VH v VI and Another
[2007] SGHC 221

Case Number : D 4042/2005, RAS 29/2007, SUM 6355/2007, 6708/2007

Decision Date : 17 December 2007

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Niko Isaac (Tito Isaac & Co) for the petitioner; Bernice Loo (Allen & Gledhill) for the respondent; Koh Tien Hua (Harry Elias Partnership) for the co-respondent

Parties : VH — VI; B

Family Law – Divorce – Concurrent divorce proceedings in Singapore and Sweden

Civil Procedure – Stay of proceedings – Whether Singapore proceedings should be stayed in favour of Swedish proceedings at a more advanced stage

Civil Procedure – Injunctions – Anti-suit injunction – Whether ends of justice served by granting anti-suit injunction – Anti-suit injunctions to be issued with caution

Civil Procedure – Costs – Whether costs should be awarded to successful party that disregarded interim injunction

Conflict of Laws – Natural forum – Forum non conveniens – Whether Sweden more appropriate forum than Singapore because it provided easier fault-free divorces

[EDITORIAL NOTE: The details of this judgment have been changed to comply with the Children and Young Persons Act and/or the Women's Charter]

17 December 2007 Judgment reserved.

Kan Ting Chiu J:

Background

1 The petitioner, a French national, married the respondent, a Swedish national, in July 1993 in Sweden. They are permanent residents of Singapore and reside here with their two infant children who were born in Singapore and Indonesia. The respondent runs his own business, after a successful career with a multi-national corporation, and the petitioner was a lecturer in French.

2 The marriage has broken down and the relationship between them is acrimonious. On 13 September 2005, the petitioner commenced divorce proceedings here ("the Singapore proceedings") against the respondent on the ground, *inter alia*, that the marriage had broken down irretrievably because the respondent committed adultery with the co-respondent named in the petition. The petitioner was able to file the petition in Singapore because s 93(2) of the Women's Charter (Cap 353 1997, Rev Ed) gives the Singapore courts jurisdiction when one of the parties has been habitually resident in Singapore at the commencement of the proceedings.

3 The respondent submitted to the jurisdiction of the Singapore courts when the divorce petition was served on him. He had filed his answer to the petition on 18 October 2005 and has filed several interlocutory applications. The Singapore proceedings have not progressed very far, and have not been fixed for hearing. On 28 November 2006, he filed an application to stay the Singapore

proceedings pending the determination of divorce proceedings before the Stockholm City Court, Stockholm, Sweden ("the Swedish proceedings"). This application was dismissed on 9 March 2007 and comes before me on appeal.

4 The respondent had filed the Swedish proceedings on 4 October 2006. The petitioner had applied to the Swedish District Court to stay the Swedish proceedings because of the ongoing Singapore proceedings. The application was heard by the Swedish court on 9 January 2007. The court dismissed the petitioner's application to stay the proceedings and ordered a reconsideration period of six months, after which the respondent could request for a Divorce Decree to be issued. The appeal against the dismissal was likewise dismissed on 26 April 2007 by the Swedish High Court. An application to the Swedish Royal Court of Appeal for leave to appeal was dismissed on 4 July 2007.

5 On 15 May 2007, the respondent applied for a Divorce Decree to be issued, and it was issued on 26 June 2007, dissolving the marriage.

6 The petitioner having failed to stay the Swedish proceedings in Sweden, applied for an anti-suit injunction in the Singapore proceedings to restrain the respondent from continuing with the Swedish proceedings. The application was filed on 3 May 2007 and came on for hearing before me on 8 May 2007, i.e. the day before the expiration of the six-month reconsideration period, on an urgent basis.

7 It was evident that neither the parties nor the court were prepared, or had the time for a full hearing of the application on 8 May 2007. In the circumstances, I ordered that the respondent was to file his affidavit in reply to the application by 29 May 2007 and that the application be fixed for hearing by the Registry after 29 May 2007. To preserve the situation, I also issued an interim injunction prohibiting the respondent from proceeding with the Swedish proceedings pending the hearing and disposal of the application for the anti-suit injunction.

8 The respondent disregarded the order. He applied on 15 May 2007 to the Swedish Courts to issue the Divorce Decree, and it was issued on 26 June 2007.

9 When the parties came before me again on 12 July 2007, the situation was that there were the ongoing Singapore proceedings which were in a relatively early stage, and the Swedish proceedings which had progressed substantially.

10 The two issues to be addressed in the hearing before me are whether the Singapore proceedings should be stayed, and whether there should be an anti-suit injunction.

11 There is a common element in both applications. They both refer to the forum in which a dispute is to be determined. In an application for a stay order on the ground of *forum non conveniens*, the applicant seeks to stay existing proceedings in the jurisdiction where the application is made, on the basis that the dispute should be resolved in another jurisdiction instead.

12 In an application for an anti-suit injunction, the applicant seeks to restrain another party from commencing or continuing with proceedings in another jurisdiction on the ground that the dispute should be determined in the jurisdiction where the application is made.

13 The tests for these applications are set in different terms, i.e. the existence of a more appropriate forum for a stay order, and the furtherance of the ends of justice for an anti-suit injunction. It would be interesting to examine the similarities and differences between them. However, it is not necessary, and I will not do it in this judgment, and will deal with each application and its test separately.

The respondent's stay application

14 The respondent's application was made in rather exceptional circumstances. He did not do anything to stay the proceedings when they commenced in September 2005. He filed his answer, and attended mediation hearings in the course of the Singapore proceedings.

15 He did not commence divorce proceedings in Sweden till October 2006. It was only in November 2006, 13 months into the Singapore proceedings, that he applied for them to be stayed pending the Swedish proceedings.

16 Why did the respondent engage in the Singapore proceedings for so long before applying for a stay? In his affidavit filed on 10 July 2007, he explained:

> 56. I will now explain why I filed the Swedish divorce proceedings only in October 2006 and not earlier. It was not done out of an intention to thwart the Singapore divorce proceedings or to deprive the Petitioner of a divorce and fair resolution of the ancillary matters, which is what the Petitioner has accused me of. To the contrary, it was done in the *best interests of both the Petitioner and me*, and in the children's best interests. (Emphasis added)
>
> 57. It was my intention all along to try to settle the divorce and ancillary matters amicably and expeditiously. As I mentioned earlier, one example of such intention was when I offered, in my Answer, to have the divorce granted on the basis of my "unreasonable" behaviour.
>
> 58. I understood that the Singapore Court offered mediation services in divorce cases. I had great faith that the Singapore Court would be able to convince the Petitioner and help us both settle the matter without the need for protracted, painful and costly litigation.
>
> 59. Hence, I asked my solicitors to quickly get mediation dates fixed. I agreed to take part in the mediation sessions and, only in this sense, to continue with the Singapore proceedings. In other words, I agreed to continue with the Singapore proceedings only so as to participate in the mediation sessions, in the hope that it would lead to a speedy and amicable settlement.

and he recounted that he and the petitioner attended at mediation services between February and June 2006, although the petitioner had informed him in March 2006 that she intended to withdraw from the mediation services.

17 The respondent's explanation and conduct show that he has submitted to the jurisdiction and had hoped that the Singapore proceedings would lead to a speedy and amicable settlement.

18 He is represented by counsel throughout the Singapore proceedings. He must have known that he could institute divorce proceedings in Sweden or seek an order that any divorce proceedings to dissolve the marriage should be instituted in Sweden, and he could apply to stay the Singapore proceedings. He did not do that at the outset because he decided at that time that Singapore was a proper forum for the divorce proceedings. It was only when no speedy and amicable settlement was reached that he decided to commence the Swedish proceedings.

19 He went on to explain in his affidavit:

> 71. I had been advised that, under Swedish divorce laws, the Petitioner would not be prejudiced in any way. In fact, under Swedish law, *the Petitioner would get a very fair "deal"*. (Emphasis added)

72. For example, in Sweden, the divorce would be granted within months, on a no-fault basis. After all, a divorce was what the Petitioner and I both want.

73. The Petitioner and I would have joint custody of the children. We have already both agreed to this. In any event, I understand this is also likely to be the position the Singapore Court would take.

74. The Petitioner is entitled to ask for maintenance for herself. The Petitioner and I are entitled to ask for maintenance for the children.

75. Both parents are obliged to maintain the children. I understand this is the same under Singapore law.

76. Under Swedish law, the Petitioner is entitled to 50% of the matrimonial assets. This is what the Petitioner has always wanted. In fact, as I understand it, under Singapore law, it is likely that the Petitioner will get less than 50% of the matrimonial assets as she did not make any financial contribution to acquire them.

77. My Swedish solicitor, Ms Sophie Paulsson, is filing an affidavit in support of the Swedish position on divorce laws, and explaining the relevant Swedish legislation.

78. Hence, *the Swedish divorce process is fair to both the Petitioner and me*. (Emphasis added)

79. Clearly, the Swedish divorce process is also in the children's best interests. Their parents would not have to air their dirty laundry in public and sling mud at each other in order to get a divorce. The children would be protected, vis a vis the joint custody order, and maintenance would be provided for them.

80. It was for all these reasons that I decided to file for divorce in Sweden in October 2006. I did it, knowing the Petitioner would get a fair judgment there, and so would I. I did it, knowing we would both have the matter resolved within months, without further acrimony and without incurring much more legal costs.[note: 1]

20 The law on stay of proceedings on the ground of *forum non conveniens* is well settled. The Court of Appeal has affirmed that the principles enunciated by the House of Lords in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] 1 AC 460 ("*Spiliada*") apply: see *Brinkerhoff Maritime Drilling Corp & Anor v PT Airfast Services Indonesia* [1992] 2 SLR 776; *Eng Liat Kiang v Eng Bak Hern* [1995] 3 SLR 97, *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1998] 1 SLR 253 and *Rickshaw Investments Ltd & Another v Nicolai Baron von Uexkull* [2007] 1 SLR 377.

21 In *Spiliada,* Lord Goff set out six principles at 476-478, which I summarise, retaining His Lordship's words as far as I can:

(a) The basic principle is that a stay will only be granted on the ground of *forum non conveniens* where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action.

(b) In general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay. If the court is satisfied that there is another available forum which is prima facie the appropriate forum for the trial of the action, the burden will then shift to the

plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country.

(c) The burden resting on the defendant is not just to show that the forum of the action is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the forum of the action.

(d) The "natural forum" is that with which the action had the most real and substantial connection. So it is for connecting factors in this sense that the court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction.

(e) If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay.

(f) If however the court concludes at that stage that there is some other available forum, which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted.

22 Counsel for the respondent submitted that Sweden is a more appropriate forum because:

a. The parties are not, and never intended to be, domiciled in Singapore.

b. The marriage did not break down in Singapore.

c. The bulk of the assets are not in Singapore.

d. The children are not Singapore citizens and attend international school.

e. The divorce proceedings in Singapore are in initial stages.

f. Divorce proceedings have commenced in Sweden to a further stage than the Singapore proceedings.

g. No prejudice to parties for divorce and ancillary matters to be heard in Sweden. In fact, it is in the interests of the parties and in the interests of justice that the matter should be determined in Sweden.[note: 2]

23 The petitioner opposed the stay application. Her counsel was critical of the respondent for making the application 13 months after he had participated in the proceedings. There is merit in the criticism. The respondent is legally represented throughout the Singapore proceedings. He would have, or should have, been advised on the Singapore divorce process, and that he could apply to stay the proceedings if he felt that Sweden is the more appropriate forum for the divorce proceedings. Having by his conduct lead the petitioner and the Singapore court to believe that he accepts Singapore to be the appropriate forum to deal with the divorce, he changes his mind, and wants the divorce to be dealt with in Sweden instead.

24 When he deposed his affidavit in support of the stay application, a primary contention was that the petitioner would not be prejudiced, and that she would get a very fair deal in that the divorce could be obtained on a no-fault basis within months, that they would have joint custody of the children and the petitioner could apply for maintenance for herself and the children, and that the

petitioner would be entitled to half the matrimonial assets.

25 The respondent filed an affidavit deposed by his Swedish lawyer, Sophie Palmgren Paulsson that:

> Generally, foreign judgments will not be recognized or enforced in Sweden unless the Swedish Court is required to do so by law (often based on treaties).[note: 3]

26 The suggestion is that any divorce issued in the Singapore proceedings will not be recognized in Sweden. His counsel in the application before me goes further, and submits that a Singapore divorce will have no effect in Sweden.[note: 4] However, Ms Paulsson did not state that a Singapore divorce order is not recognised in Sweden. If indeed that is the position, why did the respondent participate in the Singapore proceedings at all? In the absence of a clear statement from a competent source, I do not regard there to be any evidence that a Singapore order will not be recognized in Sweden.

27 It is commendable that the respondent was acting in his interest and the petitioner's interest as well when he filed the Swedish proceedings, as he professes. Nevertheless, it should not surprise him at this stage of their relationship that the petitioner does not believe his good intentions, and she has reason to do that.

28 On the facts before me, it is quite clear that the respondent was content with the Singapore proceedings until he realised that the divorce could not be concluded quickly. It is also quite clear that when he is disillusioned with the Singapore proceedings, Sweden is a suitable alternative forum, given that he is a Swedish national and has maintained substantial links with Sweden, and that the children are also Swedish nationals (as well as French nationals).

29 The crucial question is not whether Sweden is an *appropriate* forum, but whether Sweden is the *more appropriate* forum than Singapore. It is clear that Singapore is an appropriate forum for the divorce proceedings. The parties and the children are all presently resident in Singapore. The respondent is working in Singapore, the children are attending school in Singapore, the parties owned several properties in Singapore, and it must not be forgotten that both parties had been content to proceed in Singapore, before the respondent decided to file the Swedish proceedings a year later.

30 The main thrust of the respondent's argument is that Sweden is a more appropriate forum because it allows his marriage to be dissolved on a fault-free basis, and that the ancillary matters such as the division of matrimonial property and the care and custody of and maintenance of the children can be settled more expeditiously than they can be accomplished in the Singapore proceedings, where they will not be heard till after the completion of the contested divorce application. It should be noted that Singapore law also allows for fault-free divorces based on separation. Apparently, the respondent's circumstances do not constitute separation, and he has to bring his case to Sweden where fault-free divorces are more readily obtainable.

31 The argument overlooks the petitioner's right to seek a divorce on any ground allowed by the laws of Singapore. In proceedings of a deeply personal nature as divorce, the ground may be as important as the conclusion. It cannot be said that Sweden is a more appropriate forum than Singapore because it allows easier fault-free divorces.

32 I find that while the respondent has reason now to prefer Sweden as the forum for the divorce proceedings, he has not established that it is a more appropriate forum than Singapore. For this reason, it is unnecessary to proceed to the second *Spiliada* principle. The respondent's appeal against the dismissal of the stay application is dismissed with costs.

The petitioner's anti-suit injunction application

33 The petitioner filed her application on 3 May 2007, as it was coming to the time when the respondent could have applied for a divorce order in the Swedish proceedings after the six-month reconsideration period which could have ended on 8 May 2007.

34 Inasmuch as the respondent's delay in making the stay application is relevant in the determination of the application, the petitioner's delay in applying for the anti-suit injunction should also be considered in the determination of the anti-suit injunction application. She had known of the Swedish proceedings after it was filed in October 2006. She had actively sought to stay those proceedings, but she failed repeatedly. She did not apply for the anti-suit injunction until 3 May 2007 as the six-month reconsideration period was about to expire on 9 May 2007, and the respondent would become entitled to apply for the Divorce Decree in the Swedish proceedings.

35 On the other hand, the respondent has been diligent in prosecuting the Swedish proceedings and has effectively obtained the Divorce Decree by the time the petitioner filed the anti-suit injunction application. The effect of the application is to deny him of the fruits of the Swedish proceedings just as they become available to him.

36 The petitioner's assertion that the respondent should not be allowed to continue with the Swedish proceedings should also be examined. She married the respondent in Sweden. He is a Swedish national, and is domiciled in Sweden. In the circumstances, the petitioner must have realised and accepted that if the marriage breaks down, it is likely that the divorce proceedings would be brought before the Swedish courts.

37 The law on anti-suit injunctions in Singapore is also well settled. The Court of Appeal has made it clear in *Bank of America National Trust & Savings Association v Djoni Widjaja* [1994] 2 SLR 816 ("*Djoni Widjaja*") and *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 3 SLR 121 that the law to be applied is that enunciated by Lord Goff of Chieveley in the decision of the Privy Council in *Société Nationale Industrielle Aerospatiale v Lee Kui Jak and Another* [1987] 1 AC 871 at 892.

38 Lord Goff held that:

> The law relating to injunctions restraining a party from commencing or pursuing legal proceedings in a foreign jurisdiction has a long history, stretching back at least as far as the early 19th century. From an early stage, certain basic principles emerged which are now beyond dispute. ***First***, the jurisdiction is to be exercised when the "ends of justice" require it: see *Bushby v. Munday* (1821) 5 Madd. 297, 307, *per* Sir John Leach V.-C.); *Carron Iron Co. v. Maclaren* (1855) 5 H.L. Cas. 416, 453, *per* Lord St. Leonards (in a dissenting speech, the force of which was however recognised by Lord Brougham, at p. 459). This fundamental principle has been reasserted in recent years, notably by Lord Scarman in *Castanho v. Brown & Root (U.K.) Ltd.* [1981] A.C. 557 and by Lord Diplock in *British Airways Board v. Laker Airways Ltd.* [1985] A.C. 58, 81. ***Second***, where the court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed. As Sir John Leach V.-C. said in *Bushby v. Munday,* 5 Madd. 297, 307:
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> > "If a defendant who is ordered by this court to discontinue a proceeding which he has commenced against the plaintiff, in some other Court of Justice, either in this country or abroad, thinks fit to disobey that order, and to prosecute such proceeding, this court does not pretend to any interference with the other court; it acts upon the defendant by

punishment for his contempt in his disobedience to the order of the court; ..."

There are, of course, many other statements in the cases to the same effect. ***Third***, it follows that an injunction will only be issued restraining a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy: see, e.g. *In re North Carolina Estate Co. Ltd.* (1889) 5 T.L.R. 328, *per* Chitty J. ***Fourth***, it has been emphasised on many occasions that, since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution: see e.g., *Cohen v. Rothfield* [1919] 1 K.B. 410, 413, *per* Scrutton L.J., and, in more recent times, *Castanho v. Brown & Root (U.K.) Ltd.* [1981] A.C. 557, 573, *per* Lord Scarman.

(Emphasis added)

39 In *Djoni Widjaja*, L P Thean JA in delivering the judgment of the Court explained at 822:

Applying the principles here, if in this case the court in Singapore is the natural forum for the determination of the dispute, an injunction should only be granted if the pursuit of the proceedings by the respondent in Indonesia would be vexatious or oppressive and, in this connection, account must be taken of any injustice to the appellants if the respondent was allowed to pursue those proceedings and also of any injustice to the respondent if he was not allowed to do so.

40 The law as explained requires that in deciding whether an injunction would serve the ends of justice, the court should consider whether the Swedish proceedings are vexatious or oppressive, and the court should also consider the impact the court's decision will have on each of the parties.

41 If the Swedish proceedings are a rehearsal of the Singapore proceedings, it can be argued that the ends of justice require that the petitioner should not be put through the stresses and expenses twice over. But that is not the case. A fault-free divorce is a simpler process than a contested divorce founded on adultery, as the developments before us show.

42 Of the four principles set out by Lord Goff, the application of the first principle requires particular consideration. The petitioner's counsel submitted that:

(a) Both parties are amenable to the jurisdiction of the Singapore Court; only the Respondent thinks Sweden is more convenient for him. As stated, the Petitioner does not understand the language employed in Sweden and has no lodgings or connection there apart from part of the matrimonial assets being within that jurisdiction.

(b) It cannot be contended with any seriousness that the natural forum for the hearing of the divorce is anywhere other than Singapore. The proceedings here have been ongoing naturally since September 2005.

(c) The Swedish divorce, if pronounced, would be oppressive because the Respondent would next say that our local court's jurisdiction to adjudicate on maintenance and the division of assets is lost since a foreign divorce has been pronounced. The Co-Respondent could argue that the proceedings against her cannot be maintained because a divorce has already been pronounced in Sweden.

(d) These are the very 'advantages' the Respondent seeks and it is respectfully submitted that they are monstrously prejudicial to the Petitioner, who has put herself at the disposal of our courts to determine her break from the Respondent and has never consented to any Swedish

proceedings.[note: 5]

43 The underlying argument is that if the Swedish proceedings are to proceed to a conclusion, the petitioner will not be able to pursue her action on adultery against the respondent and the co-respondent. But as I have noted earlier, the petitioner should have realised when she married the respondent that if the marriage breaks down, it is likely and reasonable that the respondent will institute divorce proceedings in Sweden. I do not find the respondent's action to be vexatious or oppressive.

44 The petitioner deposes in her affidavit filed in support of her application that:

> All witnesses who have deposed affidavits of evidence in support of parties' positions are based in Asia and can conveniently be summoned to give testimony in Singapore, not Sweden.
>
> Similarly it would be absurd to require me and the children to travel all the way to Sweden. I have no lodgings or friends or family in Stockholm. The cost of living and legal fees are also substantially higher in Sweden than in Singapore. Already I am in dire financial straits, having been cut off by the Respondent.
>
> It is oppressive and vexatious to me to suddenly have to give up my life here and go with my young children to Sweden to fight for my interests in what is to me a foreign land. Requiring me to go to Sweden will be out of all proportion to my convenience, and even the Respondent's convenience because he lives here in Singapore.[note: 6]

45 Those assertions raise unanswered questions. If the petitioner believes that her presence, and the presence of her children and the witnesses in Sweden was necessary in the Swedish proceedings, why did she delay filing her anti-suit injunction application and allow the Swedish proceedings to proceed in their absence?

46 Although the petitioner is represented by counsel in the Swedish proceedings, there is no affidavit filed to explain whether the petitioner, her children or her witnesses will have to attend before the Swedish courts at this stage of the proceedings. The petitioner's concern that she has to give up her life in Singapore and go to Sweden is exaggerated. It cannot be assumed that the Swedish courts would require the petitioner or the children to settle in Sweden after the divorce. If she wanted that to be taken seriously, she should obtain confirmation from a Swedish divorce lawyer.

47 The respondent's Swedish lawyer has filed affidavits to state that:

> (a) the Divorce Decree issued gave the petitioner and the respondent joint custody of the children;
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> (b) the Swedish courts usually order that the matrimonial assets acquired by the parties during the marriage, whether solely or jointly be divided equally; and
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> (c) the petitioner can apply for maintenance for herself and her children,

and this has not been disputed by the petitioner

48 Reviewing the evidence, I find that the respondent has filed the Swedish proceedings in order to bring his failed marriage to an expeditious conclusion, after he had tried but failed to get that through the Singapore proceedings. He would suffer real prejudice if he is prohibited from carrying on

further with the proceedings which have progressed to the stage where he could apply for the Divorce Decree. In coming to this finding, I take into account the fact that the petitioner has allowed the situation to develop by not filing her application earlier.

49 From the petitioner's standpoint, if the Swedish proceedings continue to their conclusion, they will deal with all the questions relating to the dissolution of the marriage and the ancillary matters. When the marriage is dissolved by a court of competent jurisdiction, it will not be dissolved again under the pending proceedings in Singapore. So although the marriage will be dissolved, it will not be dissolved on the basis preferred by the petitioner, i.e. that the respondent has committed adultery with the co-respondent. I do not regard this as sufficient to constitute an injustice against her because the respondent is seeking a divorce in Sweden which he is entitled to, the breakdown of the marriage is not attributed to her, and she can still advance and protect the interests of herself and the children in the Swedish courts.

50 In the circumstances, I find that the first principle, i.e. that the ends of justice requires an anti-suit injunction to be issued, is not satisfied. The fourth principle, that such injunctions are to be issued with caution applies with particular force where a Swedish national and domicile is seeking a dissolution of a marriage contracted in Sweden, and the courts of Sweden had repeatedly refused the petitioner's application to stay the proceedings.

51 I now refer to the respondent's application to the Swedish courts to issue the Divorce Decree with full knowledge that there was an interim anti-suit injunction issued against him. The respondent deposes in his affidavit:

> 196. As the Court knows, on 9 January 2007, the Swedish Court accepted my divorce petition and said it would issue the Divorce Decree if I asked for it to be issued, 6 months later, ie on 9 May 2007. The request for the Divorce Decree to be issued is but the last small step in the divorce proceedings.
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> 197. On or about 15 May 2007, after much consideration, I asked the Swedish Court to issue the Divorce Decree. The Divorce Decree was issued by the Swedish Court on 26 June 2007. It is the only and final document for the dissolution of the marriage.
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> 198. At the same time, the Swedish Court ordered us to have joint custody, care and control of the children.
>
> 199. First, I would like to apologize unreservedly to the Singapore Court for going against the interim injunction.
>
> 200. Second, I would like to explain why I had finally, on 15 May 2007, written to the Swedish Court to issue the divorce decree.
>
> 201. First, Sweden is the country of my domicile. The marriage was registered there. I simply could not agree that I should be restrained from getting my divorce there.
>
> 202. Second, by May 2007, the divorce process in Sweden had been ongoing for 7 months. The Petitioner had actively participated in the process. She objected to the Swedish Court's jurisdiction many times, but the Swedish Court rejected her case every time. The Court of the country of my domicile was insistent on taking jurisdiction of the matter.
>
> 203. By May 2007, the divorce process in Sweden was already so well advanced and the end

was in sight. What finally tipped the balance was knowing that it would ultimately be in the family's best interests for the divorce and ancillary matters to be granted in Sweden. Also, that I could finally see my children in a normal way after 2 agonizing years.

204. Third, I truly believe that the Petitioner had obtained the interim injunction by misleading the Singapore Court. I have given numerous examples of these misrepresentations above, and she also did not make full and frank disclosure to the Singapore Court. I believe that the Honourable Judge would not have made the interim injunction if he had known of the true facts.[note: 7]

52 The apology is hollow and insincere. The respondent knew that the injunction in force was an interim injunction and that he would have the opportunity to present his full arguments, within a few weeks, that the injunction should not be continued. There appears to be a real case for arguing that his conduct is in contempt of court, but I will not come to any concluded view on it, and leave that to be decided if the occasion arises.

53 As matters stand, I find that he should not be restrained from continuing with the Swedish proceedings, and I dismiss the petitioner's application, but I will not award costs to the respondent as he does not deserve any costs in view of his conduct.

[note: 1]Affidavit of the Respondent filed 10 July 2007

[note: 2]Respondent's Skeletal Submissions filed 9 March 2007

[note: 3]Affidavit of Sophie Palmgren Paulsson filed 11 July 2007 para 25

[note: 4]Respondent's Submissions filed 13 July 2007 para 73

[note: 5]Petitioner's Skeletal Submissions para 17

[note: 6]Affidavit of the Petitioner filed 1 May 2007 paras 14(e), 14(f), 14(g)

[note: 7]Affidavit of the Respondent filed 10 July 2007