

HillField International Ltd and Others v Chew Lai Yoke Bettina and another action
[2002] SGHC 234

Case Number : Suit 1200/2001, 1349/2001

Decision Date : 10 October 2002

Tribunal/Court : High Court

Coram : Lee Seiu Kin JC

Counsel Name(s) : Joseph Fok Shiu Kong and Morris Yow (David Chong & Co) for the plaintiffs; Philip Fong, Foo Siew Fong and Chang Man Phing (Harry Elias Partnership) for the defendant

Parties : HillField International Ltd — Chew Lai Yoke Bettina

Family Law – Matrimonial assets – Division – Parties entering into agreement relating to division of matrimonial assets – Husband claiming return of missing personal belongings – Onus on husband to prove entitlement to items – Determination of ownership of property in accordance with terms of deed

Civil Procedure – Costs – Appropriate order – Consideration of interest of parties' children in making costs order

Judgment

Cur Adv Vult

GROUNDS OF DECISION

1 These actions arise out of the breakdown of the marriage between Michael David Selby ("Selby"), the Plaintiff in Suit No.1349/2001 and beneficial owner of the three Plaintiffs in Suit No.1200/2001, and Bettina Chew Lai Yoke ("Chew"), the Defendant in both Suits. They were married in October 1989; it was his second marriage and her first. They have a daughter aged 11 and a son aged 6. Selby has two daughters from his first marriage, aged 20 and 18. The matrimonial home at the material time was at 6 Coronation Road West.

2 Like most marriages, it began on a promising note. Selby is a Jew and Chew converted to Judaism in order that their children would become Jews. And within a few years the children came. Over the duration of the marriage the family accumulated enough assets to keep them comfortable for the rest of their lives. However from 1999, Selby and Chew were feeling the strain of their marriage. Matters came to a head late in the evening of 14 May 2001 and they agreed to divorce. Thereafter events moved at a remarkable pace. On 15 May both of them consulted their solicitors and from then on they were acting with the benefit of legal advice. Selby instructed M/s David Chong and Co ("DCC") and Chew instructed M/s Harry Elias and Partners ("HEP"). Through their solicitors, Selby and Chew negotiated and executed a "Deed of Separation and Financial Arrangement in Contemplation of Divorce" ("the Deed") dated 24 May 2001. This is a settlement of all issues as regards matrimonial property and custody of the children. They filed for divorce in Divorce Petition No.601787 of 2001 and a Decree Nisi was granted on 15 June 2001. It was made absolute on 23 October 2001. The Deed was approved by the Court at the hearing of the Decree Nisi and was incorporated in the resulting Order of Court.

3 The following are the relevant provisions of the Deed:

Paragraph 17

(A) No 6 Coronation Road West Singapore 269239 which is in the Wife's sole name is to be kept by her.

(B) The property at Flat 5 No. 10 Cadogan London SW32RS which is in the Wife's sole name is to be kept by her.

(C) There are monies, securities and other investment instruments in Account No. 685371 (Whitham Enterprises Ltd) and Account No. 685370 (Silver Falcon

Holdings Ltd) with the Wife as beneficial owner, the total amount standing in the 2 said accounts as at 30 April 2001 being a sum of USD60,590,121.79. Parties agree to an equal division of this sum of USD60,590,121.79 plus accrued interest up to the date of withdrawal/transfer.

...

(G) Upon this Deed being approved by the Court, the Wife shall transfer her shareholdings in the following companies to such person or persons as the Husband shall direct :-

Airfast Aviation International Pte Ltd

Business Advisory Ltd (incorporated in the British Virgin Islands)

Business Advisory Ltd (Hong Kong)

(H) The Wife shall upon the approval of the Court deliver to the Husband the bearer share certificates of Bonvest International Limited, Tramway Assets Limited and Adavale Management Limited. The Wife agrees that she will relinquish all claims to Adavale Management Limited. The Wife shall not remove the bearer shares of Adavale Management Limited in the interim period and will not operate the company's bank account.

(I) The Husband and Wife shall retain all other properties and possessions in his or her own name.

(J) The Husband agrees to only remove all his personal belongings, such art collection and moveable property as described in the annexure hereto by 31 July 2001.

Paragraph 18

The division of assets as stated in paragraph 17(A) to (J) above shall be in full and final settlement of each other's financial claims under section 112 of the Women's Charter and the Wife's claim for maintenance under section 118 of the Women's Charter.

4 The annexure referred to in paragraph 17(J) (hereafter "the Annexure") contains a wide-ranging list of items such as wine, guitars, art objects, documents and personal belongings. Selby made arrangements for his belongings to be transported from the matrimonial home to Bangkok, where his business activities had taken him at the time. He engaged movers for the task and on 25 May 2001, one of them went to the matrimonial home to survey the items to be moved. On three days, from 2 to 4 July, the movers attended at the matrimonial home to pack and cart away Selby's belongings. However Selby claimed that upon unpacking the boxes in Bangkok certain items were missing. He also claimed that some items belonging to him were already missing before the movers completed their task. In Suit No 1349 of 2001, Selby claims the following from Chew:

(i) 1952 Gibson J50 Guitar;

(ii) Telescope;

(iii) 2 Macaws;

- (iv) 3 Sapphires gemstones;
- (v) 2 Khmer sculptures;
- (vi) Han Dynasty Bronze Horse and Cart;
- (vii) 5 pre-Han Dynasty Bronze Bells;
- (viii) All invoices, documents and photographs taken on the art objects and sculptures belonging to the Plaintiff.

5 There are two further claims in that action. The first is for reimbursement of the sum of \$19,028.11 that Chew incurred on her supplementary American Express ("Amex") charge card and which Selby had paid. The expenses were incurred over the period 24 May to 15 June 2001, in respect of which Selby had paid to Chew an interim maintenance of \$38,000.

6 The second is for an account of the bottles of wine retained by Chew from Selby's wine collection. They had agreed to share the wine collection in the ratio of 3 to 1. Although he received more or less the correct number of bottles, Selby claimed that the wines retained by Chew were of a far higher quality than the ones he obtained and therefore the distribution was not in accordance with their agreement.

7 In Suit No 1200 of 2001, the three Plaintiffs are BVI companies ("the Companies") owned and controlled by Selby. Their claim against Chew is for the return of what they describe as their "company kits", viz. the company seal, the certificate of incorporation and original Memorandum and Articles of Association and the company records. In addition the three companies claim from Chew all banking and financial documents and files of correspondence. Selby claimed that these items were in the matrimonial home and that Chew had kept them from him.

8 I should highlight at the outset an important aspect of this case to put the matter in its proper perspective. The principal asset in the Deed is a sum of slightly over US\$60 million in cash, securities and other investment instruments sitting in two bank accounts of two of the Companies. The Deed provides that Selby and Chew should divide this equally, which means that they would get slightly over US\$30 million each. In addition there was a division of various other assets. Hence the matrimonial home, which sits on 25,000 square feet of land along Coronation Road West, and a flat in London went to Chew. Selby got a condominium in Bangkok as well as control and all shares of a number of private companies.

9 The present dispute does not concern these "big-ticket" items, but comparatively minor items, although some of them are allegedly of considerable sentimental value. According to the Statement of Claim in Suit No 1349/2001, the total value of the items claimed there is US\$422,500. Although this is a large sum by normal standards, it is dwarfed by the value of the matrimonial assets that Selby and Chew have divided up among themselves. Chew claims that Selby initiated these actions to harass her because of bitterness on his part, and the supposition that she had obtained a good deal in the division of assets. Selby on the other hand claims that Chew was an embittered woman who, in her rage and fury, had gone out of the way to deny Selby certain items that were of great sentimental value to him, as well as to inconvenience him.

10 In the wake of these allegations, it is not surprising that the evidence of the protagonists were at polar extremes in important areas. And that a substantial portion of the trial was devoted to issues of credibility. In the course of the trial, I have had the opportunity not only to listen to the two protagonists and evaluate the consistency of their answers, but also to observe their demeanour in the witness box. At the end of it, I came to the conclusion that neither of them had been completely frank and truthful in their evidence. This is hardly surprising as many people who are caught up in such a situation would be moved to massage the truth to embellish their case. Having said that, I would add that I am driven to conclude that Chew's evidence has been most unreliable. Counsel for the Plaintiffs has set out a long list of contradictions in her evidence. I do not intend to go into it in detail. I shall be content to state that, although I do not agree with every item in that list, there is a sufficient number of clear contradictions in her evidence as would lead me to the conclusion that it is not safe to believe her evidence on the substantial issues of fact.

11 Nevertheless, and particularly in view of my finding that Selby has also been prone to exaggeration in some areas, it is not sufficient for me to simply say, as his counsel urges me to do, that therefore he has been telling the truth in all the matters and she has not. It is necessary for the Plaintiffs to overcome the burden of proof that rests on them as claimants. Where the evidence hinges on the words of the parties, I have preferred Selby's to Chew's in view of the finding that I have made in respect of their relative credibility. However in respect of any item claimed it is possible for both parties to be correct in that neither has that item and it is simply lost due to the act of a third party. If there is evidence that the loss could be due to this possibility, it would be incumbent upon Selby to produce evidence to discount it.

12 I turn now to examine the specific items claimed. It would be convenient to group them into five categories as follows:

- (i) admitted items;
- (ii) items not specifically listed in the Annexure;
- (iii) the Amex card charges;
- (iv) the wine; and
- (v) the company kits.

(i) Admitted items

13 The items in this category are the (a) Gibson Guitar; (b) two Khmer Statues; and (c) invoices, documents and photographs of the art objects and sculptures ("the Art Documents"). Chew does not dispute Selby's right to these items; her position is simply that she does not have them.

14 The Gibson Guitar and two Khmer Statues were supposed to have been moved by Helu-Trans, the movers engaged by Selby, from 2 to 4 July 2001. The evidence shows that there was general pandemonium at the matrimonial home during that period. But it was also compounded by the strained relationship between the parties. There is also evidence that Chew made matters difficult for the movers by not permitting them to photograph the art objects beforehand. However there is evidence that one of the two Khmer Statues, a stone Ganesh, was packed by the movers and shipped to Bangkok. Selby's collection of more than 30 guitars was also mostly moved out that day. And there is evidence that prior to 2 July Selby had taken away one or more guitars. On the basis of all the evidence before me I am not satisfied that Selby has discharged the burden of proving that Chew has converted the Gibson Guitar and the two Khmer Statues.

15 The Art Documents are invoices, receipts, photographs, a catalogue book, written appraisals and test certificates relating to those art objects and sculptures that Selby would be entitled to under the Annexure. Selby said that a folio file that contained the Art Documents was kept in the Matrimonial Home. He said that from 14 May 2001 he had no idea where the file was as Chew had removed all their files or locked them up. Selby explained that the records were necessary for insurance purposes and to provide him with a complete record of every art piece in his collection.

16 On 22 June 2001, nine days before the movers went in, Selby's solicitors, DCC, wrote to HEP to ask for the Art Documents. HEP replied on 25 June to say that they would be made available for Selby's collection. Then in a letter from DCC to HEP dated 3 July 2001, the second day of the moving operation, the following statements are made:

In your fax of 25 June 2001 ... you said that the said documents could be collected at your office. When we went to your office on 29 June 2001, we were told that the documents were not at your office but that the same would be handed over to our clients personally when he went over to your clients' premises to supervise the movers on 2 July 2001. Our client went down at the said premises yesterday but the said documents were not handed to him.

The said documents are important to our client in that the same would enable him

to verify every piece of art sculpture (as the said documents would include the relevant certificates and photographs) that are now being packed and moved.

We hereby demand the immediate surrender of the said documents to us as solicitors within the next twenty-four (24) hours.

We need not tell you that the said art sculptures are extremely valuable and rare. Our client will hold your client wholly liable for any loss and damage suffered by him by the delay or your client's refusal to surrender the same immediately.

17 On 3 July 2001 Chew handed to one of the movers a bundle of documents comprising some 20 pages. Selby confirmed that this was a part of the Art Documents but claimed that there were many more documents. He said that the documents handed over did not include a single photograph of the Khmer sculptures which formed a large part of his collection.

18 On 6 July 2001 DCC wrote to HEP to state that the documents handed over were incomplete and demanded the complete set to be handed over by Chew. HEP replied on 10 July to say that there were no pictures or invoices of the Khmer sculptures. On 12 July DCC replied to reiterate their position that Chew was in possession of the remaining documents.

19 Chew gave evidence that she did not have the Art Documents. She said that as far as she was aware, Selby had removed all his personal belongings including his documents and files from the matrimonial home. She recalled that Selby had returned to the matrimonial home on one occasion on 29 May 2001 specifically to collect his files and other documents. However in the next breath, she said that she had handed over a file containing some documents and photographs to the movers. Selby pointed out that if Chew could produce part of the Art Documents, it confirmed that she had the complete set of documents in her possession.

20 On a consideration of the evidence in its entirety, I find that Chew had retained the Art Documents.

(ii) Items not in Annexure

21 The items in this category are the (a) Han Dynasty Bronze Horse and Cart and five Pre-Han Dynasty Bronze Bells (collectively, "the Bronzes"); (b) telescope; (c) Hyacinth Macaw; and (d) three Sapphire gemstones ("the Gemstones").

22 Selby claimed that the Bronzes were purchased by him personally and were at all times kept in the matrimonial home. Chew's version is rather inconsistent. DCC first demanded for the Bronzes in their letter to HEP of 19 July 2001. HEP's reply of 20 July asserts that they were not specified in the Annexure nor were they "personal assets" within item 55 of the Annexure which covers "*clothes, shoes, socks, cufflinks, toiletries, watches, computers ..., novels (fiction)*". HEP said that they would take instruction from Chew as to whether she was prepared to let Selby have them. Those instructions were eventually taken and HEP wrote on 17 August to inform DCC that Chew was not prepared to do so. There matters remained until the suits were filed. It was then that Chew revealed in her Defence that the Bronzes were the assets of Sablowsky and Tang, a partnership dealing in antiques owned by Chew and one Tang Kok Foo.

23 I would have gone into the details of Chew's evidence in relation to the ownership of the Bronzes had it been necessary to do so. It is not for the reason set out in the following paragraph, but I cannot leave this aspect without commenting that I am not satisfied with the inconsistency of the evidence given by her. If the Bronzes were not matrimonial assets but owned by Sablowsky and Tang, it is puzzling that she did not mention it at the outset. This parsimonious attitude towards revelation of the true picture has been displayed at other times as well and is one of the factors that led me to conclude that her evidence is unreliable. Selby's counsel had also pointed out that Sablowsky and Tang's accounts did not count the Bronzes among their inventory, although Chew gave an explanation which I need not go into.

24 The claim for the Bronzes can easily be settled because of the simple fact that they were not included in the Annexure. On Selby's case, they were purchased during the marriage and kept in the matrimonial home. The Annexure gives a rather detailed list of what art objects he was entitled to under the Deed. Therefore it was clearly within the contemplation of the agreement embodied in the Deed that the Bronzes would not go to him. In the premises, I find that Selby is not entitled to the Bronzes.

25 Chew's counsel submitted that the remaining items, viz. the (b) telescope; (c) Hyacinth Macaw; and (d) three gem stones should also be determined in like manner. As they were not listed in the Annexure, Selby is not entitled to them. The issue turns on the construction of paragraph 17(J) of the Deed which provides as follows:

The Husband agrees to only remove all his personal belongings, such art collection and moveable property as described in the annexure hereto by 31 July 2001.

The issue is whether the words "as described in the annexure" qualifies "personal belongings". In my view the word "such" before "art collection and moveable property" delinks "personal belongings" from "as described in the annexure". This would mean that Selby is entitled to remove all of his personal belongings (not otherwise excepted by the remaining terms of the Deed, such as objects of art) from the matrimonial home by 31 July 2001. It would also mean that he would not be entitled to any personal belonging not removed by that date, save those that he was prevented from removing by Chew. I turn to examine whether the three remaining items are Selby's personal belongings.

26 In respect of the telescope, Selby said that he had purchased it for himself from the Singapore Science Centre. Selby had initially wrongly described the telescope but I find that it was a genuine error given the torrent of events in that period. Chew claimed that Selby had purchased it for use of the family and that their children had made use of it. Selby pointed out that apart from the fact that it is a large and heavy instrument, it is also a sophisticated telescope with a motor that compensated for the rotation of the earth to keep the telescope pointed at fixed position in the sky. He pointed out that at the time of its purchase, the children were aged five and two years and would not have been able to operate nor appreciate this type of telescope. I accept Selby's evidence and find that the telescope is part of his personal belongings. As he had demanded it on 5 July 2001 and Chew had refused to return it to him, I find that Selby is entitled to possession of the telescope.

27 I turn to the Macaw. The original claim was for two Macaws but in the course of the trial, at my suggestion Chew agreed to return one of them, a Military Macaw, without prejudice to her position. Selby accepted it, also without prejudice to his position. The claim therefore becomes that of the remaining Macaw, a Hyacinth. Selby had given evidence that he had purchased them from a bird shop in the United States and had imported them to Singapore. They were juvenile birds at the time and he had raised and trained them. Chew claimed that she had bought the birds from a bird shop in Singapore and that they were family pets. As they were not covered by the Annexure, Selby was not entitled to them.

28 I should point out that this is another instance of Chew's inconsistent positions. On 2 July 2001, when he went to the matrimonial home to direct the movers, Selby discovered the Macaws missing from their cages. On 5 July 2001 DCC wrote to HEP to inquire as to their whereabouts in the following manner:

The 2 macaws were missing from their cages and our client demands to know what your client did to the birds. We are instructed that the value of the 2 macaws is about US\$20,000 and one of which is extremely rare. Our client's rights in this regard are also reserved.

In their reply, HEP said as follows:

Please note that the macaws and the other birds, dogs and hamsters are all family pets and are not in the list and neither are they your client's personal belongings. For your client's information, the birds do not cost USD20,000 each. This could be the reason your client did not include the birds in the [Annexure] in the first place.

By letter dated 9 July 2001 DCC repeated the request to know what Chew had done to the Macaws but the reply from HEP on 10 July evaded the question by repeating that they were matrimonial assets not in the list and therefore there was no need to reply to the query. The request was repeated on 12 July with DCC asking specifically what Chew had done to the birds. There was no further response from HEP on this issue.

29 In her affidavit evidence in chief, Chew had said as follows at paragraphs 29 and 30:

29. The 2 Macaws are the pets of the family. They have been with the family for about 6 to 7 years now. They did not belong to the Plaintiff. As such, the Plaintiff is not entitled to the 2 Macaws.

30. The 2 Macaws were not listed in the [Annexure] and were not removed from the matrimonial home by the Plaintiff.

In those paragraphs, Chew states her position that the Macaws are family pets and have been for the past six or seven years. The clear implication is that she still has the birds and intend to retain them and therefore Selby ought not to have them. In the course of the trial, her counsel revealed that she had given the birds away to a friend. Chew sought to correct her affidavit by changing the tense of paragraph 29, but this was only done after the revelation that the Macaws had been given away. In cross-examination, she admitted that the Macaws were given away sometime between 15 June 2001, when the Decree Nisi was granted, and 2 July. It turned out that the friend she had given the birds to, Chua Ka Soon, was also a pet shop owner who sold birds. She had managed to get back the Military Macaw from Chua but was unable to do so in respect of the Hyacinth Macaw.

30 On the evidence before me I have no hesitation in holding that the Hyacinth Macaw is part of Selby's personal belongings to which he is entitled and that Chew had converted it.

31 In respect of the Gemstones, DCC first asserted Selby's claim to them by letter dated 22 June 2001. That letter stated as follows:

We are instructed that the following gem stones were kept in a safe in your client's premises:-

- a) A 4-carat Cabachon Sapphire which was purchased in 1980. The gem stone was set in a men's ring. Approximate value is about US\$20,000.00;
- b) A 4-carat Sri Lanka Sapphire which our client received as a gift in 1985. This too was set in a men's ring and is approximately valued at US\$45,000.00; and
- c) A Kashmiri Cabachon Sapphire (comes with a Gueblin Certificate) which our client bought in 1986. Approximate value US\$30,000.00.

...

Your client will no doubt make the above items available for our client's collection.

32 HEP replied on 25 June to say that the Gemstones belonged to Chew because Selby had given them to her during the marriage as he did not want them. On 5 July 2001 Chew asserted, through a letter from HEP, that the Kashmiri Sapphire was purchased after their marriage. This position was reaffirmed in HEP's letter of 10 July in which it was claimed that the Gemstones were "*matrimonial assets purchased during the marriage*". However in her affidavit evidence in chief, Chew said that the Kashmiri Sapphire was given to her by Selby as a wedding gift. Additionally this assertion does not accord with the fact that it is an unset stone, a rather odd wedding gift to give. It should be noted that there were other jewellery that Selby had given to Chew as wedding gifts.

33 As for the other two sapphires, Chew denied that they were men's settings in her affidavit evidence in chief and asserted that they were originally set in ladies' rings. Yet in a letter from HEP dated 5 July 2001, she had asserted that they were "re-set" as lady's rings. Paragraph 8 of that letter states as follows:

Gem stones (2 blue sapphires) given to our client in the early days of the marriage were re-set for our clients as lady's rings. Your client is fully aware of this fact.

34 To support her case, Chew produced two invoices from Gee Wee Jewellery in respect of the setting of the rings, which are dated 8 September 1994 and 17 February 1996. It was pointed out to her in cross-examination that the invoices were inherently suspicious because they use the 6 digit postal code which were only introduced after the invoice dates. In re-examination Chew explained that she had asked Gee Wee Jewellery in early 2002 for copies of her receipts and those were what they had given her. She had, of course omitted to disclose this fact in her evidence up to that point and only chose to do so after the discrepancy about the postal code was pointed out.

35 From totality of the evidence, I believe Selby's case concerning the Gemstones, that they had been purchased by him before the marriage and that they remained his personal belongings.

(iii) Amex Card

36 In paragraph 19 of the Deed, Chew agreed that Selby could terminate all her credit cards and charge cards that are supplementary to his cards upon approval of the Deed by the Court. It provides as follows:

The Husband shall terminate all supplementary credit or charge cards taken out by him for the benefit of the Wife upon the approval of this Deed by the Court.

However the Deed is silent on the extent to which Chew was entitled to use her supplementary cards during this period. Indeed on 16 May 2001, while the terms of the Deed were being negotiated, Selby instructed Amex to terminate Chew's supplementary card. However on 17 May he reinstated it. It should be recalled that the Deed was signed shortly thereafter, and dated 24 May 2001. It falls to be considered as to what is the agreement between the parties as to this provision.

37 As it would be patently absurd to suggest that they had agreed that Chew could expend any amount she wished, it is a necessary implication of paragraph 19 of the Deed that the card may only be used for the family and her ordinary personal expenses until reasonable provision could be made in relation to her maintenance. On 24 May 2001, Selby paid to Chew a sum of \$38,000 pursuant to an agreement reached on 23 May, as an interim arrangement until the Court's approval of the Deed. Although this agreement was reached in consideration of Chew consenting to release a certain sum of money residing in the bank account of a company called Adavale Management Limited, it is clear in the context that it is related to interim maintenance rather than some sort of ransom for the release of those funds as Chew's counsel appears to suggest.

38 I therefore hold that it was an implied term of the agreement to pay interim maintenance that Chew would reimburse Selby in respect of the expenses incurred on her supplementary Amex card after 24 May 2001. Accordingly she is liable to reimburse Selby for the sum of \$19,028.11 incurred by her between 24 May and 15 June 2001.

(iv) Wine

39 Selby claimed that Chew directed the movers to take all the wine that were stored in the guest bungalow. He said that those were the cheaper wine as he had kept the bottles meant for long-term storage at that location. Selby said that the more expensive wine were kept in the main house. Chew had no interest in wine and it was Selby who purchased and built up the wine collection. On my view of the relative credibility of the protagonists, and taking into consideration Selby's evidence that there is a considerable variation in the value of the wine in his collection, I find that the agreement was for division in the ratio of 3 to 1 by value rather than random bottles. Therefore there should be an account rendered by Chew on the bottles of wine retained by her.

40 For completeness I make the following subsidiary findings of fact. I find that Selby did receive 614 bottles. I find also that the wine that he consumed with his friends during the latter half of May and early June 2001 were white wine that came from the fridge in the kitchen and not from the wine collection.

(v) Company Kits

41 Selby had purchased the Companies as shelf companies for the purpose of holding the substantial assets he had acquired over the years. Chew was the sole director of the Companies at all material times. Selby gave evidence that they used the matrimonial home as the

mailing address of the Companies and all correspondence to the Companies, including the bank statements, were sent there. He said that these documents, together with all other company records, namely, registers, articles of association and memorandum and company seals were kept in the study room in the main house in Chew's sole custody. He claimed that Chew kept them in a locked desk drawer to which only she had the key.

42 Chew denied that she has the company kits. She claimed that Selby must have removed them from the matrimonial home as he had access to the home and the documents at the material time and was in fact moving out many of his documents well before the movers came in early July 2001.

43 Selby deposed to a number of factors which indicate that Chew had the documents she now disclaims. Some of the more significant ones are as follows:

- (i) At the time of the negotiations of the terms of the Deed, between 16 and 24 May 2001, Chew was able to produce the bank statements of Whitham Enterprises Ltd and Silver Falcon Ltd for Selby's inspection. This is embodied in paragraph 17(D) of the Deed which reads: "*The latest bank statement of April 2001 which has been inspected by both parties shall be accepted as conclusive evidence of the amount in Accounts no. 685371 and 685370 ...*".
- (ii) Chew filed an affidavit on 18 September 2001 in connection with the divorce petition in which she exhibited copies of the United States tax returns from 1995 to 1998 of Hillfield International Ltd, the first Plaintiff in Suit No 1200 of 2001.
- (iii) Immediately prior to the transfer of Chew's share of the US\$60 million under paragraph 17(C) of the Deed, DCC wrote to the HEP on 15 June 2001 to request for the up-dated bank statement. At that time, the Defendant had obtained or would soon obtain up-dated bank statements that would show the amount of interest earned since 24 May, which was expected to be a fairly substantial sum. Chew however did not furnish the bank statements. HEP wrote to DCC on 18 and 19 June 2001 giving a precise breakdown of interest and the monies and other deposits in the accounts, showing that Chew had in her possession, the bank statements of the Companies.

44 Counsel for Selby also highlighted several additional factors pointing to Chew having possession of the company kits:

- (i) Chew was able to produce in her September 2001 affirmation various documents relating to the transfer of monies from Whitham to pay for renovations at the Bangkok condominium;
- (ii) There were many transfers of monies from the Companies' accounts to Chew's own account and this indicates that she had a motive in withholding the companies' documents.
- (iii) On 26 April 2001, Chew instructed Citibank to retain all statements in respect of the Companies' accounts so that they would not be sent to the matrimonial home as would ordinarily have been done. She gave this rather doubtful reason for making that instruction:

After I--I signed the Hold-All-Mail Agreement because at that time, I had received three phone calls from Thai women to my house, disturbing my children's life, disturbing my life. By that time, my husband was always in Bangkok on the

weekend. And after the calls that came to the house, after I questioned and asked for the local mobile phone, after he switched to a Thai local phone so that Pauline Han would not be able to give me phone bills. After all that, I put in the Hold-Mail on the 26th April of 2001. I removed the power of attorney on the day that he walked out and I believe that would be May 10th.

45 I am satisfied on a consideration of all the evidence before me that Chew had converted the company kits.

Orders

46 Following from the findings made above, I make the following orders:

- (1) Chew shall return the following items to Selby:
 - (i) the Telescope;
 - (ii) the Hyacinth Macaw;
 - (iii) the three Sapphires gemstones produced by Chew at the trial and as identified by her; and
 - (iv) All invoices, documents and photographs taken on the art objects and sculptures belonging to Selby.
- (2) Should Chew fail to return item (ii) or (iii) above to Selby within one month of this judgment, she shall pay damages assessed as follows:
 - (a) US\$10,000 for the Hyacinth Macaw;
 - (b) US\$20,000 for the 4-carat Cabochon Sapphire, US\$45,000.00 for the 4-carat Sri Lanka Sapphire and US\$30,000.00 for the Kashmiri Cabochon Sapphire.
- (3) Should Chew fail to return item (iv) above to Selby within one month of this judgment, then there shall be an order to pay such damages as shall be assessed by the Registrar.
- (4) Chew shall render an account of the wines retained by her from Selby's wine collection and should their value exceed 25% of the value of the entire wine collection, she shall deliver up wine in excess of this value or, at her option, pay a sum equivalent to such excess value. The valuation shall be made by a valuer to be agreed between the parties, failing which there shall be an inquiry before the Registrar.
- (5) There shall be judgment for the sum of \$19,028.11 in respect of the amount incurred by Chew on her supplementary American Express charge card.
- (6) Chew shall hand over the company kits to the three Companies. Should she fail to do so within one month of this judgment, there shall be an inquiry as to damages and an order for payment of the sum assessed.

47 In crafting the above orders, I have endeavoured to minimise future clashes in court as this will be detrimental to the children of the

protagonists. On the question of costs, I am of the view that the primary consideration should be the children in view of the fact that both Selby and Chew have enough money to take their quarrels to the courts for a long time to come. This will aggravate the emotional harm already inflicted upon their children and I have no wish to see that happen, nor pander to any inclination on the part of either of them to resort to the legal process unnecessarily. Accordingly the most appropriate order for costs to make in this case would be to order that all parties in these consolidated actions bear their own costs.

Sgd:

LEE SEIU KIN

JUDICIAL COMMISSIONER

SUPREME COURT

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