

**DALAM PERKARA SAMAN PEMULA NO: PA-24F-95-09/2024**  
**DALAM MAHKAMAH TINGGI MALAYA DI PULAU PINANG, MALAYSIA**  
**(BAHAGIAN KELUARGA)**

**Dalam Perkara Seksyen 102 Dan 106  
Akta Membaharui Undang-Undang  
(Perkahwinan Dan Perceraian) 1976**

**Dan**

**Dalam Perkara Tentang Aturan 29  
Kaedah 1 (1), 1 (2a) Dan 1 (3) Kaedah-  
Kaedah Mahkamah 2012**

**Antara**

**Ong Ko Lynn  
(No. KP: 750523-07-5224)**

**...Pemohon**

**Dan**

**Cheah Beng Keong  
(No. KP: 721120-07-5331)**

**...Responden**

**Judgment**  
**[Enclosure 1]**

**Introduction**

**[1]** This is an appeal by the Applicant Wife (Applicant) against the decision of the Penang High Court on 05.02.2025 against part of the said decision which allowed the entire application for an interim injunction except paragraphs 2.3, 2.7, 2.8, 5, 7 and 9.

**[2]** Under Section 102 of the Law Reform (Marriage & Divorce) Act 1976 (LRA) read together with Order 29 Rules 1 (1), 1 (2A) and 1 (3) of the Rules of Court 2012 (ROC) and / or the inherent jurisdiction, the Court has the power to prevent the disposal of the matrimonial property and to set aside and restore the disposal of the matrimonial property made by the Respondent Husband (Respondent) pending the disposal of the Divorce Petition with costs in the cause.

**[3]** The remaining reliefs sought were allowed, and the Respondent did not file an appeal. In this judgment, the parties are referred to as they were in the High Court.

## **Originating Summons (Enclosure 1)**

**[4]** The cause papers filed in respect of the Applicant's Originating Summons are as follows:

- (i) Originating Summons dated 12.09.2024 (Encl. 1) ;
- (ii) Affidavit in Support affirmed by Ong Ko Lynn on 09.09.2024 (Encl. 2) ;
- (iii) Applicant's Certificate of Urgency dated 12.09.2024 (Encl. 3) ;
- (iv) Ex-parte Injunction Order dated 18.09.2024 (Encl. 6) ;
- (v) Affidavit of Service dated 01.10.2024 (Encl. 7) ;
- (vi) Ad-interim Injunction Order dated 02.10.2024 (Encl. 12) ;
- (vii) The Respondent's Affidavit in Reply dated 11.11.2024 (Encl. 13) ;  
and
- (viii) The Applicant's Affidavit in Reply "Afidavit Balasan" dated 26.11.2024 (Encl. 16).

## **The Application and the laws**

**[5]** This application is filed in accordance with Sections:

- (i) Section 102 of the Law Reform Act (Marriage & Divorce) 1976

section 102 LRA 1976 which provides as follows:

"102. Power for court to set aside and prevent dispositions intended to defeat claims to maintenance

(1) Where -

(a) any matrimonial proceeding is pending; or

...

the court shall have power on application -

(i) if it is satisfied that any disposition of property has been made by the spouse or former spouse or parent of the person by or on whose behalf the application is made, within the preceding three years, with the object on the part of the person making the disposition of reducing his or her means to pay maintenance or of depriving his or her spouse of any rights in relation to that property, to set aside the disposition; and

(ii) if it is satisfied that any disposition of property is intended to be made with any such object, to grant an injunction preventing that disposition.

(2) For the purpose of this section -

"disposition" includes a sale, gift, lease, mortgage or any other transaction whereby ownership or possession of the property is transferred or encumbered but does not include a disposition made for money or money's worth to or in favour of a person acting in good faith and in ignorance of the object with which the disposition is made;

"property" means property of any nature, movable or immovable, and includes money. "

(ii) Section 29 rule 1 (1), 1 (2A) and 1 (3) Rules of Court 2012 which provides as follows:

"O29 r1. (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or

matter, whether or not a claim for the injunction was included in

that party's originating process, counterclaim or third party notice, as the case may be.

(2A) The affidavit in support of an application made ex parte must contain a clear and concise statement of—

(a) the facts giving rise to the claim;

(b) the facts giving rise to the application for interim injunction;

(c) the facts relied on to justify the application ex parte, including details of any notice given to the other party or, if notice has not been given, the reason for not giving notice;

(d) any answer by the other party (or which he is likely to assert) to the claim or application;

(e) any facts which may lead the Court not to grant the application ex parte or at all;

(f) any similar application made to another Judge, and the order made on that application; and

(g) the precise relief sought.

and/or inherent jurisdiction of the Court for the following reliefs (original wording and sentences):

1. Bahawa kebenaran diberikan kepada Pemohon oleh Mahkamah yang Mulia ini untuk memfailkan permohonan ini ;

2. Bahawa suatu Perintah Injunksi Interim (Ex-Parte) diberikan untuk menahan Responden dan / atau agen-agennya dan / atau pekerja-

pekerjanya daripada mengambil apa-apa langkah dan / atau cara dan / atau membenarkan termasuklah memindahmilik, menjual, melupus dan / atau membuat sebarang tindakan yang boleh menjejaskan segala hartaharta sepencarian yang dimiliki dan dipegang oleh Responden, sama ada dimiliki secara tunggal, atau bersama dengan Pemohon atau orang lain seperti tertera di perenggan-perenggan 2.1 sehingga 2.15 dan juga kesemua aset-aset, dana-dana, saham-saham, kepentingan-kepentingan, amanah-amanah dan hartanah-hartanah Responden yang lain yang masih belum dikenal pasti sehingga pelupusan muktamad bagi prosiding perceraian

#### KECUALI DAN TERTAKLUK KEPADA YANG BERIKUT:-

2.1. Mulai dari tarikh Perintah ini diserahkan kepada Responden, jumlah simpanan / wang di akaun perbankan di bawah nama tunggal Responden iaitu Maybank Islamic Berhad Saving Account No. 1571 6714 9459 dan CIMB Bank Berhad Saving Account No. 7021 4391 48 untuk gaji bulanan tujuan D Responden adalah dibenarkan bagi kegunaan Responden ke atas perbelanjaan Responden;

#### HARTANAH TAK BERALIH

2.2. harta tak beralih yang dipegang di bawah GM 1898, Lot 5530, Mukim 11, Daerah Seberang Perai Tengah, Pulau Pinang, yang beralamat di No. 11, Lorong Gemilang Ria 3, Taman Gemilang Ria, 14000, Bukit Mertajam, Pulau Pinang yang dibawah nama Responden dan ayah kepada Responden, Chia Ah Seng @ Cheah Ah Seng ;

#### HARTANAH BERALIH

2.3. Akaun Bersama dibawah nama Pemohon dan Responden di bank OCBC (Portfolio No. 6000097217-1) setakat 30.04.2024 yang mempunyai jumlah aset sebanyak RM4,574,065-38 ;

2.4. Akaun Simpanan dan Simpanan Tetap dibawah nama Responden di bank OCBC (No. Akaun 731 341 4464) setakat 30.04.2024 yang mempunyai jumlah aset sebanyak RM880,179-53 ;

2.5. Akaun Simpanan Tetap dibawah nama Responden di bank UOB (No. Akaun 123 000 139 7) setakat 30.04.2024 mempunyai jumlah aset sebanyak RM100,000 ;

2.6. Akaun Pelaburan dibawah nama Responden di bank UOB setakat 30.04.2024 yang mempunyai jumlah aset sebanyak RM150,000 ;

2.7. Akaun Bersama dibawah nama Pemohon dan Responden di bank UOB (Privilege Account No. # 123 300 248 3) setakat 30.04.2024 yang mempunyai jumlah aset sebanyak RM83,000 ;

2.8. Akaun Bersama Simpanan Tetap dibawah nama Responden dan anak kedua dari hasil perkahwinan, Cheah Tze Chwan di bank UOB (No. Akaun 123 000 137 0) setakat 30.04.2024 yang mempunyai jumlah aset sebanyak RM47,000 ;

2.9. Akaun Simpanan Tetap dibawah nama Responden di bank CIMB setakat 30.04.2024 yang mempunyai jumlah aset sebanyak RM350,000 ;

2.10. Akaun Pelaburan dibawah nama Responden di bank CIMB (No. Akaun. 07380000093712) (No. Akaun Klien C 9010 2917) ALLIANZ SE Bond setakat 30.04.2024 mempunyai jumlah aset sebanyak USD 143,893.65 ;

2.1.1 Akaun Pelaburan dibawah nama Responden di bank CIMB (No. Akaun. 07380000093712) (No. Akaun Klien C 9010 2917) PETRONAS CAPITAL LIMITED Bond setakat 30.04.2024 yang mempunyai jumlah aset sebanyak USD 106,577-70 ;

2.12. Akaun Pelaburan dibawah nama Responden di bank CIMB (No. Akaun. 07380000093712) (No. Akaun Klien C 9010 2917) Unit Trust setakat 30.04.2024 yang mempunyai jumlah aset sebanyak RM400,000 ;

2.13. Akaun Simpanan dibawah nama Responden di Kumpulan Wang Simpanan Pekerja Account No. 1307 6723 ;

2.1.4 50% saham Responden dalam syarikat EPS Integration Sdn Bhd (No. Syarikat : 1181146-X) bersama dengan hartanah tak beralih kilang yang dipegang dibawah HSD 44402, Lot PT10, Mukim 01, Daerah Seberang Perai Tengah, Pulau Pinang yang beralamat di No. plot 975, MK 1 Solok Perusahaan 3, Kawasan Perusahaan Perai MIEL, 13700 Perai, Pulau Pinang ;

2.15. 50% saham Responden dalam Embedded Product Solution (PG0071120-D) ;

3. Bahawa sebarang pelupusan aset-aset, dana-dana, saham-saham, kepentingan-kepentingan, amanah-amanah dan hartanah-hartanah yang telah dilakukan oleh Responden sama ada melalui dirinya sendiri, melalui ahli-ahli keluarganya, pegawai-pegawainya, agen-agensya, pekerja-pekerjanya, wakil-wakilnya, nomini-nomininya, dalam masa lebih kurang tiga (3) tahun sebelum ini (iaitu dari tahun 2021 hingga 2024), dengan tujuan untuk mengurangkan kemampuan Responden untuk membayar nafkah atau untuk menghalangi Pemohon daripada menerima apa-apa hak atau kepentingan yang sepatutnya berhubung dengan harta itu, dibatalkan dan diketepikan di mana Responden restore transaksi-transaksi tersebut ;

4. Bahawa Responden hendaklah dalam tempoh tujuh (7) hari dari tarikh penyampaian Perintah ini bagi tujuan berikut :-

4.1 memaklumkan kepada Pemohon dan / atau peguamcara Pemohon berkenaan dengan kesemua aset-aset, dana-dana, saham-saham, kepentingan-kepentingan amanah-amanah dan hartanah-hartanah Responden di mana:

4.1.1 samaada yang dimiliki adalah secara sah atau secara benefisial oleh Responden dan sama ada dalam namanya sendiri atau tidak dan sama ada dimiliki secara tunggal atau bersejua ;

4.1.2. sifat kesemua aset-aset, dana-dana, saham-saham, kepentingan-kepentingan, amanah-amanah dan hartanah-hartanah tersebut yang dikenal pasti ;

4.1.3. nilai, lokasi, cagaran, gadaian, gadai janji, sekuriti ;

4.1.4. penjualan, pindahan, pengeluaran, perimitan atau apa-apa bebanan penjualan, pindahan, pengeluaran, perimitan atau apa-apa bebanan ) didedahkan ;

4.1.5. dokumen-dokumen yang relevan kepada nilai kesemua aset-aset, danadana, saham-saham, kepentingan-kepentingan, amanah-amanah dan hartanah-hartanah tersebut dizahirkan dan ditentu sahkan ;

4.2. mendedahkan pelupusan aset-aset, dana-dana, saham-saham, kepentingan-kepentingan, amanah-amanah dan hartanah-hartanah yang telah dilakukan oleh Responden dan / atau ahli-ahli keluarganya, pegawai-pegawainya, agen-agenjnya, pekerja-pekerjanya, wakil-wakilnya, nomini-nomininya bagi tempoh tiga (3) tahun sebelum permohonan ini iaitu dari tahun 2021 hingga 2024 ;

4.3. Bahawa maklumat yang dirujuk dalam perenggan 3 di atas hendaklah kemudiannya disahkan di dalam suatu afidavit yang diikrarkan oleh Responden yang mana afidavit tersebut hendaklah disampaikan kepada peguamcara Pemohon dalam tempoh empat belas (14) hari dari tarikh penyampaian Perintah ke atas Responden ;

5. Bahawa Pemohon memberi akujanji untuk membayar gantirugi sebagaimana Mahkamah yang mungkin berpendapat sesuai dan wajar selepas ini ditanggung oleh Responden, sekiranya ada, yang sepatutnya dibayar kerana perintah yang diberikan;

6. Bahawa perintah injunksi ini hendaklah berkuatkuasa sehingga pelupusan penuh dan muktamad petisyen perceraian ini ;
7. Bahawa kegagalan dan / atau kemungkiran mematuhi Perintah injunksi ini merupakan suatu penghinaan kepada Mahkamah dan dengan itu boleh dikomitkan ke penjara ;
8. Bahawa Mahkamah Yang Mulia ini menetapkan suatu tarikh dalam masa empat belas (14) hari dari tarikh Perintah ini bagi pendengaran inter-parti permohonan ini ;
9. Bahawa kos permohonan ini dijadikan kos dalam kausa ; dan
10. Lain-lain Perintah atau relif lanjutan yang mana dianggap sesuai dan patut oleh Mahkamah yang Mulia ini.

**Alasan-alasan untuk menyokong permohonan ini adalah seperti berikut :-**

- a. Sementara Sijil Perakuan Badan Pendamai dibawah Seksyen 106 (1) Akta Membaharui Undang-undang (Perkahwinan & Perceraian) 1976 dikeluarkan dan pemfailan Petisyen Perceraian, suatu Perintah Mengelak Pelupusan Harta adalah diperlukan dengan segera bagi mengekalkan status quo harta-harta sepencarian tersebut sehingga pelupusan muktamad prosiding perceraian ini ;
- b. Pemohon mengemukakan deraf Petisyen Perceraian Bersama pada 15.07.2024 kepada Responden, yang mana terma-terma dalam Petisyen Perceraian bersama tersebut adalah tidak dipersetujui oleh Responden ;
- c. Pada 17.07.2024, Responden telah membuat transaksi pemindahan wang yang substansial sebanyak RM4,953,623-54 daripada akaun bersama yang dibuka atas nama Pemohon dan Responden ;
- d. Responden pada 24.07.2024 mengugut Pemohon supaya menandatangani dokumen untuk memindahkan harta-harta sepencarian kepadanya sehinggakan Pemohon terpaksa meninggalkan rumahnya yang beralamat

di 137-1-3 Fairy Height, Jalan Rambutan 11500, Ayer Itam, Pulau Pinang atas faktor keselamatan diri ;

e. Pemohon kini tinggal bersama ibu kandungnya dan Pemohon juga telah membuat satu laporan polis terhadap Responden atas perbuatannya yang membuat kekacauan di rumah ibu kandung Pemohon untuk mengambil kenderaan motokar dengan nombor pendaftaran PPU 6102 Jenis Mercedes Benz yang didaftarkan di atas nama Pemohon dan juga sebagai cover report sekiranya terjadi apa-apa kepada Pemohon ; and

Alasan-alasan lain yang dinyatakan dalam Afidavit Sokongan Pemohon yang diikrarkan oleh Ong Koh Lynn dan difailkan untuk menyokong permohonan ini.

### **Order dated 05.02.2025**

**[6]** Enclosure 1 is allowed with the following orders:

- (1) Dibenarkan
- (2) Perintah injunksi hanya diberikan bagi harta-harta di dalam 2.3,2.7 & 2.8.
- (3) Tiada perintah
- (4) Tiada perintah
- (5) Dibenarkan
- (6) Dibenarkan
- (7) Dibenarkan
- (8) Tiada Perintah
- (9) Dibenarkan.

## **Background facts**

**[7]** On 22 June 2003, the Applicant and Respondent were legally married before the Registrar at Che Hoon Khor Moral Uplifting Society Penang, Daerah Timur Laut, Pulau Pinang and they were blessed with two (2) children who are still under the age of 18, namely Cheah Tze Hoong (17 years and 6 months old) and Cheah Tze Chwan (13 years 7 months), during the time the application was filed.

**[8]** Over the course of twenty-one (21) years of marriage, the Applicant and the Respondent engaged in business activities together, successfully expanding their market internationally to countries including China, Japan, the United States, the Philippines, and Thailand.

**[9]** Throughout their marriage up until the year 2020, the Applicant and Respondent resided together at a property located at No. 11, Lorong Gemilang Ria 3, Taman Gemilang Ria, 14000, Bukit Mertajam, Pulau Pinang. In 2012, the Applicant and Respondent together with the children of the marriage relocated to a rented apartment located at No. 137-01-03, Fairy Heights, Jalan Rambutan 11500, Ayer Itam, Pulau Pinang nearer to the school both children are attending at the aforesaid address ("the matrimonial home").

**[10]** The marriage of twenty-one (21) years between the Petitioner Wife and the Respondent Husband has reached a point of irretrievable breakdown and is deemed irreparable. The Applicant alleges that Respondent's

extramarital affair with a female employee at EPS Integration Sdn Bhd, who has been named as the Co-Respondent in their divorce case is intolerable to the Petitioner Wife and she cannot be expected to continue living with the Respondent as husband and wife.

**[11]** Prior to the presentation of a petition for divorce, the Petitioner Wife had referred the difficulty of the marital affairs to the Conciliatory Body Tribunal at National Registration Department “Jabatan Pendaftaran Negara Negeri Pulau Pinang” for advice and to conduct reconciliation sessions in accordance with the provisions under section 106 (1) of the Law Reform Act (Marriage & Divorce) 1976. The application to refer to the Conciliatory Body Tribunal was made on 02.04.2024.

**[12]** The Respondent failed to attend all the meeting sessions held on 06.06.2024, 01.08.2024 and 01.10.2024 and the Conciliatory body had on 01.10.2024 issued a letter to confirm that the tribunal sessions had failed.

**[13]** However, on 25.07.2024, the Applicant had left the matrimonial home and currently lives with her biological mother as it intolerable for the parties to live together.

### **Hearing of Enclosure 1**

**[14]** The Applicant alleged that the Respondent had begun to dispose of the matrimonial assets by transferring funds from the joint accounts held by

the Petitioner and Respondent to his personal account. The transfer was made without the Appellant's knowledge or consent and she had never signed on any transfer to authorise such transfer.

**[15]** Given that this matter is to be adjudicated within the context of the divorce proceedings, it is essential to impose an injunction to avert any further disposal of assets, thereby safeguarding the Applicant's interests in the matrimonial property.

**[16]** The Applicant contends that the Respondent's intent to dispose of these assets is evident, as he has repeatedly threatened and coerced the Applicant into signing documents for the transfer of savings and/or matrimonial assets following the receipt of the draft Joint Divorce Petition on July 15, 2024.

**[17]** Furthermore, the Applicant asserts that the Respondent executed multiple significant money transfer transactions totalling to RM4,953,623.54 from a joint account established in the names of both the Applicant and the Respondent at OCBC Bank (portfolio No. 600007217-1), with the details outlined as follows:

(i) Since March 2024, the Respondent prevented banker from contacting the Applicant regarding the investment account and joint saving accounts opened under the names of the Applicant and the Respondent ;

(ii) On 12.06.2024, a confirmation letter from OCBC bank regarding RM409,282-28 being transferred to the Respondent under Portfolio No. 6000162594-1

(iii) On 12.06.2024, a confirmation letter from OCBC bank regarding RM338,861-08 being transferred to the Respondent under Portfolio No. 6000162594-1 ;

(iv) On 12.06.2024 a confirmation letter from OCBC bank regarding RM261,389-44 being transferred to the Respondent under Portfolio No. 6000162594-1 ;

(v) On 17.07.2024, a confirmation letter from OCBC bank regarding the Respondent made cancellation of the Term Deposit Account which has a principal amount of RM2,294,369-86 ;

(vi) On 17.07.2024, the Respondent transfers out RM 52,746-72 after selling off OCBC Unit Trust under Account No. 7215 0333 79 ;

(vii) On 17.07.2024, the Respondent transfers out RM653,608-50 to himself under Portfolio No. 6000162594-1 ;

(viii) On 22.07.2024, the Respondent transfers out RM654,263-54 to himself under Portfolio No. 6000162594-1 ;

(x) On 22.07.2024, the Respondent transfers out RM184,747-14 to himself under Portfolio No. 6000162594-1;

(ix) On 22.07.2024, the Respondent transfers out RM104,704-68 to himself under Portfolio No. 6000162594-1.

**[18]** The Applicant has filed this Originating Summons to apply for an *ex-parte* interim injunction aimed at preventing the Respondent from disposing of matrimonial assets, which could undermine or negate the Applicant's claim for maintenance and the assets subject to division in divorce proceedings. This injunction is also intended to safeguard assets that are either jointly or solely owned by the Applicant and Respondent, which are currently in the Respondent's possession, until the said divorce proceedings reach a final

resolution. Nevertheless, the Respondent will retain access to his personal savings account, held solely in his name, for his own expenses.

[19] The *ex-parte* Order was granted on 18.09.2024. Following this, the Petitioner Wife had to apply for and obtained a High Court Order on 16.10.2024 allowing the Petitioner Wife to file this Divorce Petition without first referring the marriage difficulties to the Conciliatory Tribunal as provided under Section 106 of the Law Reform (Marriage and Divorce) Act 1976. The Divorce Petition is filed on 24.12.2024.

### **Analysis and decision**

[20] For this application, the relevant laws are Section 102 of the LRA 1976 and Order 29 of the ROC 2012, which to be complied before an injunction can be granted by this Court.

[21] In the meantime, the test to apply injunction was illustrated in the trite case of **AMERICAN CYANAMID CO. V ETHICON LTD [1975] AC 396** and **KEET GERALD FRANCIS NOEL JOHN V MOHD NOOR BIN ABDULLAH [1995] 1 MLJ 93**, which was affirmed in the case of **TEE BEE CHIN (P) V GOH SWEE POR (L) [2018] 8 MLJ 59**:

- (i) that there are serious issues to be tried;
- (ii) that the balance of convenience lies on the side of granting the injunction. In this respect the court must consider the harm

that the injunction would produce by its grant and the harm would result from its refusal thereof;

(iii) that damages are not an adequate remedy;

(iv) the sufficiency of the undertaking of damages given by applicant; and

(v) the sufficiency of the undertaking of the Respondent to compensate the Applicant in the event the judgment in the Applicant's favour.

[22] The Respondent, on the other hand, did not have any assets or properties before their marriage and the wealth is built by their joint efforts. However, these were denied by the Respondent claiming that the Applicant is not entitled to claim the businesses as matrimonial assets.

[23] The Applicant submits that the properties held by the companies and all shareholdings held by the Respondent should be subject to distribution. The Court must act to preserve assets in a family dispute pending matrimonial litigation and this is specifically provided for under Section 102 of the LRA. There are express pre-conditions that must be satisfied before section 102 can be applied.

[24] In the present instance, the Applicant relies on limb (1)(a), and refers to the case of **DIANA CLARICE CHAN CHIING HWA V TIONG CHIONG HOO [2002] 1 CLJ 721**, where her Ladyship Siti Norma Yaakob JCA (as her Lady then was) held at page 725 (f-h) that –

“We say that the trial judge had erred when he ruled that he had no jurisdiction to entertain the wife’s application for maintenance under the above section. This is so as we acknowledge the Act to be a piece of social legislation for which a liberal interpretation is more apt than a strict one. As such matrimonial proceedings need not necessarily commence with the filing of a petition for divorce, legal separation or nullity of marriage. Any step taken by a party under the Act as a prelude to bringing the marriage to an end is sufficient enough to put s. 77(1)(a) into motion. In this instance, the wife had filed a s. 106 reconciliation application to a conciliatory body at the material time, a mandatory requirement for any person seeking to put an end to the marriage and we have since been informed at the hearing of these appeals that a petition for divorce had already been filed by the wife in the High Court at Sibuya and registered as Divorce Petition No. 33-16-2000. We say that on the facts of this case, the High Court had the necessary jurisdiction to entertain the wife’s application for maintenance under s. 77(1)(a). “

**[25]** This Court concurs that, based on the previously mentioned cases, the Applicant has satisfied one of the criteria outlined in section 102 of the LRA by taking the necessary procedural step to obtain a certificate from the conciliatory body. In this context, the Applicant asserts that the matrimonial assets specified in the Originating Summons should be safeguarded from any disposition by the Respondent until a final resolution of the divorce proceedings is reached, in order to preserve the status quo.

**[26]** The Court will address only the reliefs that have been denied and subsequently appealed, specifically: 2.1 and 2.2, 2.4 until 2.6, 2.9 to 2.15, 3, 4, 8 and 9.

**[27]** The Court will address each denial of relief individually, and why it concurs with the arguments presented by the Learned Counsel for the Respondent.

**Relief at paragraph:**

“2.1. Mulai dari tarikh Perintah ini diserahkan kepada Responden, jumlah simpanan / wang di akaun perbankan di bawah nama tunggal Responden iaitu Maybank Islamic Berhad Saving Account No. 1571 6714 9459 dan CIMB Bank”

**[28]** The primary contention raised by the Respondent is that item 2.1 is entirely unrelated to matrimonial asset, as it pertains solely to the Defendant's unequivocal right. According to the Affidavit, there is an absence of adequate evidence to justify the withholding of the funds. Simple suspicion is insufficient; it must be demonstrated that the Applicant possesses a legitimate interest in the money.

**[29]** In addition, this being an application under section 102 LRA 1976, the Petitioner has to demonstrate that the Respondents are disposing the said money with the intention of depriving the Petitioner of her rights in relation to the matrimonial assets because the money is in the name of the Respondent.

**Relief at paragraph**

“HARTANAH TAK BERALIH

2.2. harta tak beralih yang dipegang di bawah GM 1898, Lot 5530, Mukim 11, Daerah Seberang Perai Tengah, Pulau Pinang,

yang beralamat di No. 11, Lorong Gemilang Ria 3, Taman Gemilang Ria, 14000, Bukit Mertajam, Pulau Pinang yang dibawah nama Responden dan ayah kepada Responden, Chia Ah Seng @ Cheah Ah Seng”

**[30]** There is no clear evidence in the Applicant's supporting Affidavit that the immovable property was jointly owned or acquired during the marriage. What is clear is that the immovable property was acquired by the Respondent and also by his father. The Court cannot allow an injunction to be entered against this property.

**[31]** In **TAY CHONG YEW & ANOR V. ONN KIM MUAH [2016] 2 CLJ 579**, in allowing the first appellant's (the husband's) appeal on the shares in 2 family companies as these shares were a gift to the first appellant by his father, Tay How Seng. Hence, it could not be said to be matrimonial asset as it was acquired by the first appellant, no doubt during the subsistence of the marriage, by way of a gift with no contribution whatsoever from the respondent. The Court of Appeal opined as follows:

"[91]... We agreed with Lord Nicholls when he stated that property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage and that in fairness the spouse to whom it was given should be allowed to keep it. This is especially so when s. 76(4)(a) is taken into account.

**Relief at paragraph:**

“2.4. Akaun Simpanan dan Simpanan Tetap dibawah nama Responden di bank OCBC (No. Akaun 731 341 4464) setakat

30.04.2024 yang mempunyai jumlah aset sebanyak RM880,179-53 ; 2.5. Akaun Simpanan Tetap dibawah nama Responden di bank UOB (No. Akaun 123 000 139 7) setakat 30.04.2024 mempunyai jumlah aset sebanyak RM100,000”

**[32]** The Court adopted the reasoning in paragraphs 28 and 29 above.

**Relief at paragraph**

“.6. Akaun Pelaburan dibawah nama Responden di bank UOB setakat 30.04.2024 yang mempunyai jumlah aset sebanyak RM150,000”

**[33]** This is an investment account in the name of the Respondent and the Applicant has no right to prevent the investment from being transacted.

**Relif at paragraph:**

“2.9. Akaun Simpanan Tetap dibawah nama Responden di bank CIMB setakat 30.04.2024 yang mempunyai jumlah aset sebanyak RM350,000”

**[34]** The Court adopted the reasoning in paragraphs 28 and 29 above.

**Relief at paragraph:**

“2.10. Akaun Pelaburan dibawah nama Responden di bank CIMB (No. Akaun. 07380000093712) (No. Akaun Klien C 9010 2917) ALLIANZ SE Bond setakat 30.04.2024 mempunyai jumlah aset sebanyak USD 143,893.65”

**[35]** This is an investment account in the name of the Respondent and the Applicant has no right to prevent the investment from being transacted. The Court also adopted the reasoning in paragraph.

**Relief at paragraph:**

“2.11 Akaun Pelaburan dibawah nama Responden di bank CIMB (No. Akaun. 07380000093712) (No. Akaun Klien C 9010 2917) PETRONAS CAPITAL LIMITED Bond setakat 30.04.2024 yang mempunyai jumlah aset sebanyak USD 106,577-70”

**[36]** This is an investment account in the name of the Respondent and the Applicant has no right to prevent the investment from being transacted.

**Relief at paragraph:**

“2.12. Akaun Pelaburan dibawah nama Responden di bank CIMB (No. Akaun. 07380000093712) (No. Akaun Klien C 9010 2917) Unit Trust setakat 30.04.2024 yang mempunyai jumlah aset sebanyak RM400,000”

**[37]** This is an investment account in the name of the Respondent and the Applicant has no right to prevent the investment from being transacted.

**Relief at paragraph:**

“2.13. Akaun Simpanan dibawah nama Responden di Kumpulan Wang Simpanan Pekerja Account No. 1307 6723”

**[38]** This Court dismissed this relief based on the case of **SREEDEVI NAIDU 8T SREE RAMALU NAIDU v. EELASEGERAN T NADARAJAH & ANOR [2016] 6 CLJ 53**, held that:

“(1) The decision of the High Court dismissing prayers 3(a), 3(c), 4(a) and 4(b) was affirmed. (i) The petitioner's prayer to restrain the first respondent from withdrawing his savings from his EPF account was unsustainable in light of s. 51 of the EPF Act 1991 which provides that contributions and deposits are not to be assigned or attached; (ii) there was no evidence to show that the first respondent was about to or had taken any steps to dissipate the unit trust; (iii) the Semenyih house was purchased before the first respondent married the petitioner and there was no evidence to support

the assertion that the first respondent had or was about to dissipate the property; and (iv) the Capsquare Condominium was registered in the joint names of the parties and was also charged to the bank. As such, it was impossible for the first respondent to dissipate the property in question without the consent of the petitioner. (paras 13-16)”

**Relief at paragraph:**

”2.14 50% saham Responden dalam syarikat EPS Integration Sdn Bhd (No. Syarikat : 1181146-X) bersama dengan hartanah tak beralih kilang yang dipegang dibawah HSD 44402, Lot PT10, Mukim 01, Daerah Seberang Perai Tengah, Pulau Pinang yang beralamat di No. plot 975, MK 1 Solok Perusahaan 3, Kawasan Perusahaan Perai MIEL, 13700 Perai, Pulau Pinang”

**[39]** This is an investment account in the name of the Respondent and the Applicant has no right to prevent the investment from being transacted.

**Relief at paragraph:**

”2.15. 50% saham Responden dalam Embedded Product Solution (PG0071120-D)”

**[40]** This is an investment account in the name of the Respondent and the Application has no right to prevent the investment from being transacted.

### **Relief at paragraph:**

“3. Bahawa sebarang pelupusan aset-aset, dana-dana, saham-saham, kepentingan-kepentingan, amanah-amanah dan hartanah-hartanah yang telah dilakukan oleh Responden sama ada melalui dirinya sendiri, melalui ahli-ahli keluarganya, pegawai-pegawainya, agen-agennya, pekerja-pekerjanya, wakil-wakilnya, nomini-nomininya, dalam masa lebih kurang tiga (3) tahun sebelum ini (iaitu dari tahun 2021 hingga 2024), dengan tujuan untuk mengurangkan kemampuan Responden untuk membayar nafkah atau untuk menghalangi Pemohon daripada menerima apa-apa hak atau kepentingan yang sepatutnya berhubung dengan harta itu, dibatalkan dan diketepikan di mana Responden restore transaksi-transaksi tersebut”

**[41] In the case of NIRMALA ARASANAYAGAM lwn. DR RAJASINGAM RATNASAMY [2013] CLJU 611, held that:**

“Memang benar di bawah seksyen 102 Akta Memperbaharui Undang-Undang (Perkahwinan dan Perceraian) 1976, Mahkamah mempunyai kuasa untuk membatalkan dan menahan perpindahan-perpindahan apa-apa hartanah, tetapi kuasa itu hanya boleh diguna apabila Mahkamah berpuas hati ada terdapat sesuatu cadangan atau tindakan oleh responden untuk melupuskan hartanah tersebut. Di dalam kes kita ini, tidak ditunjukkan apa-apa bukti yang responden bercadang atau mengambil apa-apa tindakan untuk melupus hartanah tersebut umpama dengan ura-ura untuk menjual tanah itu kepada pihak ketiga atau ada pihak lain yang datang melihat hartanah itu bagi tujuan untuk membeli.”

**[42]** In the case of **ALVIN TAN MIN SZE v. CHAN EE LYNN [2023] CLJU 1483**, held:

“[58] On the subsidiary issue of whether a spouse such as the defendant in the present case is only entitled to pursue her remedy under section 102 of the Law Reform (Marriage and Divorce) Act 1976, the answer is in the negative. The remedies available under section 102 of the Law Reform (Marriage and Divorce) Act 1976 and section 323(1) of the National Land Code are not alternative remedies.”

**[43]** These reliefs are no longer relevant for this Court to grant an order because the relevant reliefs have been previously dismissed based on the reasons stated previously.

**Relief at paragraphs:**

“4. Bahawa Responden hendaklah dalam tempoh tujuh (7) hari dari tarikh penyampaian Perintah ini bagi tujuan berikut :-

4.1 memaklumkan kepada Pemohon dan / atau peguamcara Pemohon berkenaan dengan kesemua aset-aset, dana-dana, saham-saham, kepentingan-kepentingan amanah-amanah dan hartanah-hartanah Responden di mana :

4.1.1 samaada yang dimiliki adalah secara sah atau secara benefisial oleh Responden dan sama ada dalam namanya sendiri atau tidak dan sama ada dimiliki secara tunggal atau bersesama ;

4.1.2. sifat kesemua aset-aset, dana-dana, saham-saham, kepentingankepentingan, amanah-amanah dan hartanah-hartanah tersebut yang dikenal pasti ;

4.1.3. nilai, lokasi, cagaran, gadaian, gadai janji, sekuriti ;

4.1.4 penjualan, pindahan, pengeluaran, perimitan atau apa-apa bebanan penjualan, pindahan, pengeluaran, perimitan atau apa-apa bebanan ) didedahkan ;

4.1.5. dokumen-dokumen yang relevan kepada nilai kesemua aset-aset, danadana, saham-saham, kepentingan-kepentingan, amanah-amanah dan hartanah-hartanah tersebut dizahirkan dan ditentu sahkan ;

4.2. mendedahkan pelupusan aset-aset, dana-dana, saham-saham, kepentingankepentingan, amanah-amanah dan hartanah-hartanah yang telah dilakukan oleh Responden dan / atau ahli-ahli keluarganya, pegawai-pegawainya, agen-agennya, pekerja-pekerjanya, wakil-wakilnya, nomini-nomininya bagi tempoh tiga (3) tahun sebelum permohonan ini iaitu dari tahun 2021 hingga 2024 ;

4.3. Bahawa maklumat yang dirujuk dalam perenggan 3 di atas hendaklah kemudiannya disahkan di dalam suatu affidavit yang diikrarkan oleh Responden yang mana affidavit tersebut hendaklah disampaikan kepada peguamcara Pemohon dalam tempoh empat belas (14) hari dari tarikh penyampaian Perintah ke atas Responden”

**[44]** These reliefs are no longer relevant for this Court to grant an order because the relevant reliefs have been previously dismissed based on the reasons stated previously.

**Relief at paragraph:**

“8. Bahawa Mahkamah Yang Mulia ini menetapkan suatu tarikh dalam masa empat belas (14) hari dari tarikh Perintah ini bagi pendengaran inter-parte permohonan ini”

[45] No longer relevant and academic because this hearing has been *inter-parte*.

[46] From the above evidence, the Applicant has not shown that there is a high risk that the Respondent would dissipate the matrimonial property even before her Petition is heard, if an injunction is not granted at this juncture.

[47] In summary, the court's findings can be summarized as follows: The Applicant has failed to prove the following conditions:

**(i) Bona fide serious issues to be tried**

[48] With reference to reliefs in this judgment, this Court doubts whatsoever that the Affidavit evidence discloses serious questions to be tried in respect of the said reliefs that:

(i) whether the said shares and land which are not belong to the Respondent or/and third party were intended to be disposed of;

(ii) whether the said Land and shares of the company forms part of the matrimonial assets; and

(iii) whether the Petitioner is entitled to the reliefs

[49] Therefore, I find that the first requirement as per the **AMERICAN CYANAMID** (*supra*) test is not fulfilled.

## **(ii) Balance of convenience**

**[50]** In **NATIONAL COMMERCIAL BANK JAMAICA LTD V. OLINT CORPN LTD [2009] 1 WLR 1405** [referred to in **DAYATERA ROOF SYSTEMS SDN BHD V. SENI TELITI SDN BHD [2015] 3 CLJ**, decided that:

“Whether the granting of the interlocutory injunction will preserve the status quo until the Petition is disposed of by the Court. The court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court’s opinion of the relative strength of the parties’ cases.”.

**[51]** This Court considered the potential harm or loss that the Applicant may experience if this application is dismissed and the aforementioned land, monies and share are transferred by the Respondent to a third party. After evaluating the statements presented in the Affidavits submitted in this matter, the Respondent and the third party (or the company) would face the temporary inconvenience of having their rights as the registered owner of the Land, monies and shares suspended and the balance of convenience is not in favour of granting the interlocutory injunction.

**[52]** It is clear that enforcement against company property or dealings with the company cannot be confused with an application under Section 76 LRA 1976. As an example, this court refers to the case **THEYNARASI A/P**

**SELAMBARAM V PERIASAMY A/L CHINNAPPAN & ANOR [2019] MLJU 558, held:**

“In this instance it is my considered view that her claim regarding the issues of revenue of the palm estate and poultry farm business is outside the ambit of section 76(1) LRA. Claims on profit ought to be put forward at a separate civil forum and not in the family court. It is at the former avenue that PW must establish her right to the revenue of those said businesses. At this forum, it is to determine her entitlement to matrimonial assets pursuant to a divorce proceeding as mandated under section 76 (1) LRA. PW’s claim on this issue is dismissed.”

**[53] In YAP SOO KEAN V PHANG CHEE WAI (SIEW OOI SEONG, CO-RESPONDENT) [2022] MLJU 2975, held that:**

“(iv) Briefly, it is trite law that a company’s assets (movable or immovable) are assets belonging to the company and not the members, shareholders, or directors. These companies listed in PW’s arguments are not parties to this JS proceeding. These companies named are separate legal entities with their own artificial legal persona. The legal reality is that the only thing the parties own are the shares of these companies and nothing more. Whether those shares control the well-being and benefits of these companies are separate legal issue outside the parameters of the present forum. Attempting to deliberate it here in the current proceedings connote an overstretching exercise and undoubtedly will be unsustainable. At this juncture, allegations of impropriety in the bleeding of company assets are merely speculative, bare averments, and misplaced.”

**[54]** It is trite in law that companies are creatures of statute with their own artificial persona as a separate legal entity that can sue and be sued, able to deal with assets and also subject to statutory liability. All company affairs must be determined by the company’s own management. On that basis, the

Court did not accept the Applicant's complaint that the Respondent was trying to get rid of and confiscate the company's property.

**[55]** The principle of separate legal entity is explained in the case of **YEAP LILY V. CHONG CHEE MING [2023] CLJU 1019; [2023] 1 LNS 1019**, held

“[7] With regard to the companies owned by the Respondent, the Petitioner sought from the Respondent, several documents, such as reports of shares sale, statements of bank accounts, audit reports and current annual statement of the companies ("the Company Documents"), namely Vibrant Shine Sdn Bhd, Vibrant Cash Sdn Bhd, CMS Secretarial & Tax Sdn Bhd, Vibrant Tiara Sdn Bhd, My Corporate Tax Sdn Bhd, and My Taxation Sdn Bhd ("the Companies"). In addition, the Petitioner had sought discovery of documentation pertaining to properties owned by Vibrant Shine Sdn Bhd and Vibrant Cash Sdn Bhd.

[8] It is a well-established legal principle that a company is a separate legal entity distinct from its members and shareholders. Consequently, as a general rule, shareholders are not entitled to assert ownership rights over the assets of a company.

[9] Upon careful examination of the affidavits filed for the purpose of this Application, it was evident that the Petitioner's intention behind seeking the Company Documents was to determine the value of the Respondent's shares in the Companies. However, it was crucial to note that the Company Documents are not indispensable for this purpose.

[10] It appeared, therefore, that the Petitioner had mistakenly proceeded on the assumption that the Respondent's shares in the Companies are automatically considered matrimonial assets, eligible for division and distribution upon the dissolution of the marriage”

**(iii) Whether damages will be an adequate remedy**

**[56]** If damages would not be an adequate remedy, the Court should then consider whether, if the injunction were granted, the Respondent would be adequately compensated under the Applicant's undertaking as to damages.

**[57]** In light of the aforementioned principles and the specific circumstances of this case, this Court concurs with the Respondent assertion that monetary damages would be sufficient to remedy the loss and difficulties faced by the Petitioner.

**[58]** The sale of matrimonial asset even with consent is still against the law, In the case of **ONG KEOK LIANG V LIM GUAT LEAN [2021] MLJU 1035**. The Court held that:

**“[18] My decision is a notice to all of this Court's declaration that by virtue of the instant divorce petition this Court is already seized with jurisdiction over the property but due to the property having been transferred to third parties the matrimonial asset has been converted into the form of gross proceeds of sale that is within this Court jurisdiction. This Court will decide the issue of the gross proceeds of sale at the appropriate stage of the divorce petition.**

**[19] The petitioner and the respondent by their agreement to sell the matrimonial property while the divorce petition was pending had clearly violated section 76 of the LRA. They are both at fault. Matters turned for the worse when the petitioner filed Civil Suit 168 and the respondent opposed the claim at the Sessions Court.**

**[20] I am aware that the property has been sold to third parties and that presently what is left is the money from the proceeds of the sale of the property. In my view the gross proceeds of sale falls within section 76 of the LRA and therefore forms part of the matrimonial assets which has to be resolved at the hearing of the divorce petition.**  
(emphasis added )

### **Conclusion**

**[59] Referring to the case of YAP YEN PIOW v. HEE WEE ENG [2016] CLJU 1060; [2016] 1 LNS 1060; [2017] 1 MLJ 17, where the Court ruled that:**

"...assets which does not fall into the category of matrimonial property but acquired by the sole effort of one spouse during the subsistence of marriage which we have referred to as non-matrimonial property but may qualify as matrimonial assets pursuant to s. 76 (3) of the LRA 1976. When it relates to matrimonial property, the division of the assets is a well-recognized principle in Malaysia. However, when the assets fall under the category of non-matrimonial property, the division is not permissible as of right unless the Act clearly says so or provides for a methodology to do so. That is to say, for matrimonial property, the division is of right but non-matrimonial property the division is not as of right."

**[60] This Court wishes to emphasize that, at this juncture, the matter under consideration is whether an injunction may be issued based on the Affidavit presented. It is important to clarify that the Court's order does not imply that the issuance of an injunction will automatically classify all properties as matrimonial property; such a determination will ultimately be made in**

accordance with Section 76 of the LRA once the divorce proceedings have been thoroughly examined, heard and determined.

[61] In summary, it is my finding that all principles in **AMERICAN CYANAMID** (supra) and Section 102(1)(a)(i) LRA 1976 and/or Section 29 of the ROC 2012 have been fulfilled and for the above reasons, this Court ordered that the Petitioner's application in Enclosure 1 be allowed with costs in the cause for all reliefs, except for paragraphs 2.1, 2.2, 2.4 until 2.6, 2.9 until 2.15, 3, 4, 8 and 9.



**AZIZAN MD ARSHAD**

**Judge**

**High Court (3) Pulau Pinang.**

**Dated 11 March 2025**

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**Legislations referred to:**

1. Section 102 of the Law Reform (Marriage & Divorce) Act 1976 (LRA) read with Order 29 Rules 1 (1), 1 (2A) and 1 (3) of the Rules of Court 2012 (ROC)
2. Section 106 (1) of the Law Reform Act (Marriage & Divorce) 1976

**Cases referred to:**

1. **AMERICAN CYANAMID CO. V ETHICON LTD [1975] AC 396**
2. **KEET GERALD FRANCIS NOEL JOHN V MOHD NOOR BIN ABDULLAH [1995] 1 MLJ 93]**
3. **TEE BEE CHIN (P) V GOH SWEE POR (L) [2018] 8 MLJ 59**
4. **KEET GERALD FRANCIS NOEL JOHN V MOHD NOOR BIN ABDULLAH [1995] 1 MLJ 93]**
5. **DIANA CLARICE CHAN CHIING HWA V TIONG CHIONG HOO [2002] 1 CLJ 721**
6. **TAY CHONG YEW & ANOR V. ONN KIM MUAH [2016] 2 CLJ 579**
7. **SREEDEVI NAIDU 8T SREE RAMALU NAIDU v. EELASEGERAN T NADARAJAH & ANOR [2016] 6 CLJ 53**

8. **NIRMALA ARASANAYAGAM Iwn. DR RAJASINGAM RATNASAMY** [2013] CLJU 611
9. **ALVIN TAN MIN SZE v. CHAN EE LYNN** [2023] CLJU 1483
10. **NATIONAL COMMERCIAL BANK JAMAICA LTD V. OLINT CORPN LTD** [2009] 1 WLR 1405
11. **DAYATERA ROOF SYSTEMS SDN BHD V. SENI TELITI SDN BHD** [2015] 3 CLJ
12. **THEYNARASI A/P SELAMBARAM V PERIASAMY A/L CHINNAPPAN & ANOR** [2019] MLJU 558
13. **YAP SOO KEAN V PHANG CHEE WAI (SIEW OOI SEONG, CO-RESPONDENT)** [2022] MLJU 2975
14. **YEAP LILY V. CHONG CHEE MING** [2023] CLJU 1019; [2023] 1 LNS 1019
15. **ONG KEOK LIANG V LIM GUAT LEAN** [2021] MLJU 1035
16. **YAP YEN PIOW v. HEE WEE ENG** [2016] CLJU 1060; [2016] 1 LNS 1060; [2017] 1 MLJ 17