

Cheo Sharon Andriesz v Official Assignee of the estate of Andriesz Paul Matthew, a bankrupt
[2013] SGCA 8

Case Number : Civil Appeal No 49 of 2012
Decision Date : 18 January 2013
Tribunal/Court : Court of Appeal
Coram : Sundaresh Menon CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s) : Lim Seng Siew, Susan Tay and Ong Ying Ping (Ong Tay & Partners) for the appellant; Lee Eng Beng SC, Chua Beng Chye, Raelene Su-Lin Pereira, Cheong Wei Yan Ginny and Matthew Teo (Rajah & Tann LLP) for the respondent.
Parties : Cheo Sharon Andriesz — Official Assignee of the estate of Andriesz Paul Matthew, a bankrupt

Insolvency law – Bankruptcy – Bankruptcy effects

[LawNet Editorial Note: The decision from which this appeal arose is reported at [\[2012\] 4 SLR 89.](#)]

18 January 2013

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

Introduction

1 This was an appeal against the decision of the High Court judge (“the Judge”) holding that the disposition of the interest of the appellant’s ex-husband (“the Bankrupt”) in two properties to the appellant (“the Disposition”) pursuant to an interim consent judgment in a divorce suit (“the ICJ”) made between the date of the bankruptcy application against the Bankrupt and the date of the bankruptcy order was void by virtue of s 77(1) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) (“the Act”). The Judge also declined to ratify the Disposition (see *Cheo Sharon Andriesz v Official Assignee of the estate of Andriesz Paul Matthew, a bankrupt* [2012] 4 SLR 89 (“the GD”). The properties in question (collectively, “the Properties”) consist of the matrimonial home at No 35 Kew Drive, Singapore 466104 (“the matrimonial property”) and a condominium in Penang (“the Penang property”).

2 We dismissed the appeal, and we now set out the grounds for our decision.

The facts

3 The salient chronology of events is set out in the table below (with the crucial events highlighted in bold).

Date	Event
10 Aug 2010	Bangkok Bank Public Company Limited (“the Bank”) issued a statutory demand against the Bankrupt for the sum of US\$8,671,681.56.
14 Aug 2010	The statutory demand was served by posting on the front gate of the matrimonial property.

14 Sep 2010	The Bankrupt applied in Originating Summons (Bankruptcy) No 28 of 2010 ("OSB 28/2010") to set aside the statutory demand.
22 Oct 2010	The appellant filed an affidavit in support of OSB 28/2010. In it, she stated that she was present when the statutory demand was served, and that she opened the envelope containing the statutory demand and informed the Bankrupt about it.
4 Nov 2010	The appellant commenced divorce proceedings against the Bankrupt in Divorce Suit No 5600 of 2010.
22 Dec 2010	OSB 28/2010 was dismissed by an assistant registrar ("the AR").
29 Dec 2010	The Bank filed a bankruptcy application against the Bankrupt ("the Bankruptcy Application").
30 Dec 2010	The Bankruptcy Application was served personally on the Bankrupt at the matrimonial property, where the appellant was residing.
3 Jan 2011	The Bankrupt filed a notice of appeal against the AR's decision in OSB 28/2010. As a result, the hearing of the Bankruptcy Application was adjourned.
27 Jan 2011	The Bankrupt's appeal against the AR's decision in OSB 28/2010 was dismissed.
1 Feb 2011	The appellant and the Bankrupt agreed to the ICJ in Divorce Suit No 5600 of 2010. The ICJ included the following terms: [note: 1] ... (c) Subject to the bank's [<i>viz</i>, United Overseas Bank Limited's] [note: 2] approval, the [Bankrupt] shall transfer all his right, title and interest in [the matrimonial property] to the [appellant] within 4 weeks from the date of this Order without consideration and without the [appellant] refunding to the [Bankrupt's] account with [the] Central Provident Fund Board. (d) The [Bankrupt] shall also transfer all his right, title and interest in ... the Penang property ... to the [appellant] within 4 weeks from the date of this Order without consideration. ...
5 May 2011	A bankruptcy order was made against the Bankrupt.
16 May 2011	The Bankrupt filed his Statement of Affairs, which made no reference to his interest in the Properties.
2 Dec 2011	The appellant filed an application to enforce the ICJ. This application was adjourned pending the outcome of her application for ratification of the Disposition.
14 Feb 2012	The appellant applied for, <i>inter alia</i> , ratification of the Disposition. The respondent (<i>viz</i> , the Official Assignee of the Bankrupt's estate) opposed the application, contending that the divorce proceedings were sham proceedings intended to put the Properties out of the reach of the creditors of the Bankrupt.

The decision below

4 In considering the appellant's application for (*inter alia*) ratification of the Disposition, the Judge first set out the relevant provisions of the Act. Section 77(1) of the Act ("s 77(1)") reads as follows:

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. [emphasis added]

5 The period emphasised above in italics will be referred to as "the Relevant Period". Section 77(3)(a) of the Act ("s 77(3)(a)") provides as follows:

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 ...

6 The Judge relied on the English High Court decision of *In re Flint (A Bankrupt)* [1993] Ch 319 ("*Flint*"), where s 284 of the Insolvency Act 1986 (c 45) (UK) ("the IA 1986"), which corresponds to s 77 of the Act, was considered, for the proposition that the transfer of an interest in property by a debtor to his or her spouse pursuant to a court order was a "disposition of property" within the meaning of s 77(1) (see the GD at [17]). The Judge held that since the Bankrupt had attempted to give away his share of the Properties to the appellant by way of the ICJ during the Relevant Period, the Disposition was void unless it was ratified by the court (see the GD at [18]). The Judge declined to ratify the Disposition, concluding that much more was required of the appellant in order to persuade the court to ratify what appeared, without more, to have been an attempt to keep the Bankrupt's interest in the Properties out of the reach of his creditors (see the GD at [37]).

The issues on appeal

7 The issues on appeal were as follows:

- (a) whether s 77(1) applies to a disposition of property pursuant to a court order;
- (b) whether the appellant falls within s 77(3)(a); and
- (c) whether this court should ratify the Disposition.

8 It is interesting to note that in the court below, both the appellant and the respondent accepted *Flint* as being dispositive of the first issue above. Not surprisingly, perhaps, the Judge therefore merely referred to this particular issue in a single paragraph, relying (as noted above at [6]) on *Flint* to hold that the transfer of an interest in property by a debtor to his or her spouse pursuant to a court order was a "disposition of property" for the purposes of s 77(1) (see the GD at [17]).

However, in the present appeal, the appellant mounted a root-and-branch attack on (in particular) *Flint*. Indeed, the respondent, in its written case for this appeal, observed (correctly, in our view) that “[t]he vanguard of the [a]ppellant’s case [was] that [the Judge] had wrongly applied *Flint*” [\[note: 3\]](#)_[emphasis in original omitted]. As we shall see in a moment, this particular issue is, as a result, the focus of the present grounds of decision as well.

Our decision

9 In our view, s 77(1) applies to a disposition of property pursuant to a court order. Before proceeding to set out our reasons for arriving at this decision, we shall deal briefly with the two remaining issues listed at [7] above. The facts of this case are quite stark. For the reasons provided by the Judge in the GD (which we do not propose to repeat), we found that the appellant had not proved that she fell within s 77(3)(a). Further, it was not disputed that the court which granted the ICJ requiring the Disposition was not informed that the Bankruptcy Application had been made. Given this, as well as the reasons detailed in the GD, we were not prepared to ratify the Disposition.

10 Turning now to the scope of s 77(1), the appellant’s main submission was that s 77(1) was “confined to dispositions *voluntarily* carried out by the bankrupt, not when [they were] *carried out under compulsion of an order of court*” [\[note: 4\]](#)_[emphasis in original]. In support of this submission, the appellant argued that: (a) *Flint* should not be applied in Singapore; (b) as a matter of statutory interpretation, s 77(1) did not apply to a disposition pursuant to a court order; and (c) the proper statutory provision to use to invalidate the Disposition was s 73B of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) (“the CLPA”).

11 In so far as the first argument was concerned, the appellant argued that the court in *Flint*, in arriving at its decision, “relied principally” [\[note: 5\]](#)_[emphasis in original] on an earlier case, *In re Abbott (A Bankrupt), Ex parte Trustee of the Property of the Bankrupt v Abbott (PM)* [1983] Ch 45 (“*Abbott*”), which was concerned with two English statutory provisions, namely, s 42 of the Bankruptcy Act 1914 (c 59) (UK) (“the BA 1914”) and s 39 of the Matrimonial Causes Act 1973 (c 18) (UK) (“the MCA 1973”). The relevant portions of s 42 of the BA 1914 provide as follows:

(1) Any settlement of property, not being a settlement ... made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, ... shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in bankruptcy ...

...

(4) “Settlement” shall, for the purposes of this section, include any conveyance or transfer of property.

12 As for s 39 of the MCA 1973, at the time *Abbott* was decided, it provided as follows:

The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that settlement or transfer from being a settlement of property to which section 42(1) of the Bankruptcy Act 1914 (avoidance of certain settlements) applies.

13 According to the appellant, the absence of a Singapore equivalent of s 39 of the MCA 1973 is “an *overwhelming ground*” [\[note: 6\]](#)_[emphasis in original] for arguing that *Abbott*, and therefore *Flint*,

should not be applied in Singapore.

14 The brief facts of *Abbott* are as follows. In 1977, a wife petitioned for divorce from her husband, with her claim for ancillary relief including a claim for a property adjustment order under s 24 of the MCA 1973 transferring to her the jointly-owned matrimonial home. Negotiations between the parties resulted in a compromise of the wife's claim, and in December 1978, a consent court order was made pursuant to which the matrimonial home was to be sold and the wife was to be paid £18,000 from the proceeds, with the balance to be divided equally between the husband and the wife. In May 1980, the husband was adjudicated bankrupt, and the trustee in bankruptcy asked the court for a declaration that the consent order was a settlement of £9,000 by the bankrupt on the wife which was void against the trustee under s 42 of the BA 1914. The County Court dismissed the application, holding that: (a) the consent order was a settlement for the purposes of s 42 of the BA 1914; but (b) the wife was a purchaser for valuable consideration within the meaning of s 42 of the BA 1914. Only the second holding was challenged on appeal to the Divisional Court, which dismissed the appeal.

15 After *Abbott* was decided and before *Flint* was decided, the UK Parliament introduced new bankruptcy legislation in the form of the IA 1986. Section 339 of the IA 1986 deals with undervalued transactions entered into by a bankrupt; s 340 of the IA 1986 deals with preferences given by a bankrupt; and s 284 of the IA 1986 deals with dispositions of property made by a bankrupt during the English equivalent of the Relevant Period. The relevant portions of s 284 of the IA 1986 provide as follows:

(1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.

...

(3) This section applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting ... of the bankrupt's estate in a trustee.

(4) The preceding provisions of this section do not give a remedy against any person —

(a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented ...

...

16 Further, s 42 of the BA 1914 was repealed, and s 39 of the MCA 1973 underwent consequential amendments to read as follows:

The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that settlement or transfer from being a transaction in respect of which an order may be made under section 339 or 340 of the Insolvency Act 1986 (transactions at an undervalue and preferences).

17 We turn now to *Flint*, the facts of which bear a close resemblance to those in the present case. In *Flint*, after a bankruptcy petition was presented against the husband and before the husband was adjudicated bankrupt, a consent court order was made in divorce proceedings, pursuant to s 24 of the MCA 1973, ordering him to transfer his interest in the matrimonial home to the wife. Thereafter,

the husband's trustee in bankruptcy sought, and was granted, a declaration that the order transferring the husband's interest in the matrimonial home was void under s 284(1) of the IA 1986 ("s 284(1)"). The wife appealed, and one of the grounds of appeal was that the consent court order was not, for the purposes of s 284(1), a "disposition of property" by the person adjudged bankrupt (*ie*, the husband). Nicholas Stewart QC (sitting as a deputy judge of the English High Court) disagreed and held that a transfer of property order made by a court under s 24 of the MCA 1973 in respect of property held by a person against whom a bankruptcy petition had been presented was a "disposition of property" by that person within the meaning of s 284(1).

18 The appellant argued that because the amended s 39 of the MCA 1973 (reproduced above at [16]) applied only to ss 339 and 340 of the IA 1986 and not also to s 284 of the IA 1986, Stewart QC had to fill in a gap in the legislation by relying on the decision in *Abbott*. [\[note: 71\]](#) It is thus important, in assessing this particular argument, to refer to the relevant portion of Stewart QC's reasoning *in extenso*, which was as follows (see *Flint* at 325–326):

... [The Divisional Court in *Abbott*] had to decide whether a wife in whose favour a property adjustment order had been made by consent under section 24 of the [MCA] 1973 was a "purchaser for valuable consideration" for the purposes of section 42 of the [BA] 1914. If she was, that was an effective answer to what would otherwise have followed under section 42, that the relevant part of the consent order would have been void against the trustee in bankruptcy because it had been made within two years of the husband's bankruptcy.

Section 42 of the [BA 1914] was affected by a special provision in section 39 of the [MCA 1973] which expressly provided that the fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order should not prevent that settlement or transfer from being a settlement of property to which section 42 applied. **Section 39 is now applied, by amendment, to sections 339 and 340 of the [IA 1986] but has no equivalent so far as section 284 is concerned.**

Nevertheless, even allowing for that difference, it is worth noting that in [*Abbott* ,] the judge had held that the consent order *itself* was a settlement for the purposes of section 42. That conclusion was not challenged in the Divisional Court, where the appeal on the critical point, whether the wife was a purchaser for valuable consideration, simply proceeded on the assumption that it was correct. It is not binding on me. But it does at least show that [the Divisional Court in *Abbott*] accepted, though without the benefit of any argument, as a reasonable proposition a conclusion which is essentially on all fours with the one that [counsel for the trustee in bankruptcy] is inviting me to reach in relation to section 284. For a settlement to be void under section 42 it was necessary for "the settlor" to have become bankrupt within two years. Accordingly, for the court order to have been a settlement [for] the purposes of section 42 it must have been a settlement by the bankrupt, since otherwise he could not have been the settlor and the section could have no application.

If the relevant part of the court order in [*Abbott*] was a settlement for the purposes of section 42, the relevant part of the Crewe order [*ie* , the consent court order in *Flint*], *i.e.* the part ordering transfer of [the husband's] interest in the [matrimonial home], would likewise be a disposition by [the husband]. In my view that is the position. The first paragraph of the Crewe order stated: "Within 28 days of the date of this order [the husband] do transfer unto [the wife] all his estate and interest in the [matrimonial home]." **Leaving aside section 284, such an order would have the effect that [the husband's] equitable interest would pass immediately. That is a relatively straightforward example of equity treating as done that which ought to be done, the same principle by which a purchaser under a**

specifically enforceable contract acquires an equitable interest upon contract and before completion. What was treated as done in the present case was a transfer by [the husband] of all his interest in [the matrimonial home].

This conclusion does not, I emphasise depend upon the Crewe order being a consent order. If the relevant parts of the order had been the result of a contested application my conclusion on this further point would have been exactly the same. As soon as the court makes its order, whether or not by consent, the transfer of property in accordance with the order becomes compulsory in a way that it was not immediately before the making of the order. But the fact that it is then compulsory, and that in the case of a consent order any previous agreement between the parties is suspended, does not in any way prevent its being a disposition by the owner of the property in question, in this case, [the husband]. It follows, therefore, that once [the husband] was adjudged bankrupt, the disposition of [the husband's] interest in the [matrimonial home] became void under s 284 unless subsequently ratified by the court ...

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

19 A few points may be made in respect of the passage cited above. First, Stewart QC expressly recognised that: (a) the amended s 39 of the MCA 1973 applied only to ss 339 and 340 of the IA 1986, and there was no equivalent provision for s 284 of the IA 1986; and (b) the decision in *Abbott* was not binding on him. Secondly, any support that Stewart QC was seeking to obtain from *Abbott* related to the holding of the County Court at first instance, and the assumption of the Divisional Court on appeal, that “the consent order *itself* was a settlement for the purposes of section 42 [of the BA 1914]” [emphasis in original] (see *Flint* at 326). This is to be contrasted with s 39 of the MCA 1973 (in both its original and its amended versions), which clarifies that *a settlement or transfer of property that had to be made in order to comply with a property adjustment order* can nonetheless be subject to the relevant provision(s) of bankruptcy legislation. Thirdly, after considering the decision in *Abbott*, Stewart QC proceeded to reason from first principles (and without relying on either *Abbott* or s 39 of the MCA 1973) to conclude that the consent court order in *Flint* was a disposition by the husband within the meaning of s 284(1) despite the fact that the transfer of property in accordance with the order was compulsory. It is therefore not accurate for the appellant to argue that Stewart QC relied either on s 39 of the MCA 1973, or on parts of the decision in *Abbott* which relied on that provision to arrive at his decision.

20 That the appellant incorrectly identified s 39 of the MCA 1973 as the reason for the decisions in *Abbott* and *Flint* is apparent from the subsequent decision of *Treharne and another v Forrester* [2003] EWHC 2784 (Ch) (“*Treharne v Forrester*”), where the English High Court applied the rule in *Flint* on very similar facts *without* considering s 39 of the MCA 1973 and the fact that it did not apply to s 284 of the IA 1986. For the above reasons, contrary to the appellant’s contention, the absence of a Singapore equivalent of s 39 of the MCA 1973 is *not* “an overwhelming ground” [\[note: 8\]](#) [emphasis in original] for arguing against the applicability of *Flint* in Singapore.

21 With regard to the appellant’s second argument that as a matter of statutory interpretation, s 77(1) does not apply to a disposition pursuant to a court order (see [10] above), the appellant made the following points. First, the words “disposition of property *made by him*” [emphasis added] (*ie*, the person who is adjudged bankrupt) in s 77(1) suggest that this provision applies only to voluntary dispositions. [\[note: 9\]](#) Secondly, the appellant submitted that the fact that the UK Parliament saw the need to enact s 39 of the MCA 1973 to make it clear that a transfer of property in compliance with a property adjustment order was caught by bankruptcy legislation was “a clear

recognition" [\[note: 10\]](#) that but for s 39 of the MCA 1973, a disposition under a court order was not one made by the bankrupt.

22 The appellant's argument, in essence, is that a disposition pursuant to a court order is not one made by the person to whom the court order is directed. This argument has been made on several occasions (including, as noted above, in *Flint*) without success. In this regard, we respectfully adopt the following analysis of the court in *Treharne v Forrester* (at [49]–[53]) on the issue of who the disponor is when there is a disposition in the form of a property adjustment court order:

49 ... If the property adjustment order was a disposition, ... then if it was not made by the debtor, who was it made by? It cannot have been made by the Court; the [C]ourt had no legal or equitable interest in the property then disposed of. How could the court dispose of it; *nemo dat quod non habet*. Surely only a person having a legal or equitable interest in the property disposed of could have made the disposition. That points to the husband as disponor and rules out the Court as being disponor.

50 [Counsel for the wife], though, says that disposition which he accepts was made was made by operation of law. I am far from sure that that, of itself, denies the disposition as being made by the person adjudged bankrupt, albeit by operation of law, the law operating, so to speak, upon him.

51 There is, of course, ... a disposition by operation of law under s 306 of the [IA 1986] when the property of the bankrupt vests in the trustee in bankruptcy. There is in that case express statutory provision that the vesting takes place without any conveyance, assignment or transfer. In such a case statute makes it quite plain that what takes place could not fairly be described as a disposition by the bankrupt. It does not follow from the fact that one can, under a statutory express provision, have a form of disposition which is attributable to no individual person as the maker of the disposition, that a disposition made by way of Court order but without any equivalent statutory provision as to the absence of need for a conveyance, assignment or transfer is either a disposition made by operation of law in the strict sense or is made by no person.

52 It would be reasonable, it seems to me, for Parliament specifically to have overcome the ordinary common sense exemplified in the "*nemo dat*" principle had it been intended to do so. I therefore do attach weight to the simple view that if there is a disposition here, ... then who could it have been made by if not by the husband?

53 A further consideration is this. The [*Mountney v Treharne* [2003] Ch 135] and *Flint* cases are both examples of the equitable doctrine of taking as done that which ought to have been done. What is it, therefore, upon the making of the property adjustment order that ought to have been done? The answer surely is a disposition *by the husband*. The [court] orders contemplate no other disponor. To apply the maxim and accept, therefore that there ought to have been, and therefore, in the eye[s] of the law, has been a disposition does not go far enough. The very same maxim goes on to identify the disponor as the husband. It is he that ought to have made the disposition made by the [court] orders in the wife's favour. ...

[emphasis in original]

23 In arriving at its conclusion, the court in *Treharne v Forrester* did not have to rely on s 39 of the MCA 1973. In the present case, the ICJ may have been the *means* by which the Disposition was made, but the Disposition was nonetheless made, in our view, *by the Bankrupt*.

24 The common law position is therefore clear: a court order requiring a transfer of property is a disposition, and it is a disposition made by the person to whom the court order is directed. All s 39 of the MCA 1973 did, therefore, was to *clarify, rather than to effect a substantive change in the law as such*. This was recognised by Peter Gibson J in *Abbott* itself, where he observed (at 54) that s 39 of the MCA 1973 put to rest any doubt that might have arisen on the matter:

... The wording of [s 39 of the MCA 1973] seems to me designed to put beyond doubt that which otherwise might have been in doubt. In the absence of the section it might have been thought that section 42(1) [of the BA 1914] might not apply to a settlement or transfer made pursuant to an order of the court, particularly when the debtor himself could not impugn the settlement or transfer. Section 39 makes clear that the mere fact that there has been a court order does not prevent any such transfer or settlement from being challenged by the trustee under section 42(1). ...

25 The same conclusion may also be arrived at from a reading of s 77(1), both alone as well as in the context of the Act. The word "disposition" is defined in *Black's Law Dictionary* (Bryan A Garner chief ed) (West Publishing Co, 9th Ed, 2009) at p 539 as "(t)he act of transferring something to another's care or possession, esp. by deed or will; the relinquishing of property". This definition suggests that a "disposition" in the context of s 77(1) need only entail an act of transfer effected by (here) the Bankrupt. Indeed, other definitions of the word "disposition" appear to furnish even stronger support for the approach which we have adopted in the present appeal. In *Jowitt's Dictionary of English Law* (Daniel Greenberg gen ed) (Sweet & Maxwell, 3rd Ed, 2010), for example, the word "disposition" is defined as follows (at vol 1, p 726):

Disposition. (1) The passing of property to another party, *whether by act of the parties or by operation of law*.

...

(3) For statutory definitions and judicial constructions in various contexts, see *Stroud's Judicial Dictionary*.

[emphasis added]

26 And, in *Stroud's Judicial Dictionary of Words and Phrases* (Daniel Greenberg gen ed) (Sweet & Maxwell, 8th Ed, 2012), the word "disposition" is elaborated upon thus (at vol 1, pp 800–801):

DISPOSITION. "The terms 'disposition' and 'devolution' must have been intended to comprehend and exhaust every conceivable mode by which property can pass, whether by act of parties or by act of the law" (per Lord Macnaghten, *Northumberland v Att-Gen* [1905] A.C. 406 ...). ...

...

An order made by the court under s.24 of the Matrimonial Causes Act 1973 (c.18), ordering the transfer of property by a person against whom a bankruptcy petition had been presented, was a "disposition" by the bankrupt and void under s.284 of the Insolvency Act 1986 (c.45) (*Re Flint (a Bankrupt)* [1993] 2 W.L.R. 53).

...

27 We also note that the word "disposition" is used in contradistinction to the word "sale" in

various provisions of the Act (see, for example, ss 123(3), 123A(5) and 128(2)(b) of the Act), indicating that the word “disposition” as used in the Act captures both personal as well as court-ordered dispositions. Further, if the appellant’s submission is accepted, a disposition during the Relevant Period pursuant to an out-of-court settlement of a dispute would be caught by s 77(1), but if the terms of settlement are recorded as a consent court order instead, a disposition pursuant to such an order would not be so caught. We see no logical basis whatsoever for distinguishing between these two scenarios. This is especially so in the light of the line of decisions from this court holding that a liquidator (and, by analogy, an Official Assignee) may go behind court orders, which are open to scrutiny during liquidation and bankruptcy, respectively.

28 We now turn to the appellant’s third argument (see [10] above), *viz*, that the proper statutory provision to use to invalidate the Disposition is s 73B of the CLPA, and not s 77(1) (*ie*, s 77(1) of the Act). Section 73B of the CLPA reads as follows:

- (1) Except as provided in this section, every conveyance of property ... 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.

29 Section 73B(2) of the CLPA makes it clear that the section is meant to operate *independent of* bankruptcy law. Therefore, the appellant’s argument, which is an attempt to use s 73B of the CLPA to limit the scope of s 77(1), cannot be accepted. The mere fact that s 73B(1) of the CLPA may be applicable in this case does not – in and of itself – render s 77(1) inapplicable.

30 In summary, s 77(1) applies to a disposition of property pursuant to a court order. This conclusion is consistent with the wording and philosophy of s 77(1) in particular and the Act in general, as well as with logic and common sense. It is also the position at common law as set out in *Flint and Treharne v Forrester*, decisions which were not based on s 39 of the MCA 1973 and which are applicable in this case. There is therefore no need for the existence of a separate statutory provision (such as s 39 of the MCA 1973) in order to clarify that this is the position.

Conclusion

31 For the reasons set out above, we dismissed the appeal with costs.

32 This appeal also serves as a reminder that it is prudent for parties to a litigation to conduct the relevant bankruptcy searches before the commencement of proceedings. This applies equally to divorce cases. Indeed, in this last-mentioned regard (reference may also be made to the observations in the Singapore High Court decision of *Lee Hong Choon v Ng Cheo Hwee* [1995] 1 SLR(R) 92 at [36]–[38]), there is, in our view, merit in considering the promulgation of relevant Practice Directions in both the Family Court as well as the High Court which require the parties in the proceedings at first instance to list both basic information (including the results of bankruptcy searches) as well as any other information which might be relevant to the court in making a consent order pursuant to an application for the same by the parties concerned.

[\[note: 1\]](#) Appellant’s Core Bundle, vol 2 at pp 24–25.

[\[note: 2\]](#) *Id* at p 32.

[\[note: 3\]](#) Respondent's Case at para 40.

[\[note: 4\]](#) Appellant's Case at para 18.

[\[note: 5\]](#) *Id* at para 22.

[\[note: 6\]](#) *Id* at para 23.

[\[note: 7\]](#) *Id* at para 28.

[\[note: 8\]](#) *Id* at para 23.

[\[note: 9\]](#) *Id* at para 45.

[\[note: 10\]](#) *Id* at para 46.

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