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

[2021] SGHC 129

Originating Summons No 479 of 2020 and Registrar's Appeal No 111 of 2021

Between

Ong Dan Tze Magdalene

… *Plaintiff*

And

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

… *Defendants*

ORAL JUDGMENT

[Insolvency Law] — [Bankruptcy] — [Bankrupt disposing of property to ex-wife pursuant to consent orders made in interim judgment in divorce suit made between date of bankruptcy application and date of bankruptcy order] — [Whether disposition of properties should be ratified under s 77(1) Bankruptcy Act (Cap 20, 2009 Rev Ed)] — [Sections 77(1) and 77(3)(a) Bankruptcy Act (Cap 20, 2009 Rev Ed)]

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Ong Dan Tze Magdalene
v
Chee Yoh Chuang and another

[2021] SGHC 129

General Division of the High Court — Originating Summons No 479 of 2020 and Registrar's Appeal No 111 of 2021
Mavis Chionh Sze Chyi J
27 April 2021

28 May 2021 Judgment reserved.

Mavis Chionh Sze Chyi J:

Background

1 Originating Summons No 479 of 2020 is an application brought by Ong Dan Tze Magdalene ("the Applicant"), in which the Applicant seeks a ratification of the Interim Judgment dated 7 November 2019 *vide* FC/D 3847/2019.

2 By way of background, the facts of this case were as follows. On 8 August 2019, the Applicant commenced divorce proceedings against her husband, Wong Kwet Yoong ("the bankrupt") in Divorce Suit No 3847 of 2019. The Applicant claims that at the time she filed the divorce papers, there "was no ongoing bankruptcy application against the Bankrupt".[1] However, she

[1] Applicant's 1st Affidavit ("AA1") dated 11 May 2020 at para 35.

admits that on 12 August 2019, she "saw the actual Statutory Demand against the Bankrupt".[2] She also admits that she "received a copy of a letter of demand dated 17 September 2019 from the solicitors of one of the Bankrupt's creditors" for the sums of US$1,946,789.88 and $3,762.02, as this letter was sent to the Jervois Road address where she and her son were residing at the time.[3] On 25 September 2019, CTBC Bank Co., Ltd. ("the bank") commenced a bankruptcy application against the bankrupt in Bankruptcy Originating Summons No 2400 of 2019 ("the bankruptcy application").[4] On 7 November 2019, the Applicant obtained the grant of an interim judgment for the dissolution of the marriage between her and the bankrupt ("IJ").[5] The IJ included the following consent orders (the bankrupt having endorsed his consent on the draft order on 11 October 2019)[6]:

> 3. c. (1) The property at [River Valley Road ("the River Valley property")] shall be sold in the open market within 6 months from the date of the Final Judgment and after repaying the outstanding housing loan, refunding to the parties' Central Provident Fund account withdrawals made therefrom for the purchase of the property including accrued interest, and deducting the costs and expenses of the sale, the balance proceeds shall be paid to the [Applicant] solely.
>
> (2) The [bankrupt's] right, title and interest in the property at [West Coast Road ("the West Coast property")] be transferred to the [Applicant] with no cash consideration and no refund to be made to the [bankrupt's] Central Provident Fund account. The [Applicant] to bear the cost and expenses of the transfer.

3 As a matter of fact, the River Valley property had already been sold for

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2 AA1 at para 34.

3 Applicant's 2nd Affidavit ("AA2") dated 5 January 2021 at para 7.5 and Tab 2.

4 AA2 at para 24.3 and Tab 7.

5 AA1 at para 4 and Tab A.

6 AA2 at para 16.

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$2.17m[7] during the period between the commencement of the bankruptcy application and the IJ. The sale of the River Valley property was completed on 14 October 2019 and the balance sale proceeds of $817,345.40 (the "14 Oct sale proceeds") were issued to the Applicant by way of cashier's orders.[8]

4 On 23 January 2020, a bankruptcy order was made against the bankrupt.[9] On 10 February 2020, the IJ was made final.[10] On 20 May 2020, the Applicant filed the present Originating Summons ("OS 479") to seek ratification of the IJ. The Respondents to OS 479 are the private trustees in bankruptcy of the bankruptcy estate.

Preliminary Issue – Registrar's Appeal No 111 of 2021

5 I deal first with Registrar's Appeal ("RA") No 111 of 2021. This was an appeal by the Applicant against the Assistant Registrar's decision dismissing her application for leave to file a further affidavit. Before the Assistant Registrar, the main submission by the Applicant was that a further affidavit was required to respond to new evidence brought up in the Respondents' affidavit filed on 2 February 2021 ("the Respondents' affidavit"), allegedly on the issue of her contributions to the marriage. After going through the paragraphs in the affidavit which the Applicant claimed she wished to respond to, the Assistant Registrar held that no new evidence had been adduced in the Respondents' affidavit and that no further affidavit was required.

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7 AA2 at para 35 and Tab 13.

8 AA2 at para 36 and Tab 14.

9 AA2 at para 24.6 and Tab 8.

10 AA1 at para 4 and Tab A.

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6 In the present RA, the written submissions filed on behalf of the Applicant again stated that she needed to respond to "new points raised in the Respondents' Affidavit" on her contributions to the marriage.[11] She claimed that the issue of her contributions (both direct and indirect) to the marriage was relevant to the issue of whether she had given value for the transfer by the bankrupt to her of all his interest in the matrimonial properties.[12] In this connection, counsel's oral submissions at the hearing focused on the issue of the bankrupt's alleged beneficial ownership of a property at Poets Villas: as far as I could glean, the Applicant claimed that her decision not to include the Poets Villas property in the pool of matrimonial assets constituted valuable consideration for the transfer of the bankrupt's interest in the properties which were eventually included in the consent IJ.

7 In addition, in his oral submissions at the hearing, the Applicant's counsel also said that the Applicant wanted to adduce further evidence of her lack of notice of the bankruptcy application. This apparently related to the issue of the service of the bankruptcy application: counsel said the Applicant wanted to show that the bankruptcy application had not been served on her and had instead been served via substituted service on "two other properties".

8 In respect of these issues, it was not actually the Applicant's case that new evidence had been produced by the Respondents. Instead, the Applicant's case was that these issues were material, and that she would be prejudiced if she were not given an opportunity to furnish evidence on them. In response, the Respondents objected to the application on the basis that (a) no new evidence

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11 Applicant's 2nd Written Submissions ("AWS2") dated 26 April 2021 at para 15.

12 AWS2 at para 23.

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had been adduced in their affidavit, and (b) granting the application would result in a delay which would prejudice the creditors and the bankruptcy estate.[13]

9 First, I agreed with the Assistant Registrar that there was no new evidence in the Respondents' affidavit which warranted a response from the Applicant.

10 Further, I found no merit in the Applicant's allegation that she would be prejudiced if she were not allowed to put in a further affidavit. OS 479 was filed on 20 May 2020. The Applicant's 1st affidavit was filed on the same day. Some six months later, in December 2020, the Applicant obtained an extension of time for the filing of her 2nd affidavit, which was filed on 5 January 2021. This 2nd affidavit was 671 pages in length and contained multiple exhibits. The Respondents filed their reply affidavit on 2 February 2021. Another two months passed; and it was just two weeks before the scheduled hearing of OS 479 when the Applicant filed her application for leave to file a further affidavit. No coherent explanation was provided by the Applicant as to why the further evidence she wanted to adduce could not have been furnished earlier. In this connection, it should be noted that in her existing two affidavits, the Applicant had already dealt with the issue of her notice of the bankrupt's financial situation and of the bankruptcy application.[14] The Applicant had also been afforded ample opportunity to address the issue of her contributions (direct and indirect) to the marriage in her two affidavits, and had indeed done so at some length.[15]

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13 Respondents' 2nd Written Submissions ("RWS2") dated 26 April 2021 at p 4, para 3.

14 See for *eg*, AA1 at paras 32–37 and AA2 at paras 20–26.

15 See for *eg*, AA2 at paras 33–50.

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11 In the circumstances, I was of the view that the alleged "further evidence" could and should have been adduced in the Applicant's earlier affidavits, and that no coherent reason has been provided by the Applicant for her omission to do so. The Applicant has been given more than sufficient time since the filing of OS 479 to put forward all the evidence she wants to rely on in support of her application. I agreed with the Respondents that any further delay of the hearing would prejudice the administration of the bankruptcy estate. As such, I dismissed the appeal and ordered the Applicant to pay costs to the bankruptcy estate fixed at $1,200 (inclusive of disbursements).

Issue 1: Ratification under s 77 of the Bankruptcy Act (Cap 20, 2009 Rev Ed)

12 Dealing with OS 479 itself, the starting point is ss 77(1) and 77(3) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("BA"), which provides as follows:

> **Restrictions on dispositions of property by bankrupt**
>
> **77.**—(1) Where a person is adjudged bankrupt, any disposition of property made by him during the period beginning with the day of the making of the bankruptcy application and ending with the making of the bankruptcy order shall be void except to the extent that such disposition has been made with the consent of, or been subsequently ratified by, the court.
>
> …
>
> (3) Nothing in this section shall give a remedy against any person in respect of —
>
> (a) any property or payment which he received from the bankrupt before the commencement of the bankruptcy in good faith, for value and without notice that the bankruptcy application had been made; or
>
> …

13 These provisions have been retained in ss 328(1) and 328(3) of the Insolvency, Restructuring and Dissolution Act 2018 (No 40 of 2018) ("the

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"IRDA") (see *Sutherland, Hugh David Brodie v Official Assignee and another* [2021] SGHC 65 ("*Sutherland*") at [21] and [26]). As an aside, parties did not address the issue of whether the BA provisions or the IRDA provisions should apply in this case (see *Marina Towage Pte Ltd v Chin Kwek Chong and another* [2021] SGHC 81 at [13]–[17]). Both sides proceeded on the basis that the BA provisions were applicable. Since these BA provisions were *in pari materia* with the corresponding IRDA provisions, this was also the basis on which I have proceeded in deciding the matter.

14 The prayer sought by the Applicant in OS 479 is for ratification of the IJ. In the first place, it seems to me to be procedurally incorrect to ask for the "ratification" of an order of court: the Applicant has not explained the legal basis for asking the High Court to "ratify" an interim judgment granted by a district judge in the Family Justice Courts ("FJC"), which interim judgment has in any event been made final since. Section 77(1) of the BA, which the Applicant purports to rely on, provides for ratification of *dispositions of property made by a bankrupt*.

15 However, from the submissions made by the Applicant's counsel and from the contents of the Applicant's affidavit, it would appear that what she is asking for is – in substance – ratification of the dispositions of the River Valley property and the West Coast property made pursuant to the consent orders recorded at paragraphs 3(c)(1) and 3(c)(2) of the IJ respectively.[16] I note that the Respondents' counsel has also dealt with OS 479 on this basis.[17] I approach the OS, therefore, on the basis that the Applicant is really seeking ratification of the

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16 Applicant's 1st Written Submissions ("AWS1") dated 22 April 2021 at para 1; AA2 at para 56.

17 Respondents' 1st Written Submissions ("RWS1") dated 16 April 2021 at p 6, para 2.

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dispositions of the River Valley property (or rather, as will be seen later, the sale proceeds therefrom) and the West Coast property pursuant to the said consent orders. In this connection, it is not disputed that s 77(1) of the BA applies to a disposition of property pursuant to a court order – including a consent order: per the Court of Appeal ("CA") in *Cheo Sharon Andriesz v Official Assignee of the estate of Andriesz Paul Matthew, a bankrupt* [2013] 2 SLR 297 ("*Sharon Cheo* (CA)") at [30]. *Sharon Cheo*, for example, was a case where the bankrupt had agreed to transfer his interest in two properties to his wife, the appellant, via an interim consent judgment in divorce proceedings initiated by her.

16 It is also not disputed that the onus is on the Applicant to persuade the court that the dispositions of the River Valley property (or sale proceeds) and the West Coast property pursuant to the consent orders should be ratified: see in this respect the High Court's judgment in *Cheo Sharon Andriesz v Official Assignee of the estate of Andriesz Paul Matthew, a bankrupt* [2012] 4 SLR 89 ("*Sharon Cheo* (HC)") at [19] and [22]. In this connection, it is apt to bear in mind the High Court's observation in *Sharon Cheo* (HC) (at [24]):

> The spouse and children of a bankrupt are often innocent bystanders who are prejudiced by bankruptcy proceedings against the bankrupt and it is understandable that a bankrupt would want to provide for his or her spouse and their children. However, *any attempt by a bankrupt to transfer his assets to his spouse after the presentation of a bankruptcy petition against him in order to put the said assets out of the reach of his creditors must be closely scrutinised.* In *Denney v John Hudson & Co Ltd* [1992] BCLC 901 at 904, Fox LJ explained that *in considering whether or not to make a validating order, the court "must always do its best to ensure that the interests of the unsecured creditors will not be prejudiced".*
>
> [emphasis added]

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17 Similar observations were made by the High Court in *Sutherland* at [28], where the court in dissecting the test for ratification under s 77 of the BA stated (at [26] to [28]):

> What then is the test for ratification of a disposition? The first observation to make is that ratification is only necessary if the disposition does not fall within the exception set out in s 77(3) of the BA (now s 328(3) of the IRDA). That exception [contained in s 77(3) is] essentially in favour of a good faith purchaser for value without notice of the bankruptcy application …
>
> That the possibility of ratification is provided for separately from and in addition to the exception contained in s 77(3) necessarily means that ratification is not limited to transactions that fall within that exception. There may be occasions when ratification is appropriate even though the conditions of the exception are not met. *Good faith, notice and value will be relevant when considering ratification, but how important or necessary they are will have to be considered as part of the overall exercise of discretion. Considerations of good faith and notice will figure differently. Transactions may be ratified even though the third party had notice of the bankruptcy application, if it is otherwise fair and just to do so. On the other hand, the absence of good faith would almost certainly rule out a successful application for ratification. The presence of good faith would not in itself be sufficient.*
>
> *Returning to the test for ratification, the starting point is the objective of s 77 of the BA. It is to preserve the bankrupt's assets for orderly and rateable distribution to the general body of creditors. For this reason, the first consideration must be whether ratification promotes this objective or undermines it. A disposition that was, at the time it was made, in the interests of the general pool of creditors fits with the objective of the provision. Such a disposition may be ratified, if it is otherwise fair and just to do so.* In determining what was in the interests of the general pool of creditors, the court should ask whether at the time of the disposition it was likely to benefit the general pool of creditors.
>
> [emphasis added]

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Issue 2: Ratification of the disposition of the River Valley property

18 Dealing first with the River Valley property, the sale of the said property was completed on 14 October 2019. I will refer to the purchasers of the said property simply as "the purchasers".[18]

19 In the first place, as the bankrupt disposed of his interest in the River Valley property to the purchasers between the date of the bankruptcy application and the date of the bankruptcy order, it might be argued that this disposition was void by virtue of s 77(1) of the BA unless ratified by the court. However, this issue was not explicitly canvassed before me. Moreover, the purchasers were not represented at these proceedings, which meant that I did not have any of the information necessary to determine issues such as whether the purchasers were *bona fide* purchasers for value without notice: for instance, no information was available on why the sale was completed apparently without the requisite checks being done by the purchasers' solicitors on the bankruptcy status of the sellers prior to completion.

20 In the circumstances, I make no finding as to whether the disposition by the bankrupt to the purchasers should be ratified. In any event, it is evident from the Applicant's submissions that this is not the "disposition" for which she is seeking ratification in this OS.[19] Rather, it appears from the submissions before me that the Applicant is proceeding on the basis that the River Valley property was no longer owned by the Applicant and the bankrupt at the time of the IJ on 7 November 2019. The Applicant's position appears to be that paragraph 3(c)(1) of the IJ provides for *a disposition of the 14 Oct sale proceeds from the bankrupt*

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18 AA2 at Tab 14, p 108.

19 AWS1 at para 1.

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to her – and it is this disposition which should be ratified by the court pursuant to s 77(1) of the BA.[20]

21 I find the Applicant's analysis to be fundamentally flawed. The express wording of paragraph 3(c)(1) of the IJ plainly contemplated that the River Valley property was still a matrimonial asset as at the date of the IJ: it certainly did not contemplate that the River Valley property had already been sold on 14 October 2019, much less that the 14 Oct sale proceeds constituted a matrimonial asset available for distribution. On the evidence before me, therefore, I find that the Applicant has not established that paragraph 3(c)(1) of the IJ gives rise to a "disposition" of the 14 Oct sale proceeds within the meaning of s 77(1) BA; and without being able to establish this, her request for ratification is a non-starter.

22 In any event, the inescapable inference to be drawn from the terms of the consent orders in the IJ is that the district judge who granted the IJ was never informed of the River Valley sale on 14 October 2019. These consent orders for which the Applicant obtained the district judge's approval provided for the River Valley property to be "*sold in the open market within 6 months from the date of the Final Judgment*" (per paragraph 3(c)(1)) – when in reality she and the bankrupt had completed the sale of this property a month before the IJ. Had the district judge been apprised of the truth about the completion of the sale on 14 October 2019, it is inconceivable that she would have approved paragraph 3(c)(1) of the consent orders in the terms in which it was drafted.

23 I find this deeply disturbing. Any party seeking the court's approval for a consent order has a duty to make full and frank disclosure of all material facts: see for *eg*, the CA's decision in *AOO v AON* [2011] 4 SLR 1169 at [18]. Not

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[20] AA2 at paras 31–32 and 56.

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only did the Applicant fail to make full and frank disclosure of the completed River Valley sale to the district judge, the consent orders she put forward for the district judge's approval presented a state of affairs which did not exist. The Applicant has not explained her conduct anywhere in her affidavits. I do not think it is possible to characterise the Applicant's conduct as anything other than a deception practised on the court granting the IJ. Indeed, the further inference I draw from the Applicant's behaviour in presenting the consent orders in the IJ with the terms as stated for the court's approval and in concealing from the court the truth about the completed River Valley sale is that she did so because she knew there was something untoward about the transaction. On the evidence before me, it would seem the only untoward element here was that the bankrupt had purported to dispose of his interest in the River Valley property to the purchasers *after* bankruptcy proceedings had been filed against him, and in the absence of any ratification of such disposal.

24 In this connection, I make the following other observations. The Applicant's position is that she had no notice of the bankruptcy application filed against the bankrupt when the divorce proceedings were ongoing and when she obtained the IJ on 7 November 2019.[21] According to her, the bankrupt "did not raise any issues" with her and had assured her that he was "in the midst of selling tin in Indonesia to pay off his creditors and … did not foresee that he would be in the financial position that he currently is in".[22] I do not find the Applicant's claims at all believable. The Applicant has admitted that she saw the "actual Statutory Demand against the Bankrupt on 12 August 2019" (see [2] above). This was just 4 days after counsel representing her in the divorce proceedings had filed on her behalf a Statement of Particulars stating *inter alia* that

21 AA2 at para 20.

22 AA2 at para 15.

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bankruptcy searches had been done "on the Defendant" in the divorce proceedings (*ie*, the bankrupt) and that there were no pending bankruptcy proceedings against him.[23] On her own admission, she had also received at her place of residence a copy of a letter of demand dated 17 September 2019 from the solicitors of one of the bankrupt's creditors for the sums of US$1,946,789.88 and $3,762.02: it was stated in the same letter that legal proceedings would be commenced in the event the outstanding sums were not paid within 7 days. Given these circumstances, I did not believe that the Applicant would have failed to keep herself abreast of the situation and particularly of any changes in the bankrupt's financial status. After all, as she herself said in her affidavits, the bankrupt had not previously kept her informed of the state of his business.[24] She had no basis, therefore, for simply accepting at face value his assurances that he was paying off the large sums owed to his creditors by "selling tin in Indonesia".

25 Indeed, the Applicant's own documentary exhibits give the lie to her claims about her ignorance of the bankrupt's financial predicament in the period leading up to the IJ of 7 November 2019. For example, in an email to her lawyer dated 30 August 2019, the Applicant asked her lawyer whether she could file a "1 sided divorce and have [the bankrupt's share of the matrimonial assets] transferred" to her or her son as she was – in her own words – "worried about the consequence of further delay".[25] In an undated conversation with the bankrupt, the Applicant requested that the bankrupt expedite on the divorce matter "before anything happen again".[26] Like the plaintiff in *Sharon Cheo*, the Applicant must have been concerned about the future of her family after she

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23 AA1 at Tab B.

24 AA1 at para 18; AA2 at paras 20–21.

25 AA1 at Tab H, p 73.

26 AA1 at Tab H, p 76.

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saw – in the span of two months – a statutory demand and a letter of demand from two different creditors of the bankrupt, one of them demanding payment of a sum exceeding US$1.9m (see *Sharon Cheo* (HC) at [31]). It is unbelievable that she would have blithely accepted the bankrupt's vague assurances and gone about preparing the draft consent orders without verifying further developments in his financial status.

26 Taking into account the above circumstances, I do not accept that the Applicant would have remained ignorant of the bankruptcy proceedings against the bankrupt by the time she obtained the consent IJ. Her behaviour in concealing from the FJC district judge the truth about the completion of the River Valley sale on 14 October 2019 is strongly indicative of guilty knowledge. I find that she did not act in good faith when she obtained the consent IJ. Accordingly, even assuming that the Applicant is right in asserting paragraph 3(c)(1) of the IJ provides for a disposition of the 14 Oct sale proceeds from the bankrupt to her, I would not ratify such a disposition.

27 I should add that the Applicant does not appear to have advanced an alternative case that the "disposition" of the 14 Oct sale proceeds was effected by the bankrupt to her at the point of the completion of the River Valley sale. In any event, even if she were to make this alternative argument, I would decline to order ratification of such a disposition in light of my findings on her lack of good faith.

Issue 3: Ratification of the disposition of the West Coast property

28 I turn next to the disposition of the West Coast property from the bankrupt to the Applicant pursuant to paragraph 3(c)(2) of the consent orders recorded in the IJ. The disposition was void by virtue of s 77(1) of the BA, as it was made between the date of the bank's bankruptcy application and the date

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of the bankruptcy order. The issue before me, therefore, is whether the disposition of the West Coast property should be ratified.

29 In this connection, the High Court's and the CA's decisions in *Sharon Cheo* were instructive. The disposition of property in question also concerned a transfer of the bankrupt's right, title and interest in two properties to the applicant (his wife) pursuant to an interim consent judgment in a divorce suit (see *Sharon Cheo* (CA) at [3]). The Court of Appeal affirmed the decision of the High Court not to ratify the dispositions.

30 The Applicant sought to distinguish the present case from *Sharon Cheo*. In respect of the issue of value given by her for the transfers from the bankrupt, she argued that the consent IJ in her case could be distinguished from the consent IJ in *Sharon Cheo* because the consent IJ in her case stated that the transfer was for "no cash consideration", whereas in *Sharon Cheo* the transfers were stated to be "without consideration". The Applicant evidently took the position that this left the door open for her to show that she had provided non-cash consideration in the form of her indirect contributions to the marriage, as well as her decision to exclude the Poets Villas property from the pool of matrimonial assets in the divorce proceedings.

31 I am not persuaded by the Applicant's arguments. First, I would reiterate the observations I made earlier on the Applicant's notice of the bankruptcy proceedings (see [24]–[26] above).

32 Second, on the issue of value given for the bankrupt's transfers, I note that in *Sharon Cheo* (HC) at [23], the court was cognisant of the fact that the applicant and the bankrupt had three young children, and that a finding against the applicant might prejudice her and her children. This did not stop the court

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in *Sharon Cheo* (HC) at [35] from finding that the dispositions were without consideration. In respect of the Poets Villas property, it is not disputed that this property was registered in the names of the bankrupt's brother and sister.[27] Against this evidence of the registered ownership, the Applicant failed to put forth any objective evidence to establish the bankrupt's alleged beneficial ownership (apart from a bare assertion that the bankrupt paid approximately $200,000 for the down payment of the property).[28] There was, in short, no evidence to show that the Poet Villas property should have formed part of the pool of matrimonial assets for distribution. In any event, the Applicant also failed to provide any coherent explanation as to why her alleged decision to exclude the Poets Villas property from the pool of matrimonial assets amounted to her giving value for the transfer of the bankrupt's interest vis-à-vis the West Coast property.

33 Third, while a transaction may be ratified even though the applicant for ratification had notice of the bankruptcy proceedings, this really depends on the facts of the case; and as the High Court held in *Sutherland* (at [27]), the absence of good faith will almost certainly rule out a successful application for ratification. In this connection, I reiterate the findings I made earlier on the Applicant's lack of good faith in obtaining the consent IJ.

34 My fourth and final observation applies not only to the disposition of the West Coast property by the bankrupt to the Applicant but also to any disposition of the 14 Oct River Valley sale proceeds. What the Applicant appears to have forgotten is that the foremost consideration in an application for ratification under s 77 of the BA is whether the ratification promotes the interests of the

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27 AA2 at para 30 and Tab 9.

28 AA2 at para 30.

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general pool of creditors: *Sutherland* at [28]. In *Sutherland*, the applicant had agreed to pay a total of $414,000 to the respondent bank, Oversea-Chinese Banking Corporation ("OCBC"), in repayment of mortgage instalments owed by the debtors to OCBC. The arrangement he had with the debtors was that if OCBC was persuaded to hold off on enforcing their rights, the debtors could sell the mortgaged property on the open market for a better price, which would benefit the unsecured creditors. In return, the applicant expected to be repaid from the surplus sale proceeds, after OCBC was paid, but ahead of the unsecured creditors. This arrangement was recorded as an assignment agreement. The debtors were made bankrupt before they could sell the property; and the applicant applied under s 77(1) of the BA for ratification of the assignment agreement. The High Court allowed his application because the court found that the assignment agreement would benefit the creditors, firstly by fending off a fire sale by the bank; and secondly, by saving on interest payable to OCBC (at [36] and [38]).

35 In contrast, in the present case, the Applicant has failed to put forward any evidence to show that the disposition of the West Coast property and/or the 14 Oct sale proceeds would benefit the general pool of creditors. If anything, the evidence before me strongly suggests that the consent IJ was really an attempt to put the bankrupt's assets out of the reach of his creditors (see *Sharon Cheo* (HC) at [24] and [37]). It is pertinent to note that despite the Applicant's self-declared difficulties in contacting and locating the bankrupt at the material time,[29] she was able to serve the divorce papers on him on 9 October 2019 (two weeks after the bankruptcy application was filed against the bankrupt on 25 September 2019).[30] It is also pertinent to note that just 2 days after he was served

[29] AA1 at paras 24–27.

[30] AA1 at para 29.

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the divorce papers, the bankrupt endorsed the draft consent order, agreeing to *all* of the Applicant's demands regarding the division of matrimonial assets, including the demand for the transfer of all his interest in the West Coast property for no cash consideration and with no refunds to his CPF account.[31] The convenient timing of these actions is not merely suspicious: it shows how much the bankrupt wanted to put his assets out of the reach of his creditors. It must moreover be highlighted that based on the documents exhibited in the Applicant's affidavit, the option to purchase the River Valley property was exercised by the purchasers on 22 July 2019.[32] The sale was to be completed 12 weeks from the date of exercise. There is simply no cogent explanation as to why, on 11 October 2019, the bankrupt endorsed a draft consent order which provided for a *subsequent* sale of the River Valley property.

36 In the circumstances, it is simply not possible for me to conclude that the dispositions for which the Applicant seeks ratification would benefit the general body of creditors.

Conclusion

37 For the reasons given above, I find no merit in the application for ratification in OS 479, and I dismiss OS 479 accordingly.

38 In the absence of ratification, the disposition of the West Coast property and any disposition of the bankrupt's interest in the 14 Oct sale proceeds are void, pursuant to s 77(1) of the BA. Under s 76(1)(a) of the BA (now s 327(1)(a) of the IRDA), the bankrupt's property vested in the Respondents – the trustees of the bankruptcy estate – upon the making of the bankruptcy order on 23

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31 AA1 at para 30; AA2 at para 16.

32 AA2 at Tab 13, pp 102–103.

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January 2020, and became divisible amongst his creditors, subject only to the exceptions set out in s 78(2) of the BA (now s 329(2) of the IRDA) (see *AVM v AWH* [2015] 4 SLR 1274 at [109]). It is for the Respondents to take the next steps necessary for realising and dividing the bankrupt's assets. I note that in the affidavit filed on their behalf in this OS, the Respondents asked that orders be made in these proceedings for the West Coast property to be sold with the Applicant having joint conduct of the sale together with them.[33] However, the Applicant has not made any submissions on this issue, and I do not consider it appropriate to make such orders today.

39 As I have dismissed OS 479, I will now hear the parties' submissions on costs.

Mavis Chionh Sze Chyi
Judge of the High Court

Richway Ponnampalam and Dilys H Chua (CHP Law LLC) for the applicant;
Leong Choi Fun (Tan Kim Seng & Partners) for the first and second respondents.

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[33] Respondents' Affidavit dated 1 February 2021 at p 14.

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