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JAMES SLOAN

v.

SARALA DEVI SOCKALINGAM

B

HIGH COURT MALAYA, KUALA LUMPUR
YEOH WEE SIAM JC
[DIVORCE PETITION NO: S8-33-623-2009]
4 JULY 2011

C

FAMILY LAW: *Divorce - Division of matrimonial asset - Wife contributed in kind to acquisition and enhancement of asset - Whether granting wife 20% share of net proceeds from sale of asset reasonable - Whether wife financially unstable and requires maintenance from husband - Factors to consider - Law Reform (Marriage and Divorce) Act 1976, ss. 53, 54, 76, 77 & 78*

D

FAMILY LAW: *Divorce - Maintenance - Whether wife financially unstable and requires maintenance from husband - Factors to consider - Whether wife contributed equally to breakdown of marriage - Whether full amount of maintenance granted - Law Reform (Marriage and Divorce) Act 1976, ss. 53, 54 & 77*

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The petitioner husband ('husband') was an Irish national whereas the respondent wife ('wife') was a Malaysian. They had married and lived together as husband and wife for only 18 months when she left the matrimonial home. The husband petitioned, and the wife cross-petitioned, for divorce on the ground that the marriage had irretrievably broken down. Each party, however, had different reasons for the divorce. The husband contended that the wife's behaviour was intolerable and that he had been the object of her extreme verbal, emotional and mental abuse. The wife, on the other hand, alleged that she could no longer continue to live with his "private activities", by which she, *inter alia*, meant that he required her to have sex with multiple men or indulge in wife-swapping. She also contended that she had initially forced herself to indulge in such activities to save the marriage but could not tolerate it any more.

I

The main dispute in this proceeding concerned a condominium ('the property') purchased by the husband but jointly registered in the names of both parties. Each party wanted full ownership of it. At the time the property was bought, on the wife's suggestion, both parties were living together in Austria. The wife claimed that

as the husband was busy with his work in Austria, she attended to all matters connected with the sourcing and legal documentation for purchase of the property. She also purchased utilitarian and decorative items for the property and arranged for it to be rented out. After the parties came to Malaysia and moved into the property, the wife alleged that she did all the cleaning and household matters for upkeep of the property.

The other dispute in this proceeding concerned as to whether the wife was entitled to be maintained by the husband and, if so, in what amount. The wife submitted that she did part-time work earning between RM500 and RM2,500 per month and her rent was about RM1,000 per month. Although the husband was financially well off, he argued that she did not require maintenance as, with her good qualifications and previous job experiences, she was capable of getting a well-paying job and supporting herself.

Held (granting the divorce with *decree nisi* to be made absolute forthwith, ordering the husband to pay the wife RM1,000 monthly maintenance and each party to bear their own costs):

- (1) The evidence showed that the wife did not make monetary contributions towards acquisition of the property. Her contributions were all in kind. Thus, it was reasonable that she be given 20% of the net proceeds from sale of the property, or, if it was not sold, the cash equivalent thereof. (paras 27, 28 & 31)
- (2) Both parties had contributed equally to the breakdown of the marriage to the extent they could not be reasonably expected to live with one another any longer. (paras 70 & 71)
- (3) Having regard to the means and needs of both parties and the degree of responsibility of each for the breakdown of the marriage, as long as the wife was still financially unstable and in need, the husband had to give her some amount of maintenance until she was able to secure employment with a steady income to support herself fully. (para 76)

- A (4) Since the wife had contributed equally to the breakdown of the marriage, it was not possible for the court to grant her the full amount of the maintenance that she would have deserved had she not contributed to its breakdown. (para 78)
- B **Case(s) referred to:**
Koay Cheng Eng v. Linda Herawati Santoso [2008] 4 CLJ 105 CA (*refd*)
Lumsden v. Lumsden [1963] 5 FLR 388 (*refd*)
Parkunan Achulingam v. Kalaiyarasy Periasamy [2004] 7 CLJ 175 HC (*refd*)
- C **Legislation referred to:**
Law Reform (Marriage and Divorce) Act 1976, ss. 53, 54, 76(2), (4), 77(1)(b)

For the petitioner husband - Josephine LK Chow; M/s Josephine LK Chow & Co
- D *For the respondent wife - Gazel Cheong; M/s Gazel Chan & Partners*

Reported by Ashok Kumar

E **JUDGMENT**

Yeoh Wee Siam JC:

Appeal

- F [1] This is an appeal by James Sloan, the petitioner husband (“the PH”) against part of my decision given on encl. 1 on 24 May 2011 as follows:
- G (a) regarding the order on the property known as 37-12-2, Sri Penaga Condo, Jalan Medang Serai, 59100 Bangsar, Kuala Lumpur (“the property” or “the condo”) where Sarala Devi a/p Sockalingam, the respondent wife (“the RW”) was given 20% of the net proceeds of sale based on the market value of the said property; and
- H (b) regarding the order granting a maintenance of RM1,000 per month to be paid to the RW.

Enclosure 1, And Answer To Petition And Cross Petition Of RW (“Cross Petition”)

- I [2] Enclosure 1 is the divorce petition filed by the PH for the following prayers:

Prayer

- 13(a) : the marriage to be dissolved. A
- 13(b) : the RW to transfer the 1/2 share of the property to the PH. B
- 13(c) : that based on the transfer in para. (a) above, the PH will not make any claim against the RW for payment of the housing loan that had been made under the names of the PH and RW or any costs regarding the purchase of the property or any costs regarding the ownership of the said property in the names of the PH and RW where the RW did not make any contribution. C
- 13(d) : the car Honda City WPG 1125 which is being driven by the RW and paid in full by the PH be given to the RW. D
- 13(e) : the RW is not required to pay back the PH the sum of RM10,000 which had been taken by the RW at the time when the RW left the PH. E
- 13(f) : the PH will not claim back the sum of RM35,000 for the debt of the RW that the PH had paid to the creditors of the RW.
- 13(g) : costs to be borne by the respective parties. F

[3] In her cross-petition, the RW prayed for the following reliefs:

Prayer

- 35.1 : the marriage to be dissolved. G
- 35.2 : the PH to transfer the undivided 1/2 share of the property to the RW.
- 35.3 : all debts and/or arrears to the bank for the property to be settled by the PH only before the transfer of the property to the RW. H
- 35.4 : the PH to pay RM20,000 a month as maintenance to the RW.
- 35.5 : the PH to pay the cost of these proceedings and the legal fees of the RW. I
- 35.6 : such other relief as the Court deems fit.

A [4] I gave the following decision on 24 May 2011:

Regarding encl. 1

B Prayer 13(a) : allowed. The marriage is dissolved and the *Decree Nisi* is to be made absolute forthwith.

C Prayer 13(b) : the RW is allowed a share of the matrimonial asset ie, the property/condo at Sri Penaga ie, 20% of the net proceeds of the sale of such asset, or its equivalent should the PH decide not to sell it.

Prayer 13(c) : allowed.

D Prayers 13(d),
(e) and (f) : allowed.

Prayer 13(g) : costs are to be borne by the respective parties.

E Regarding the RW's Cross Petition

Prayer 35.1 : allowed. Decree Nisi is to be made absolute forthwith.

F Prayers 35.2 : dismissed, in view of the Court's Order
and 35.3 for prayer 13(b) of the PH's Petition.

G Prayer 35.4 : the RW is allowed a monthly maintenance of RM1,000 to be paid by the PH, and such sum is to be credited into the RW's bank account on or before the 7th day of each month.

Prayer 35.5 : costs are to be borne by the respective parties.

H **Reasons For My Decision**

Regarding The Order On Property

I [5] The law governing the division of matrimonial assets upon an order for divorce being made is found in s. 76 of the Law Reform (Marriage and Divorce) Act 1976 ("the LRA") which provides as follows:

76. Power for court to order division of matrimonial assets. **A**
- (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 by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale. **B**
- (2) In exercising the 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; **C**
- (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**
- and subject to those considerations, the court shall incline towards equality of division.
- (3) 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 during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale. **E**
- (4) In exercising the power conferred by subsection (3) the court shall have regard to: **F**
- (a) 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 the family; **G**
- (b) the needs of the minor children, if any, of the marriage;
- and subject to those considerations, the court may divide the assets or the proceeds of sale in such proportions as the court thinks reasonable; but in any case the party by whose effort the assets were acquired shall receive a greater proportion. **H**
- (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. **I**

- A [6] The main factors to be considered under s. 76 of the LRA for the division of any matrimonial asset are:
- (a) whether the property is a matrimonial asset;
 - B (b) if so, what is the extent of contribution by each party towards the acquiring of the asset; and
 - (c) any debts owing by either party which were contracted for their joint benefit.
- C [7] The guiding principle under s. 76(2) of the LRA is to incline towards equality of division of both parties who have acquired the matrimonial asset by their joint efforts.
- D [8] However, under s. 76(3) and (4) of the LRA, if the property is acquired by the sole effort of one party to the marriage, the other party can be given a share of the property based on the extent of contributions made to the welfare of the family by looking after the home or caring the family.
- E [9] In the present case, the property is currently registered under the names of the PH and the RW, each holding 1/2 share. Each party is now praying for the other 1/2 share of the property to be transferred to his or her name, which in effect means that each party is claiming a 100% ownership/division of the property.
- F [10] The RW claimed that the property was purchased by the PH for her as a gift, in particular to give her security for the future.
- G [11] The PH disputed that. He stated that he never intended the property to be given as a gift to the RW. He allowed the RW to hold 1/2 share of the property as security for her should anything happen to him in the future. This is on the basis that the marriage is still good and intact. However, if the marriage breaks down and is to be dissolved, as in this case, then the PH prays that the other 1/2 of the property is to be given back to him by the RW since he was the one who had been and is still paying for the property.
- H [12] The RW gave evidence to prove her contributions towards the acquisition of the property as follows:
- I

[13] The PH is an Irish and the RW is a Malaysian. They had known each other since 1998 and were married to each other on 29 July 2004. A

[14] At the time when the property was purchased, both parties were living together in Austria. However, at the RW's suggestion, they decided to buy a property in Malaysia. B

[15] Since the PH was still working in Austria, the RW came back to Malaysia to look for a suitable property and she found the said condo to buy. She confirmed the purchase of the condo and paid the down payment and organized the lawyer to execute the paperwork. She flew back to Austria. She coordinated with the lawyer for all the agreements and documents to be couriered to Austria for her and the PH to sign. They needed a witness to their signatures for the documents, and the RW was able to arrange for the signing at the Malaysian Embassy in Austria before Mr. Suliman Ibrahim, the Malaysian Third Secretary based at the Embassy. The RW was able to make this arrangement because she was a member of the Malaysian Wives' social group and was familiar with the people at the Embassy office. C
D
E

[16] All the documentation pertaining to the Sale and Purchase Agreement ("S & P") of the property were dealt with by the RW. She liaised with the lawyer in Malaysia ie, Messrs Mazlan & Associates who handled the matter and all the necessary documents were couriered back and forth. The PH was busy with his work in Austria and did not have time to arrange for all this. The RW contended that this is not unusual as it was the same when they got married. She was the one who purchased the wedding rings for both of them, organized all the paperwork etc. and when the PH came back on leave to Malaysia they got married. The RW did all the arrangement and coordination for the sourcing, purchasing, signing and taking possession of the property. F
G

[17] The S & P for the property is in both names of the parties and they are joint owners of the condo (see exh. P1, pp. 1 to 15 of bundle B). H

[18] The RW in her examination-in-chief stated that after the documents were completed for the purchase of the condo, she received the keys of the condo from Ms Francine Tan of Westmont Properties. She had to go to the various authorities (eg, DBKL, Gas Malaysia, etc) to transfer the ownership to them. I

A Then she cleaned the condo, purchased some minor items and arranged for some repairs to be done, so that the place was presentable for tenancy. She then put in an advertisement for the rental of the condo but the response was poor. So she enlisted the assistance of a real estate agent to do it, namely, Ms Screen
B Loh of Property Link.

C [19] The RW purchased items for the condo such as curtains, table lamps, vases, bed linens, potted plants, kitchen utensils etc. She also arranged for the decoration and maintenance works for the condo.

D [20] In order to arrange for the tenant, the RW had to fly back from Austria to Malaysia during October 2005, for the handover of the keys from the previous owner. She stayed on to organize the rental as well. When this was concluded, the RW handed over the keys of the condo to the tenant and returned to Austria.

E [21] The PH in his cross-examination admitted that it was the RW who searched for the condo since at that time he was in Vienna and the RW was in Kuala Lumpur. He confirmed that he did not see the condo physically at all prior to the purchase. He only saw the photograph of the condo.

F [22] The PH also confirmed that after the purchase of the condo, it was the RW who looked for a tenant for the condo. She was the one who arranged for the tenancy with the property agent for the tenancy commencing 1 November 2005 to 31 December 2006. It was the RW who signed the tenancy agreement for the condo, not the PH (see bundle D).

G [23] After the tenant moved out, the PH and RW moved into the condo. The RW did all the household matters for the condo like cleaning, upkeeping and maintaining the condo. They did not have a maid, so the RW did all the cleaning and upkeeping of the condo despite the fact that by then the RW was already working full-time.
H

I [24] The PH contended that he did most of the cleaning for the condo whilst the RW did the cooking (and he admitted that the RW is a good cook). However, the RW contended that she was the one who did all the household matters for the condo. She stated that the PH did not help with the household chores. He spent most of his time on the Internet.

[25] The RW stated that even though she is a joint owner of the condo, the total rent for the condo from 1 November 2005 to 16 Disember 2006 was collected by the PH. The RW requested the court to take into consideration 1/2 of the total rent that she is entitled to ie, RM22,800 out of the RM45,600.

A

[26] From the evidence adduced, it is clear that the property is a matrimonial asset acquired in the course of marriage by the joint efforts of both parties. I do not think that it is a 100% gift from the PH to the RW. It is my finding that the intention of both parties, at the time when the property was purchased, is that the PH and RW should be joint owners of the property, on the basis that the marriage continues in their lifetime. However, since the marriage broke down, the whole property has to be divided according to s. 76 of the LRA based on their contributions towards the acquisition of the matrimonial asset.

B

C

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[27] The evidence shows that RW did not make monetary contributions towards the acquisition of the property. Her contributions are all in kind, as shown from the evidence enumerated above.

E

[28] Based on the above contributions of the RW, I am of the opinion that it is reasonable that the RW be given, not 100% or 50% of the property, but only 20% of the net proceeds from the sale of the property.

F

[29] By net proceeds, I mean that should the property be sold according to the current market value, then the proceeds are less all costs incurred in the sale, such as agent's commission, legal costs, transfer costs (if any), including the redemption sum to be paid to the bank for the loan (if any), and all other costs which are incidental to the sale.

G

[30] The net proceeds should not take into account or deduct any costs that had been incurred in the purchase of the property, including any loan payments or rental collected.

H

[31] However, should the PH decide to keep the property, he is required to give the RW the cash equivalent of what the RW is entitled to from the net proceeds of the sale of the property should it be sold.

I

A [32] I decided on the proportion of 20% division of the matrimonial asset for the RW after taking into account prayers 13(c), (d), (e) and (f) of the petition, which I allowed. I took into consideration the fact that the RW did not have to pay for all the sums stated in prayers 13(c), (d), (e) and (f). As such, she is not
B entitled to 1/2 of the matrimonial asset, but it is reasonable and just that she gets a 20% share of the property as I had stated above having regard to her non-monetary contributions.

C [33] Since the PH is the one who fully funded the purchase of the property, given the fact that he had already expended money on the items in prayers 13(c), (d), (e) and (f) of the petition, it is also reasonable and just that he now gets 80% share of the property.

D *Regarding The Order On Maintenance For The Wife*

[34] I ordered the PH to pay the RW a monthly maintenance of RM1,000 per month.

E [35] Section 77(1)(b) of the LRA empowers the court to order maintenance to be paid to a wife or former wife when granting a decree of divorce.

[36] In *Koay Cheng Eng v. Linda Herawati Santoso* [2008] 4 CLJ 105 at p. 114 the Court of Appeal stated as follows:

F What is maintenance is defined in *Re Borthwick (Deceased)*, *Borthwick v. Beauvais* [1949] Ch 395 where at p. 401, His Lordship Harman J held:

G ... Maintenance does not only mean the food she puts in her mouth, it means the clothes on her back, the house in which she lives, and the money which she has in her pocket, all of which vary according to the means of the man who leaves a wife behind him. I think that must be so. Maintenance cannot mean only a mere subsistence.

H ... Thus to me, what amount of maintenance the husband should pay to the wife must depend on the means and needs of the parties, taking into account the standard of living of the parties which was enjoyed by them during the marriage.

I [37] Section 78 of the LRA provides for the assessment of such maintenance as follows:

78. Assessment of maintenance. A

In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage. B

[38] In *Koay Cheng Eng v. Linda Herawati Santoso (supra)* the Court of Appeal went on to hold as follows: C

It is an established principle that in deciding what amount of maintenance the husband should pay the wife, the court must take into consideration the means and needs of the parties. In assessing the means and needs of the parties the court has always had regard to the duration of the marriage, whether there were any children of the marriage, the age of the parties, whether the husband had financially supported the wife during the duration of their marriage, the parties earning capabilities and whether the divorce would have affected the husband's position financially. D

[39] In the case of *Parkunan Achulingam v. Kalaiyarasy Periasamy* [2004] 7 CLJ 175 (Faiza Tamby Chik) J cited the case of the Supreme Court of Victoria, *Lumsden v. Lumsden* [1963] 5 FLR 388 at p. 394, where Hering CJ, Dean and Gowans JJ held: E

In the second place in awarding maintenance the court endeavours, subject to the Husband's financial position, to place the wife in a position to enjoy the same standard of living as she did during the marriage. F

Means And Needs Of The Parties G

[40] The RW is claiming a monthly maintenance of RM20,000 a month from the PH. She based it on the amount that the PH gave her in Austria when they were living there, which I think cannot apply to Malaysia since the cost of living is much lower here. Moreover, I think the amount of RM20,000 per month is a grossly inflated figure. I note, however, that upon cross-examination, the RW reduced her claim to RM10,000 per month. H

[41] The RW stated that when she first came back to Malaysia, before the PH relocated to Malaysia in order to live with her, the PH had paid for her expenses of about RM7,000 to RM8,000 a month. However, the bank statement of the PH at HSBC, Kuching branch, dated January 2006 (pp. 31 f and 31 g of I

A respondent's bundle of document) showed that the RW only withdrew RM5,000 for that month. That was at a time when the RW did not have a job.

B [42] Currently, the RW earns between RM500 to RM2,500 a month. She is 48 years old. From 2008 until now she does not have a full-time job but does some part-time work. She does some training programmes, teach English, edits Primary and Secondary School books, writes Press releases for certain companies, writes Website contents, and does some Human Resource consulting work. Her rent is about RM1,000 per month. No documentary evidence was adduced on her monthly expenses.

D [43] The RW has an impressive curriculum vitae ("CV"), but judging from the number of jobs she held within a short period, it appears that she does not stay long in any particular job, for example: at the end of April 2006, she was working for British India for 4 months with a basic salary of RM6,000 per month. Then she moved to KASK consulting, getting a salary of RM6,000 per month for about a year. Next, she moved to help a friend at a legal firm, Messr Mazlan & Associates, and received a salary of RM10,000 per month for one or two months. After that, she had another job offer and worked with a multinational company, Teletech, for about four or five months with a salary of RM10,000 per month. Her last job was with Data Com for about six to seven months with a salary of RM12,500 per month. She worked for all these companies from the time she came back from Austria to Malaysia in 2006 until 2008. She denied that she has issues with her previous employers, except for Data Com where she now has a pending matter with the Industrial Relations Department for constructive dismissal.

G [44] On the other hand, the PH is financially stable and strong. His current take-home salary is RM50,000 per month. From the evidence adduced, it is clear that the PH and RW lived very comfortably, given the PH's high income. The PH admitted that his salary is sufficient to pay RM7,000 to RM8,000 for the RW per month. However, the PH contended that the RW does not have to be paid any maintenance because she is capable of getting a good job, with her qualifications as seen in her CV, and she should support herself. He only supported her in Austria because she was unable to get a job there. The PH further contended that

he should not be made to pay maintenance to the RW just because by her own doing, the RW was unable to stay long in any job. A

[45] The PH contended that the RW was previously sacked by Federal Express. Even though the RW said that she left her job at Shangri La Hotel at Tanjung Aru, Kota Kinabalu (“the hotel”) on her own accord, the PH informed the court that she left the job because she was supposed to be sacked. The matter was later settled when the RW put in her resignation letter provided that the management of the Hotel gives her a letter of reference. The letter was actually drafted by the PH for the RW to take to the management of the hotel to sign. B C

[46] The PW further contended that since the RW is responsible for the breakdown of the marriage she is not entitled to any maintenance from him. D

Degree Of Responsibility To Be Apportioned To Each Party For Breakdown Of The Marriage

[47] In the PH’s petition he applied under ss. 53(1) and 54(1)(b) of the LRA for a divorce on the ground of irretrievable breakdown of the marriage due to the unreasonable behaviour of the RW. E

[48] The PH gave evidence of the extreme verbal, emotional and mental abuse and attack by the RW during the course of their marriage to the extent that he could no longer continue in the marriage with her. He stated that the RW is strong-willed and stubborn. He said that it was hell living with the RW. F

[49] According to the PH, out of love for the RW, he gave the RW a condo and a car, paid for all sorts of things, gave her his cash card without limitation (allegedly), and took her to his family’s home and met with his family, but without reciprocation from the RW. G

[50] The PH described his life with the RW as “like being on a rollercoaster”. When the RW was in good spirits she was a beautiful woman and a pleasure to be with; when she was in an angry mood, which became progressively more frequent and animated over time, the PH had to stand up for himself because life became intolerable. When the RW was angry she would often attack the PH verbally, and the PH was unable to make himself I

A heard. The RW was extremely “good” at identifying points of criticism in the miniature of life or things that the PH had said and transforming them into big issues against the PH, exaggerating, dramatizing and repeating them so often and with such conviction that sometimes the PH wondered whether he really had done those things that the RW accused him of.

[51] The PH believes that the RW’s angry disposition and volatility were the biggest factors in the breakdown of the marriage. She repeatedly said nasty things, that the PH was:

- C – a disgrace to his family
– a shame to his poor parents
– what kind of a father was he?
- D – a useless and stupid man
– fool who had it all but didn’t realise it (ie, making reference to how lucky he was to have her)
- E – a selfish, self-centred man.

[52] In time, the PH started to respond and tried to defend himself. He described the RW’s attacks variously as “vitriolic”, “torrents of abuse”, “wild rants”, “ripping me to pieces” and “verbally slaughter me every time”.

F [53] As time went by, the RW started going to see a lawyer for the most trivial of reasons eg, “I’ll talk to my lawyer tomorrow”. She goaded the PH to see a lawyer repeatedly and endlessly asking whether the PH had found a lawyer yet. She sent text messages to the PH, “C you in court”, “I’ll have my day in court” (see bundle B pp. 42 to 67, exh. P6).

H [54] On the other hand, the RW in her answer to the petition and cross-petition also prayed for a divorce but on several other grounds for the irretrievable breakdown of the marriage.

I [55] The main grounds that the RW relied upon are the “private activities” of the PH. The PH himself admitted that he was involved in private activities even before he married the RW. In fact, even at the time when the PH was still married to his first wife, he was already involved in private activities. His first wife (now his ex-wife) knew about it. The RW also knew about it and married the PH fully knowing about such private activities.

[56] By “private activities” in this case, the PH meant that he would arrange to meet a male stranger on the internet. The male stranger would be invited to have sex with the RW while the PH takes videos or pictures of them before the PH himself joins them for sex. A

[57] The RW went on further to explain that the PH required her to have sex with multiple men, or wife-swapping. B

[58] The PH maintained that the RW and he participated in these private activities as a willing, consenting married couple. The RW enjoyed participating in these activities and PH thinks that it is unacceptable that the RW should now cite this as a ground for the breakdown of the marriage. The PH exhibited several photographs in court taken in their apartment in Austria in 2005 where the RW was dressing up for a private activity with a younger male, where she was happy and looking forward to it, and the captions of her conversation with the PH were all shown (see Bundle C, exhs. P8A to G, P9A to H, P10A to G). The RW had used words such as “So much fun” and “I just love this”. C D

[59] According to the PH, he and the RW first explored the private activities at the Hilton Hotel in Paddington, London. That was around 21 to 27 April 2005, according to the RW. The PH contended that the RW enjoyed the event hugely and was keen to do it again very soon. They did repeat the experience on a number of occasions, the last time being in late December 2006, after they returned to Malaysia. The PH stated that the RW suggested making a special trip to Singapore for a private activity and asked the PH to arrange everything, which the PH did. E F

[60] The PH therefore contended that it is completely misleading to suggest that the RW was forced by him to do something against her own will. The RW is extremely single-minded and stubborn; she simply would not do something like that if she did not choose to do so. G

[61] The RW further contended that the marriage irretrievably broke down for the following reasons: H

[62] During the marriage, the PH generally picked on every little thing eg, the RW wearing flat heels, working late, dragging her feet etc, etc, and did listen to any reasoning. The PH would shout at her if he did not agree with her. There were many times that the I

- A PH even hit her and the RW had bruises on her arms, legs and back. I note, however, that no medical reports or Police reports were adduced as evidence.
- B [63] Aside from the abuse, the PH wanted the RW to go to porn theatres, swing clubs and S & M clubs while in Austria. He also wanted the RW to get in to the swinging lifestyle which he was accustomed to before they met. If the RW was not agreeable to his request, the PH would get angry and it would always end up in a fight and abuse, so the RW finally gave in.
- C [64] The swinging lifestyle only started after the PH and RW were married (before that they were living together). Prior to the marriage, the PH did not make such a request. The PH told the RW that his ex-wife was not interested in him or sex, so the PH engaged in having sexual encounters with other couples or singles etc for nearly ten years of his previous marriage. The RW told the PH that she had only been with one man before the PH and that was her ex-husband. This was not the culture that she was raised in. The PH was fine with it. When they were about to get married, the RW again reminded the PH about this. The PH promised her that he would not expect this of her.
- D
- E [65] When they were in Austria, the PH get bored and started pushing the RW to have sex with other men. The RW refused and the PH would sulk. The PH kept pushing the RW and if she did not agree with his request, he would shout at her or hit her.
- F [66] Because the RW wanted to stay married, she did her best including sleeping with other men to save the marriage “but nothing was or will ever be enough”.
- G [67] The RW realised that when she came back to Malaysia. The PH wanted her to sleep with more than one men at a time. That was the last straw and the RW made up her mind that the marriage was not worth saving. She was a fool to even have thought that the PH ever loved her. The PH is a selfish and self-centred person.
- H
- I [68] Under cross-examination, when the RW was questioned why she looked happy in the photographs taken of her in her apartment in Austria where she was dressing up before a private activity, she replied, “one learns to say these things when you’re married to a pervert who expects it. If I made a fuss about it, it

would just spark off a fight and more drama. If I was so happy and into it all, there was no reason whatsoever for me to have left the petitioner when we returned to Malaysia.” A

[69] According to the undisputed fact, the RW left the PH at the matrimonial home on 10 February 2007, after about 2 1/2 years of marriage. The duration they actually lived together as husband and wife is about 18 months in total. B

[70] On a balance of probabilities, I find that the marriage irretrievably broke down due to the RW’s unreasonable behaviour in abusing the PH verbally, emotionally and mentally, and also due to the PH’s unreasonable behaviour in wanting the RW to be frequently involved in his private activities (even though she did not wish to do so anymore after coming back to Malaysia). All this is to the extent that the PH and the RW cannot be reasonably expected to live with the other party any longer. It is therefore inevitable that I had to grant the *Decree Nisi* to dissolve the marriage according to ss. 53 and 54(1)(b) of the LRA. C D

[71] It is my finding that both the PH and RW had contributed equally to the breakdown of the marriage. E

[72] The PH and RW adduced extensive evidence on the conduct of the other party after their separation from each other.

[73] The PH alleged that the RW, after the petition was filed, committed several malicious, and damaging vengeful acts against him such as sending an email (purportedly from the PH) to the PH’s parents, sister and ex-wife making “confessions” about his matrimonial life with his ex-wife and the RW and his guilt in tax evading actions in Austria, sending a Facebook message to the PH’s children having the same content, and writing to the Malaysian Immigration Department accusing him of tax evasion in Malaysia, with the motive of getting the PH’s working visa cancelled so that he be asked to leave the country. F G

[74] On the other hand, the RW accused the PH of threatening *via* SMSs and email to post her photographs on adult websites in the Internet. However, no proof was given of such matters. The RW did not visit those links given in the emails, or the websites to verify them. H I

- A [75] I did not consider the above alleged respective acts of the PH and RW for the purpose of computing the amount of maintenance for the RW since they are not relevant under s. 78 of the LRA. Under s. 78 the court should only consider the degree of responsibility which the court apportions to each party
- B for the breakdown of the marriage, namely whatever each party did to break down the marriage during the time that they were living together and before the RW left the matrimonial home. The above malicious acts that the PH and RW are alleging against each other were committed after the RW had left the matrimonial
- C home, after the marriage had broken down, and therefore should not be considered at all under s. 78, of the LRA. Such evidence, at the most, can only serve to prove conclusively that the marriage has already irretrievably broken down, to a point of no return.
- D [76] Having regard to the means and needs of both parties, and the degree of responsibility which the court apportions to each party for the breakdown of the marriage in accordance with s. 78 of the LRA, I am of the view that for as long as the RW is still
- E financially unstable and in need, the PH has to give her some amount of maintenance until such as time as when she is able to secure employment with a steady income to support herself fully. Given her good qualifications and impressive CV, the RW is expected to do her best to get a job soon. I also consider the
- F fact that the RW has been having a problem in her back since a previous snatch theft incident in October 2005. Even though the PH stated that he had not paid for the RW's medical insurance in Malaysia, the fact remains that the RW does have a medical issue at the moment because of the pain in her back.
- G [77] The PH's January 2006 bank statement showing a withdrawal of RM5,000 proves that when the RW was first living alone in Malaysia, before the PH came here to live with her, the RM5,000 was enough for her monthly expenses. That was at the
- H time when the RW had just returned to Malaysia and had not found a job yet.
- I [78] Now that the RW is earning between RM500 to RM2,500 a month, I am of the opinion that she does need some maintenance from the PH to supplement her earnings in order to survive. The RW did not disclose whether she is being paid any

maintenance by her ex-husband from her previous divorce. Since the RW had contributed equally to the breakdown of the marriage, it would not be possible for the court to grant her the full amount of the maintenance that she would have deserved had she not contributed to the breakdown of the marriage. I am of the view that a reasonable sum to award her by way of a monthly maintenance for the wife is RM1,000, bearing in mind the short duration of 18 months that both parties lived together as husband and wife.

[79] For the above reasons, I therefore ordered accordingly.

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