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

[2026] SGHC 6

Originating Application No 3 of 2024

Between

Farooq Ahmad Mann (in his capacity as the private trustee in bankruptcy of Li Hua)

… *Claimant*

And

Xia Zheng

… *Defendant*

GROUNDS OF DECISION

[Insolvency Law — Avoidance of transactions — Transactions at an undervalue — Whether transfer of property pursuant to ancillary relief order may be challenged as a transaction at an undervalue — Section 361 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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Farooq Ahmad Mann (in his capacity as the private trustee in bankruptcy of Li Hua)
v
Xia Zheng

[2026] SGHC 6

General Division of the High Court — Originating Application No 3 of 2024
Aidan Xu J
14 July, 2 September 2025

13 January 2026

Aidan Xu J:

1 The issues in this application concern the ability of the applicant, the private trustee in bankruptcy ("Private Trustee") of Mr Li ("Bankrupt"), to set aside transfers of property from the Bankrupt to the respondent, Ms Xia, his ex-wife, on the basis of dishonesty and collusion in obtaining the grant of interim judgment in their divorce proceedings. Some transfers were indeed set aside, but I declined to extend the order to the proceeds from the sale of the various properties. The applicant and the respondent have each appealed.

Background

2 Much of the background and history of these proceedings have been described in prior grounds and judgments, including *Farooq Ahmad Mann v Xia Zheng* [2024] SGHC 182 ("*Mareva* Judgment"), which dealt with the *Mareva* and proprietary injunctions sought by the Private Trustee against the respondent.

In brief, the present case concerned the substantive application by the Private Trustee to recover various assets in the hands of the respondent. This background will only summarise the context briefly.

3 The Bankrupt was alleged to have used two companies under his and the respondent's control to run a fraudulent investment scheme.[1] The allegations were that one of these companies, Sunmax Global Capital Fund 1 Pte Ltd ("Sunmax"), was used to obtain payments from investors, while the other, SMGC Pte Ltd ("SMGC"), was used to siphon off the funds to the Bankrupt and the respondent's own pockets.[2] The alleged fraud was large, affecting some $65.7m which had been invested in Sunmax by investors in the period between 2009 and 2012.[3] During this period, the Bankrupt and the respondent purchased or repaid the mortgage loans taken on properties in Singapore, which they held as joint tenants.[4] The applicant alleged that the properties were acquired through misuse of the moneys invested in Sunmax.

4 In July 2016, Sunmax informed its investors that they were facing substantial losses on their investments.[5] Subsequently, a wave of litigation from various disgruntled investors was commenced against Sunmax and the Bankrupt.[6] It was alleged that the Bankrupt began taking steps to dissipate his assets to the respondent to put them out of reach of the creditors.

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1 1st Affidavit of Farooq Ahmad Mann dated 5 January 2024 ("FAM-1") at para 18.

2 FAM-1 at paras 18, 39–40.

3 FAM-1 at para 24.

4 FAM-1 at para 42.

5 FAM-1 at para 44.

6 FAM-1 at para 45.

5 In July 2019, around the same time as the sale of one of the properties, the Bankrupt and the respondent entered into an interim judgment by consent ("Interim Judgment") in the Family Court, under which all of the Bankrupt's assets in Singapore, including his interests in the properties, were transferred to the respondent. The Bankrupt remained responsible for making the mortgage repayments on the various properties and also had to pay child maintenance to the respondent.[7]

6 Shortly after this, other properties were sold, and the proceeds were paid to the respondent.[8]

7 In the present application, the Private Trustee applied to reverse property transfers made by the Bankrupt to the respondent under s 361 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") for being undervalued transactions, or in the alternative, under s 73B of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA") for being fraudulent conveyances.[9]

8 I found largely in favour of the applicant. However, the applicant has appealed against the aspect of my decision not to award interest on the value of the sale proceeds which were used to make various payments. The respondent has also appealed against my decision in favour of the applicant.

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7 FAM-1, Tab 17 at pp 407–408.

8 FAM-1 at paras 61–62.

9 Claimant's Written Submissions in HC/OA 3/2024 dated 4 July 2025 ("CWS") at para 2.

Summary of the applicant's case

9 The applicant argued that the transfers of the properties through the Interim Judgment were undervalued transactions which may be reversed under s 361 of the IRDA.[10] There was collusion and dishonesty involved in obtaining the Interim Judgment, given the timing and the suspicious circumstances surrounding it, including the one-sided division of assets and misrepresentation of the parties' living arrangements, as well as their post-judgment conduct. The agreement entered into in Shanghai in 2013 between the parties ("Shanghai Agreement") was also suspect, as it was concluded the same month that Sunmax received money from its investors and the parties continued to live together even after their supposed divorce.[11] All of the transferred properties should thus be revested in the Private Trustee, or alternatively, the remaining significant assets, namely, the property at Orchard Boulevard ("Orchard Property"), the shares in USP Group Limited ("USP Shares") and the vehicle, should be revested.[12]

Summary of the respondent's case

10 The respondent argued that the Shanghai Agreement, under which the Bankrupt had ceded all his interest, was valid and binding, and that all this had occurred before any creditor issues arose.[13] There was, in any event, insufficient evidence of collusion, which required a high burden of proof.[14] There was no evidence that the respondent knew of the Bankrupt's difficulties, and there were

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10 CWS at para 43.

11 CWS at para 41(f).

12 CWS at paras 58–59.

13 Defendant's Written Submissions in HC/OA 3/2024 dated 8 July 2025 ("DWS") at paras 5–10.

14 DWS at paras 29–31.

plausible reasons for the circumstances relied upon. There was accordingly no undervalued transaction.

The decision

11 I was satisfied that the application for reversal of the property transfers under s 361 of the IRDA should be allowed. The transfers effected by way of the Interim Judgment were undervalued transactions caught by s 361 of the IRDA. The Interim Judgment was not disturbed. It was only the transfers of the properties that were reversed, as considered by this court in the earlier *Mareva* Judgment. I also found that the transfers were at an undervalue, as they were made through collusion. The evidence relied upon, particularly the one-sided allocation of property in the Interim Judgment, together with the actions of the respondent in withdrawing funds, the lack of information or substantiation of bare assertions about the assets in her hands and what was done with the properties and funds, as well as the surrounding circumstances, including the coincidence of the divorce deed with the investment activity, all pointed to the very strong inference that the property transfers to the respondent by the Bankrupt were done deliberately at an undervalue. The evidence showed that the property transfers were the product of collusion to evade the creditors of the Bankrupt, instead of being based on factors going towards the just and equitable division of matrimonial assets under the Women's Charter 1961 (2020 Rev Ed). There was no proper basis for the terms of the disposition under the Interim Judgment, as it was tainted by collusion. The explanations invoked by the respondent were insufficient to rebut this conclusion. They were bare and bereft of detail or substantiation that would have given some credibility to what was being asserted.

12 I accepted that the orders made should be those sought by the applicant. The transfers under the Interim Judgment, having occurred at an undervalue, ought to be reversed. The assets involved, according to the terms of the Interim Judgment (which was made final), included:[15]

(a) the following matrimonial properties:

(i) a unit at Duchess Road;

(ii) a unit at Leedon Heights;

(iii) a unit at Duchess Avenue;

(iv) the Orchard Property; and

(b) all other matrimonial assets transferred, including the shares and credit balance in the Bankrupt's Singapore bank accounts.

13 I accepted that the objectives of the relief should be disgorgement and reversal to the pre-existing position as far as possible. Based on what was before me, I did not think that my order should extend to the sale proceeds unless those were shown to remain in the respondent's hands. Thus, in the present case, I ordered the vesting of the Orchard Property, the USP Shares and the vehicle, as well as interest, in the Private Trustee.

14 I also accepted that an order should be made under s 73B of the CLPA that the transfers of the properties were voidable. In the present circumstances, I similarly ordered that the Orchard Property, the USP Shares and the vehicle, as well as any accumulated interest from the date of the order, were to be vested in the Private Trustee.

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15 FAM-1, Tab 17 at p 408.

Issues arising

15 The Interim Judgment did not bar the making of the orders sought, for the same reasons considered in my *Mareva* Judgment. I will thus discuss this issue only briefly.

16 The primary issue was whether there was evidence of collusion and dishonesty involving the respondent. I found that there was.

17 The other relevant issue concerned the orders for interest that I had made.

Whether revesting may be ordered in the face of the Interim Judgment

18 The applicant maintained its position as in the *Mareva* Judgment that a challenge may be made to the transfers of property under s 361 of the IRDA, without requiring the Interim Judgment to be set aside.[16] The respondent did not really take a different line – her position was that the Interim Judgment barred the claim unless there was fraud or collusion, which she denied.[17]

19 As noted in the *Mareva* Judgment at [62], there is a valid distinction between challenging a judgment and reversing transfers effected under that judgment. An order under s 361 of the IRDA did not rescind the transactions: the transactions remained valid and untouched. The effect of a s 361 order was to restore the parties to the positions they would have been in if the transactions had not occurred. The Interim Judgment was not being set aside, rescinded or discharged.

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16 CWS at para 24.

17 DWS at para 18.

20 While the default position is that the transfer of property through an order for the division of matrimonial property would be a transaction for which the wife was taken to have provided full consideration of an equivalent value to the transferred property to the husband for the purposes of s 361 of the IRDA, and thus would not be a transaction at an undervalue, it would be otherwise if there was collusion or some other vitiating factor (see *Mareva* Judgment at [88] and [91]).

The claim under s 361 of the IRDA

21 Section 361 reads:

> (1) Subject to this section and sections 363 and 365, where an individual is adjudged bankrupt and the individual has at the relevant time (as defined in section 363) entered into a transaction with any person at an undervalue, the Official Assignee may apply to the Court for an order under this section.
>
> (2) The Court may, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.
>
> (3) For the purposes of this section and sections 363 and 365, an individual enters into a transaction with a person at an undervalue if —
>
> …
>
> > (*c*) the individual enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

22 Essentially, it had to be shown that the transaction was at an undervalue, meaning that the value received by the Bankrupt was significantly less than the value of what was transferred. As explained, for transfers of property under an order for division of matrimonial property, evidence of collusion or dishonesty would be required to displace the default position that full consideration of an equivalent value had been provided.

23 The impugned transfers were within the relevant time period as defined under s 363 of the IRDA, which specifies that for transactions at an undervalue, the transactions must have taken place within three years of the date of the bankruptcy application. In the present case, this three-year period spanned and included the transactions in question (see *Mareva* Judgment at [47]–[48]).

24 The respondent relied on the Shanghai Agreement, which pre-dated this period, to show that there was no collusion or dishonesty.[18] This will be dealt with below.

Evidence of collusion or dishonesty

25 The applicant argued that the transactions either resulted in the Bankrupt receiving no consideration or consideration that was significantly less than the value of what was transferred.[19] The transfers under the impugned Interim Judgment essentially operated to transfer all of the Bankrupt's assets to the respondent, with nothing put into his estate. The only possible justification or basis was that this transfer was in fulfilment of justice and equity accompanying the dissolution of the marriage between the Bankrupt and the respondent. However, that would be nullified if there was anything in the nature of collusion, impropriety or a lack of *bona fides* leading to the Interim Judgment.

26 The respondent justified the terms of the Interim Judgment and its timing by arguing that there was nothing to show any knowledge by the respondent of any attempt to avoid the creditors' demands. She had merely received good offers for the properties in question, and wanted to formalise the divorce terms

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18 DWS at para 10.

19 CWS at para 43.

in Singapore.[20] The terms of the Interim Judgment were also not unusual in the circumstances. According to the respondent, the one-sided allocation of assets was justified as she was the primary caregiver and required financial security. The respondent had also given up maintenance, and the Bankrupt had been earning a high income.[21] All of these considerations would be relevant in matrimonial proceedings, as seen in cases such as *ANJ v ANK* [2015] SGCA 34.

27 A number of authorities were cited by the parties to support their respective positions on whether dishonesty and collusion was made out on the facts here. What mattered to my mind was an assessment of the evidence before me. Thus, cases cited by the respondent such as *Mark Sands v Tarlochan Singh* [2016] EWHC 636 (Ch) and *Ball v Jones* [2008] 2 FLR 1969 did not detract away from the conclusion that there was collusion here.[22] What mattered was the quality of the evidence, and what could be inferred from it. The respondent also relied on the case of *Re Leung Siu Wai* [2020] HKCFI 1502, where the court declined to infer collusion from the circumstantial evidence and the fact of cohabitation.[23] Again, that finding depended on the assessment of the facts there. Cohabitation may not be indicative of anything on its own, but here I had to weigh the cohabitation alongside the cumulative effect of the other suspicious circumstances.

28 I reached similar conclusions as in the *Mareva* Judgment, where I found that there was a good arguable case that the Interim Judgment was the product of collusion between the Bankrupt and the respondent, noting that the terms of

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20 DWS at para 32.

21 DWS at para 34.

22 DWS at paras 21–25.

23 DWS at paras 26–28.

the Interim Judgment were disproportionately skewed in the respondent's favour (see *Mareva* Judgment at [96] and [107]).

29 I accepted the applicant's argument that collusion was displayed by the Bankrupt and the respondent. I found that the individual aspects pointed towards collusion. In addition, the combined and cumulative effect of these aspects brought the allegations of the applicant across the threshold required to prove collusion.

30 Collusion was described by Thorpe LJ in *Hill v Haines* [2008] Ch 412 at [46] as involving the design to adversely affect the creditors:

> These authorities did not, of course, establish that all ancillary relief orders are proof against the claims of the trustee in bankruptcy. Plainly if the ancillary relief order was the product of collusion between the spouses designed to adversely affect the creditors the trustee would intervene in the ancillary relief proceedings and apply for the order to be set aside. …

As such, what would be required was cooperation between the Bankrupt and the respondent to keep the assets out of the estate available to the creditors. I was satisfied that this indeed happened here. While the evidence was circumstantial, and there was no statement or document capturing this cooperation between the parties, the inference from the circumstances was to my mind strong enough to lead to that conclusion.

31 The applicant put forward alternatives to the requirement for a high degree of proof of collusion as required in cases such as *Seagate Technology Pte Ltd v Goh Han Kim* [1994] 3 SLR(R) 836 ("*Seagate*"),[24] but I did not think it appropriate to depart from this. In any event, I found that the high threshold

[24] CWS at paras 36, 38 and 42.

required to prove collusion was met because of the combination and cumulative effect of the evidence here.

32 Firstly, there was a clear imbalance in the benefits from the arrangements. Nothing was left to the Bankrupt: he gave up everything for nothing. He handed over the properties and assets of the marriage entirely to the respondent. Furthermore, he undertook to pay child maintenance. He remained responsible for repaying the mortgages on the properties. This was not a lump sum transfer with the intention of severing relations or limiting obligations, allowing the Bankrupt to start afresh. He handed over all his economic means and financially bound himself.

33 Certainly, there may be parties divorcing who may do so – but one would expect some pattern of behaviour that would telegraph or foreshadow this, within the marriage or before. Nothing of this sort was put in evidence. His altruism and selflessness in the dissolution of the marriage was unheralded. No other explanation was given to lend any weight to this absolute surrender. The court thus had to view this arrangement with grave scepticism.

34 After the divorce, the respondent continued to give support and aid to the Bankrupt through loans. No records were made of these, and no adequate explanation was given. The respondent also paid for the mortgage payments, which were supposedly to be paid by the Bankrupt. The respondent could say that she had no choice but to make the mortgage payments, in order to keep the properties. Yet, no evidence was given of any attempt to recover these payments from the Bankrupt. No remonstration or demand made on the Bankrupt by the respondent was put in evidence.

35 The events surrounding the Interim Judgment also garnered great suspicion. The divorce and Interim Judgment came about at a time when there were increasing demands from the Bankrupt's creditors and the investors. In 2019 itself, claims amounting to more than $10m were commenced against the Bankrupt.[25]

36 There were also continued drawdowns and dissipation of assets even after freezing injunctions were granted. Shortly after a freezing injunction was granted against the Bankrupt, the respondent withdrew large sums from her joint account with the Bankrupt, amounting to a total of $3.4m.[26] Even after a freezing injunction was granted against the respondent, she continued to withdraw sums and dissipate her assets. For example, the respondent allegedly withdrew a sum of $20,580 and also spent $84,300 in just two months on her family's supposed living expenses.[27]

37 The respondent had a pattern as well of not disclosing clearly and candidly her financial position. There were often delays in disclosure of material facts, such as her means as required by the *Mareva* injunction, bank statements and properties that were not disclosed, including those in Shanghai, and sources of cash and funds that were not explained.[28]

38 A private investigator's report showing the activities of the Bankrupt in 2021 was also tendered and relied upon by the applicant.[29] On the one hand, as

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25 FAM-1 at para 57; CWS at para 41(b).

26 5th Affidavit of Farooq Ahmad Mann dated 9 December 2024 at para 33; CWS at para 41(h).

27 7th Affidavit of Xia Zheng dated 16 December 2024 at para 7; CWS at para 41(j)–(k).

28 CWS at para 41(k).

29 FAM-1, Tab 22 and para 66(d)–(e).

highlighted by the respondent, I accepted that doubts about some aspects of the investigation did exist, such as the duration of the investigation and the precise circumstances of the interactions between the respondent and the Bankrupt. The respondent claimed that the Bankrupt no longer lived together with her at the time of the report.[30] On the other hand, the applicant pointed to the respondent's own affidavit evidence that they had lived in the same apartment until 2021 in separate bedrooms.[31] As it was, I did not set great store by either the private investigator's report or the continued cohabitation of the parties. What mattered more, to my mind, were the circumstances surrounding the properties and funds.

39 The upshot of all the evidence was that, cumulatively, the inference that could be drawn was that there was no real separation of assets and funds between the Bankrupt and the respondent. There was continued intermingling and pooling of assets for their common objectives, whatever this may have been. The only other conclusion that could be drawn was that this was to evade the obligations owed to the creditors of the Bankrupt, which therefore meant that the Interim Judgment was tainted to the bone with collusion and dishonesty. No other reasonable and credible explanation was put forward by the respondent. On the civil standard, therefore, the applicant's case was made out.

40 The respondent argued that there had to be specific evidence of actual collusion. The respondent submitted that "[c]ircumstantial evidence has been

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30 DWS at paras 40–41.

31 6th Affidavit of Xia Zheng dated 25 October 2024, Tab 6 at para 1(g) of the Statement of Particulars in FC/D 2823/2019; CWS at para 41(g).

held to be insufficient to prove a conspiracy".[32] However, this was not supported by the authority cited. The Court of Appeal in *Seagate* stated at [15] that:

> The essence of conspiracy is an agreement, and the question is whether the appellants had proved there was in existence an agreement or at least some arrangement between [the parties involved] to defraud the first appellants; and a high degree of proof is required …

41 The Court of Appeal then went on at [21] to state:

> … Looking at the evidence in totality, we are not persuaded that the circumstantial evidence relied upon by the appellants led ineluctably to the inference that [the parties involved] were acting in concert pursuant to an agreement to cheat the first appellants. …

This was not a rejection of circumstantial evidence as the respondent argued. Rather, it was a reminder that there had to be a high degree of proof for collusion to be made out. Often, circumstantial evidence falls short. Here, given the piling on of all the different evidence, it did not.

42 The respondent further argued that the matter should have been pursued by way of an originating claim, with the opportunity for cross-examination.[33] This argument, I found, did not serve her well at all: if anything, the absence of cross-examination worked in her favour. The applicant had nothing to be tested on in cross-examination. The evidence would have had to come from the respondent. As it was, on the respondent's own evidence together with the concatenation of objective evidence, such as when the various transactions took place, the backdrop of the investment failure and the like, there was sufficient material from which dishonesty or collusion could be inferred without requiring any buttressing from cross-examination at all.

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32 DWS at para 30.

33 DWS at para 27.

43 The respondent alluded in the course of her submissions to an affidavit whose filing had been refused by the assistant registrar.[34] That ruling stood, and the affidavit was not before the court, nor was there any application or appeal against the assistant registrar's decision. In any event, I would emphasise the need for finality in proceedings, which should only be disturbed if good reasons were shown for non-compliance with procedural requirements. Furthermore, the issue of cohabitation, which would seem to be the primary focus of this additional affidavit, was not one that affected the outcome materially.

44 All in all, then, there was clearly evidence of collusion between the Bankrupt and the respondent to put assets out of the reach of the Bankrupt's creditors. Additionally, I found that, based on the evidence above, there was sufficient evidence to infer dishonesty on the part of the respondent.

The Shanghai Agreement

45 The Shanghai Agreement between the Bankrupt and the respondent did not detract away from the conclusion that the Interim Judgment was obtained dishonestly or through collusion.

46 The Shanghai Agreement was entered into before the factors or aspects that provided the basis for the finding of dishonesty or collusion. However, this pre-dating did not help the respondent at all, given the strength of the inference from all the other factors. If anything, it suggested instead, to my mind, that there was something oddly suspicious and pre-planned about the allocation of assets under the Interim Judgment. Again, no explanation was given by the

[34] DWS at para 43.

respondent about why things were done in this way, which was so far out of the ordinary and expected course of a breakdown of a marriage.

47 Thus, the fact that the agreement may be regarded as valid under Chinese law did not assist the respondent. Whatever its legal nature, it was yet another nail in the coffin showing that the whole set of transactions between the Bankrupt and the respondent was at least highly suspect, and in the circumstances, pointed sufficiently to collusion and dishonesty in the obtaining of the Interim Judgment.

48 The respondent argued that the Shanghai Agreement was the operative instrument by which the interests in the Singapore properties were transferred.[35] I accepted and preferred the argument of the applicant that the Shanghai Agreement did not transfer any interest in the Singapore properties: nothing was done pursuant to the Shanghai Agreement, and the couple did not do anything about their marriage till six years later. In particular, the property at Leedon Heights was purchased in the parties' joint names more than two years after the parties had allegedly been divorced under the Shanghai Agreement.[36] This same property was thereafter jointly mortgaged in 2018, five years after the Shanghai Agreement was entered into.[37] This conduct of the Bankrupt and the respondent showed that they acted as if the agreement did not exist. In the circumstances, the Shanghai Agreement was nothing more than a part of the same camouflage to squirrel assets away from the creditors. It could not, to my mind, confer any protection on the respondent.

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35 DWS at para 10.

36 CWS at para 41(f).

37 CWS at para 41(f).

49 I should note as well that the Shanghai Agreement could not operate on its own to transfer the property interests in Singapore. Even if the Shanghai Agreement operated in contract, and was valid under Chinese law, it could not dispose of the interests in real property in Singapore. At the very least, various formalities and registrations would have been required. Nothing was done. That showed its ineffectiveness and also pointed to its lack of genuine effect, as dealt with above.

50 There was also no advancement of any interest in the properties to the respondent, nor any presumption of such advancement. The factors listed above instead suggested that the ownership interests in the properties continued to be held by the Bankrupt, or that the purported interest of the respondent was a sham or was not genuine.

The claim under s 73B of the CLPA

51 The alternative argument made by the applicant was based on s 73B of the CLPA. Section 73B reads:

> 73B.—(1) Except as provided in this section, every conveyance of property, made whether before or after 12th November 1993, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.
>
> (2) This section does not affect the law relating to bankruptcy for the time being in force.
>
> (3) This section does not extend to any estate or interest in property disposed of for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the disposition, notice of the intent to defraud creditors.

52 Section 73B of the CLPA was repealed when the IRDA came into force in 2020, but it applied to the transactions in question. For the same reasons as in respect of s 361 of the IRDA, I was of the view that there was sufficient

cumulative evidence to show that the conveyance of interest through the Interim Judgment was tainted by dishonesty and collusion between the parties, which led to the inference that there was fraud implicating the Bankrupt. In this regard, I would also take the word "conveyance" at a broad meaning in this context.

53 The applicant argued that s 73B of the CLPA was engaged as there was a conveyance of property, with intent to defraud creditors, which caused prejudice to the applicant. As with s 361 of the IRDA, the Interim Judgment did not bar an order under s 73B from being made. The respondent argued that no fraud, including constructive fraud, was established on the evidence.

54 As the applicant's claim was made out under s 361 of the IRDA, I will only deal with s 73B of the CLPA briefly. It is trite that constructive fraud would suffice to invalidate the transfers under s 73B of the CLPA. This would be made out if the transferor was, at the point of the conveyance, indebted to the extent of insolvency, or became so as a result of the conveyance. The intent to defraud creditors would, in such circumstances, be attributed to the transferor (see *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 at [29] and [33]).

55 At the point of the conveyance in 2019, I was satisfied that the Bankrupt was indebted to the extent of insolvency, which led to the conclusion that there was constructive fraud on his part. As noted previously, the Bankrupt was facing a multitude of claims around the time of the Interim Judgment. From 2018 to 2021, claims amounting to more than $30m were filed against the Bankrupt, with more than $10m claimed in 2019 alone.[38] Taken together with the collapse of Sunmax from 2016 onwards involving over $65m of investment moneys, the Bankrupt's ongoing mortgage obligations, as well as the absence of a source of

[38] FAM-1 at para 57.

income, the Bankrupt was indebted to the extent of insolvency either at the point of the transfers, or at the very least, as a result of it, such that constructive fraud may be imputed to him.

56 In addition, the timing of the divorce proceedings in Singapore was also strongly indicative of the Bankrupt's intent to defraud. The divorce proceedings were only commenced after a letter of demand was sent by one of the creditors.[39] As noted, there was no clean break between the parties. The inference would be that there was a clear intent involving the Bankrupt together with the respondent to defraud the creditors of the Bankrupt in obtaining the Interim Judgment. The burden was also on the respondent under s 73B(3) of the CLPA to show that the transfers were for valuable consideration and in good faith, and that she had no notice of the intent to defraud creditors at the time of the disposition. There was nothing of this sort, given the problems with the Interim Judgment and the surrounding circumstances.

Reliefs

57 Relief was ordered in respect of the following assets:

(a) the Orchard Property;

(b) the USP Shares; and

(c) the vehicle.

58 These assets were all implicated in the transfers impugned in the Interim Judgment, and caught by the collusion and dishonesty between the parties.

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[39] FAM-1 at paras 58 and 59.

59 However, the order for relief did not extend to the proceeds from the properties that were sold. I did not find that there was sufficient evidence before me that those proceeds were in the hands of the respondent. There may be some suspicion of this, but that, to my mind, would not be enough. I understand that there is no appeal on this aspect of my decision.

60 Interest was ordered in respect of the assets which were ordered to be revested in the applicant. However, no interest was ordered in respect of the sale proceeds used by the respondent to make mortgage repayments for the Orchard Property and to purchase the USP Shares and the vehicle. I could not see that such an order could be made in the circumstances, since the scope of the relief I had made was in respect of assets in the hands of the respondent only. Interest on funds used to purchase these various other properties would appear to me to be outside the scope of what I had ordered. In any event, even if it was available in principle, I would not have exercised my discretion to so order. To my mind, the appropriate limit of the order would be to reverse and grant interest only on any value clearly in the hands of the respondent. In so far as any proceeds were used for these other assets, they would have been subsumed in the value of those assets, and awarding interest would, to my mind, not be justified here.

61 Costs were ordered in favour of the applicant.

Aidan Xu
Judge of the High Court

Tham Lijing and Lim Rui-Qi Rochelle (Tham Lijing LLC) for the claimant;
Goh Seow Hui and Yuan Jingjie (Bird & Bird ATMD LLP) for the defendant;
Derek Tan Chang Shen (Quahe Woo & Palmer LLC) for the non-party liquidator of Sunmax Global Capital Fund 1 Pte Ltd (in compulsory liquidation) (watching brief).
