

Nyo Nyo Min v Aung Khin and Another
[2001] SGHC 39

Case Number : OS 738/2000
Decision Date : 28 February 2001
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Seenivasan Lalita (Virginia Quek Lalita & Partners) for the plaintiff; Jason Lim & Andy Chiok (Michael Khoo & Partners) for the defendants
Parties : Nyo Nyo Min — Aung Khin; Khin Hla Hla Aung

JUDGMENT:

Cur Adv Vult

The background

1. The first defendant and the plaintiff are husband and wife; both were Burmese nationals and were married in Yangon, Myanmar on 21 December 1963. At the time, the plaintiff was a widow with 5 children (aged between 10 and 17) while the first defendant was a bachelor; he married her despite strong objections from his family and his mother in particular. The plaintiff's first husband was the mayor/municipal commissioner of Yangon from 1959 until his death in 1962 (apparently from suicide according to the first defendant). There are no children from the plaintiff's marriage to the first defendant but the plaintiff's oldest child (a son) by her first marriage is already 50 years old. Presently, the plaintiff suffers inter alia from, hypothyroidism (excessive activity of the thyroid gland), thyrotoxicosis (Grave's disease) and dyspnoea (difficulty in breathing) probably attributable to heavy smoking in her younger days. She also suffers from coronary arterial disease. Hence, she requires constant medical treatment. In fact, it was the need for medical treatment that prompted the plaintiff to return to Singapore from Myanmar in 1992. Other than from 1992 to date, the plaintiff has only resided in Singapore for one other period, namely from 1979 to 1985. Looking much older than her 74 years, she came to court in a wheelchair which carried a portable oxygen tank to help her to breathe. The second defendant is a Thai national who runs a furniture export business known as Elephant House Co. Ltd (Elephant House) in Bangkok; she is a family friend of the plaintiff and the first defendant. The property known as No. 23 Newton Road #02-02, Newton Meadows (the flat) was the matrimonial home of the plaintiff and the first defendant until about March 2000, when the first defendant left the flat, apparently for good.

2. The first defendant although only four (4) years her junior, looked considerably younger and fitter than the plaintiff. He retired in 1997 after having spent 43 years in the field of oil and natural gas exploration; he became a Singapore citizen in 1986 after first gaining permanent residence in 1982. He left Myanmar in 1977 for Singapore where he worked as a representative for Morgan J Davies Associates, an oil exploration company based in Houston. The plaintiff chose to remain in Yangon with her children. Prior thereto, beginning in 1959, the first defendant worked for the Burmah Oil Company (later renamed the Myanmar Oil & Gas Enterprise [Burmah Oil]), starting off first as a geologist. He rose quickly through the ranks to become the general manager in 1968; by 1975 when he left, he was Burmah Oil's managing-director. The plaintiff however claimed that for the 2 years prior to his departure for Singapore, the first defendant was supported by her.

3. Initially, when he arrived in Singapore, the first defendant paid \$1,200 per month for his rented accommodation, out of his salary which the plaintiff contended was only S\$3,000 while he asserted it was US\$3,000. Later, after the plaintiff's visit to him in or about 1978, it was decided that the couple would purchase rather than rent, a property for the first defendant's occupation. Accordingly, in 1980 the first defendant purchased a flat at No. 153 West Coast Road, Singapore 0512 for \$130,000 (the first property). The plaintiff claimed she paid the 20% deposit as well as most of the balance 80% of the purchase price, from the sale of her personal assets in Yangon. She said the first defendant had no money as he had just started his company (AFKA). The first defendant however said he took a bank loan of \$110,000 to finance the purchase of the first property after paying the difference (\$30,000) between the mortgage sum and the purchase price from his own savings. The plaintiff said the mortgage

instalments were paid by the first defendant partly from his salary and partly from her savings remitted periodically from Myanmar. The first property was registered in the sole name of the first defendant as the plaintiff was not in Singapore at the material time. In 1989, the first property was sold for \$370,000 yielding a gross profit of \$240,000 (when compared with the purchase price).

4. On 15 June 1983, the flat was purchased at the sum of \$518,094. Like the first property, it was registered solely in the name of the first defendant who said he took a 10 year mortgage term loan of \$410,000 from International Trust & Finance Limited (ITF) to finance it with the balance being paid by the first defendant (according to him) from his earnings. The mortgage was only redeemed in November 1994 when the term loan of ITF was fully repaid. The plaintiff disputed the first defendant's claim that he funded the purchase of the flat. She again asserted that she paid for most of the purchase price, apart from \$240,000 which came from the sale proceeds of the first property. Although she had insisted that her name be included in the title to the flat, the plaintiff said she was not aware until 1991, that the first defendant had failed to abide by her instructions. She claimed he had lied to her by saying that as she was a non-Singaporean, she could not hold property. Instead he told her not to worry as he regarded her as the owner since she had paid for the property; she trusted and believed him. The flat was tenanted from 1983 to 1985 at between \$2,500 to \$3,000 rent per month which rent was utilised to pay the mortgage instalments.

5. In 1991, the plaintiff decided to return to Singapore to reside on a long term basis because she needed medical treatment. She said the first defendant assisted her to transfer monies from Yangon to Singapore for her medical and other expenses. This was disputed by the first defendant who said he paid her medical expenses since 1991 to late 1999.

6. The plaintiff owned a piece of land in Yangon situated at 615/2 Pyay Road (the Pyay Road property) which area approximated 0.29 acres (or 12,760 sq ft). She had originally purchased it with the intention of building a house there to live (with the first defendant) eventually. She said she flew in architects from Singapore to co-ordinate the design of the two (2) buildings with local architects. Although he did not contribute towards either the cost of purchase or construction, she added the first defendant's name to the Pyay Road property because he was her husband. The Pyay Road property was sold on 30 April 1996 for 76,700,000 kyats (equivalent to US\$608,730 or S\$852,222) excluding another 30,000 kyats for the furniture and fittings. The plaintiff claimed that she remitted two sums of 23,987,500 kyats and 16,459,900 kyats therefrom to Singapore (equivalent to S\$266,000/US\$190,000 and S\$182,887/US\$130,634 respectively) while 34,659,000 kyats were used to buy a smaller property in Myanmar. In fact, according to the plaintiff, a total of 50,000,000 kyats or US\$398,406.37 (which were her life savings) were remitted by her to Singapore through the first defendant. As she was not literate in English, the plaintiff claimed she entrusted the transactions to the first defendant to handle. What the first defendant would do was to ask the remitter of her funds to issue a cheque in his name which he then deposited into his Citibank account.

7. On or about 4 November 1999, the plaintiff was seen off at Changi airport by the first defendant for her trip to Myanmar to seek indigenous medical treatment; she remained there for five (5) months. When she returned to Singapore on or about 7 April 2000, she found the first defendant missing and upon inquiring of her son (by her first marriage), she was told that the first defendant had left the flat on or about 29 March 1999. The first defendant did not return to the flat thereafter causing the plaintiff disquiet as, it was not his habit to be away from home for more than 2-3 weeks each time he travelled, albeit frequently.

8. The plaintiff then discovered that the title deeds to the flat which were usually kept in an old unused briefcase were missing and so too were the first defendant's cheque books, bank statements and personal belongings, including his clothes. She also discovered that the monies she remitted from Myanmar had been deposited by the first defendant into his accounts or, into the joint accounts of the first and second defendants with Citibank, Bank of America and OCBC. The plaintiff had had an argument with the first defendant before she left for Myanmar. Apparently, she questioned him about her monies and wanted to know how much was left in their bank accounts after the car loan on their 1996 Mercedes Benz had been paid.

The proceedings

9. Suspecting that the two (2) defendants were maintaining an extra-marital relationship, the plaintiff instructed her solicitors to

conduct a search on AFKA Company Pte Ltd (AFKA), which company, registered in 1979 by the first defendant, provides consultancy services in oil exploration and petroleum production; she discovered therefrom that the first and second defendants were shareholders and directors of the company, with the latter being appointed in June 1987. Fearing for the worst, the plaintiff instructed her solicitors to lodge a caveat on the flat on 8 May 2000. She also filed a prohibition order in the nature of a caveat against the first defendant's plot of land in Myanmar (given to him by his mother) at 117B, Thanlywn Road, Kamayet township, Yangon. This was followed by her commencement of these proceedings (the OS) on 16 May 2000 at which same time she applied (ex parte) for a world-wide Mareva injunction against both defendants which application was granted on 17 May 2000.

10. The plaintiff prayed for the following reliefs in the OS:-

(i) a declaration that the first defendant holds a share in the flat on trust for her and that the first defendant transfer the same to her within three (3) months from the date of this order with all expenses of the transfer to be borne by him;

(ii) a declaration that all monies to the sum of S\$600,000 in the bank accounts opened by the first defendant solely or jointly with the second defendant at Citibank (Orchard Road branch), Bank of America (in San Francisco), HSBC (Bangkok) and OCBC (Orchard Road branch) are held by them on trust for the plaintiff and for an order that they pay her the sum.

11. Upon an application made by her counsel, the plaintiff was granted leave to serve the OS on both defendants at the second defendant's address in Bangkok. On 29 June 2000, the defendants (after entering an appearance to the OS), applied to court by way of summons-in-chambers no. 602932/2000 (the application) to discharge the Mareva injunction granted to the plaintiff. The application was heard on 7 July 2000 and was granted; Amarjeet Singh JC after considering the affidavits filed by the parties including those of the plaintiff and the two defendants, ordered the injunction to be set aside, including that placed on AFKA. The plaintiff did not appeal against the order.

12. On 18 August 2000, the defendants applied to court under summons in chambers no. 603545/00 (the defendants' application) for inter alia a stay of all proceedings on the ground that there was a pending action between the plaintiff and the first defendant in Divorce Petition No. 2193 of 2000 and, the OS was frivolous, vexatious and an abuse of the process of the court. The plaintiff not unexpectedly resisted the defendants' application. I dismissed the same on 22 August 2000 but directed that the first defendant file (by a deadline) a further affidavit to substantiate his claim (in the affidavits he had already filed) that:-

a he paid the purchase price of the first property (at West Coast Road) and discharged the mortgage within one year, from his savings;

b. some of the sale proceeds of the first property were remitted to Myanmar for the purchase of the Pyay Road property;

c. he paid (for the flat) the difference between the purchase price and the mortgage sum, as well as the mortgage instalments and the redemption sum for the mortgage, from his own savings;

d. he made numerous remittances from Myanmar to Singapore between 1980 and 1996 and that the source of funds was from his own income/investments in Myanmar;

and produce evidence of his earnings as a consultant by way of income tax assessments for years 1978-79 to date.

13. I also directed the second defendant to file a further affidavit to substantiate her claim that the HSBC Bangkok account

previously enjoined by the plaintiff was her account and that it was opened with her own funds and pertained to her business at the Elephant House. Finally, I ordered that the deponents of all affidavits including U Win Htein, Ung Min Aung and Sai Yee Leik be cross-examined on their affidavits failing which the same would be disregarded.

The affidavits

14. The three (3) persons named above were Myanmar nationals who filed affidavits to support the plaintiff's contention that she was a wealthy woman at the time she married the first defendant. U Min Htein (Htein) is a retired architect who had known and is a close friend of the plaintiff (and her first husband) since 1958. Htein had, in his affidavit deposed that he was the subordinate of the plaintiff's first husband at the Municipal of Rangoon where he worked as the chief architect. He described the plaintiff as an intelligent, charismatic and astute businesswoman, well learned in the Burmese language and who was part of Burmese high society during the time her first husband held office. Htein said the plaintiff invested her savings in property and carried on a profitable wholesale and retail business in her own right. He also recalled that she used to wear full sets of huge diamonds, rubies and other jewellery. Further, she had purchased plots (2) of land and constructed houses thereon which she sold or rented out.

15. The first defendant on the other hand, was described by Htein as occupying a lowly position in Burmah Oil when they first met in December 1963. Htein added that the first defendant was forced to relinquish his post (of exploration manager) in Burmah Oil in 1975. The first defendant's colleagues deserted him and the civil service sector shunned him so much so that he had difficulty renting a house and could not provide a home for the plaintiff or her children. Htein personally intervened to help expedite approval for the plaintiff's application to buy a piece of property at Kanbe Road (the Kanbe Road property) to build a two storey house for her accommodation. He said the cost of purchase and construction of the Kanbe property was paid by the plaintiff and the title was in her sole name. He said he assisted her in its construction as well as in the construction of the Pyay Road property for which purchase and construction the first defendant again provided no financial assistance. During the construction of the Pyay Road property (1984-1990) the plaintiff was in Yangon while the first defendant was in Singapore.

16. Htein deposed that in July 1979, the plaintiff sold the Kanbe Road property ostensibly for 150,000 kyats but in actual fact for 4,500,000 kyats (equivalent to US\$40,000 or S\$132,857) which she remitted to Singapore in 2 instalments through two family friends. Furthermore, the plaintiff's close and trustworthy friends brought her personal jewellery and expensive silverware to Singapore.

17. U Min Aung (Aung), who the first defendant alleged (but which the plaintiff and Aung denied) is the plaintiff's adopted son, also affirmed an affidavit on her behalf. Like Htein, Aung had the highest regard for the plaintiff (whom he addressed as Auntie Ngo and considered his benefactor) but had nothing good to say about the first defendant who he alleged, was an uncaring husband. Aung deposed he owed his success as a businessman to the plaintiff who assisted him (and his father) to import machines into Myanmar (a difficult task in those days), without which he could not today, be the owner of two (2) plastic factories in Yangon. Aung supported Htein's assertion that the plaintiff was a wealthy woman who used her savings to buy and construct the Pyay Road property. He acted as the plaintiff's 'banker' keeping kyats for her as well as her boxes of jewellery, making payments and overseeing her expenditure on the Pyay Road property for which she had given him a general power of attorney. He had expended monies on her behalf for two (2) properties, at Kamaryut and Kyeemynndine townships (for which he provided a breakdown in exhibit P4) and had also remitted to Singapore on her behalf on three (3) occasions (twice in 1996) sums totalling US\$310,000. Before each remittance, he would first telephone the plaintiff to inform her of the local currency equivalent and where to collect the money from in Singapore. Aung understood (presumably from her) that the plaintiff does not have a bank account in her name in Singapore, nor did she have one in Myanmar. Hence, her monies would be collected by the first defendant who would then deposit the same into their bank account opened in his name, for investment purposes.

18. The architect who designed the plaintiff's houses (2) at Pyay Road, namely Sai Yee Leik also affirmed an affidavit on her behalf. However, as he did not attend court to be cross-examined, Sai Yee Leik's affidavit was disregarded. The second defendant's affidavit was similarly disregarded for the same reason. The affidavit filed by one Duncan Niven, a former business

associate of the first defendant in a Hong Kong company called Interong Trading Co Ltd (Interong) was disregarded as the affidavit was filed without leave of court and so was the affidavit filed by Naomi Joyce Seah Bee Hwa, the former personal assistant (for 18 years) of the first defendant. Consequently, in so far as the first defendant was concerned, he was the only witness for his case; I now turn to his affidavit evidence.

19. Not unexpectedly, the first defendant denied all of the plaintiff's allegations. He asserted that he alone paid for the first property at West Coast; he discharged the mortgage loan from OCBC Bank after 3 years partly from the sale proceeds of the Kanbe Road property (which purchase price in 1975 he paid entirely). Neither did the plaintiff pay any part of the purchase price of the flat. The first defendant pointed out that the sale proceeds of the first property could not have gone into the purchase price of the flat because the flat was purchased some 6 years (in 1983) before the sale (in 1989) of the first property, while the parties were still residing at the latter. To substantiate his contention that he alone serviced the mortgage instalments, the first defendant compiled a list (see exhibit D2) of such payments he had made from his BNP and Citibank accounts between the period 3 May 1983 and 5 December 1989.

20. As for the Pyay Road property, the first defendant deposed that it was bought in 1985 using part of the sale proceeds of the Kanbe Road property. In addition, the construction costs of the Pyay Road property came from his earnings as well as from re-mortgaging the first property for a loan of \$200,000. While he admitted that an aggregate sum of S\$448,887.00 was remitted to Singapore from Myanmar, the first defendant denied that the entire sum belonged to the plaintiff. He said that S\$65,000 was remitted to Singapore in 1980 from the sale proceeds of Kanbe Road property (which he used to repay the mortgage on the first property) while the second remittance in 1996 of S\$448,887 came from the sale proceeds of the Pyay Road property. He sold the Pyay Road property in the early 1990s for S\$852,222 when the political situation in Myanmar deteriorated; \$488,887 thereof was remitted to Singapore for his/the plaintiff's expenses as well as for those of his business while the balance was used by the plaintiff to buy a property at No. 7B Kanbawza Avenue, Yangon (which title she put in Aung's name as she did not seem to trust her own children). This was denied by the plaintiff and Aung both of whom contended that the plaintiff lent Aung about 3 million kyats from the sale proceeds of the Pyay Road property to buy No. 7B Kanbawza Avenue which loan Aung was repaying in instalments.

21. Contrary to the negative picture painted by the plaintiff, Htein and Aung of his career and calibre, the first defendant deposed that he had an illustrious record with Burmah Oil, starting as the company's chief geologist in 1963 and ending as its managing-director in 1970. The first defendant has impressive academic qualifications -- he holds a degree in pure science from the University of Rangoon and a master's degree as well as a doctorate, in geology from Ohio State University and Kyoto University respectively. To refute the allegation of the plaintiff and her two witnesses that the Burmese government terminated his services (because he was soft and incompetent), the first defendant exhibited a testimonial (see exhibit A-4 in his affidavit evidence in chief) he had obtained from the present managing-director [Hal Min] of Myanmar Oil and Gas Enterprise, which set out the history of his illustrious career with the company and which testimonial concluded with this paragraph:

In conclusion, I would like to mention that Dr Aung Khin had opened up a new era in the energy sector of Myanmar, especially in oil and gas exploration and production, both on land and offshore, and that it was no wonder that he was deservedly acclaimed as a worthy and dutiful son of Myanmar, by his superiors and colleagues from the whole oil industry as well.

I cannot imagine that the present Myanmar government would speak so highly of the first defendant if what the plaintiff alleged (that he was practically asked to leave the country's national oil company) is true. The testimonial was given despite the fact that Burmah Oil was nationalised on 1 January 1963 by the (henceforth) socialist government of Myanmar (beginning with General Ne Win's) and the first defendant had started his career in the company under a vastly different form of government. During his tenure with the company, the first defendant said he received many benefits which included accommodation for 12 years (at a nominal rent), a car (with chauffeur and petrol provided) and various other allowances. In addition, he acted as a petroleum consultant to several foreign companies. He was never financially dependent on the plaintiff but in fact supported her and her 5 children, as the sole bread-winner for 37 years. The first defendant revealed that as an expert on oil and gas exploration work, he was appointed a member of the Asia Pacific Economic Council (APEC) energy advisory group (head-quartered in

Tokyo) from 1994 until 1997. Further, back in Myanmar (between 1974 and 1977), he had been an elected member of the State Legislative council of Yangon.

22. The first defendant deposed that he opted for early retirement from Burmah Oil in 1975 because he intended to leave Myanmar due to its increasingly unstable political situation; he was considered a liberal technocrat by the new socialist government. As the plaintiff did not want to leave, he decided to purchase a property for her and her children's accommodation. That was how the Kanbe Road property came to be purchased by him in 1976 for US\$40,000, without any monetary contribution from the plaintiff. The money came from his Paris account with Banque National De Paris (BNP) which he had opened in 1974 while on a working trip there and, was hand-carried to Yangon by a friend Rolan Vandenbosch who was then the country manager of Schlumberger Wireline Service.

23. After arriving in Singapore in 1977, the first defendant said he worked for Morgan J Davies Associates, an American oil exploration company based in Houston. His work in 1975-77 on four (4) oil related development projects alone earned him fees of US\$115,000 which he paid into his Paris account with BNP. When he first arrived, he transferred the BNP account from Paris to Singapore, it had funds of US\$100,000. He said he continued to maintain the plaintiff by making regular remittances to Myanmar; he also exported two (2) cars from Singapore between 1978 and 1987 for her use one (1) of which she sold, before she returned to Singapore in 1980. This statement however, was denied by the plaintiff's second son Maung Yai Minn, who filed an affidavit asserting that the first defendant never supported him or his siblings or helped at all in his education. The son went further to refute the first defendant's claim that the latter had exported cars to Myanmar for the plaintiff's use. The son said it was he and his younger brother (Khin Zaw) who exported to the plaintiff five (5) cars, motorcycles, spare parts, television sets and electronic goods to Myanmar for re-sale purposes as well as for the plaintiff's own use. As Maung Yai Minn did not appear to be cross-examined, I disregarded his affidavit. The first defendant explained that although the plaintiff's said son paid for/procured the cars and building materials shipped to Myanmar, he reimbursed the son subsequently. As proof, he referred to entries (pp 225, 239 and 246 of exhibit A-10 are examples) from his Citibank statements which showed cheques issued to Maung Yai Minn, Henley Agencies Corporation (a second-hand car dealer from whom he bought the Toyota pick-up exported to Myanmar) and Birkart SEA (the forwarding agents). There were also entries in his said bank statements (at pp 223, 243, 249 of A-10) which showed he, not the plaintiff's said son, paid for building materials such as tiles (from Polybuilding), paints (from Best Hardware & Paint) and air-conditioners (from Liberal Aircon Engineering) which were sent to Myanmar in 1989 for the construction of the Pyay Road property. The documents contradicted the plaintiff's/Maung Yai Minn's claim that her son(s) paid and shipped the building materials and cars to Myanmar. Indeed, the first defendant's testimony was substantiated by the plaintiff's own exhibit (P2) which showed that Henley Agencies Corporation were indeed the sellers of the Toyota pick-up to Maung Yai Minn.

24. The first defendant also refuted the plaintiff's allegation that he had siphoned off large sums from her funds with Citibank. He explained that the joint Citibank accounts he held with the second defendant were to facilitate their business arrangements. Besides the Elephant House, the second defendant also has a furniture factory in Yangon (Sun Myanmar Elephant House Co Ltd) which produces furniture for export to Europe and the United States. Because of the currency controls in Myanmar and Thailand, the second defendant would receive payments in Singapore for export sales and these were deposited into their Citibank joint accounts; the accounts would disburse payments to the factory in Myanmar, to Elephant House and to business associates. The plaintiff did not deposit any monies into, the joint Citibank account or into his OCBC or Bank of America accounts.

25. The first defendant gave his employment and remuneration history after Burmah Oil as follows:

- a. mid 1977 to February 1979 -- project consultant with Morgan J Davies @ US\$3,000 per month;
- b. February 1979 to July 1999 -- AFKA
- c. July 1977 to December 1987 -- representative of Fuller & Kincaid Associates and US Oil Wells, selling rigs, pipelines and infrastructure equipment to India and

South East Asian countries, for which he received retainer fees and commission totalling about US\$700,000 over ten (10) years;

d. October 1977 to March 1999 - consultant and project manager to Japan National Oil Corporation for US\$400,000 (@ about US\$1,500 x 22 years;

e. 1979 to 1982 -- project consultant for Diminex and DST of Dusseldorf, Germany for an Indonesian project for three (3) years @ about US\$1,800 per month;

f. 1980 to 1990 -- writing and publishing for Petro Consultant SA of Geneva, Switzerland three (3) volumes of Geological Studies and Research on Myanmar for which he was paid US\$450,000 over ten (10) years;

g. 1988 to 1990 -- exploration and petroleum consultant for JAPEX of Japan @ US\$1,500 per month;

h. 1988 to 1996 -- exploration consultant for Indemitsu Company of Japan for exploration work carried out mainly in Myanmar and Vietnam @ US\$1,000 per month;

i. 1989 to 1994 -- project consultant for Amoco, USA @ US\$5,000 for the first year and @ US\$2,500 per month for the next four (4) years;

j. 1996 to 1998 -- project consultant for a joint venture of Total and SAIPEM off the coast of Myanmar for which he was paid a total of US\$300,000;

k. 1988 to late 1992 -- working with Duncan Niven in Interong (which took over the business of Fuller & Kincaid) for which his share of the profits was about US\$300,000;

l. 1994 to 1999 -- director of Sembcorp Engineering Pte Ltd, part of the Sembawang Group of companies in Singapore.

26. As for the Mercedes Benz 200, the first defendant said he purchased it for \$205,000 in 1996 with a hire-purchase loan of \$135,000 which he fully paid up in June 1999. He produced a letter from UMF (Singapore) Pte Limited dated 7 June 1999 confirming full settlement of the hire-purchase sum (see exhibit A-13 in his affidavit evidence in chief).

27. Refuting her claim that he married her for her wealth (he married her out of love and pity [N/E 304]), the first defendant said the plaintiff's first husband left her just a house at Green Bank Road, Yangon (the Green Bank Road property) which rental was her only source of income before they married. After their marriage and when the plaintiff's children were older, the rental was paid direct to them (in 1973). However, the first defendant continued to support the plaintiff's children financially and paid for their education so much so that the plaintiff's eldest son is a medical doctor while her other two (2) sons are professional engineers. The first defendant pointed out that the plaintiff never worked throughout their 37 years of marriage.

The court proceedings

28. Under cross-examination, the plaintiff repeatedly asserted she was/is an extremely wealthy woman. She denied she was only a housewife when the first defendant married her. She claimed (amongst many other contentions) that she operated a wholesale business at the material time in the buying and selling of greens (such as onions, garlic and potatoes) in Yangon and another

town; it gave her a monthly profit of about 25,000 kyats (in 1973 that would be equivalent to US\$5,000 @ 5 kyats to US\$1.00). In addition, she had the rental income from the Green Bank Road property (US\$1,000 per month) and from another property at Windermere Road (which was sold and replaced by one at University Avenue). Further, she also had an import-export business called Samanthu as well as a later joint venture business which dealt in hardware and (tinned) food. The plaintiff asserted that the income she received from rent, her businesses and from selling her jewellery but not the first defendant, supported her children.

29. According to the plaintiff, her first husband (U Kyaw Min) and in turn she, had a great deal of influence with the top echelons of government at the material time. She claimed that (the then ruler) General Ne Win came to know the first defendant through her and she was instrumental in his being appointed the managing-director of Burmah Oil at only 38 years of age. She alleged that the first defendant knew that marrying her would be an immense advantage to him. She further alleged that General Ne Win's brother, who was then the director-general of housing, allowed her to import building materials at the official exchange rate when she constructed the Pyay Road property. She was able to sell off the excess building materials at market rates for 6 million kyats which sum (together with the sale proceeds of Pyay Road) was remitted to Singapore (to the first defendant) and part whereof was lent to Aung to purchase No. 7B Kanbawza Avenue.

30. The plaintiff even took credit for the free accommodation given to the first defendant. She alleged that the Minister for National Housing Board gave them a house more suited to their status (at No. 6 Windermere Gardens) as the first house (at University Avenue) provided by Burmah Oil was too small. She claimed that because she did not have an official work status, Windermere Gardens was allotted to the first defendant instead. She further asserted that although she alone paid for the Pyay Road property, she added the first defendant's name as co-owner (in 1988-89) to facilitate resale. This was because it was customary to add a spouse's name to the title of properties so that buyers would have more confidence.

31. It would be appropriate at this juncture to make a pertinent observation. My suspicion (from reading the affidavits) that Htein and Aung were heavily influenced by the plaintiff's views in their unflattering portrayal of the first defendant was confirmed by their cross-examination. It was apparent therefrom that they hardly knew the first defendant whom they had only met once or twice; in Aung's case, he was only introduced to the first defendant in or about 1990 some seven (7) years after he first met the plaintiff (in 1983). Consequently, how could Aung know what actually transpired relating to the parties' purchase of the Kanbe Road property (in 1976), the first property (in 1979) and even of the flat (1983)? He only knew what he had been told by the plaintiff, which may not be accurate. I should add that under cross-examination, it transpired that Aung's periodical remittances of US\$310,000 to Singapore were actually repayments of the plaintiff's loan to him to purchase No. 7B Kanbawza Avenue, on which about \$50,000 was still outstanding as at the date of trial. Aung's testimony may be coloured by the fact that he is beholden to the plaintiff for lending a substantial sum to him without interest and without a deadline for repayment, notwithstanding that part thereof has been repaid.

32. My observation regarding the unreliability of Aung's testimony would equally apply to Htein. In cross-examination, he could only answer "*I don't know*" to questions put to him by counsel relating to such matters as, how much money the plaintiff remitted to Singapore from the sale proceeds of the Kanbe Road property, how she paid for the Pyay Road property and whether she brought the purchase monies from Singapore. What he knew was what he believed or, what was told to him by the plaintiff. I would add that the fact Htein saw the plaintiff personally attending to payments or construction matters relating to the Kanbe Road or Pyay Road properties did not mean that the monies came from her and not from the first defendant who, by his own admission, left such matters to her. Presumably, prudence dictated that the first defendant should not return too often to a country which he left for good because of its political situation and which had confiscated his four (4) shop-houses, under its nationalisation policy.

33. In compliance with my orders made on 22 August 2000, the first defendant produced his Singapore income tax assessments for the years 1989 to 1994 (see exhibit D3) and later, also those from 1979 to 1983, as well as for last year. It is to be noted therefrom that his income ranged from \$32,356 (1979) to \$70,627 (2000). The inland revenue authorities were however unable to provide copies of his tax assessments for the years 1984-88. The first defendant also produced (see exhibit D1) statements pertaining to his Citibank accounts showing substantial deposits in United States dollars as well as in local currency, covering the period 1998-99. He explained that his income from off-shore contracts (N/E 290) would not be reflected in his Singapore tax

assessments as he kept those earnings abroad. In this regard, the first defendant obtained (at considerable expense), statements from his BNP Singapore account from 1983 to 1987 (when the account was closed) including statements which showed BNP extended overdraft facilities (of around \$200,000) to him secured by his fixed deposit(s). He was unable to produce the statements pertaining to his BNP Paris account as that was closed in 1977, some 23 years ago. He did produce statements pertaining to his Citibank, Bank of America and OCBC accounts as well as, extracts from the HSBC account of the second defendant to show remittances which he made thereto from his Citibank account (between 5 October 1999 and 24 January 2000), in connection with the export sales of Elephant House.

34. As against the bank statements produced by the first defendant, the plaintiff substantiated her case with two (2) documents:-

- a. an undated 3 page document in the first defendant's handwriting (see exhibit I in the plaintiff's 5th affidavit filed 29 September 2000) in which he had set out items like the amounts of funds sent either to or from Yangon, fixed deposits, amounts spent, sale proceeds of cars, interest earned and insurance;
- b. her statutory declaration made on 4 August 1980 (see exhibit P6) before a notary public in Singapore in which she declared she had sold 5 items of jewellery for a total of 427,000 kyats either at end 1975 or early 1976, which proceeds went towards the purchase and construction of the Kanbe Road property.

The findings

35. Contrary to the high regard expressed for her by the plaintiff's two (2) witnesses in their oral and written testimony, I was not impressed with the plaintiff as a witness. Granted she may well be a devout Buddhist and well versed in Buddhism and its teachings, but I certainly did not find the plaintiff to be the refined and elegant lady Htein and Aung made her out to be. Rather, she came across as strong-willed, domineering, difficult and quite ignorant. Although I could not understand a word of her testimony before it was translated into English from Burmese, I formed the distinct impression that the plaintiff was/is an unreasonable person and lived in a world totally devoid from reality. My view in this regard is reinforced by the following extracts from para 6 of the first defendant's Answer and Cross-Petition filed in Divorce Petition No. 2193 of 2000:-

- (a) Despite the fact that by 1963 her only real source of income was the rental from the Green Bank Road property and she was dependent on the respondent's income, the petitioner always regarded herself as still belonging to the upper most strata of Yangon society solely on account of the fact that her previous husband was a high ranking government official. She considered the respondent to be of lower class;
- (b) despite his best efforts, she never regarded the respondent as an equal let alone of equal standing to her late husband. Even when he became the managing-director of the Burmah Oil Company in 1970, she despised the fact that he was only a wage-earner;
- (c) she had for many years fuelled her own illusions of past grandeur, that is, of her life with her former husband whom she remembers as a 'powerful man' and she has convinced herself, and even others, that the respondent became managing-director of the Burmah Oil Company only because of her 'high social status' and that he should be indebted to her for the rest of his life;

(f) since she moved into the Newton Road property in 1990, she had used the master bedroom almost exclusively for herself and her 50 year old son, Maung Ye Minn has occupied for himself the only other bedroom. The respondent has been working in Bangkok since 1997 and whenever he was in Singapore, he would sleep on a sofa in the living room;

(g) she prohibits the respondent from using the telephone to call his mother in Yangon or to visit his mother in Yangon and he has had to do so for many years without her knowledge. The respondent's mother is now 91 years old.

If the above allegations are true, I am not at all surprised that the first defendant was driven to find solace with the second defendant who, judging from a photograph of her in a brochure of Elephant House exhibited in an affidavit, is much younger and considerably more attractive than the plaintiff. The second defendant was also likely to be a less difficult person than the plaintiff.

36. In his written testimony, the first defendant deposed that the marriage with the plaintiff was already strained by 1977. He had, in reply to counsel's repeated questioning (N/E 301), said that the plaintiff was an influential woman at the time, meaning before her first husband died; after 1962 and now, she did not/does not, know anybody. After her first husband's death and the longer the lapse of time thereafter, the lesser her influence; I agree entirely with the first defendant's argument. It is too far-fetched to believe that the plaintiff, as the former wife of U Kyaw Min (whose position as mayor was short-lived anyway) could have had an influence (if any) stretching over 30 years (1959-1999). People have short memories especially of politicians and more so of those who leave or lose power; this is particularly true of a country which overthrew the legitimate government of the day and installed a socialist regime thereafter headed by the army, starting with General Ne Win. I do not accept that the plaintiff had the influence she made out in her testimony and which she convinced Htein and Aung she had; it is a pure figment of her imagination, just like her claims to extreme wealth.

37. I shall now elaborate on my finding that the plaintiff is an ignorant woman. The factors which support my observation include the following:-

a. on her instructions, her counsel had actually suggested to the first defendant that he had obtained his doctorate from Kyoto University on just one visit (N/E 294) when the first defendant spent 3 years on a (then) Burmese government scholarship on the course;

b. anyone looking at the first defendant's employment history would have realised, even without any special knowledge of the oil/petroleum industry, that he worked for some of the most well-known oil and oil-related companies and consultancies in the industry -- names like Amoco Oil, Total Petroleum and US Oil Wells, not to mention our own Sembawang Corporation. Yet the plaintiff spoke of the first defendant's occupation and qualifications in the most disparaging terms. She even derided the jewellery the first defendant's mother gave to her upon her marriage to him as so insignificant that she gave them away.

38. I shall also elaborate on my passing comment that her wealth was another figment of the plaintiff's imagination or more correctly, her own illusion. This was very obvious from her oral and written testimony. She did not produce one iota of evidence to support her alleged wealth, supposed businesses in Yangon and vast collection of jewellery, apart from the self-serving statutory declaration referred to in para 34(b) above and her bald statements. She did not furnish any proof that she sold \$100,000 worth of jewellery to Singapore's well known Mrs Aw or to another Mr Lau. Aung was unable to say what jewels if any, were in the green jewellery boxes she left in his safe-keeping, neither was he present when she allegedly sold some jewellery on one occasion in Yangon. The first defendant had also testified that he bought jewellery for the plaintiff worth \$150,000 after their marriage, so it could well be that she was selling the jewellery he bought for her and not her own; indeed,

that was what the first defendant claimed.

39. The hand-written document by the first defendant set out in para 34(a) is at best a neutral document. There is nothing stated therein to suggest that all or any of the sums stated therein belong to the plaintiff; I find that the document has no probative value.

40. What cannot be disputed is, that the plaintiff never worked for the 37 years she was married to the first defendant; I do not regard her as a businessman. Even if I believe that she received a pension from the government after her first husband died, that did not last very long because a year after his death, she married the first defendant and by her own admission, the pension ceased on her re-marriage. I take judicial notice of the fact that the kyat is a currency which is practically worthless outside Myanmar and which, over the past 30 or so years has steadily lost its value against the United States dollar (and thereby against the Singapore dollar), particularly under the rule of the socialist government. So even if the plaintiff did manage to remit kyats out of Myanmar in recent years (despite the currency restrictions imposed by its government) how much would they have been worth in Singapore dollars? I doubt it could have been very much let alone the huge sums the plaintiff claimed.

The decision

41. As counsel for the first defendant rightly pointed out in his closing submissions, this OS is not an application under s 59 of the Women's Charter Cap 353 (1997 ed) nor is it an application for the determination or division of matrimonial assets under s 112 of the same Act; that will follow after the pending divorce proceedings between the parties have been resolved. Although this fact was conceded by the plaintiff's counsel in her closing submissions, she nevertheless prayed (see para 2) that the *plaintiff's actual legal right to the matrimonial property be determined*. With respect, that submission is misconceived as it is not the relief prayed for under the OS. It is also to be noted that the OS is not founded on any express trust and indeed the plaintiff did not allege there was one.

42. Consequently, the plaintiff's claim can only be based on a resulting trust for which the onus is on her to prove:-

(i) that she paid half () the purchase price of the flat;

(ii) that she entrusted \$600,000 of her own monies to the first defendant for safe-keeping.

On the evidence, the plaintiff has failed to discharge the burden of proof for both claims. Her counsel, throughout the closing submissions submitted for the plaintiff, criticised the first defendant's testimony as being unreliable, contradictory and unsubstantiated. Where she was unable to refute the first defendant's evidence, for example when confronted with the unassailable payments he received from SAIPEM, counsel conveniently brushed them aside with the cursory comment that they are not issues in this OS but will be taken into account for the ancillary hearing pursuant to the divorce petition (see paras 56 and 58 of the plaintiff's submissions). Such criticisms ignore a basic principle of law -- he who alleges must prove, it is not for the opposing party to disprove. It is not for the first defendant to prove he had the means to pay for the purchase price of the flat or that the monies in all his bank accounts belonged to him. The burden is on the plaintiff to prove that the monies that went into the flat, the first property, the various properties in Myanmar and the first defendant's bank accounts belong to her partially or totally; she failed miserably in discharging that onus.

43. Notwithstanding that the burden was not on the first defendant to prove that he had the means and the wherewithal to pay for the couple's 2 matrimonial homes in Singapore as well as to amass the substantial sums in his various bank accounts, I am of the view that he has more than discharged the burden, based on the documents he produced in court and from his oral testimony. He struck me as a gentleman who spoke the truth and who, despite the poor treatment he had received over the years from the plaintiff and despite the lack of gratitude from her and her children for what he had done for them, still discharged his duties to her and to them as her husband and their stepfather, until 1999.

44. Accordingly, I dismiss the OS with costs to the first defendant (to be taxed unless otherwise agreed) and with costs fixed at \$1,000 to the second defendant, as she took no part in the cross-examination process.

45. Finally, I wish to make it clear that my decision in these proceedings should not affect or prejudice the plaintiff in her claim on the ancillary reliefs in the event that her marriage to the first defendant is dissolved in Divorce Petition No. 2193 of 2000.

Choo Han Teck

Judicial Commissioner

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