

HONG KONG / JUDGMENT

FRED LEE AND ANOTHER v. LI YAT SHING

COURT

Court of First Instance

DECIDED

5 November 2007

CASE / FILE NUMBER

HCB4224/2003

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bjbj HCB 4224/2003 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO. 4224 OF 2003

RE: LI YAT SHING, a bankrupt BETWEEN FRED LEE and CHOW WAI LIN, CHRISTINE, Trustee of
the property of LI YAT SHING, a bankrupt The Applicant LI YAT SHING The Respondent/ The
Bankrupt

Coram : Before Master Levy in Court Date of Hearing : 31 October 2007 Date of Judgment : 5
November 2007

J U D G M E N T**Introduction**

1. Mr. Li became a bankrupt on 8 April 2003. As he was a first time bankrupt, he should have been, by the operation of the regime of automatic discharge provided in Section 30A of the Bankruptcy Ordinance (Cap.6), discharged from bankruptcy on 8 April 2007.
2. The joint and several trustees (the Trustees) however objected to Mr. Li's automatic discharge. Hence an application to object was issued on 6 March 2007 (the Application).
3. The running of the period of automatic discharge has since been suspended by Master Ho's interim order dated 2 April 2007.
4. The statutory grounds upon which the Trustees rely upon are Section 30A (4), subsections (c), (d) and (h), that is, Mr. Li has failed to co-operate in the administration of a bankrupt's estate, his post-bankruptcy conduct has been unsatisfactory, and that he has failed to submit his 1st and 2nd annual reports of his earnings and acquisitions to the Trustees on time, and

has failed to submit the 3rd report altogether. Thus the underlying complaints under subsections (c) and (d) are the allegations of losing of contact with Trustees, and under subsection (d), is the problem with submission of annual reports.

5. Mr. Li appeared in person and filed an affirmation in opposition. Proceedings were conducted in Cantonese. Given most of the documents are in English, and Mr. Li also understands English, I have decided, with the consent of the parties, to use English in this judgment.
6. A court will apply a two-stage test to an objection application. In the first stage, the court is to determine whether the grounds of objections are established. Once the first stage is satisfied, the court will next consider how its discretion on suspension is to be exercised.
Discussion (I) Losing Contact Ground
7. The evidence in support of the Application is found in the Affirmation of Fred Lee, one of the Trustees. The complaints under subsections (c) and (d) concern with Mr. Li's alleged failure to maintain contact with the Trustees. It was alleged that since November 2006, Mr. Li could not be contacted whether by telephone or letters sent to his address provided to the Trustees. A movement record issued by the Immigration Department shows that Mr. Li left Hong Kong on 31 October 2006, and up to February 2007, has not returned.
8. Mr. Li denies this allegation. He does not dispute that he left Hong Kong for China. He avers that he has informed the Trustees of his new contact both by telephone and by fax. He stated that he had lost his job in August 2006. At the same time, his rental payments had fallen into arrears. At the end, he had to move out from his rented apartment in Kowloon and live temporarily in Mainland China. He has however kept the Trustees informed of this change. (II) Annual Reports Ground
9. Mr. Li is required to submit annual reports of his earnings and acquisitions to the Trustees. The Trustees allege that Mr. Li had submitted his 1st and 2nd annual reports late, and had further failed to submit the 3rd annual report altogether. There is no issue on the 4th report as it was not due until April 2007. Mr. Gopaoco, solicitor for the Trustees, informed me that Mr. Li only submitted the 3rd and the 4th reports on 17 July 2007.
10. Mr. Li took issue with some of the allegations. He said that he submitted the 1st report in September 2004, which is only 5 months late, not 20 months as the Trustees have alleged. He accepts the 2nd report was submitted two months late. However, he contends that he has submitted the 3rd report on time. He said that the date of submission of the 3rd report that the Trustees allege is in fact the date of the re-submission. Mr. Li said that after he had submitted the 3rd report in 2006, the Trustees told him that they had not received it. He then handed in the 3rd report again together with the 4th report. (III) Findings

11. Fred Lee filed a reply affirmation by generally denying Mr. Li's assertions. In relation to the allegation of losing contact with the Trustees, both parties are not able to produce any corroborative evidence. Fred Lee's allegations are based on information provided to him by his staff. Against this allegation is Mr. Li's direct conflicting evidence.
12. Regarding allegations concerning the annual reports, the Trustees initially only exhibited copies of the 1st and 2nd reports. The 1st report bears a chop showing the date of receipt of 30 December 2005, which is 20 months late. However, unlike the 2nd report that has a second page bearing Mr. Li's signature and the date of signing on the report, I was not able to find similar signature page in the 1st report. I asked Mr. Gopaoco about this. He requested to adjourn the hearing to make inquiries. I therefore briefly adjourned the hearing to enable Mr. Gopaoco to produce the original copies of the reports for my inspection.
13. When the hearing resumed, Mr. Gopaoco brought all the four reports to court. After he had seen the reports and made inquiries from the Trustees office, Mr. Gopaoco informed me that the Trustees were not able to find the second page of the 1st report, and that the only copy they have in their possession is a photocopy. The original copy (which is in fact a photocopy) of the 1st report bears Mr. Li's signature (which is not a photocopy).
14. After inspecting the copy of the 1st report the Trustees produced, Mr. Li then told me that the reason why the Trustees copy is a photocopy because he had submitted the original copy in 2004. He had kept a photocopy of the 1st report. In 2005, when the Trustees told him that they had not received his 1st report, he made another copy, signed on it and personally delivered to the Trustees.
15. In view of the conflicting evidence, I asked Mr. Gopaoco if he wished to cross-examine Mr. Li, but he declined to do so.
16. The evidence of both parties is not entirely satisfactory. The Trustees are not able to say how their staff kept documents or records sent by Mr. Li, and more particularly, why the 1st report was a photocopy and why the second page had been missing. On the other hand, Mr. Li is also not to explain satisfactorily as to why he only sent the first page of the 1st report to the Trustees, but not the second page. In the absence of any cross-examination by both parties, I should evaluate their evidence on its face value.
17. When direct evidence is weighed against indirect evidence, direct evidence should usually prevail. In this case, I am also attracted more to the direct evidence than the indirect one.
18. In the absence of any evidence from the Trustees as to their system of keeping records, and any direct evidence from the Trustees staff responsible for keeping files and records, I prefer the direct evidence of Mr. Li to the indirect evidence of Fred Li.
19. In the circumstances, I am inclined to find that the Trustees have misplaced the original copies of the 1st and 3rd reports Mr. Li had submitted respectively in 2004 and 2006. On the evidence, I further infer that the Trustees have probably also lost the records of Mr. Li's change of contact. Hence, I find that it is more likely than not that Mr. Li has informed the

Trustees of his change of address and telephone number before he went to reside in Mainland China, and that he has submitted the annual reports substantially on time. I am satisfied however that the delay in the submission of the report is only minimum. (IV)
Conclusion on the first stage

20. In light of the above findings, I conclude that the grounds of objections have not been made out. The Application must be dismissed. Alternative Position
21. If I am found to be wrong and that the grounds are found to be established, I am still disinclined to order any suspension.
22. A number of justices in a spate of recent decisions on the same subject matter have expounded and given guidelines on how a court should exercise its discretion on suspension of automatic discharge. The matters I should take into account in this case include but not limited to a consideration as to whether the proper administration of the estate has been affected by the conduct of a bankrupt as well as the need to give effect to the legislative objective of the regime of automatic discharge.
23. In this case, the Trustees accept that Mr. Li has cooperated with them. Before he was made redundant in September 2006, Mr. Li has kept the Trustees informed of his contact as well as his employment. Before he lost in job in August 2006, he had regularly made payments in the total sum of \$142,000 to the bankruptcy estate. Further, the delay with the submission of the annual reports has not impeded or adversely affect the administration of the bankruptcy estate.
24. Mr. Li s conduct is therefore not too serious, and is excusable. The need to give effect to the rehabilitative objective in this case prevails over the interests of the public and the creditors.

Conclusion

25. It follows therefore that the Application is dismissed. The interim order is lifted with retrospective effect. Costs
26. Both the Trustees and Mr. Li have not asked for costs. I therefore make no order for costs (including all costs reserved).
27. From the above, it appears that the Trustees have not satisfactorily discharged their duty. Had they been more careful, the Trustees could have discovered that the second page in the 1st report was missing and gone on to conduct a proper investigation. Unfortunately, the problem was only discovered during the substantive hearing. In light of the way the Trustees have conducted this case, I do not find it appropriate to permit the Trustees to recover their costs from the bankrupt s estate, and I so order. The order is nisi. (Levy) Master of the High Court Mr. E. Gopaoco of Messrs. Lee & Chow for the Trustees The bankrupt, in person, present Kwan J in Fred Lee v Lee Yuk Man (unrep), HCB 9461 of 2002, 9 Jan.2006 (Kwan J s decision is affirmed by the Court of Appeal (CACV 30 of 2007) in a judgment handed down on 23 October 2007), Deputy High Court Judge To in Fred Lee v Tong Yuk Kin (unrep), HCB

22870 of 2002, 20 June 2007, Lam J in Fred Lee v Liu Man Hoo (unrep), HCB 11719 of 2002, 14 September 2007, Barma J in Fred Lee v Wong Hing Wah Michael (unrep), HCB 26018 of 2002, 12 October 2007. - PAGE - A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V m,Q|= & 6" Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 27 October 2026 · Esheria