**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2022] SGHC 297**

Originating Application No 144 of 2022

Between

Yiong Kok Kong (as the private trustee in bankruptcy of the bankrupt estate of Goh Ming Hue Julius, a bankrupt)

… *Claimant*

And

Liu Chien Min

… *Defendant*

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# GROUNDS OF DECISION

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[Land — Sale of land — Sale under court order]
[Insolvency Law — Bankruptcy — Bankruptcy effects — Priority of creditors]

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# v
# Liu Chien Min

**[2022] SGHC 297**

General Division of the High Court — Originating Application No 144 of 2022
Audrey Lim J
3 August, 21 November 2022

29 November 2022

**Audrey Lim J:**

1 The Claimant, who is the trustee in bankruptcy of one Julius Goh ("**the Bankrupt**"), applied essentially for the following orders:

(a) That he be empowered to sell the Bankrupt's property at 120 Gerald Drive Singapore 797765 ("the Property"), which is jointly owned by the Bankrupt and his wife ("the Defendant") (collectively, "the Couple"), pursuant to s 18(2) and para 2 of the First Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"), and for the sale proceeds (of the portion belonging to the Bankrupt) to be used to pay off the Bankrupt's creditors, after deducting: (i) the expenses connected with the sale of the Property; and (ii) the repayment of the outstanding mortgage ("the Net Proceeds").

(b) That he be empowered to pay out the Net Proceeds to three creditors in priority to the other creditors of the Bankrupt, pursuant to s 352(6) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA").

2 Having considered the parties submissions and the evidence, I granted the order sought in [1(a)] above and made no order in relation to [1(b)] above. I now set out the grounds of my decision.

**Background**

3 On 20 February 2020, the bankruptcy order ("Bankruptcy Order") was made with the Official Assignee ("OA") appointed to administer the Bankrupt's estate. On 26 January 2021, upon the application of a creditor, the Claimant was appointed to replace the OA as the private trustee in bankruptcy of the Bankrupt. As of 22 August 2022, 27 proofs of debts have been filed with a total debt value of $1,873,598.87.[1]

4 The Bankrupt was directed by the OA to make a monthly contribution of $1,920 ("Monthly Contribution") with effect from June 2020, but at the time this application was filed on 20 May 2022, he had contributed only $4,900, with the last contribution of $950 made on 29 April 2022.[2] He is employed as a sales manager and draws a monthly salary of $3,200.

5 The Bankrupt declared his only asset to be the Property. Based on the Land Titles Register, the Property is jointly owned by the Couple as tenants-in-

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1 Yiong Kok Kong's 2nd affidavit dated 26 August 2022 ("Yiong's 2nd Affidavit") at [6].

2 Yiong Kok Kong's 1st affidavit dated 20 May 2022 ("Yiong's 1st Affidavit") at [7].

common, with the Bankrupt having a 99% share and the Defendant having a 1% share. The Property is a three-storey semi-detached house with a 99-year lease from 1997.[3]

6 The Property is currently charged to the Central Provident Fund ("CPF") Board and Standard Chartered Bank ("SCB"). The total amount that the Bankrupt and Defendant have to refund or repay these entities upon the sale of the Property is $1,558,587.49, which comprises the following:[4]

(a) The sum of about $152,107.53 (comprising $119,230.87 in principal and $32,876.66 in accrued interest) as of August 2022, to be refunded to the Bankrupt's CPF account.

(b) The sum of about $27,196.73 (comprising $23,400 in principal and $3,796.73 in accrued interest) as of August 2022, to be refunded to the Defendant's CPF account.

(c) The sum of about $1,379,283.23 as of July 2022, being the outstanding SCB mortgage on the Property.

**The Claimant's case**

7 The Claimant sought the sale of the Property as the Bankrupt was not able to make the Monthly Contribution and his only asset of substantial value was the Property. On 3 March 2022, the Claimant's solicitors wrote to the Defendant's solicitors ("Claimant's Letter") to enquire whether the Defendant would be agreeable to the sale of the Property. However, this was rejected by

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3 Yiong's 1st Affidavit at [8]–[10]; Liu Chien Min's 1st affidavit dated 20 June 2022 ("Liu's 1st Affidavit") at [4]–[5].

4 Liu Chien Min's 2nd affidavit dated 12 August ("Liu's 2nd Affidavit") at Exhibit LCM-1.

the Defendant pursuant to a reply from her solicitors on 23 March 2022 ("Defendant's Letter").[5] Principally, the Defendant's Letter stated that: (a) the Property is the matrimonial home of the Couple; (b) seven individuals resided in the Property (the Couple and their two children aged ten and seven, the Bankrupt's mother, the Bankrupt's elderly aunt and a domestic helper); and (c) a sale of the Property would be disruptive to the schooling of the Couple's daughter. The Defendant's Letter also stated that the current market value of the Property is $1,850,000.

8 The Claimant claimed there was no evidence to support the Defendant's contentions. The Bankrupt's mother and aunt jointly own a five-room HDB flat ("HDB Flat") which the Bankrupt's family could live in should the Property be sold. Further, the Bankrupt's family could purchase a smaller property using the refunds made to the CPF accounts (of the Bankrupt and Defendant) from the sale proceeds of the Property and by taking out another mortgage. The Claimant also highlighted that the Couple had previously attempted to sell the Property (before the start of COVID-19 pandemic) at an asking price of $2.2m.[6]

9 As the Bankrupt was unable to comply with the OA's direction to make the Monthly Contribution and the only asset of substantial value that the Bankrupt owns was the Property, the creditors would not be able to realise any debt owed to them if the Property was not sold. The Claimant further claimed that the Defendant and her family have had ample opportunity to arrange for alternative accommodation as it had been more than two years since the

5 Yiong's 1st Affidavit at [11]–[12] and pp 20–21.

6 Yiong's 1st Affidavit at [13]–[16].

Bankruptcy Order was made. Meanwhile, the Defendant and her family continued to reside in the Property at the expense of the creditors.[7]

**The Defendant's case**

10 The Defendant claimed that she would be prejudiced should the Property be sold as the sale would cause financial hardship to every member of the family.[8] The Property is the Couple's matrimonial home. The Defendant holds only one share in the Property because she was only a permanent resident at the time she obtained a share in the Property and she did not have much savings to pay for the Property and stamp duty.[9]

11 As for the Claimant's suggestion to purchase a smaller property, the Defendant claimed that she would be unable to afford such a purchase. The Defendant also asserted that the HDB Flat was being rented out for some $2,200 a month, with the rental income used to pay for the Bankrupt's mother and aunt's medical expenses. Moreover, the Bankrupt's mother and aunt are dependent on helpers and need one room each to live in.[10] The Defendant thus averred that the HDB Flat could not be used by the Bankrupt's family should the Property be sold.

12 Additionally, the Couple's daughter had started primary school near the Property ("the School") and gained admission to the School based on its proximity to the Property. The Defendant claimed that she is required to reside

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7 Yiong's 1st Affidavit at [18]–[19].

8 Defendant's Written Submissions ("DWS") dated 27 July 2022 at [13]; Liu's 1st Affidavit at [13]–[14].

9 Liu's 1st Affidavit at [5].

10 Liu's 1st Affidavit at [8]–[9].

at the Property for at least 30 months (from 30 June 2021), in accordance with the requirements imposed by the Ministry of Education ("MOE"), failing which her daughter's place in the School would not be kept.[11]

## My decision

### *Application to sell the Property*

13 The High Court has the power to sell the Property where it "appears necessary or expedient" to do so, pursuant to s 18(2) read with para 2 of the First Schedule to the SCJA and this power applies equally in the context of an application by the OA or a trustee in bankruptcy: *Ooi Chhooi Ngoh Bibiana v Chee Yoh Chuang (care of RSM Corporate Advisory Pte Ltd, as joint and several private trustees in bankruptcy of the bankruptcy estate of Freddie Koh Sin Chong, a bankrupt)* [2020] 2 SLR 1030 ("*Ngoh Bibiana*") at [21]. In deciding whether to exercise its power of sale, the court will consider all the relevant facts and circumstances and conduct a balancing exercise: *Ngoh Bibiana* at [24]–[25]. The factors to be taken into account in this balancing exercise could include the following:

(a) Whether the expected share of sale proceeds would be sufficient to discharge the debts owed by the bankrupt to his creditors.

(b) Whether the co-owner resisting the sale has contributed, benefited or is in any way related to the events that led to the bankruptcy.

(c) The potential prejudice that the co-owner(s) and any third parties might face in each of the possible scenarios, namely, if a sale is granted and if it is not granted. An example of such prejudice to the co-owner(s)

[11] Liu's 1st Affidavit at [12]; DWS at [44].

could include their inability to find feasible alternative accommodation once a sale is ordered due to the low price their property might fetch.

(d) The potential prejudice that creditors might face in each of the two abovementioned scenarios.

(e) Whether there is sufficient time and opportunity given to source for alternative accommodation.

(f) If the property is being used as a family home, any exceptional and irremediable hardship to the family should also be considered.

14 Having considered the relevant factors, I found the balance to be in favour of the sale of the Property.

15 First, without a sale of the Property, the Bankrupt's creditors would be unable to reclaim any of the debts owed to them, as the Bankrupt has declared his only asset of substantial value to be the Property. In this regard, the Defendant's counsel ("Mr Chung") submitted that the Net Proceeds of the Property would in any event be "inadequate to discharge the [B]ankrupt from all his debt, after settling the mortgage loan".[12] But the point is not whether the assets recovered from a bankrupt's estate would be sufficient to repay *all* the bankrupt's debts. Invariably in many situations of insolvency, creditors would generally obtain only a proportion of what they are owed. Here, the outstanding mortgage loan with SCB and the amounts that would have to be returned to the Bankrupt and Respondent's CPF accounts if a sale is ordered, aggregates $1,558,587.49 (based on the latest information available in July/August 2022) (see [6] above). Assuming the current market value of the Property is

[12] DWS at [23].

$1,850,000 (based on a valuation report of 22 March 2022 enclosed in the Defendant's Letter (see [7] above), there remains about $290,000 for distribution to the creditors. In this regard, the parties agreed that the Defendant's 1% share in the Property would be accounted for by the refund into her CPF account from the Net Proceeds, should the court make an order for such refund.[13]

16 Whilst this remainder sum amounts to about 15% of the total value of the proofs of debts, this is not an insignificant sum. As I noted at [15] above, it is quite common in insolvency proceedings that creditors are unable to recover a substantial percentage of their debts. However, this should not be a reason in itself to tilt the balance in favour of the Bankrupt (or the Defendant) by refusing to order a realisation of an asset to satisfy the debts. If this were the case, creditors who are faced with a situation where the available assets are insufficient to cover a significant portion of the debt would find themselves being unable to make *any* recovery at all.

17 Mr Chung also sought to distinguish *Ngoh Bibiana* on the basis that the bankrupt there was 75 years old and did not have an income from which he could pay off his debts, while the Bankrupt is only 41 years old and capable of repaying the debt to the creditors "through self-hard work and help from the family".[14] The Defendant had also stated that she was prepared to help the Bankrupt make good the previous shortfall in the Monthly Contributions from June 2020 and was further prepared to undertake to ensure his continuing payment of the Monthly Contribution.[15]

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13 Minute Sheet dated 21 November 2022.

14 DWS at [26]–[27].

15 Liu's 1st Affidavit at [7].

18 However, the evidence did not support the Defendant's position and instead showed the contrary. The Bankrupt was to make a Monthly Contribution of $1,920 from June 2020. However, as of 29 April 2022, he had only contributed $4,900 in total over a period of about 22 months (or a mere 11% of some $42,000 which he should have contributed throughout this period).[16] This showed that the Bankrupt had not made any serious attempts to discharge his debts. Indeed, at the adjourned hearing before me on 21 November 2022 (after the first hearing on 3 August 2022) Mr Chung then claimed that the Bankrupt had commenced making repayment of the Monthly Contribution from June 2022 until October 2022. There was no evidence to support his assertion made at the last minute, and even if true, it is pertinent to note that the Bankrupt's attempts to restart payment of the Monthly Contribution occurred only after this application was filed in May 2022. Even if I had accepted Mr Chung's claim, the Defendant would still only have contributed some 7.5 months of Monthly Contribution out of 29 months (from June 2020 to October 2022) and there was no evidence that he would continue to make the Monthly Contribution from November 2022 onwards. As for the Defendant's proposed undertaking, this did not assist her, given her assertion that she "is working a low-salary job to support the entire family" and that she "doesn't have much savings left".[17]

19 Mr Chung further argued that the balance sale proceeds would in any event be insufficient to discharge all the debts of the Bankrupt. This was because the sale would favour three creditors, who had intimated their willingness to fund the current application in exchange for priority to the distribution of the Bankrupt's estate pursuant to s 352(6) of IRDA, and who account only for

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16 Yiong's 1st Affidavit at [7]; Claimant's Written Submissions dated 27 July 2022 ("CWS") at [33]; DWS at [25].

17 DWS at [33]; Liu's 1st Affidavit at p 24.

16.2% of the total debt.[18] I held that this point was irrelevant to the consideration of whether the court should exercise its powers of sale under s 18(2) read with para 2 of the First Schedule to the SCJA, as s 352(6) of IRDA deals with a matter of distribution of a bankrupt's estate among the creditors *after* his assets have been realised (see further at [29]–[31] below). The court's powers invoked under s 352(6) of IRDA necessitates a different set of considerations, which deals with the interest of creditors *inter se*.

20 In the circumstances, that there was only one asset of substantial value that could be used to satisfy the Bankrupt's debts coupled with the fact that the Bankrupt had not made serious attempts to satisfy the debts owed to the creditors (having failed to pay most of the Monthly Contribution) would tilt the balance in favour of the court ordering a sale of the Property: *Ngoh Bibiana* at [37].

21 Second, I was of the view that the potential prejudice the Defendant and her family might face if the sale of the Property was granted was not so exceptional as to tilt the balance in her favour.

22 The Defendant's claim that her family could not "relocate easily as no one amongst them is capable of purchasing a new property nor renting an alternative premises capable of housing all of them"[19] was not supported by the evidence. As the Claimant had pointed out, several viable options were open to the Defendant and her family (see [8] above).[20]

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18 DWS at [24].

19 DWS at [38].

20 CWS at [36].

23 Notably, the Couple had previously attempted to sell the Property for $2.2m by placing an advertisement on PropertyGuru just before the start of the Covid-19 pandemic but which advertisement was subsequently withdrawn.[21] The listing of the Property for sale by both the Bankrupt *and Defendant* contradicted the Defendant's assertions that her family would have difficulties in relocating from the Property. When faced with this evidence, the Defendant's reply was merely to state that placing the Property for sale on the market "has no bearing as [to] whether I am prepared to sell the [P]roperty".[22] I was not persuaded by this explanation and found that the listing clearly demonstrated that the Bankrupt and Defendant contemplated moving out of the Property around the period when the Bankruptcy Order was made (*ie*, 20 February 2020).

24 As for the Defendant's assertion that the Couple's daughter would be prejudiced by the sale of the Property as her place in the School would not be kept if she did not reside at the Property for at least 30 months (which according to Mr Chung ends on 30 November 2023)[23], I found that this was not made out. The Defendant produced a screenshot of MOE's website stating that a child who gains priority admission into a school through the "distance category" is required to reside at the address used for registration for at least 30 months "from the start of the P1 Registration Exercise".[24] Contrary to what the Defendant had attempted to portray, there is no automatic termination of her daughter's place in the School if the 30-month minimum stay requirement is not met. The MOE website merely states that "MOE reserves the right to transfer the child to another school with vacancies". As parties accepted, the intent of

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21 Yiong's 1st Affidavit at [15]–[16] and p 41.

22 Liu's 1st Affidavit at [11].

23 Liu's 1st Affidavit at [12]; DWS at [44].

24 Liu's 1st Affidavit at p 57.

MOE's policy is to prevent parents, who register a child for the primary school of their choice based on distance, from abusing the admission process by taking up temporary accommodation near the school of choice to gain priority for admission only to then relocate shortly after the child has been accepted into that school. Mr Chung had not produced evidence to show that a family who has to subsequently relocate due to extraneous circumstances, such as the court making an order for the sale of the Property, would likely face similar consequences (*ie*, that MOE would transfer the child out of the school) as a family who has attempted to abuse the system.

25 Third, a substantial amount of time (of more than two years) has passed since the making of the Bankruptcy Order on 20 February 2020 and the taking out of this application on 20 May 2022. This is an important factor in the Claimant's favour in the balancing exercise: *Ngoh Bibiana* at [35]. Even before this application was filed, the Claimant had also sought the Defendant's consent on the sale of the Property by way of the Claimant's Letter sent on 3 March 2022. Hence, by the time of the hearing before me on 21 November 2022, the Defendant has had sufficient notice of the Claimant's intention to sell the Property.

26 In *Ngoh Bibiana* (at [34]–[36]) the Court of Appeal accepted that where the application for a property to be sold is made less than a year from the making of the bankruptcy order, this might be grounds for the sale to be delayed to give the bankrupt more time to look for alternative means of paying his debts and to find other arrangements for housing. In the present case, the Bankrupt and Defendant had more than two years since the making of the Bankruptcy Order to make alternative accommodation arrangements. It thus could not be said that the Defendant and her family would be prejudiced in having insufficient time and opportunity to source for alternative accommodation.

27 Finally, whilst the Defendant has contributed some $24,000 from her CPF account towards the purchase of the Property (see [6(b)] above), this was not a significant sum as to tilt the balance in her favour. The Bankrupt had contributed some $119,000 from his CPF account and was the one who took the mortgage of the Property with SCB.

28 As for the Defendant's claim that the Bankrupt's brother ("Kelvin") had been making the monthly repayments to the mortgage to SCB since April 2020,[25] this was not borne out by the evidence. The Defendant had disclosed a bank statement from Kelvin's bank account only for April 2020, but she did not disclose any documents to show that Kelvin had been discharging the mortgage on the Property from May 2020 onwards. Even if I had accepted that Kelvin was making the monthly mortgage repayments since April 2020, this was irrelevant and did not assist the Defendant's case. At best, Kelvin would be a creditor of the Bankrupt and Defendant because (as the Defendant asserted) Kelvin expects to be repaid.

### *Application under s 352(6) of IRDA*

29 I turn then to the Claimant's prayer under s 352(6) of IRDA (see [1(b)] above). I had indicated at the first hearing of this application that this prayer was premature as no sale proceeds have been recovered given that the Claimant had not obtained the sale of the Property. At the second hearing before me, the Claimant then decided to withdraw this prayer and I made no order on it. Nevertheless, it would be appropriate to mention this point briefly as it is important to note at what stage an application under s 352(6) IRDA should be made.

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[25] Liu's 1st Affidavit at [10]; Minute Sheet dated 21 November 2022.

30 Section 352(6) of IRDA reads as follows:

> Where any creditor has given any indemnity or made any payment of moneys by virtue of which any asset of the bankrupt *has been recovered, protected or preserved*, the Court may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks run by the creditor in so doing.
>
> [emphasis added]

31 It is clear from s 352(6) of IRDA that the Court cannot make an order with respect to the distribution of an asset of the bankrupt *before* the asset has been recovered, protected or preserved. This interpretation of s 352(6) of IRDA is consistent with the interpretation given in *Re Vanguard Energy Pte Ltd* [2015] 4 SLR 597 (at [53]) pertaining to s 328(10) of the Companies Act (Cap 50, 2006 Rev Ed) (now s 204 of IRDA), which deals essentially with the similar issue of funding by creditors in the case of a company winding up.

32 Thus, it would be inappropriate to make an application under s 352(6) of IRDA (pertaining to the interests of creditors in relation to recovered assets of the bankrupt) together with an application under s 18(2) read with para 2 of the First Schedule to the SCJA for the sale of the bankrupt's property vis-à-vis a co-owner of the property. It suffices to say also that different considerations would apply in determining whether an order should be granted under s 352(6) of IRDA giving priority of distribution of an asset to one creditor over another. Such considerations were not fully articulated for the court's consideration by the Claimant.

**Conclusion**

33 For the above reasons, I allowed the Property to be sold. I was cognisant of some inconvenience and hardship the Defendant and her family would face

in having to move out of the Property. However, the "[p]erceived hardship and inconvenience to the other co-owners were not in themselves sufficient to prevent the sale order from being made": *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 at [50]. Hence, although I empathised with the Defendant on the difficulties the sale of the Property would bring, the present situation was one where the interests of the creditors outweighed that of the Defendant and her family for the reasons set out above. To mitigate the situation, I further ordered that the Defendant and her family be allowed to reside in the Property until 25 August 2023 (some nine more months), to allow them sufficient time to find alternative accommodation. This was also bearing in mind that the Couple's daughter has just started primary school this year.

34 I further ordered that the proceeds from the sale of the Property were to be paid to the Bankrupt's estate: (a) after deducting the expenses connected with the sale of the Property and the repayment of the outstanding mortgage; and (b) after refunding the Bankrupt's and Defendant's respective CPF contributions to the Property (inclusive of interest). There would be no further apportionment of 1% of the sale proceeds towards the Defendant's share in the Property, given that the refund of the Defendant's CPF contribution (even without taking into account the interest on the CPF contribution) would more than compensate the Defendant for her 1% interest in the Property. Both parties were agreeable to this.

Audrey Lim
Judge of the High Court

Lim Tong Chuan (Excelsior Law Chambers LLC) for the claimant;
Chung Ting Fai and Yuge Li (Chung Ting Fai & Co)
for the defendant.

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