

HONG KONG / JUDGMENT

FRED LEE AND ANOTHER v. SIU KIN PAN

COURT

Court of First Instance

DECIDED

29 October 2007

CASE / FILE NUMBER

HCB6293/2003

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bjbj HCB 6293/2003 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO. 6293 OF 2003

RE: SIU KIN PAN, a bankrupt BETWEEN FRED LEE and CHOW WAI LAN, CHRISTINE, Trustee of
the property of SIU KIN, PAN, a bankrupt the Applicant SIU KIN PAN the Respondent/ the
Bankrupt

Coram : Before Master Levy in Court Date of Hearing : 8 October 2007 Date of Judgment : 29
October 2007

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

1. Mr. Siu became a bankrupt on 12 May 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 12 May 2007.
2. The joint and several trustees (the Trustees) however sought to object to Mr. Siu's automatic discharge by issuing an application on 13 April 2007 (the Application).
3. The running of the period of automatic discharge has since been suspended by Master Ho's interim order dated 7 May 2007.
4. At the adjourned hearing before me, Mr. Siu was not represented and absent. Having been satisfied that Mr. Siu was duly served with the notice of the adjourned hearing, I proceeded to hear the Application in his absence. Grounds of Application

5. The statutory grounds upon which the Trustees rely upon under Section 30A (4) are Subsections (c) and (d), that is failing to co-operate in the administration of a bankrupt s estate and unsatisfactory post-bankruptcy conduct.
6. The evidence in support of the Application is found in the Affirmation of Fred Lee, one of the Trustees. According to the said supporting Affirmation, the main complaint by the Trustees against Mr. Siu is his breach of the agreements with the Trustees in making voluntary contributions towards the estate. As a result of his repeated defaults in making the agreed contributions, the Trustees finally applied on 16 December 2004 to court for an income payment order. By the income payment order dated 28 February 2005 (IP Order), Master Kwang ordered Mr. Siu s employer to make a monthly payment in the sum of \$7,000 to the bankruptcy estate account.
7. On the date of the hearing, the IP Order, save for a suspension ordered by Master Kwang for the months of July, August and September 2007, has been continuing.

Issues

8. In the Application, I need to consider: Whether the grounds of objections are established; (ii) Should the grounds be established, whether I should exercise my discretion to suspend the period of automatic discharge; and (iii) Should suspension be ordered, the length of suspension. Are the Grounds of Objections Established?
9. Mr. Siu had not filed any evidence to oppose the Application and did not attend the hearing. Hence I only need to consider the evidence filed by the Trustees in support of the Application. Although the Trustees rely on two statutory grounds of objections, they boil down to the complaint that Mr. Siu had repeatedly failed to pay voluntary payments to the bankruptcy estate during the period of bankruptcy.
10. At the commencement of the bankruptcy, the Official Receiver required Mr. Siu to pay monthly contributions of \$8,980 towards the bankrupt s estate as from 31 May 2003. Mr. Siu only paid one contribution in May 2003.
11. After the Trustees were appointed in June 2003, Mr. Siu agreed with the Trustees to pay to the estate a monthly sum of \$9,600 as well as to repay the outstanding contributions for the months of June and July 2003. After the first interview with the Trustee, Mr. Siu failed to keep his promise. Despite the promises made in the four subsequent interviews with the Trustees to pay monthly contributions as well as the outstanding arrears, Mr. Siu had not kept his promises. Mr. Siu s reason given for his defaults was the sudden increase of financial burden as a result of the birth of his child by his Mainland girlfriend.
12. When Mr. Siu failed to attend the 6th interview with the Trustees, the Trustees made an application for an income payment order on 16 December 2004.

13. In the absence of contrary evidence, I find the above facts proved. I have little hesitation to conclude that Mr. Siu has failed to cooperate with the Trustee and his conduct has not been satisfactory as viewed by a hypothetical reasonable man. The IP Order is compelling evidence that Mr. Siu had the means to make contributions to the estate but has repeatedly failed to. I am satisfied that the grounds of objections are made out.
14. Before I consider below how my discretion should be exercised, there is one observation I wish to make. It relates to the rather protracted attempts by the Trustees in securing Mr. Siu's contributions to the bankruptcy estate. One of the duties of a trustee in bankruptcy is to realize the bankrupt's assets. In this case, Mr. Siu was at all material times employed as a civil servant with stable income. Mr. Siu in this circumstance given his repeated defaults is a perfect candidate against whom an income payment order should be applied for promptly.
15. In this case, the Trustees waited for more than 18 months before issuing an application for an income payment order. Extra expenses and time had been wasted. After one or two interviews with Mr. Siu, the Trustees had they exercised reasonable diligence should have realized that there was little prospect for Mr. Siu to make any voluntary payments to the estate. Mr. Siu's cumulative defaults are, ironically contributed by the Trustees in dragging their feet.
16. There is no suggestion that the court would decline to make an order for income payment had the application been issued earlier. Hence had the Trustees made the income payment application sooner, the Trustees could have been able to obtain much larger payment to the estate.
17. With this observation, I shall next consider how my discretion should be exercised. How Discretion should be exercised?
18. 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. 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. (A) Suspension Justified
19. In this case, the total amount of proven debts is about \$280,000. The total amount (including the employer's payments in the sum of \$175,000 under the IP Order) realized, when calculated up to March 2006, is \$234,000. Thus, relatively substantial sums have been realized for the estate. However, most of the contributions are not from Mr. Siu but from his employer under the IP Order. I believe that had the Trustees made the application for an income payment order more promptly, the amount realized is likely to be greater.
20. Mr. Siu is of course not able to get credit for the relatively large amount of contributions to the estate. He made no effort at all. I am satisfied therefore, it is a suitable case where I shall exercise my discretion to prolong Mr. Siu's period of bankruptcy. (B) Appropriate Period

21. In considering the suitable period, I shall have regard to Mr. Siu's repeated failure in making contributions that he had promised to make. This conduct in my exercise of discretion however can be slightly mitigated in view of the Trustee's reasonably late action taken to realize Mr. Siu's assets, which delay indirectly aggravates Mr. Siu's misconduct. Had sooner application been made it would not be possible for Mr. Siu to have broken so many promises that he could not keep. After having carefully considered the recent decisions referred to above, and all the relevant circumstances of this case, I am of the view that a suitable period of suspension should be 6 months.
22. As the period of suspension I have imposed runs beyond the date of my order, it is not necessary to lift the interim suspension imposed by Master Ho. Costs
23. The Trustees, in my view should have acted more diligently in the realization of Mr. Siu's estate, was nonetheless justified in making the Application. As the Trustees do not seek costs against Mr. Siu, I make no order for costs including all costs reserved. (Levy) Master of the High Court Ms. M. Ng of Messrs. Lee & Chow for the Trustees. The bankrupt, in person, absent. 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 1udk 1udk & 6" Normal.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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