Wong Kien Keong *v* Khoo Hoon Eng
[2012] SGHC 127

Case Number : DT No 1446 of 2006 (Summons No 1553 of 2011)

Decision Date : 21 June 2012

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Randolph Khoo and Nah Mui Kheng (Draw & Napier LLC) for the plaintiff; Suchitra Ragupathy (Rodyk & Davidson LLP) for the defendant.

Parties : Wong Kien Keong — Khoo Hoon Eng

Family Law – Matrimonial assets – Division – Separation deed – Allegations of abuse – Whether separation deed should be set aside

21 June 2012

Belinda Ang Saw Ean J:

Introduction

1 The parties, Mr Wong Kien Keong ("the Plaintiff") and Mdm Khoo Hoon Eng ("the Defendant"), divorced after more than 28 years of marriage. Before the hearing of the ancillary proceedings relating to the maintenance and the division of the matrimonial assets, the Defendant filed Summons No 1553 of 2011 ("SUM 1553/2011") for an order that a Deed of Separation dated 28 March 2003 entered into by the parties ("the Deed") be set aside or, in the alternative, for a declaration that the same is void and unenforceable.

Chronology of procedural applications

2 SUM 1553/2011 was dismissed on 21 March 2012. I held that there were no vitiating factors to invalidate the Deed. As such, it was a valid agreement and the Deed would be a factor to be taken into consideration in the division of the matrimonial assets pursuant to s 112(2)(e) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter").

3 The hearing of the ancillary matters started immediately after my decision on SUM 1553/2011. I asked counsel for the Defendant, Ms Suchitra Ragupathy ("Ms Ragupathy"), to explain why the terms of the Deed should be given little weight. In other words, what were the Defendant's reasons for maintaining that the division of the matrimonial assets in the Deed was disadvantageous to the Defendant, and how was it unreasonable in the circumstances of this present case? I also wanted to know how much the Defendant was getting under the Deed – was it 20% of the total assets as indicated in the Plaintiff's e-mail of 21 March 2003 (see [32] below), or at least 40% of the matrimonial assets as stated in the Plaintiff's affidavit of 9 December 2010. [note: 1] It turned out to be a fairly short hearing as there was no affidavit evidence on the purchase price of the properties and the financial contributions each had made to complete the sale and purchase of the properties. An adjournment of the hearing was granted to enable the parties to provide the missing information.

4 At that point, Ms Ragupathy, who was understandably keen not to be caught "out of time" if

the Defendant wished to appeal, expressed concern that given the time required for lodging an appeal against my decision in SUM 1553/2011 and that the ancillary proceedings would not be concluded within a month with the adjournment. Ordinarily, pursuant to O 57 r 4(a) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the ROC"), the Defendant has to file and serve her Notice of Appeal within one month from the date of dismissal of SUM 1553/2011 (*ie*, 21 March 2012), if she wishes to appeal. Counsel for the Plaintiff, Mr Randolph Khoo ("Mr Khoo"), had no objection with an order for the time for lodging an appeal against my decision on SUM 1553/2011 to run after a decision on the ancillaries was made.

5 Therefore, I exercised my power under O 57 r 17 of the ROC and ordered that the time for appeal in respect of SUM 1553/2011 was to run from the time of the orders for the ancillary matters. The intention was clear: in the event of an appeal to the Court of Appeal, both SUM 1553/2011 and the orders made on the ancillary matters should go up on appeal together and at the same time. Hence, the exact wording of my order, as it appears in the Notes of Arguments, is as follows:

> Time will run from the time the division of matrimonial assets is decided.

6 On 3 April 2012, Ms Ragupathy filed the Defendant's Notice of Appeal against the dismissal of SUM 1553/2011 *vide* CA 32 of 2012/S ("CA 32/2012"). On 18 April 2012, Ms Ragupathy filed Summons No 1904 of 2012 ("SUM 1904/2012") to stay the ancillary proceedings pending the outcome of CA 32/2012. SUM 1904/2012 has not yet been heard. I should mention that allied to SUM 1904/2012 is the question of whether CA 32/2012 was filed prematurely. Needless to say, these matters will be fully argued when SUM 1904/2012 is next listed for hearing before me.

7 For now, I will explain in detail the reasons for the dismissal of SUM 1553/2011.

The Parties to the Deed

8 The parties were married on 10 December 1977 in Kuala Lumpur, Malaysia. They have two sons to the marriage. Their sons are now 27 and 30 years old respectively. The parties are highly educated, bright and accomplished individuals. They have been extremely successful in their respective careers, and they continue to do well. By all counts, they were an exceptional couple. The Plaintiff is a well-known legal personality in the legal profession. The Defendant is an eminent academician. She is currently teaching at the National University of Singapore ("NUS").

9 At the time of their marriage, the Plaintiff had graduated from Massachusetts Institute of Technology, and the Defendant obtained a Ph.D from St Mary's Hospital, University of London. Both were university lecturers in Malaysia and they lived in Kuala Lumpur, Malaysia. On 5 June 1981, the elder son was born.

10 In October 1982, the Plaintiff obtained a Commonwealth fellowship to pursue his doctorate degree in engineering at Imperial College in London. The Plaintiff also concurrently enrolled to read law at Oxford University.

11 The Defendant took a sabbatical for a year from October 1982 to August 1983 to be with the Plaintiff and the family in Oxford. In August 1983, the Defendant returned to Kuala Lumpur with the elder son and returned to lecturing.

12 In July 1984, the Plaintiff completed his law studies at Oxford University and returned to Kuala Lumpur. On 22 August 1984, the younger son was born. The Plaintiff returned to London to study for the UK Bar Examinations in October 1984. In August 1985, the Plaintiff returned to Kuala Lumpur after

passing the UK Bar Examinations. He also completed his doctorate thesis in December 1985 in Malaysia. He then went on to chamber as a pupil at Shearn & Delamore, a Malaysian law firm.

13 In July 1987, the Plaintiff moved to Singapore to work for a foreign law firm at its Singapore office. Later in December 1987, the Defendant moved with the children to Singapore after the Defendant was employed by the NUS. The Plaintiff was made a local partner of the foreign firm in June 1989 and an international partner in 1993. After moving to Singapore, the parties enjoyed good fortune and in the course of the marriage acquired various properties and investments.

14 Sometime in November 2002, the Defendant confessed to the Plaintiff that she had an affair with her colleague. Their marriage subsequently fell apart.

15 On 12 March 2003, the parties separated. The Defendant moved out of the couple's residence at Blk 130 Tanjong Rhu Road, #12-02, Pebble Bay, Singapore to live in an apartment at Aspen Heights.

16 After living apart, the parties signed the Deed on 28 March 2003. The circumstances surrounding the place and time the Defendant signed the Deed was contested by the parties. In my view, nothing significant turned on the discrepancies in light of the undisputed evidence that the Defendant looked perfectly normal at the Plaintiff's birthday dinner on 28 March 2003 and did not appear to be depressed.

17 The Defendant filed a divorce petition on 29 June 2004 which was later discontinued on 20 March 2006. The Plaintiff then filed a divorce petition on 28 March 2006. The decree nisi dissolving the marriage was granted on 28 May 2006.

Parties' opposing positions in SUM 1553/2011

18 Ms Ragupathy argued that the Deed should be set aside because the Defendant was coerced, abused and/or threatened into signing the Deed. [note: 2] Ms Ragupathy further argued that the Defendant was suffering from depression at the material time such that she did not fully understand the consequences and risks of signing the Deed, and that the Defendant signed the Deed in the hope that acceding to the Plaintiff's requests as set out in the Deed would result in reconciliation. [note: 3] Ms Ragupathy pointed to various allegations of abuse made by the Defendant in her affidavits and relied on a report prepared by one Dr Pushpa Bose ("Dr Bose"), the Defendant's psychiatrist, which tried to shed light on the Defendant's mental state at the time she signed the Deed.

19 On the other hand, Mr Khoo argued that the Deed was not tainted by any vitiating factors. According to Mr Khoo, the Defendant knew the legal significance of the Deed as she obtained legal advice on the Deed and admitted that she understood the effect of the Deed in one of her e-mails to the Plaintiff. It was pointed out that the Defendant was not a simple woman. She had excellent credentials and a range of accomplishments. [note: 4] The Defendant was also actively bargaining over the split of assets. [note: 5] Mr Khoo rejected the Defendant's allegation that she signed the Deed because the Plaintiff made a false promise that he would reconcile with her if she did so. [note: 6] Mr Khoo noted that the Defendant's allegations of abuse inflicted by the Plaintiff on the Defendant were denied and explained by the Plaintiff in his affidavits [note: 7] and relied on a medical report of one Dr Brian Yeo ("Dr Yeo") to debunk the findings in Dr Bose's report. [note: 8]

Should the Deed be set aside?

Relevant legal principles

20 It is not controversial that for a pre-nuptial or post nuptial agreement (collectively referred to hereinafter as "marital agreement") to have the effect of a valid and subsisting agreement, it should satisfy the requirements of the law of contract: see *Chia Hock Hua v Chong Choo Je* [1994] 3 SLR(R) 159. The Court of Appeal in *TQ v TR and Another appeal* [2009] 2 SLR(R) 961 ("*TQ v TR*"), affirmed that for a pre-nuptial agreement to subsist, it must comply with the requirements of the law of contract. Andrew Phang JA's observations in *TQ v TR* apply equally to post nuptial agreements like the Deed in this case, and they are as follows:

> 94 It is our view that prenuptial agreements ought generally to comply with the various legal doctrines and requirements that are an integral part of the common law of contract. ... This is only logical as well as just and fair, given that such agreements are, *ex hypothesi*,*contracts* to begin with.
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> ...
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> 96 The prenuptial agreement in question must obviously have been *validly formed* in the first place in accordance with the general rules and principles relating to offer and acceptance (and see the decision of this court in *Wee Ah Lian)*. Hence, for example, an absence of a requisite offer or acceptance would be fatal to any reliance on an alleged prenuptial agreement as it would not have come into proper legal existence.
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> [emphasis in original]

21 As marital agreements are not commercial contracts, the court retains a residuary discretion even though the marital agreement does not comply with the legal doctrines of contract law to give some weight to the marital agreement where the circumstances justify it. Phang JA remarked (at [105]):

> ...The court also retains a residuary discretion, in limited circumstances, to give *some* weight to a prenuptial agreement that does not comply with one or more of the legal doctrine and requirements under the common law of contract.
>
> [emphasis in original]

22 I now come to another related point, namely the presence of any of the standard vitiating factors such as duress, fraud or misrepresentation that will negate the marital agreement. Phang JA in *TQ v TR* identified various vitiating factors. They include (at [97]):

> At the other end of the contractual spectrum are to be found the various *vitiating factors.* These include standard contractual doctrines such as misrepresentation, mistake, undue influence, duress, unconscionability, as well as illegality and public policy...[including] the possibility of 'saving' that part of the prenuptial agreement that is objectionable via the doctrine of severance... There has also been mention of the safeguard relating to the availability of independent legal advice...
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> [emphasis in original]

Analysis and Decision

23 With these principles in mind, I now turn to the facts of this case, and the vitiating factors raised by the Defendant in argument, namely the Defendant was coerced, abused and/or threatened into signing the Deed or that she did not understand the consequences and risks of signing the Deed.

24 The Defendant alleged [note: 9] that after the Defendant confessed to having her affair in November 2002, the Plaintiff, at various times and amongst other things, threatened to report the affair to the Dean of her faculty and Vice-Chancellor of the NUS and get the Defendant sacked, urinated on the Defendant and made her drink his urine, verbally and physically abused the Defendant and made her do degrading acts and humiliated the Defendant's mother by asking her to kneel and beg for forgiveness from the Plaintiff. The Defendant alleged that by January 2003, she was completely broken and in a state of depression, she suffered from insomnia and experienced significant weight loss. [note: 10]

25 The Defendant adduced a police report [note: 11] made by her on 17 October 2003 stating the various incidents of violence involving the Plaintiff between November 2002 and January 2003 and in September 2003, as well as photos of mobile messages purportedly sent by an apologetic Plaintiff on 7 January 2003. [note: 12] The Defendant also filed an affidavit of her son [note: 13] and her brother [note: 14] in support of her allegations.

26 Furthermore, to shed light on the Defendant's alleged state of mind at the time she signed the Deed, it is useful to quote from a relevant paragraph in the Defendant's Affidavit dated 25 January 2008 wherein the Defendant proffered her reasons for signing the Deed:

> 69. After years of being abused by the [Plaintiff], I was very afraid he would carry out his threats [*ie*, to make public the Defendant's affair, have her sacked and to make it impossible for her to live in Singapore [note: 15]] and at the material point in time, I was not able to stand up for myself, and neither did I have any support from friends and family. I eventually broke, and signed the Deed without addressing my mind to it, or the consequences of the same. I had also signed it to please the [Plaintiff], and in the hope that we would be able to reconcile. I did not have the courage or the strength to re-order my life after being with the [Plaintiff] for 25 years, and as such, I was prepared to do anything to reconcile with him. The [Plaintiff] had told me that if I signed the Deed, he would consider reconciling with me. The relevant e-mail dated 6th of March 2003 is at pages xxx to xxx of Exhibit KHE -53.

27 In response, the Plaintiff categorically denied all the Defendant's allegations, [note: 16] and relied on affidavits of his relatives like his brothers [note: 17] and eldest sister [note: 18] to attest to various matters: that the Plaintiff was not a violent and cruel man; and that the Defendant looked perfectly normal at the Plaintiff's birthday dinner on 28 March 2003 and she did not display any signs of depression. As to the Defendant's character, she has been described by the Plaintiff and his relatives as strong-willed with a very strong mind of her own; [note: 19] a very independent and confident woman [note: 20] ; and a very capable and self assured individual. [note: 21]

28 In the absence of contemporaneous and objective evidence, the allegations of physical abuse were basically not satisfactorily corroborated. The Defendant's police report narrated various violent acts committed by the Plaintiff on her person between November 2002 and January 2003. Notably, the police report was only made on 17 October 2003 several months after the alleged violent incidents took place. Mr Khoo questioned the veracity of the police report and, to support his contention, he went through some e-mails written by the Defendant around the time of the alleged

incidents to show that none of the e-mails alluded to anything untoward. I note that the police report was made after the Defendant had engaged a firm of lawyers to commence divorce proceedings in August 2003 [note: 22], and the Defendant, in fact, confirmed in her affidavit that it was her then lawyers who had advised her to file the police report. [note: 23] Indeed her Divorce Petition No 2545 of 2004 ("DT 2545 of 2004") filed on 29 June 2004 was based, *inter alia*, on the Plaintiff's unreasonable behaviour. DT 2545 of 2004 was eventually withdrawn by agreement. [note: 24] As for the other affidavits provided by the Defendant, the son in his affidavit stopped short of saying that he saw or knew that the Defendant was physically abused; instead, the son only claimed that he saw bruises on the Defendant's arm in the period between November 2002 and January 2003. Similarly, the Defendant's brother in his affidavit only claimed to have seen a bruise on the Defendant's lip and stated that the Defendant told him that the Plaintiff had caused the bruise. [note: 25]

29 Taking the Defendant's case at its highest, that is, the alleged abuses did happen (which I make no finding on), it must still be shown that the Defendant signed the Deed out of fear of her safety and well being. Or that she was so traumatised that she was incapable of understanding or appreciating the legal effect of the Deed. It is accepted that the psychological effect of repeated abuse can have a lingering effect in that the person may well continue to be traumatised and mentally affected by abuse he or she suffered over a period of time or even a long time ago. In the final analysis, what is important is whether the Defendant was in fact too affected and depressed to think clearly and rationally and to appreciate the legal significance of the Deed when she signed it on 28 March 2003.

30 In this regard, there is overwhelming evidence pointing to the fact, and I so find, that the Defendant had appreciated the legal significance of the Deed and was not coerced, abused or threatened into signing the Deed. The exchange of e-mails between the parties at or about the time of the signing of the Deed on 28 March 2003 is material; it showed that the Defendant perfectly understood and appreciated the significance and effect of the Deed.

31 In particular, an e-mail titled "separation matters" sent by the Defendant to the Plaintiff on 21 March 2003, just seven days before the signing of the Deed, is important. It clearly showed that the Defendant knew the legal repercussions of signing the Deed in that it was going to be binding, that she was not getting 50% of the matrimonial assets, and that since she was entitled to 50%, it was difficult for her to accept what he had proposed. The salient parts of the e-mail are quoted below: [note: 26]

> Dearest Wong,
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> ...
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> I also did not understand what a separation agreement meant or implied. I thought it was a temporary agreement such that we could work towards reconciliation. I talked to my cousin about it and she consulted a lawyer. *I now understand that it is a binding agreement if we eventually get divorced.* I had not realized that. *The lawyer's advice was that under Singapore law, I am entitled to 50% of our matrimonial assets*. When I said that I was only interested in getting enough for me to live for the rest of my life without financial difficulty, the advice was that I should not just think about myself alone but also my children because I should also have the right to give them my share of the matrimonial assets.
>
> ...

Therefore to protect our sons' interest too, I think you should recognise my entitlement to half share of our matrimonial assets so that I can bequeath this half share to our sons.

To insist that I should comply with the way you have proposed that our matrimonial assets should be divided would be very unfair to me, particularly, when you reserve the right to withdraw whatever you propose to give me based only on your perception of any failure on my part to meet with your expectations of the manner I conduct my life. *For the purpose of this separation agreement, as far as the matrimonial assets are concerned, I therefore find it very difficult to comply with your request.*

Now that you insisted on the separation and clear division of the matrimonial assets, *you should recognise my basic rights as a wife that I am entitled to at least 50% of whatever we have acquired during our marriage.*

[emphasis added]

32 In a e-mail dated 21 March 2003, the Plaintiff replied: [note: 27]

I am very annoyed by your letter below as I have stated over the phone. There is no split of 50% to you. I do not agree and will never agree. The only way for you to hope to achieve that is for us to have a full blown legal dispute over our matrimonial assets. This will mean that there will be no holds barred and I will disclose all the unsavoury aspects of our marriage to the public. I do not mind that if you wish to fight me. But it will be very bloody for both of us.

...

Thirdly, I believe that if I split 20% of our total assets as of end 2002 to you, it would be a fair split. The proposal that I gave you had more than a 20% split. In addition, there are some ongoing payments by me which will stop should you be out with another man or are unfaithful to me.

...

As for the children's sake type of argument, please do not give me that. Ming will graduate. He should stand on his own feet. It is better for him. I love him dearly and will always come to his assistance should he need it during my lifetime. En is about to enter college. Can I be so heartless as to withdraw my assistance?...So let us not bring the children into the picture. You are the last person I expect to look to in relation to them. I will help them till my last breath. So let us not try to be so good in words. ....

I do not wish to fight with you but I will if you force my hand.

The separation deed will be drafted. *It will be binding*. If you love me you do not fight with me and take what I think is fair. If you fight me you will lose me forever.

[emphasis added]

33 As can be seen from the excerpts above, the Defendant herself stated that the intended separation agreement would be "a binding agreement if [the parties] eventually get divorced" and was openly bargaining for a larger share of the matrimonial assets a few days before the Deed was signed. The Plaintiff indicated clearly in his reply to the Defendant that the Deed would be "binding". The

Defendant's e-mail is telling. It showed that she had put thought into her e-mail. It showed that she was not afraid to speak up and indeed told the Plaintiff that she wanted a larger share of the matrimonial assets, and sought to justify her stand. This e-mail militated against the Defendant's claim that she was not thinking, was irrational and incapable of appreciating the legal significance of the Deed. After the Deed was executed, the Defendant even made enquiries together with the Plaintiff to begin to carry out the terms of the Deed, as seen from an e-mail from the Defendant to the Plaintiff dated 10 April 2003. [note: 28]

34 I am aware that the Plaintiff is a lawyer and had drafted the Deed. Nonetheless, I was satisfied on the evidence before me that the Defendant signed the Deed with full appreciation of its implications. There was no lack of legal advice for the reasons stated below.

35 The Plaintiff alleged in his affidavits that the Defendant received legal advice on the Deed from at least two sources, namely Peter Moe ("Peter") and the lawyer friend of her cousin. [note: 29] Peter, a family friend, gave the Plaintiff at the latter's request a specimen copy of a deed of separation. The Plaintiff's draft was shown to Peter who confirmed that he spoke to the Defendant on various occasions about the draft including the finalised version. He also stated in his affidavits that he told the Defendant on numerous occasions before the signing of the Deed to seek independent legal advice, [note: 30] and that he actually explained to the Defendant the purport of the Deed which was a contract between her and the Plaintiff and that if they divorced, the terms of the Deed would be reviewed by the court and could be upheld if found to be fair. [note: 31] However, the Defendant alleged in her affidavit that she did not receive any legal advice on the Deed but she did inform the Plaintiff that her cousin had sought legal advice on her behalf. [note: 32] She insisted that she never received any legal advice from Peter. [note: 33] In her reply affidavit to Peter's first affidavit, she alleged again that she did not receive any legal advice from Peter. [note: 34] However, the Defendant's telephone records [note: 35] from 1 February 2003 to 31 March 2003 clearly showed that the Defendant did have conversations with Peter on numerous occasions in the period leading up to the signing of the Deed. The telephone records from 1 February to 27 March 2003 showed that there were at least 27 telephone conversations between Peter and the Defendant. It is worth noting that the Defendant in her reply affidavit to Peter's affidavit neglected to mention the various telephone calls between the Defendant and Peter made before 27 March 2003 and instead selectively focused on the calls made on 27 March 2003 to show that Peter did not advise her on the subject matter of the Deed. [note: 36] What exactly was said between Peter and the Defendant in all the phone calls was disputed as can be seen from the differing accounts of Peter and the Defendant in their respective affidavits, but the incontrovertible fact is that Peter and the Defendant did have numerous conversations up till the signing of the Deed. The Defendant's neglect to explain what transpired in the telephone conversations before 27 March 2003 gave credence to Peter's assertions that he explained to the Defendant the effect of the draft separation deed, his views on its terms as requested by the Defendant as well as reminded her to obtain independent legal advice.

36 At any rate, in light of her e-mail to the Plaintiff quoted above at [31], the Defendant was content to accept and rely on the legal advice communicated through her cousin who consulted a lawyer on the Defendant's entitlement to the matrimonial assets and the legal significance of the Deed. This legal advice was specifically in relation to Singapore law. The Defendant herself wrote in the e-mail that "the lawyer's advice was that under Singapore law, [she was] entitled to 50% of [the] matrimonial assets". Her insistence on an equal division of the matrimonial assets in the e-mail was deliberate and made on the basis of qualified legal advice obtained regarding the division of matrimonial assets under Singapore law.

37 Ms Ragupathy relied on a report prepared by Dr Bose, the Defendant's psychiatrist, [note: 37] to prove that the Defendant was suffering from depression such that she could not understand what she was signing when she signed the Deed. In response, the Plaintiff produced a report from Dr Brian Yeo to rebut Dr Bose's report.

38 Dr Bose opined on the mental state of the Defendant between January 2003 and October 2003 and, in particular, on 28 March 2003 (the day of the signing of the Deed) and concluded that the Defendant was "unable to think clearly or rationally in the face of these various factors that were affecting her mental state in March 2003". It is important to note that Dr Bose did not specifically state that the Defendant was so depressed that she did not know what she was signing.

39 According to Dr Bose's report, the Defendant had her first consultation with Dr Bose on 23 January 2003, and was prescribed anti-depressants for her depression. Subsequently, she spoke over the phone with Dr Bose on 7 March 2003. It was not until 19 August 2003, more than 3 months after the Deed was signed that Dr Bose saw the Defendant for a second consultation. It was only then that the Defendant disclosed to Dr Bose the alleged abuse committed against her by the Plaintiff. Subsequently, the Defendant had consultations with Dr Bose on 12 September 2003, 6 October 2003 and 12 January 2004. Clearly, Dr Bose did not examine the Defendant from 23 January 2003 to 19 August 2003, apart from receiving a phone call from the Defendant on 7 March 2003. Dr Bose's report on 9 March 2004 was almost a year after the Deed was signed.

40 In my view, Dr Bose's expert opinion is of limited evidential value and weight as it is scarcely contemporaneous and was made on the basis of consultations and observations made on dates well after the Deed was signed. For completeness, I should refer to Dr Brian Yeo's expert report. Dr Yeo was engaged by the Plaintiff for his opinion on Dr Bose's report on the mental state of the Defendant at the time she executed the Deed. In Dr Yeo's opinion, it would be difficult for Dr Bose to express an opinion on the mental state of the Defendant at the time she signed the Deed without having examined the Defendant "at or near the execution of the Separation Deed." [note: 38] As for the phone call to Dr Bose on 7 March 2003, Dr Yeo opined that the conversation Dr Bose had with the Defendant was inadequate to reach a conclusion that she was not able to think rationally or clearly in March 2003. Based on Dr Bose's narration of the first consultation with the Defendant, the Defendant did not appear to Dr Yeo to be an "individual that was unable to think clearly or irrationally". [note: 39] This is what Dr Yeo wrote:

> Even at the first consultation in January 2003, Dr Bose had acknowledged that Mdm Khoo had been guarded with her conscious desire to protect her husband's name and status. She was able to give the history of her problems to Dr Bose, including confidential information regarding her affair, yet expressing her wish to Dr Bose that she was seeking her husband's forgiveness and her hopes of attaining a reconciliation with him.
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> This is in my view not of an individual that was unable to think clearly or rationally.

41 It is also important to understand the significance of the fact that the Defendant went back to see Dr Bose only on 19 August 2003, months after the first consultation and execution of the Deed.

42 Based on the evidence, it seemed to me that the Defendant consulted Dr Bose again on 19 August 2003 after she realised that the Plaintiff had started a serious relationship with Li Hongxia ("Hongxia") as his partner, and that it was not on account of the alleged abuse inflicted by the Plaintiff on the Defendant as she had claimed. The Defendant was probably depressed because months after the Deed the Plaintiff had moved on with his life and any sliver of hope to reconcile was

gone. It must be noted that the Defendant did not appear to have informed Dr Bose of the Plaintiff's serious relationship with Hongxia; Dr Bose's report did not mention anything about this.

43 In March 2003, the Defendant was in all likelihood prepared to accept a situation where the Plaintiff could have liaisons with other women but not enter into a serious relationship. When the parties separated in March 2003, the Plaintiff made it clear to the Defendant that he might and would date other women. In his e-mail to the Defendant dated 6 March 2003, [note: 40] the Plaintiff told the Defendant that she must continue to be faithful and loving to him while he may engage in casual relationships with other women:

> If you must have clarity, you cannot date any man so long as you are married to me, notwithstanding the separation, nor show any interest in any man other than me. You shall continue to be warm, wifely and loving to me at all times without expecting anything from me other than the financial assistance. On my part, I will respond in accordance with firstly any assessment of your sincerity and genuine desire to atone for your sin and unfaithfulness, and secondly, of course, *my own development of feelings for other women who may turn up in my life. I intend to have girlfriends as I do need a lot of love, and you know that.* I need someone to take care of me, be faithful to me and not forsake me for another. In turn I will shower that person with my love, as I did to you and the boys. To the extent that you could share some of that love if you continue to devote yourself only to me, I will try my very best to make it possible.
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> [emphasis added]

44 In another e-mail to the Defendant dated 7 March 2003, [note: 41] the Plaintiff reported to the Defendant his success at dating women and reiterated to the Defendant that she must continue to show him love in order for them to have a hope of reconciliation:

> *I am just about trying to recover my ego by dating women and I am surprising myself. Without exceptions, everyone accepted my date the first time I tried*. Maybe they are after my money. But not all of them. Many men too have said I am charming, handsome, honest, principled, brilliant etc. I do not need re-validation, so I am beginning to discover. You were the real problem in my view, your looseness and your deceitfulness.
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> ...
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> I am not sure I can get over this with you. *That is why I want you to maintain your faithfulness to me*. If you cannot, then there is nothing more I can say or do. *If you can, at least we both have a chance of giving this a shot again*, as the couple we should have been. I will try to reform my behaviour, which I have done to a great extent over the years, and you have to love me like you did for the past months since November 2002 till early February 2003.
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> ...
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> *Going forward you will have to love me like you never did even though we are separated. If you make me feel loved*, pour all the love you can to me without being too hypocritical, show deeds more than words, show care and attention, show remorse, show that you want to enjoy a part of me, even a small part would make you happy, show that you have only me in your heart, mind and soul, *then there may be a possibility of my returning to you*.
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> [emphasis added]

45 In addition, the Defendant stated herself in her affidavit that the Plaintiff told his friends and relatives that she had agreed to him having a mistress and would go on dates with women from China before informing her about the details of his dates. In another affidavit, the Defendant stated that the Plaintiff was dating several Chinese nationals in November 2002 and already had a mistress by February or March 2003. [note: 42]

46 The Plaintiff had stated in his affidavit that he believed the Defendant found out sometime in June 2003 that he had met Hongxia, and he sensed a change in the Defendant's attitude towards him then. [note: 43] Hongxia stated in her affidavit [note: 44] that she has known the Plaintiff since sometime in the middle of 2003 and started going steady with the Plaintiff in the later part of 2003. All these were not rebutted or denied by the Defendant in her affidavits; in fact, the Defendant has been silent about Hongxia throughout all her affidavits and talked about an unidentified "mistress" instead, [note: 45] except for one notable instance where she averred that the Plaintiff had digressed in his affidavit when he stated that she was unable to accept Hongxia as his partner because it was irrelevant to the proceedings. [note: 46]

47 I now come to the Defendant's allegation [note: 47] that she signed the Deed on the Plaintiff's false promise that he would reconcile with her if she did so and she bore the hope then that the Plaintiff would accept her back. I find it difficult to believe that the Defendant was misled in the way she had claimed. In the same e-mail dated 21 March 2003 that the Defendant wrote to the Plaintiff already referred to above at [31], the Defendant herself acknowledged that the Plaintiff has been seeing other women on a casual basis. By then, the Plaintiff had announced that he could live without her and she was devastated by his announcement. It was the Defendant who expressed hope of getting back together in the future and that she would happily tear up the Deed. The Defendant wrote:

> Dearest Wong,
>
> I wrote you a long letter explaining how I have loved you and continue to still love you and it is not necessary to repeat it here. Since this nightmare began, my first priority has always been that we reconcile. You know how happy I was when you told me just before Chinese New Year that we could continue to love together after Chinese New Year. *I think I have continued to be a warm and loving wife to you despite your going out with and pursuing other women since the beginning of this year.* Unfortunately, *when you returned from Harbin and Shanghai, you decided that you would be better off and could live without me*. That completely devastated me such that I really needed to take my medication to get through the days and the nights and had to increase the dosage. I am still dependent on medication now.
>
> ...
>
> *I still hope we can get back together again and I shall be so happy to tear up the separation agreement*. *I will continue to be devoted, warm and faithful even as you go looking for other women.* Now that we are living separately, I do not know how to help you heal except continue to love you and be concerned about you and *hopefully we could get back together against some time in the future.*
>
> [emphasis added]

48 In my view, the Defendant had overstated her claim of the Plaintiff's promise of reconciliation. The Deed contained two clauses which are telling. First, the Deed contemplates a divorce between

the parties and obliges the Defendant to give her consent to a divorce based on their separation when the time came (see clause 8). Secondly, on the outside chance that the couple should get back together, the Deed would become void if they co-habited as man and wife for over a continuous period of six months after the date of the Deed (see clause 9). Furthermore, the Deed would be void save for accrued rights under the Deed which remained enforceable against the wrongdoer.

49 I now come to the final piece of evidence that militated against the vitiating factors raised by the Defendant. The evidence showed that the Defendant was able to fully function at work. As disclosed in the Plaintiff's affidavit, [note: 48] the Defendant held important appointments in her field as well as in other areas she was involved in. At various times, the Defendant was the Vice Dean of her Faculty, the President of the Singapore Society for Biochemistry and Molecular Biology, and the Vice President for Academic Planning at the Asian University for Women. To further buttress the point that the Defendant had no difficulties functioning for the large part of the year of 2003 during the time the Defendant was on study leave to pursue a diploma in medical education, [note: 49] the Plaintiff adduced documentary evidence to show that the Defendant received several grants for research projects, worked on various projects and published numerous papers during 2003. [note: 50] She also wrote an article regarding the improvement of the medical graduate programme and supervision of postgraduate students, which was published in June 2003 for the Centre for Development of Teaching and Learning. [note: 51] From these examples, I agreed with Mr Khoo that it was hard to accept the Defendant's claim that she was completely broken and was in a state of depression so as to diminish her ability to think clearly and rationally to fully understand what the Deed would entail during the months leading up to the signing of the Deed. The evidence pointed to the Defendant's energy and capacity for mentally challenging work during 2003. It is highly unlikely that she was unable to appreciate the significance of the Deed when she considered and signed it in March 2003. This view is reinforced by Dr Yeo's comments on the Defendant's ability to fully function at work in 2003: [note: 52]

> In Dr Bose's affidavit, there was no mention to account for Mdm Khoo's ability to function at such a high intellectual level while holding her opinion that Mdm Khoo could not think rationally or clearly at that period in March 2003.
>
> ...
>
> There is no mention of Mdm Khoo not being able to function in her academic duties or in her ability to continue in her post-graduate course work during this period. I note that since then, Mdm Khoo had received a teaching award and had taken up higher academic posts both locally and abroad.
>
> It is obvious that Mdm Khoo is blessed with high intelligence and is an individual that had identified and had taken on may leadership roles in academia.
>
> Thus, unless there are corroborating evidence to show that Mdm Khoo was not able to function at work due to her stress and mental state in March 2003, I am of the opinion that her innate superior intellectual capacity would make it very difficult to conclude, especially without examining her then, that Mdm Khoo was not able to think clearly or rationally and thus not understand what she was signing in March 2003.

50 In the light of all the above, I was unable to accept Ms Ragupathy's contention that the Defendant was coerced, abused and/or threatened into signing the Deed or did not understand the consequences and risks of signing the Deed. I concluded that the Deed was not tainted by any of the vitiating factors suggested by Ms Ragupathy.

51 Ms Ragupathy's fallback argument is that if the Deed was valid, it was repudiated or terminated by reason of the alleged breaches of its terms by the Plaintiff. I agreed with Mr Khoo that there were no clear statements in the Defendant's affidavits alluding to the termination of the Deed or that she had accepted the Plaintiff's repudiatory breach. In fact, the premise of her affidavits was of a subsisting agreement and her focus was on setting it aside because of vitiating factors.

Conclusion

52 For the reasons set out above, I dismissed SUM 1553/2011. I reserved the issue of costs for SUM 1553/2011 until after the ancillary matters are decided by me.

53 I wish to point out that even though the Deed was not set aside, the Deed would have to be scrutinised in order to determine the weight to be given to it in deciding the ancillary matters. Section 112(1) of the Charter gives the court the power to order a division of matrimonial assets "in such proportions as the court thinks just and equitable". Matrimonial agreements do not and cannot oust the court's jurisdiction to order a just and equitable division of matrimonial assets. An agreement between parties to a marriage relating to the division of matrimonial assets like the Deed cannot automatically be enforced in and of itself and is only one of the factors listed under section 112(2) of the Charter to be considered by the court in determining a just and equitable division of the matrimonial assets, and the weight to be accorded to such an agreement depends on the precise facts and circumstances of the case itself: see *TQ v TR* at [73]-[75], [77], [80], [103]; *AOO v AON* [2011] 4 SLR 1169 at [19]; *AFS v AFU* [2011] 3 SLR 275 at [17]-[18]. As the court noted in *TQ v TR* (at [80], [86]), such an agreement may be given conclusive weight and effectively enforced in its entirety if the facts and circumstances warranted so. Similar sentiments have been expressed by Chao Hick Tin JA in a recent decision of the Court of Appeal in *AQS v AQR* [2012] SGCA 3. Chao JA reiterated (at [35]):

> In any case, an agreement between the parties made in contemplation of divorce could not be decisive. It is only one of the factors listed in s112(2) of the Women's Charter that the court must take into account as part of its overarching duty to reach a just and equitable division in light of all the circumstances of the case. This Court affirmed in *TQ v TR and another appeal* [2009] 2 SLR(R) 961 at [75] that even though post-nuptial agreements could be accorded more weight than pre-nuptial agreements, how much weight was to be allocated to a postnuptial must ultimately depend on the precise circumstances of the case.

54 As for the circumstances to be taken into consideration in the determination of the weight to be given to a matrimonial agreement, the oft-cited dictum of Ormrod LJ in *Edgar v Edgar* [1980] 1 WLR 1410 is relevant and provides valuable guidance (see, *eg*, *Granatino v Radmacher* [2011] 1 AC 534 at [38]; *MacLeod v MacLeod* [2010] 1 AC 298 at [25], [42]; *NA v MA* [2007] 1 FLR 1760 at [13]; *A v B (Financial Relief: Agreements)* [2005] 2 F.L.R. 730 at [13]; *X v X (Y and Z Intervening)* [2002] 1 F.L.R. 508 at [84]; *Benson v Benson (Deceased)* [1996] 1 F.L.R. 692 at 704G-705B). Ormrod LJ said (at 1417):

> To decide what weight should be given, in order to reach a just result, to a prior agreement not to claim a lump sum, regard must be had to the conduct of both parties, leading up to the prior agreement, and to their subsequent conduct, in consequence of it. It is not necessary in this connection to think in formal legal terms, such as misrepresentation or estoppel; *all* the circumstances as they affect each of two human beings must be considered in the complex relationship of marriage. So, the circumstances surrounding the making of the agreement are relevant. Under pressure by one side, exploitation of a dominant position to secure an unreasonable advantage, inadequate knowledge, possibly bad legal advice, an important change

of circumstances, unforeseen or overlooked at the time of making the agreement, are all relevant to the question of justice between the parties. Important too is the general proposition that formal agreements, properly and fairly arrived at with competent legal advice, should not be displaced unless there are good and substantial grounds for concluding that an injustice will be done by holding the parties to the terms of their agreement. There may well be other considerations which affect the justice of this case; the above list is not intended to be an exclusive catalogue.

55 Essentially, where the marital agreement is valid and subsisting, the court will look at the facts and circumstances that are likely to reduce or eliminate the weight to be attached to the marital agreement. I have in mind, unconscionable conduct as such undue pressure (falling short of duress). Another example is unworthy conduct such as exploitation of a dominant position to secure an unfair advantage. An important change of circumstances, unforeseen or overlooked at the time of entering into the marital agreement may be relevant.

56 The appropriate weight to be given to the Deed is yet to be argued and determined and this will take place at the adjourned hearing of the ancillary matters.

[note: 1] Plaintiff's Affidavit affirmed on 9.12.10 at para 13

[note: 2] Defendant's Submissions at paras 7, 66

[note: 3] Defendant's Submissions at para 69

[note: 4] Plaintiff's Submissions at paras 26-31

[note: 5] Plaintiff's Submissions at para 33

[note: 6] Plaintiff's Submissions at paras 35-36

[note: 7] Plaintiff's Submissions at para 39

[note: 8] Plaintiff's Submissions at paras 37

[note: 9] Defendant's Affidavit affirmed on 17.11.06 at para 66

[note: 10] Defendant's Affidavit affirmed on 17.11.06 at paras 68-69

[note: 11] Defendant's Affidavit affirmed on 15.1.08 at pp 114-116

[note: 12] Defendant's Affidavit affirmed on 15.1.08 at p109

[note: 13] Affidavit of Wong Shin En filed on 29.12.06 at para 5

[note: 14] Affidavit of Khoo Say Guan filed on 25.6.07 at para 5

[note: 15] Defendant's Affidavit affirmed on 15.1.08 at para 68

[note: 16] Plaintiff's Affidavit affirmed on 16.1.08 at para 101

[note: 17] Affidavit of Wong Kien Haw filed on 25.1.08 at pp 2-3; Affidavit of Wong Kan Por filed on 25.1.08 at pp 3-5

[note: 18] Affidavit of Wong Chiew Li filed on 25.1.08 at pp 2-4

[note: 19] Plaintiff's Affidavit affirmed on 21.7.10 at para 28

[note: 20] Affidavit of Wong Kan Por filed on 25.1.08 at para 10; Affidavit of Wong Kan Yuen filed on 25.1.08 at para 6

[note: 21] Affidavit of Bessy Gill filed on 25.1.08 at para 4

[note: 22] Defendant's Affidavit affirmed on 17.11.06 at para 75

[note: 23] Defendant's Affidavit affirmed on 15.1.08 at para 93

[note: 24] Defendant's Affidavit affirmed on 17.11.06 at para 76

[note: 25] Affidavit of Khoo Say Guan filed on 25.6.07 at para. 5

[note: 26] Plaintiff's Affidavit affirmed on 16.1.08 at pp 146-147

[note: 27] Plaintiff's Affidavit affirmed on 21.7.10 at p224

[note: 28] Plaintiff's Affidavit affirmed on 16.1.08 at p 93

[note: 29] Plaintiff's Affidavit affirmed on 2.11.06 at para 158; Plaintiff's Affidavit affirmed on 16.1.08 at para 84

[note: 30] Affidavit of Peter Moe affirmed on 30.10.06 at paras 7, 10, 11; Affidavit of Peter Moe affirmed on 8.12.10 at para 9

[note: 31] Affidavit of Peter Moe affirmed on 30.10.06 at para 8

[note: 32] Defendant's Affidavit affirmed on 15.1.08 at para 85

[note: 33] Defendant's Affidavit affirmed on 24.8.10 at para 53

[note: 34] Defendant's Affidavit affirmed on 15.1.08 in reply to the Affidavit of Peter Moe affirmed on 30.10.06 at paras 6, 8-10

[note: 35] Defendant's Affidavit affirmed on 15.1.08 in reply to the Affidavit of Peter Moe affirmed on 30.10.06 at 37-49

[note: 36] Defendant's Affidavit affirmed on 15.1.08 in reply to the First Affidavit of Peter Moe affirmed on 30.1.06 at para 8

[note: 37] Affidavit of Dr Pushpa Bose filed on 25.1.08, exhibit "PB-1"

[note: 38] Affidavit of Dr Brian Yeo filed on 24.8.10 at p 2 of his report

[note: 39] Affidavit of Dr Brian Yeo filed 24.8.10 at p 3 of his report

[note: 40] Defendant's Affidavit affirmed on 15.1.08 at p102

[note: 41] Defendant's Affidavit affirmed on 15.1.08 at pp 106-107

[note: 42] Defendant's Affidavit affirmed on 24.8.10 at para 81

[note: 43] Plaintiff's Affidavit affirmed on 16.1.08 at para 45

[note: 44] Affidavit of Li Hongxia affirmed on 21.7.10 at para 3

[note: 45] Defendant's Affidavit affirmed on 17.11.06 at para 66(x); Defendant's Affidavit affirmed on 15.1.08 at paras 74, 81, 99; Defendant's Affidavit affirmed on 24.8.10 at paras 48, 79-81.

[note: 46] Defendant's Affidavit affirmed on 24.8.10 at para 87.

[note: 47] Defendant's Affidavit affirmed on 17.11.06 at para 71; Defendant's Affidavit affirmed on 15.1.08 at para 69; Defendant's Affidavit affirmed on 24.8.10 at paras 26, 62, & 65,

[note: 48] Plaintiff's Affidavit affirmed on 16.1.08 at pp155-176

[note: 49] Defendant's Affidavit affirmed on 15.1.08 at p 21

[note: 50] Plaintiff's Affidavit affirmed on 21 .7.10 at pp75-88

[note: 51] Plaintiff's Affidavit affirmed on 21.7.10 at pp97-98.

[note: 52] Affidavit of Dr Brian Yeo filed on 24.8.10 at pp 3-4 of his report

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