IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 35

Originating Summons No 1017 of 2019

Between

(1) Chee Yoh Chuang
(2) Lin Yueh Hung

… *Applicants*

And

(1) Ooi Chhooi Ngoh

… *Respondent*

GROUNDS OF DECISION

[Land] — [Sale of land] — [Sale under court order] — [Effect of bankruptcy]

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v
Ooi Chhooi Ngoh

[2020] SGHC 35

High Court — Originating Summons No 1017 of 2019
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5, 20 November 2019

19 February 2020

Chan Seng Onn J:

1 What are the considerations that a court should take into account when ordering the sale of a co-owned family home upon the application of the Official Assignee or the trustee in bankruptcy? How is the court to balance the rights of the creditors of a bankrupt co-owner as against those of the non-bankrupt co-owner(s), bearing in mind that the whole family stands to be evicted should the sale of their family home be ordered? These are the issues in the present dispute involving the property located at 79 Neram Road, Singapore 807774 ("the Property").

Background Facts

2 The Property was originally owned by Koh Sin Chong Freddie ("the Bankrupt") and his wife, the respondent, as joint tenants. A bankruptcy order ("the Bankruptcy Order") was made on 4 August 2016 and the Official Assignee

("the OA") was appointed as the trustee of the Bankrupt's estate.[1] The first and second applicants were appointed as the Private Trustees in Bankruptcy of the Bankrupt ("the PTIBs") in place of the OA on 21 May 2019.[2]

3 The Bankrupt's two creditors and the debts owed to each of them are as tabulated:[3]

Creditor	**Nature of Debt**	**Amount of Debt (S$)**
DBS Bank Ltd ("DBS")	Secured on the Property	1,408,724.83[4]
Singapore Swimming Club ("SSC")	Unsecured	1,832,653.05[5]
Total Debt (S$):	3,241,377.88	

4 The Bankrupt's main asset is his interest in the Property. While there is no official valuation of the Property, the Bankrupt valued it at $5.7 million in his Statement of Affairs in 2016.[6] It was also listed for sale on a property listing site, propertyguru.com.sg, in 2013 for $7.8 million.[7]

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1 1st Joint Affidavit of Chee Yoh Chuang and Lin Yueh Hung (8 August 2019) ("Applicants' 1st Joint Affidavit"), Exhibit CL - 1 at p 15.

2 Applicants' 1st Joint Affidavit, Exhibit CL - 2 at p 18.

3 Applicants' 1st Joint Affidavit at [6].

4 Applicants' 1st Joint Affidavit, Exhibit CL - 4 at p 44.

5 Applicants' 1st Joint Affidavit, Exhibit CL - 4 at p 47.

6 Applicants' 1st Joint Affidavit, Exhibit CL - 3 at p 35.

5 As with his other assets, the Bankrupt's interest in the Property vested automatically in the OA upon the making of the Bankruptcy Order by virtue of s 76(1)(*a*)(i) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("Bankruptcy Act"). This in turn severed the joint tenancy by operation of law (see *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 at [137] and *Malayan Banking Bhd v Focal Finance Ltd* [1998] 3 SLR(R) 1008 at [16]). Therefore, the OA and the respondent each took a half share in the Property as tenants in common.[8] When the applicants were appointed as the PTIBs in place of the OA, they own the half share in the Property by virtue of s 36(2) of the Bankruptcy Act.

6 Since 2018, the OA and the PTIBs have contacted the Bankrupt and/or the respondent on various occasions to provide the Bankrupt with options to discharge his debts, namely by (1) selling the Property, (2) getting one or more of the Bankrupt's family members to buy over his half share in the Property, or (3) by settling his debts in full. This was done by:

(a) sending letters to the Bankrupt on 25 July 2018[9] and 15 March 2019;[10]

(b) arranging a meeting between the PTIBs and the Bankrupt on 17 June 2019 to discuss the options for the sale of the Property;[11] and

(c) sending a letter to the respondent on 24 June 2019 to obtain her confirmation as to whether she or her adult children were prepared to

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7 2nd Joint Affidavit of Chee Yoh Chuang and Lin Yueh Hung (17 October 2019) ("Applicants' 2nd Joint Affidavit") at [8]–[10], Exhibit CL - 12 at pp 11–12.

8 Applicants' 1st Joint Affidavit at [9].

9 Applicants' 1st Joint Affidavit, Exhibit CL - 8 at pp 61–62.

10 Applicants' 1st Joint Affidavit, Exhibit CL - 8 at pp 64–65.

11 Applicants' 1st Joint Affidavit, Exhibit CL - 9 at p 69.

buy over the Bankrupt's share of the Property or, in the alternative, whether she would be prepared to put the Property out for sale jointly.[12]

7 The PTIBs have also informed the Bankrupt that a sale of the Property would leave him and the respondent with sufficient funds to purchase a HDB flat, settle his debts in full and annul the Bankruptcy Order against him.[13]

8 As the respondent and the Bankrupt have refused to take up any of the three options, the PTIBs filed an application in Originating Summons No 1017 of 2019 for the sale of the Property.

9 After hearing both parties, I ordered that the Property be sold in the open market and the sale proceeds, after deducting the expenses connected with the sale and the repayment of the outstanding mortgage, be remitted to the Bankrupt and the respondent in equal shares.

10 Dissatisfied with my decision, the respondent has filed an appeal. I now set out the reasons behind my decision.

The sole issue to be determined

11 The sole issue that arose for my consideration was whether to order a sale of the Property.

12 Given that this is the first case in which the High Court is being called upon to exercise its powers of sale in relation to co-owned property under the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") upon the

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[12] Applicants' 1st Joint Affidavit, Exhibit CL - 9 at pp 71–72.

[13] Applicants' 1st Joint Affidavit, Exhibit CL - 8 at p 64.

application of the OA or a trustee in bankruptcy as opposed to a fellow co-owner, I find it necessary to deal with the preliminary, albeit undisputed, question of whether the court has the power to order the sale.

A preliminary point: the court's power to order the sale

13 The court's power of sale is derived from s 18(2) of the SCJA, which provides that the High Court shall have the powers set out in the First Schedule. Paragraph 2 of the First Schedule reads as follows:

> **Partition and sale in lieu of partition**
>
> 2. Power to partition land and to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.

14 By way of background, the High Court's power of sale under the SCJA has been exercised in numerous cases involving non-bankrupt co-owner(s) where the court considered whether the property should be sold upon the application of a fellow co-owner: see, *eg, Abu Bakar v Jawahir and others* [1993] 1 SLR(R) 865 ("*Abu Bakar*"); *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*"). The main difference in the present application lies in the fact that it was brought by the PTIBs in order to realise the assets of the Bankrupt as part of their general administration of his estate, which includes the Bankrupt's share in the Property as a tenant in common with the respondent.

15 For the purposes of invoking the power of sale, I saw no difference between an application by a non-bankrupt co-owner and that by the OA or trustees in bankruptcy who represent the interests of a bankrupt co-owner's creditors. It is clear that the OA is empowered to sell a bankrupt's property and

to institute legal proceedings in relation to the same under s 111(*a*) and s 112(*b*) of the Bankruptcy Act, and the trustee in bankruptcy is empowered to do the same under s 36(1)(*b*) of the Bankruptcy Act. The PTIBs were entitled to apply to the court for an order to sell the Property because the Bankrupt's interest in the Property has vested in them.

16 The present scenario was also considered by the Court of Appeal in *Su Emmanuel*. The case involved a house owned by three individuals as tenants in common: the appellant ("Su"), the first respondent ("Priya") and the second respondent ("Philip") in respective shares of 50%, 49% and 1%. The house was originally owned by Phillip and Su as joint tenants but the joint tenancy was severed in 2004 when Priya bought over a 49% share in the house. She signed a sale and purchase agreement which included a particular clause 10 ("cl 10"). This clause, in essence, provided that Priya would not evict Su and her children from the house as it was their place of dwelling (*Su Emmanuel* at [14]). Priya subsequently ran into financial difficulties and thus applied for an order that the house be sold in order for her to use the sale proceeds to stave off impending bankruptcy proceedings. The Court of Appeal upheld the order of sale and further noted, in *obiter* at [74], that:

> … if no order for sale was made and Priya were to be adjudged a bankrupt, it would likely be the Official Assignee who would be seeking an order for the sale of the Property in order to meet the claims of Priya's creditors. In that situation, ***we fail to see how cl 10****, even on the basis of Su's interpretation,* ***could possibly have stood in the way of the Official Assignee***.

[emphasis in original in italics; emphasis added in bold italics]

17 Thus, the possibility of the OA applying to court for the sale of property to meet the claims of the creditors of a bankrupt co-owner has been judicially approved.

18 Having decided that the court has the power under s 18(2) read with para 2 of the First Schedule to the SCJA on the application of the OA or the PTIBs to order a sale of the Property co-owned by the Bankrupt, I now turn to explain the considerations behind my decision to so order.

Considerations in ordering the sale of the Property

19 The High Court can order the sale of land if it would be "necessary or expedient" to do so per para 2 of the First Schedule to the SCJA. In *Su Emmanuel*, the Court of Appeal provided guidance on the factors to be considered in deciding whether a sale should be ordered (at [57]) (*"*the *Su Emmanuel* factors*"*):

> … (a) In deciding whether it is necessary or expedient for a sale to be ordered in lieu of partition, the court conducts a balancing exercise of various factors, including (i) the state of the relationship between the parties (which would be indicative of whether they are likely to be able to co-operate in the future); (ii) the state of the property; and (iii) the prospect of the relationship between the parties deteriorating if a sale was not granted such that a 'clean-break' would be preferable.
>
> (b) Regard should be had to the potential prejudice that the various co-owners might face in each of the possible scenarios, namely, if a sale is granted and if it is not granted.
>
> (c) A sale would not generally be ordered if to do so would violate a prior agreement between the co-owners concerning the manner in which the land may be disposed of.

20 The respondent submitted that the court should consider *all* the *Su Emmanuel* factors, including those that specifically pertained to the relationship between the respondent and the Bankrupt.[14]

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[14] Respondent's Submissions at [14]–[16], [20]–[21].

21 I did not think that *all* the *Su Emmanuel* factors were applicable to the present case. In particular, it was not necessary to consider (1) the state of the relationship between the parties and (2) the prospect of the relationship between the parties deteriorating if a sale is not granted. This is because the *Su Emmanuel* factors are specifically tailored towards a joint ownership context in which a fellow non-bankrupt co-owner invokes the court's power of sale.

22 The Bankrupt is not a party to the present application and, in any event, the PTIBs are wholly entitled to deal with the Property that forms part of his bankruptcy estate for the benefit of his creditors. Unlike previous cases dealing with the court's power of sale under the SCJA, there is no relationship between the PTIBs and the respondent to speak of.

23 The *Su Emmanuel* factors are guidelines distilled from a long line of case law involving co-owners who sought to invoke the court's power of sale. They are not meant to be applied as a comprehensive and concretised check-list to be addressed in every case, whether or not warranted on the facts. Neither has it been the approach of our courts both before and after the decision in *Su Emmanuel*, to consider and address every single factor when the factual matrix plainly does not call for it. By way of illustration:

(a) In *Abu Bakar*, S Rajendran J ordered the sale of a small family house after considering the difficulty in implementing an order for partition and the inability of the other co-owners to pay for the applicant's one-third share in the property (at [18]–[19]). He did not separately consider the state of the relationship between the parties nor the lack of a prior agreement between parties.

(b) In *Foo Jee Boo v Foo Jee Seng* [2016] SGHC 225, Debbie Ong JC (as she then was) considered whether to order the sale of a property owned by two brothers as tenants in common. She ordered the sale after considering that neither party was presently living in the property and that their acrimonious relationship would make continued cooperation difficult (at [23]). There was no explicit enumeration of the potential prejudice that each co-owner might face if a sale was granted. As there was no prior agreement concerning the manner in which the land was to be disposed of, this factor was not alluded to.

24 At this juncture, I pause to note that my approach aligns with the decision in *BYX v BYY* [2019] SGHC 237, which was released shortly after parties had made their submissions. There, Tan Puay Boon JC found that the *Su Emmanuel* factors are "largely limited to the joint ownership context" and were thus inapplicable in the context of an execution creditor who wished to effect the sale of the judgment debtor's mortgaged immovable property that had been seized under a writ of seizure and sale (at [24]).

25 I am of the view that when a court considers whether it is necessary or expedient to order a sale of property upon the application of the OA or the trustee in bankruptcy, it should consider not only the interests of all the individuals who may be directly affected by the sale but also the creditors of the bankrupt co-owner of the property.

26 As a general rule, the court should consider all the relevant facts and circumstances of the case and conduct a balancing exercise. Some of the factors to be taken into account in the balancing exercise may 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) 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.

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

28 With this in mind, I now turn to the facts of this present case.

Application

29 As in a majority of cases, the single most valuable asset belonging to the Bankrupt is the home which he occupies along with various other individuals, including the respondent. The present fact scenario brings into play two mutually exclusive interests. On one side is the claim of the unsecured creditor, the SSC, which has been kept waiting for more than three years since the Bankruptcy Order was made in August 2016. On the other side is the general

concern that hardship should not be visited upon individuals like the respondent who are, in the main, innocent victims of the Bankrupt's financial misfortune.

30 It did not escape my attention that the Property is currently being used as a family home for the respondent, the Bankrupt, their two sons, their daughter-in-law, their grandson and their domestic helper (collectively, the "present occupants").[15] It was also undisputed that the respondent is essentially an "innocent party": she was not involved in the affairs that led to her husband's bankruptcy, nor did she receive any benefit from the dispute between the Bankrupt and the SSC that gave rise to his debt.[16]

Prejudice to the respondent and other third parties

31 I first considered the prejudice that would be occasioned to the respondent and her family should a sale be ordered. In my view, this is minimal and has been ameliorated in part by the long period of time since the making of the Bankruptcy Order.

32 The respondent claimed that the prejudice suffered by her and her family would outweigh that suffered by the unsecured creditor, the SSC. This stems from her sentimental attachment to the Property, the inconvenience and expenses of purchasing a new home, the likely impossibility of finding an "equivalent property in the same area"[17] and the potential fragmentation of her family if the new home is unable to house the present occupants.[18] In contrast, while the SSC would not be able to reclaim the debt owed, there was no

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15 Applicants' 1st Joint Affidavit at [12].

16 Respondent's Submissions at [28].

17 Respondent's Submissions at [29].

18 Respondent's Submissions at [22].

indication that it was in dire need of financial assistance or that it required the moneys for any purpose.[19]

33 I did not agree. As a preliminary point, the repayment of creditors is based on their right to the moneys and not solely based on their need for it. Here, the expected sale proceeds (even on the conservative estimate) of $5.7 million would be more than sufficient to pay off both DBS and the SSC. The Bankrupt and the respondent would be left with approximately $300,000 and $2.15 million respectively.

34 The above sums combined would be more than sufficient to purchase alternative accommodation to house the present occupants. While the new accommodation might not be as spacious, similarly located or as luxurious as the Property, downsizing to pay off creditors is one of the ordinary and unfortunate consequences that bankrupts visit upon their family members.

35 While I appreciated that the respondent has lived in the Property for more than 40 years and wishes to retain it for her children, this is insufficient on its own to forestall a sale. This is a "sentimental attachment which bordered on a luxury" which the Bankrupt's creditors are not obliged to indulge her in (*Abdul Razak Valibhoy and another v Abdul Rahim Valibhoy and others* [1995] 1 SLR(R) 441 at [19]).

36 In any event, the respondent's sentimental attachment to the Property was not as strong as she claimed. The respondent and the Bankrupt had previously allowed the Property to be listed on a property listing site in 2013.[20]

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19 Respondent's Submissions at [31].

20 Applicants' 2nd Joint Affidavit at [8]–[10], Exhibit CL - 12 at p 12.

During the hearing, parties were at odds about the facts surrounding the property listing. Without delving too deeply into the veracity of the different versions of facts, I noted the respondent's claim that she never intended to sell the Property and only listed it on propertyguru.com.sg out of curiosity to find out its worth.[21] However, she also conceded in her affidavit that she wanted "to find out what the Property was worth at that time"[22] and she "would at the very least only have considered selling if the selling price was truly too good to refuse".[23] This being the case, her objection to the sale is "more a matter of money than of principle" (*Su Emmanuel* at [60]).

Prejudice suffered by the unsecured creditor, SSC

37 I then considered the interests of the SSC and the potential prejudice in the event that a sale of the Property is not ordered. I found that this would be substantial prejudice that is incapable of remedy by any alternative means.

38 A failure to order a sale of the Property would mean that the unsecured creditor, the SSC would never be able to reclaim the amount owed to it together with any accrued interest. The Bankrupt is 74 years of age and, based on an Individual Insolvency Administration search, he has not received a net income since 10 August 2016.[24] His other assets in the bankruptcy estate total $39,511.91[25] and would not make a dent in his very large debt owed to the SSC. To disallow the sale would mean that the SSC would have no way of reclaiming

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21 2nd Affidavit of Ooh Chhooi Ngoi Bibiana (29 October 2019) ("Respondent's 2nd Affidavit") at [6(b)].

22 *Ibid*.

23 Respondent's 2nd Affidavit at [7].

24 Applicants' 1st Joint Affidavit, Exhibit CL - 4 at p 43.

25 *Ibid*.

its debt plus interest and correspondingly allow the Bankrupt to evade his entire debt obligation.

Balancing of various factors

39 After considering the prejudice caused to the creditors, the respondent and the other occupants of the family home, I was satisfied that the balance lies firmly in favour of ordering the sale of the Property. The prejudice caused to the SSC as the sole unsecured creditor is significant and continues to accumulate as the delay in repayment stretches. A failure to order the sale would also allow the Bankrupt to evade a large chunk of his bankruptcy obligations.

40 In contrast, the respondent would receive approximately $2.15 million from her share of the sale proceeds from the Property. Even without considering the approximately $300,000 surplus left over to the Bankrupt after fully discharging all his debts, the respondent's share of $2.15 million is more than sufficient to purchase a large HDB flat (*eg,* a five room HDB flat or a three generation HDB flat) to fit the needs of the seven individuals in her family and pay for all the attendant fees incurred in the purchase of an alternative family home.

41 Even if I have underestimated the prejudice caused to the respondent and her family, I remain assured in my decision by the fact that the respondent and all the other occupants have been given ample time to make alternative accommodation arrangements.

42 At the time of the hearing, more than three years have passed since the making of the Bankruptcy Order. The PTIBs and previously, the OA had repeatedly sought to contact the Bankrupt and the respondent to discuss ways in which the bankrupt could pay off his debts to the SSC (see [6] and [7] above).

43 I pause at this juncture to add that if only a short amount of time, *eg*, less than a year had elapsed between the making of the Bankruptcy Order and the present application, I might have been prepared to delay the sale of the Property in order to allow the respondent and her family to make reasonable and orderly arrangements to sort out their affairs so as to minimise the inevitable hardship and distress that come with losing their home.

44 I note that such a position has also been taken in the UK as a way to balance the competing interests of a bankrupt's family and his creditors in the context of a family home. Under s 335A(2) of the Insolvency Act 1986 (c 45) (UK) ("UK Insolvency Act"), the court is empowered to make an order for the sale of land upon the application of a trustee in bankruptcy if it "thinks just and reasonable" after having regard to the interests of creditors, the bankrupt's family and all the circumstances of the case. However, s 335A(3) of the UK Insolvency Act states that:

> Where such an application is made after the end of the period of one year beginning with the first vesting … of the bankrupt's estate in a trustee, the court shall assume, *unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations*.
>
> [emphasis added]

45 That said, my remarks at [43] should not be taken as a license for a trustee in bankruptcy or the OA to be unnecessarily tardy in making an application for the sale of a bankrupt's home especially in a situation where the interest rate ordered in the judgment sum payable to the SSC is well above the current interest rate for fixed deposits with the local banks. Per s 121A of the Bankruptcy Act, after the debts and expenses of the bankruptcy have been paid, any surplus is to go towards paying the accumulated interest on the bankruptcy debts before returning to the bankrupt. This means that the longer the time taken

for a trustee in bankruptcy or the OA to bring an application for sale, the greater the accumulated interest owed by the bankrupt. Undue delay in a case, particularly when the bankrupt's family does not object to a sale by the trustee in bankruptcy or the OA, would also cause hardship to the bankrupt's family as they would have to live under a prolonged state of uncertainty as to whether they would be evicted from their homes.

Conclusion

46 The sole unsecured creditor, the SSC, has already waited for more than three years to reclaim its debt. It cannot be expected to wait *ad infinitum* for the Bankrupt and the respondent to be ready to sell the Property, especially when the prejudice to the respondent is outweighed by the grave and continuing financial prejudice to the SSC.

47 In light of the above, I found that it was necessary and expedient to order the sale of the Property under s 18(2) read with para 2 of the First Schedule to the SCJA and so ordered. The PTIBs are to have conduct of the sale and the sale proceeds are to be remitted to the Bankrupt and the respondent in equal shares after deducting the expenses connected with the sale and the repayment of the outstanding mortgage. The sale proceeds remitted to the Bankrupt are to form a part of the estate of the Bankrupt.

48 Costs including disbursements and GST to be fixed at $5,800 and paid by the respondent to the PTIBs.

Chan Seng Onn
Judge

Chang Man Phing Jenny, Lim Xian Yong Alvin and Joel Tieh Wenjun (WongPartnership LLP) for the applicants;
Seah Zhen Wei Paul and Kang Weisheng Geraint Edward (Tan Kok Quan Partnership) for the respondent.
