IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 83

Civil Appeal No 215 of 2019

Between

Ooi Chhooi Ngoh Bibiana

… *Appellant*

And

(1) Chee Yoh Chuang
care of RSM Corporate Advisory Pte Ltd, as joint and several Private Trustees in Bankruptcy of the bankruptcy estate of Freddie Koh Sin Chong, a Bankrupt

(2) Lin Yueh Huang
care of RSM Corporate Advisory Pte Ltd, as joint and several Private Trustees in Bankruptcy of the bankruptcy estate of Freddie Koh Sin Chong, a Bankrupt

… *Respondents*

In the matter of HC/Originating Summons No 1017 of 2019

In the matter of Section 18(2) read with paragraph 2 of the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)

And

In the matter of 79 Neram Road, Singapore 807774

Between

(1) Chee Yoh Chuang
care of RSM Corporate Advisory Pte Ltd, as joint and several Private Trustees in Bankruptcy of the bankruptcy estate of Freddie Koh Sin Chong, a Bankrupt

(2) Lin Yueh Huang
care of RSM Corporate Advisory Pte Ltd, as joint and several Private Trustees in Bankruptcy of the bankruptcy estate of Freddie Koh Sin Chong, a Bankrupt

… *Applicants*

And

Ooi Chhooi Ngoh

… *Respondent*

GROUNDS OF DECISION

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

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Ooi Chhooi Ngoh Bibiana
v
Chee Yoh Chuang (care of RSM Corporate Advisory Pte Ltd, as joint and several private trustees in bankruptcy of the bankruptcy estate of Freddie Koh Sin Chong, a bankrupt) and another

[2020] SGCA 83

Court of Appeal — Civil Appeal No 215 of 2019
Andrew Phang Boon Leong JA, Chao Hick Tin SJ and Quentin Loh J
6 August 2020

24 August 2020

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 This appeal concerned an application by private trustees in bankruptcy ("the PTIBs") under s 18(2) read with para 2 of the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA") for the court to order a sale of property ("the Property") in circumstances where the non-bankrupt co-owner of the Property, *ie*, the appellant, Ooi Chhooi Ngoh ("Mdm Ooi"), still lives in the Property. The High Court judge ("the Judge") in *Chee Yoh Chuang and another v Ooi Chhooi Ngoh* [2020] SGHC 35 ("the GD") ordered the sale of the Property after balancing the potential prejudice that would be suffered by Mdm Ooi and members of her family living in the

Property, as well as the potential prejudice that would be suffered by Koh Sin Chong Freddie's ("Mr Koh") sole unsecured creditor, the Singapore Swimming Club ("the SSC"), and ultimately found that the balance lay firmly in favour of the sale of the Property. Mdm Ooi appealed against that decision and, in the event the sale of the Property was ordered, asked that the sale be delayed by at least two years in the light of the COVID-19 pandemic.

2 Having carefully considered the parties' written as well as oral submissions, we agreed with the Judge's decision and dismissed the appeal. We now give the detailed grounds for our decision. It would be useful to first set out the factual background as well as the Judge's findings before we explain our reasons for dismissing the appeal.

Facts

3 Mdm Ooi and her now bankrupt husband, Mr Koh, purchased the Property in 1977 and financed its purchase through an overdraft facility extended by DBS Bank Ltd ("DBS"), which was secured by a mortgage on the Property. Both Mdm Ooi and Mr Koh initially held the Property as joint tenants. Since its purchase, the Property also came to be occupied by their second son, their daughter-in-law, their grandson and their domestic helper (whom we will refer to collectively as "the occupants").

4 The Property is a semi-detached property with a 999-year leasehold and with a built-up area of around 4,800 square feet and was valued at $5.7 million in 2016, as indicated by Mr Koh's Statement of Affairs in 2016. It appears that the Property had been listed for sale sometime in 2012 on a property listing website www.propertyguru.com.sg ("the Website"), with the asking price stated to be $7.8 million.

5 On 4 August 2016, a bankruptcy order was made against Mr Koh ("the Bankruptcy Order") and the Official Assignee ("the OA") was appointed as the trustee of his estate. As at 10 August 2016, Mr Koh owed DBS $1,408,724.83 for the mortgage on the Property and the SSC $1,832,653.05. The debt owed to the SSC, which was unsecured, represented the judgment debt (including interest) owed to the SSC arising from a successful claim by members of the SSC against Mr Koh (the judgment is reported in *Singapore Swimming Club v Koh Sin Chong Freddie* [2016] 3 SLR 845 ("*Singapore Swimming Club*")).

6 On 25 July 2018, the OA wrote to Mr Koh to inform him that his share in the Property had vested in the OA as trustee of the estate for the benefit of his creditors, pursuant to s 76(1)(*a*)(i) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("the Bankruptcy Act"). The OA also requested Mr Koh to inform him whether (a) Mdm Ooi would be able to buy over his 50% share in the Property at market value; (b) whether he would be able to find a third party buyer for the Property; or (c) if there was no intention to sell the Property, if he could satisfy his debts in full.

7 On 6 August 2018, Mr Koh wrote back stating that Mdm Ooi would not able to buy over his share of the Property and that neither of them had any intention to sell the Property. Mr Koh also said that he would not be able to settle his debts in full.

8 On 15 March 2019, the OA wrote to Mr Koh, asking that Mr Koh sell the Property on the open market for the benefit of his creditors. The OA stated that an appropriate replacement accommodation for Mr Koh and his family would be a Housing & Development Board ("HDB") flat, and that the proceeds from the sale of the Property would allow Mr Koh to settle his debts in full and annul the Bankruptcy Order. Mr Koh was also informed that any HDB flat he

bought would not vest in the OA so long as one of its owners was a Singapore citizen.

9 On 27 March 2019, Mr Koh responded and repeated his position in the letter of 6 August 2018.

10 On 21 May 2019, the PTIBs were appointed in place of the OA to administer Mr Koh's estate. It appears that the PTIBs met Mr Koh on 17 June 2019 to discuss the abovementioned matters. Subsequently, on 24 June 2019, the PTIBs wrote to Mdm Ooi mentioning the earlier letters between Mr Koh and the OA on 6 August 2018 and 25 July 2018. In the 24 June 2019 letter, the PTIBs gave Mdm Ooi seven days to inform them whether she or her children would be able to buy over Mr Koh's half-share in the Property, or whether Mr Koh and Mdm Ooi would be prepared to put the Property up for sale, failing which the PTIBs would take the necessary steps to apply to court to sell the Property.

11 On 8 August 2019, the PTIBs filed the present application in Originating Summons No 1017 of 2019 seeking an order that the Property be sold.

12 Mr Koh is now 74 years old and has been retired since 2006, save for a six month period in 2013. It is common ground that he does not have income from which he can pay off his debts to the SSC. His only substantial asset is the half-share in the Property.

The decision below

13 The sole issue considered by the Judge below was whether the Property ought to be sold. The Judge dealt first with the preliminary issue of the court's power to order a sale of a property upon the application of the OA or a trustee

in bankruptcy. The Judge held that the court's power was rooted in s 18(2) read with para 2 of the First Schedule of the SCJA and noted that there was no difference between an application by a non-bankrupt co-owner and an application by the OA or trustees in bankruptcy who represent the interests of a bankrupt's creditors. In support of this proposition, the Judge referred to the OA's powers to sell a bankrupt's property under ss 111(*a*) and 112(*b*) of the Bankruptcy Act and the trustee in bankruptcy's powers under s 36(1)(*b*) of the Bankruptcy Act (see the GD at [14] and [15]).

14 In deciding whether the Property ought to be sold upon the application of the PTIBs, the Judge was of the view that not all the factors in the decision of this court in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") were applicable. He was of the view that it was unnecessary to consider the state of the relationship between the parties (*ie*, Mdm Ooi and the PTIBs) as well as the prospect of their deteriorating relationship in the future. In determining whether the Property should be sold, the Judge found that it would be relevant to consider not only the interests of the individuals who may be directly affected by the sale but also the interests of the creditors of the bankrupt co-owner (see the GD at [25]).

15 The Judge balanced the prejudice that would be suffered by Mdm Ooi and the occupants on the one hand against the prejudice that would be suffered by the SSC on the other, placing particular emphasis on the fact that Mdm Ooi and Mr Koh would be left with sufficient sums to purchase alternative accommodation to live and house the occupants of the Property, as well as the fact that but for the sale of the Property, the SSC would never be able to recover the debt owed by Mr Koh. Significantly, the Judge also stressed that had less than a year elapsed between the making of the Bankruptcy Order and the application for the sale, he would have been prepared to delay the sale.

However, given that the SSC had already waited for more than three years to reclaim its debt, he deemed it "necessary and expedient" to order the sale of the Property.

The appellant's case

16 The crux of Mdm Ooi's case on appeal was that the Judge had formulated a *new* legal test to determine whether the court should order the sale of co-owned property as he had applied a truncated set of the factors in *Su Emmanuel* and had reduced the multi-faceted approach in that case to one which focuses only on comparing the prejudice suffered by a co-owner living on the property with the prejudice suffered by the bankrupt's creditors. She argued that the Judge's approach was weighted in favour of creditors' interests because they appeared to have a *prima facie* right to have property sold to secure repayment of their debts, whereas a co-owner living on the property could only resist the application for a sale if he or she was unable to find feasible accommodation or was able to establish irremediable and exceptional hardship. In this respect, she pointed to the Judge's consideration of whether sufficient time and opportunity had been given to her to source for alternative accommodation as implying that a co-owner living on the property had a pre-existing duty to sell the property *before* an application to court was made.

17 Mdm Ooi submitted that the Judge's approach reduced the threshold for the sale of property to one that was lower than that which was required for a solvent co-owner. She claimed that such an approach was problematic because the court was not well-placed to weigh the interests of creditors (which are different in nature) as against the interests of a non-bankrupt co-owner living in the residential property. Mdm Ooi also said that the Judge's approach of favouring creditors by default did not cohere with the important role that home

ownership plays in Singapore, and that an approach that presumptively favoured a bankrupt's creditors was a sensitive policy decision that must be left to Parliament. By prioritising the creditor's interests over the interests of a co-owner living on the Property, she asserted that the Judge had contravened the limits imposed on the role of public policy in judicial decisions.

18 Instead of adopting the Judge's approach below, Mdm Ooi suggested that the court ought to *first* consider factors such as the homeowner's life situation, his or her previous conduct, the current state of the property, and its current usage, to determine whether the property was an asset suitable for realisation in bankruptcy *or* property that should be viewed as a "permanent haven" for the non-bankrupt co-owner. This approach would be more consistent with s 78(2)(*c*) of the Bankruptcy Act and the policy rationale behind protecting HDB flats in Singapore, which Mdm Ooi submitted applied by way of analogy to private residential properties. Under this approach, the court would only order a sale where it could be established that the non-bankrupt co-owner would suffer minimal or no prejudice.

19 Applying her proposed test, Mdm Ooi highlighted the following factors:

(a) She had been living in the Property for more than 42 years.

(b) The purchase of the Property was financed by the sale of her first marital property which was, in turn, financed by her.

(c) The Property was purchased as a joint tenancy.

(d) The Property was being occupied not only by her, but by her second son and his family. Indeed, the Property had originally been purchased with the aim of developing it into a long-term multi-

generational family home and Mdm Ooi and Mr Koh had in fact willed the Property to their second son.

(e) Mdm Ooi and Mr Koh are the primary caregivers of their grandchild, who lives on the Property.

(f) Little weight should be placed on the fact that the Property was advertised on the Website, as this was done more than seven years ago.

Our decision

20 The sole issue arising in this appeal was whether the court should order the sale of the Property upon the application of the PTIBs.

21 Reading s 18(2) with para 2 of the First Schedule of the SCJA, the High Court has the power to direct a sale of land where it appears *necessary or expedient*. In *Su Emmanuel*, this court traced the history of the court's power to direct a sale and referred to a number of decisions which involved applications for sale by non-bankrupt co-owners. None of the decisions concerned an application by the OA or trustees in bankruptcy who represent the interests of a bankrupt's creditors. Save for the decision by the Judge below, it appears that no reported decision has considered an application by the OA or trustees in bankruptcy. In the circumstances, we think it useful to emphasise that the court's power to direct a sale under s 18(2) read with para 2 of the First Schedule of the SCJA is a ***general power***. There is no reason in principle why there ought to be a distinction between the general applicable principles dealing with an application by a non-bankrupt co-owner and an application by the OA or trustees in bankruptcy. In this respect, we align ourselves with the Judge's analysis at [15] of the GD, where he makes much the same point. The overarching directive is that the court may order a sale where it is "*necessary or*

expedient" to do so, although it is clear that the specific interests concerned might be different where the OA or a trustee in bankruptcy makes an application to court, especially given the fact that they represent the interests of the bankrupt's creditors and that such interests are solely financial in nature.

22 As the nub of Mdm Ooi's case on appeal was the *legal* approach adopted by the Judge in determining whether the sale of the Property ought to be ordered, it is necessary to explain in greater detail the Judge's approach in arriving at his decision.

23 In the GD, the Judge referred to [57] of *Su Emmanuel* where it was held that "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***…" [emphasis added]. At [57] of *Su Emmanuel*, various factors were listed in determining whether it is necessary or expedient to order a sale. The Judge concluded that not *all* the *Su Emmanuel* factors were relevant, in particular, the state of the relationship between the parties and the prospect of the relationship between the parties deteriorating if a sale is not granted, as these factors were specifically tailored towards an application by a non-bankrupt co-owner and had been derived from case law involving non-bankrupt co-owners invoking the court's power of sale (see the GD at [21] and [22]).

24 In the context of an application by the OA or a trustee in bankruptcy, the Judge stressed that it was important to consider the interests of the creditors of the bankrupt co-owner of the property, but that the *general rule* is that the court "should consider *all the relevant facts and circumstances of the case* and conduct a ***balancing exercise***" [emphasis added] (see the GD at [26]). The Judge highlighted a non-exhaustive set of factors which could be taken into

account in this balancing exercise in a case involving the OA or a trustee in bankruptcy (see the GD at [26]), as follows:

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

25 In our judgment, the Judge had correctly identified the general principle, which is that the court must consider *all the facts and circumstances of the case* and conduct a ***balancing exercise*** of the various considerations and interests at play in determining whether a sale should be ordered. Indeed, this balancing approach may be said to be the ***raison d'etre*** in deciding any application under s 18(2) read with para 2 of the First Schedule of the SCJA. Each case, however, would ultimately give rise to *different interests* and the *weight* to be given to the

relevant factors would ultimately depend on the *precise facts and circumstances of each case*. Once it is appreciated that the test is a question of ***balance***, it cannot possibly be said that the test is inherently poised in favour of any single party. Indeed, it bears reiterating that, consistently with this test, the list of factors set out by the Judge (see [24] above) is (correctly, in our view) *non*-exhaustive in nature.

26 In this vein, we would also caution against a categorical rule that the relationship between the parties and the prospect of the relationship between the parties deteriorating is *always* irrelevant in a case involving the OA or a trustee in bankruptcy. While this might be true in *most* cases, it should be emphasised that each case turns on its *own facts*. It is not inconceivable that the relationship between the OA or a trustee in bankruptcy and the non-bankrupt co-owner could be relevant in an unusual case. On the facts of the present case, however, we are satisfied that the Judge was correct in disregarding the two *Su Emmanuel* factors (referred to above at [23]) as there was nothing to suggest that the state of the relationship between the PTIBs and Mdm Ooi or the prospect of their relationship deteriorating if a sale was not granted was relevant.

27 Given that the Judge had applied a *balancing exercise* and had carefully considered the degree of prejudice that would be suffered by *both* the SSC *as well as Mdm Ooi and her family*, there is no merit to the suggestion that the Judge had established a legal test that inherently favours the interests of creditors above the interests of the non-bankrupt co-owner living on the property. The Judge did not apply a presumption or a starting point that the potential prejudice suffered by the creditors would *inevitably* be greater than the prejudice that would be suffered by the co-owner living in the property. And, as we have mentioned above, the general rule applied by the Judge (again,

correctly in our view) was that the court should consider *all* the relevant facts and circumstances and conduct a ***balancing exercise*** (see the GD at [26]).

28 In so far as Mdm Ooi's submission that the Judge's observation that "sufficient time and opportunity had been given to her to source for alternative accommodation" suggested a legal *duty* on her part to sell the Property even *before* an application for sale of the Property is made to court is concerned, we respectfully disagree. It is clear from the context of the Judge's analysis at [41] and [42] of the GD that the length of time which had been afforded to Mdm Ooi was one of the factors taken into account in the balancing exercise and in his assessment of the potential prejudice that would be suffered by the parties. This was made clear at [41] of the GD where the Judge stated that even if he had underestimated the prejudice caused to Mdm Ooi and her family, he remained assured in his decision by the fact that Mdm Ooi and the other occupants had been given ample time to make alternative accommodation arrangements. The Judge was not seeking to establish a legal duty on the part of the non-bankrupt co-owner.

29 Neither did the Judge, in our view, apply an altogether *different* test than that was set out in *Su Emmanuel* in deciding whether an order of sale should be made upon the application of a PTIB. The Judge had applied the general rule set out at [57] of *Su Emmanuel*, but on the particular facts of this case, considered certain factors to be relevant and placed greater weight on these factors.

30 Given our finding that the Judge's approach did not prioritise the creditor's interests above the interests of the non-bankrupt co-owner, it is not necessary to consider Mdm Ooi's submissions as to whether the Judge had

transgressed the limitations imposed on the role of public policy or whether the Judge's approach is contrary to the bankruptcy framework in Singapore.

31 For completeness, we also disagreed with the suggestion that a *different test* ought to apply when the court considers an application for sale made by the OA or a trustee in bankruptcy. There is no reason in principle why the court ought to consider the matter from any particular starting point, given that s 18(2) read with para 2 of the First Schedule of the SCJA contains a broad directive stating that the court may order a sale where it is "necessary or expedient" to do so. Applying a particular starting point in favour of the non-bankrupt co-owner or ordering a sale only where the non-bankrupt co-owner suffers from "minimal or no prejudice" would restrict the broad directive possessed by the court and would be contrary to the general principle that the court is to conduct a ***balancing exercise*** of various factors, having regard to all the relevant facts and circumstances of the case.

32 Mdm Ooi's reliance on the public policy rationale behind the protection of HDB flats, by way of analogy, to justify her proposed approach was equally misconceived. There is no rule of public policy which provides that private residential properties ought to be given special recognition and should be treated as a "permanent haven" for its owner, in a manner similar to HDB flats. Parliament has expressed the public policy of protecting HDB flats from the consequences of bankruptcy in fairly specific terms. For example, Parliament has passed legislation excluding a HDB flat from vesting in the OA on the bankruptcy of its owner (see, for example, s 51(5) of the Housing and Development Act (Cap 129, 2004 Rev Ed) ("the HDB Act")) or from being attached in execution of an order of court except in prescribed situations (see also ss 51(6)(*a*) and 51(6)(*b*) of the HDB Act). There is, notably, no specific public policy pertaining to private residential properties expressed in similar

terms. The only provision relied on by Mdm Ooi, s 78(2)(*c*) of the Bankruptcy Act, provides that s 78(1) of the Bankruptcy Act does not apply to "clothing, bedding, vehicles and other items of equipment as are needed by the bankrupt for the bankrupt's personal use in the bankrupt's employment, business, or vocation". In other words, these stated items are not divisible amongst the bankrupt's creditors. What is significant, however, is that s 78(1) of the Bankruptcy Act provides that the *property of the bankrupt* is itself divisible among his creditors, and that this comprises all such property that is vested in the bankrupt at the commencement of the bankruptcy. *In other words, Parliament has made clear that property,* ***including private residential property****, may be subject to division amongst a bankrupt's creditors.* There is no exception to that rule. In the absence of legislation expressing that private residential property is subject to additional protections (similar to those enjoyed by HDB flats) or a rule of public policy recognising that private residential property ought to be similarly protected, the court cannot adopt an approach in which it orders a sale only where it can be shown that the non-bankrupt co-owner would suffer minimal or no prejudice.

33 We now turn to consider whether the Judge had correctly applied the balancing approach to the particular facts and circumstances of this case.

34 At the hearing before the Judge, Mdm Ooi highlighted, amongst other things, the fact that she has been living in the Property for more than 42 years and that the Property is presently being occupied by her son and his family. As noted above, the Judge emphasised the fact that Mdm Ooi and Mr Koh would receive sufficient sums from the sale of the Property to purchase alternative accommodation, whereas the SSC would never be able to recover the debt from Mr Koh if the Property was not sold. The Judge also stressed that more than three years had passed since the making of the Bankruptcy Order and that he

might have been prepared to delay the sale of the Property if less than a year had passed between the making of the Bankruptcy Order and the present application (see the GD at [29], [42] and [43]).

35 At the outset, we agreed with the Judge's emphasis on the length of time which had passed since the making of the Bankruptcy Order, as well as his observation that the sale might have been delayed if less than a year had passed between the making of the Bankruptcy Order and the present application. This emphasis on time underscores the fact-sensitive nature of the balancing exercise. In this case, the Bankruptcy Order was made on 4 August 2016 and the PTIBs had taken out the present application on 8 August 2019. As at the date of this appeal, almost exactly four years have passed since the making of the Bankruptcy Order.

36 The length of time that has passed should also be viewed in the *context* of all the correspondence between the OA and/or PTIBs and Mr Koh and/or Mdm Ooi. In at least one of the correspondence, the OA and/or PTIBs emphasised that they were *duty bound* to realise Mr Koh's assets for the benefit of his creditors (see, for example, the letter sent to Mdm Ooi on 24 June 2019). There was no indication that the PTIBs had been acting otherwise than in *good faith* in seeking a sale of the Property in this application. It bears highlighting that Mr Koh and Mdm Ooi were both *informed* that they could sell the Property on the open market for the benefit of Mr Koh's creditors, or that one of their children could choose to buy over the Property, or, alternatively, that Mr Koh could settle his outstanding debt such that the Property would no longer be required to be sold. Unfortunately, *none* of these suggestions was taken up, with Mr Koh informing the OA and/or PTIBs that neither he nor Mdm Ooi had any intention of selling the Property (see, for example, Mr Koh's letters on 6 August 2018 and 27 March 2019). There also did not appear to have been any serious

attempt by Mr Koh to pay off the debt owed to the SSC. As the Judge himself had noted three times in the GD (see the GD at [29], [42] and [46]), it was only ***three years*** after the making of the Bankruptcy Order that the PTIBs applied to court for the sale of the Property. We were also of the view that if the suggestions proposed by the OA and/or the PTIBs had been seriously pursued by either Mr Koh and/or Mdm Ooi, the court might have come to a different view on the issue of the sale of the Property.

37 The second crucial factor which the Judge took into account was that not ordering a sale of the Property would mean that the SSC "would ***never*** *be able to reclaim the amount owed to it* together with any accrued interest" [emphasis added] having regard to Mr Koh's age, his other assets, and his lack of an existing stream of income (see the GD at [38]). This aspect of the Judge's decision was (correctly, in our view) not challenged in this appeal. Again, it seemed to us that the situation might have been somewhat different if Mr Koh had other substantial assets which could have been used to satisfy the debt owed to the SSC *or* if he had made a serious attempt to pay off that debt. Unfortunately, that was not the case here and disallowing the sale of the Property would almost certainly have meant that the SSC would ***never*** be able to claim its debt. In the circumstances, the degree of prejudice that would be suffered by the SSC would, as the Judge rightly noted at [37] of the GD, be substantial and incapable of remedy.

38 Whilst we sympathise with Mdm Ooi's situation, particularly as there is no evidence to suggest that she had contributed, benefitted, or was in any way related to the events that led to Mr Koh's bankruptcy or the debt owed to the SSC, the prejudice that she and the other occupants of the Property would suffer would, largely, be mitigated by the fact that Mdm Ooi would likely receive about $2.15 million, with Mr Koh receiving about $300,000, if the

Property was sold at a price of $5.7 million. If the Property was sold at a price of $7.8 million, which was the asking price listed on the Website, Mdm Ooi and the Bankrupt would each receive around $3.2 million and $1.4 million, respectively. There would be sufficient funds from the sale of the Property for Mdm Ooi to buy another property and for Mr Koh to annul his bankruptcy.

39 Finally, we make clear that we did not disregard the sentimental attachment Mdm Ooi attached to the Property simply on account of its listing on the Website in 2012.

40 Having regard to all the facts and circumstances of this case, it was clear that the balance lay in favour of the sale of the Property. However, we recognised the extraordinary circumstances presented by the COVID-19 pandemic and the advanced age of both Mdm Ooi and Mr Koh. We therefore granted Mdm Ooi 12 months from the date of our decision (6 August 2020) to sell the Property and to settle the outstanding debts of Mr Koh, unless the parties could come to some other mutually acceptable arrangement. This would possibly allow the Property to be sold at a higher price and permit Mdm Ooi, Mr Koh, and the occupants sufficient time to locate alternative living arrangements. We also clarified that Mdm Ooi would have conduct of the sale and not the PTIBs as was ordered in the court below although we also encouraged Mdm Ooi to accept the assistance of the PTIBs if such help would aid her in selling the Property.

Conclusion

41 For the reasons set out above, we dismissed the appeal in Civil Appeal No 215 of 2019. Having regard to the respective costs schedules of the parties,

we awarded the respondents costs in the amount of $30,000 (all-in). There will be the usual consequential orders.

Andrew Phang Boon Leong Judge of Appeal	Chao Hick Tin Senior Judge	Quentin Loh Judge

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