Court will not be in futility. The two powers of the Court to restrain and set aside disposition (within three years preceding the application) are distinct and separate. The Court in *Susila a/p S Sankaran v. Subramaniam a/l P Govindasamy* [2012] 9 MLJ 779, HC, refuses the wife's application for an injunction to prevent the respondent-husband from disposing of matrimonial assets since there was no compelling evidence to show it so within the meaning of s.102 LRA with the object of reducing his means to pay the wife maintenance or to deprive the wife of her rights concerning any property. The Court also found from the evidence that there was no real risk of dissipation or disposition of the properties by the husband. The Court takes the position that an undertaking as to damages may not be required in an application under s. 102 LRA, that was concerning an *inter partes* application only. Notwithstanding that s. 102 LRA does not require an undertaking as to damages, it is clear that an undertaking will be required where an application is made *ex parte*; and in the event the injunction involves third parties. The Court in *Susila* had clarified that the term "property" in s. 102 LRA must mean the parties' matrimonial assets, widely interpreted to include all manner of assets that have been acquired during the marriage, not only the matrimonial home, other real property and cash in bank

accounts, but also include cars, jewelry, insurance policies, stocks, and shares as well as retirement benefits.

[23] From the foregoing position of the law and the facts of the present case read against it, I find that evidently, PW has an arguable case as she had the interest to prevent any possible dissipation or disposition of matrimonial assets pending the determination of her matrimonial proceedings. She had demonstrated that RH could dissipate the said assets as he had arbitrarily done so with one of the accounts. Whether he will eventually have a sole right over those funds has yet to be ventilated at the trial of the Divorce Petition. He cannot on his own determine that the fund is his and do what he pleases with it, all the more so when it is a joint fixed deposit account (with interests chargeable on withdrawals) of the parties and the trial is pending. Only the Court is empowered under s. 76 LRA to decide that. By his action, he had shown a high risk of dissipating the matrimonial assets even before the petition is heard if an injunction is not granted.

[24] I agree with *Susila (supra)* that S. 102 LRA is silent on the requirement of an undertaking as to damages. Therefore, any alleged failure by PW to give a specific undertaking as to damages was not be held against her, all the more so as it does involve a third party. That said, for the record, the learned counsel for PW did inform the Court that PW is giving an undertaking for damages.

In *Ultimas Sdn Bhd v. Hi-Summit Construction Sdn Bhd & Other Appeals* [2017] 2 CLJ 636, FC:

“25] In support, we would refer to *Scott & English (M) Sdn Bhd v. Yek Toh Ming* [1985] 1 CLJ 482; [1985] CLJ (Rep) 749; [1985] 1 MLJ 451, OJ, where *Chong Siew Fai J* cited with approval *Halsbury’s Laws of England, 4th edn, vol. 3, para. 1179*, which reads: *When counsel appears in Court and states*

that he is instructed, the Court will not inquire into his authority to appear...”

In *Yukilon Manufacturing Sdn Bhd & Anor v. Dato’’ Wong Gek Meng & Ors* [1997] 2 CLJ 467 where Abdul Malik Ishak J (as he then was) held that:

“... “By the giving and acceptance of the retainer, the solicitor acquires his authority to act for the client, and whatever the solicitor does, it would bind the client. The client thus becomes bound both personally as between himself and his Solicitor (Bolden v. Nicholay [1857] 3 Jur NS 884; Adams v. London Improved Motor Coach Builders Ltd. [1921] 1 KB 495, CA where the presumption is that the client is liable for the solicitor’s costs) and as between himself and third persons. “

CONCLUSION

[25] In light of the foregoing and after closely scrutinizing the application and examining all evidence adduced before me, on the balance of probabilities, I allowed PW’s application in enclosure 9 (the relevant prayers) as follows:

Prayer 1 is allowed:

“(1). The injunctive order that RH is estopped from transferring and/or withdrawing from the accounts:

1. Maybank- Joint account no: 112857011760;
2. Maybank- Joint account no: 112857083881;
3. Peti Keselamatan Bersama di Affin Taman Kinrara Puchong;

4. ASNB account no. 000011776093; and

Prayer 2 is allowed:

“(2) Money in their joint Fixed Deposit Account No: 212857015486 for the mount RM 46,757.30 be returned and banked into a new account in the name of the Petitioner Wife and Respondent Husband.”

Dated: 22 NOVEMBER 2021

(HAYATUL AKMAL ABDUL AZIZ)

Judge

High Court Of Malaya

Shah Alam, Selangor Darul Ehsan

COUNSEL:

For the petitioner wife - Khoo Ai Theng; M/s Ng Kee Way & Co

For the respondent husband - Choo Dee Wei; M/s Choo Dee Wei

Case(s) referred to:

Ang Sae Ming v. Chow Foong Yien [2018] 1 LNS 701, HC

Ng Li Lin v. Ting Tian Hwa [2017] 4 CLJ 522, HC

Ang Sae Ming v. Chow Foong Yien [2018] 1 LNS 701 HC

Keet Gerald Francis Noel John v. Mohd Noor [1995] 1 MLJ 1993

SV Beverages Holdings Sdn Bhd & Ors v. Kickapoo (M) Sdn Bhd [2008] 4 MLJ 187, CA

Alor Janggus Soon Seng Trading Sdn Bhd & Ors v. Sey Hoe Sdn Bhd & Ors [1995] 1 MLJ 241, SC



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Yap Yen Piow v. Hee Wee Eng [2017] 1 MLJ 17, CA

Devi Vejaya Raman v. Krisna Murthi Govindasamy [2017] 1 LNS 494, HC

Susila a/p S Sankaran v. Subramaniam a/l P Govindasamy [2012] 9 MLJ 779, HC

Ultimas Sdn Bhd v. Hi-Summit Construction Sdn Bhd & Other Appeals [2017] 2 CLJ 636, FC

Yukilon Manufacturing Sdn Bhd & Anor v. Dato' Wong Gek Meng & Ors [1997] 2 CLJ 467

Legislation referred to:

Law Reform (Marriage and Divorce) Act 1976, ss. 53, 76(1), (3), (5), 102