

HONG KONG / JUDGMENT

FRED LEE v. CHING PO CHEUNG

COURT

Court of First Instance

DECIDED

13 November 2007

CASE / FILE NUMBER

HCB17353/2002

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bjbj HCB 17353/2002 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO. 17353 OF 2002

BETWEEN Fred Lee, trustee of the property of Ching Po Cheung, a bankrupt Applicant Ching Po
Cheung Respondent

Coram : Before Master Lung in Chambers Date of Decision (Handed Down): 13 November 2007

REASONS FOR DECISION

The application On 15 October 2007, at the hearing of the trustee s application objecting to the bankrupt s discharge pursuant to section 30A of the Bankruptcy Ordinance, the trustee withdrew his application. I disallowed the trustee s costs from the estate with leave to the trustee to make further submissions within 14 days of my order. By his letter dated 29 October 2007, the trustee asked me to vary my order to the extent that the trustee be not entitled to recover his costs of and occasioned in the hearing for directions before Master Kwang on 27 March 2007 only, which was the hearing for the interim order prolonging the bankruptcy of the bankrupt. Grounds of application The trustee relies on the following grounds in support of his application: (1) recent authorities support his view that contracting debts while being insolvent or without any reasonable belief of being able to repay and misrepresentation in application for loan amount to unsatisfactory conduct under section 30A(4) of the Bankruptcy Ordinance; (2) the bankrupt did not intend to oppose the trustee s application; and (3) Judge Kwan in the test case ordered that the trustee was not entitled to recover his costs of and occasioned in respect of the hearing before her out of the bankrupt s estate. Similarly, the order should only have the effect of depriving the trustee s costs of and occasioned in carrying out the investigation into the circumstances in which the alleged misrepresentations were made in the loan application forms. The trustee has

made similar application in respect of the Bankruptcy Proceedings No.9850 of 2002 for variation of my order disallowing his costs from the estate. I have handed down my Decision refusing his application. For brevity, I shall refer to the guiding principles for costs in paragraph 4-6 of my Decision. In gist, Judge Kwan disallowed the trustee's costs from the estate on the reason that the trustee failed to discharge his quasi-judicial obligations. The bankrupt in this matter should have his bankruptcy order discharged on 12 December 2006 had there not been the trustee's application. The bankrupt's bankruptcy order was only discharged on the date of hearing when the trustee withdrew his application on 15 October 2007. The period of the bankruptcy order has been prolonged for more than 10 months. Grounds considered The trustee's grounds 1 and 2 can be considered together. It is not necessary to go into detail of the trustee's grounds in support of his application as he has withdrawn his application at the hearing. This court had no opportunity of investigating into those grounds. The trustee said that the bankrupt did not intend to oppose his application. The fact is that the bankrupt has by his affidavit dated 26 March 2007 proposed a conditional discharge of his bankruptcy, the condition being 6 months contribution of \$10,000 each month by the bankrupt to the estate. What transpired between the trustee and the bankrupt for his application for a conditional discharge is beyond my knowledge. Judge Kwan in her judgment has stated it clearly that a conditional discharge should be not used as leverage for more contribution from the bankrupt. The Court of Appeal has confirmed Judge Kwan's decision in CACV 32 of 2007. Judge Kwan also ruled that if the ground of objecting the discharge is misrepresentation by the bankrupt, the trustee should not compromise his position of carrying out his quasi-judicial obligations by agreeing to a conditional discharge. Now the trustee has decided to withdraw his application. As I have said, I shall not consider his grounds in support of his application. They are irrelevant even for my consideration of the trustee's costs. The question remains whether the trustee should take out his application to object the discharge. Was he discharging his quasi-judicial obligations? I repeat my reasons in paragraphs 9-11 of my Decision in Bankruptcy Proceedings No.9850 of 2002. I take the view that in exercising my discretion as to the trustee's costs from the estate, I should take a global view of the matter, taking into consideration of all relevant factors. I hold that the trustee has not shown to me that he had taken reasonable investigation into the matter before he took out this application. This application has prolonged the bankrupt's bankruptcy order unnecessarily. I do not consider that the trustee has discharged his quasi-judicial obligations. As to the trustee's 3rd ground, as I have said in paragraph 8 of my Decision in Bankruptcy Proceedings No.9850 of 2002, the learned Judge had referred the consent summons and the joint application for discharge on conditions back to the Master for further consideration. She therefore only dealt with the costs of the hearing before her.

Conclusion

For the reasons above, I confirm my order to disallow the trustee s costs of his application from the estate. I also disallow his costs for this application from the estate. (K.W. Lung) Master of the High Court Messrs Lee & Chow for Applicant Respondent appear in person - PAGE - A B 1udk 1udk (#p# GvU` GvU` & 6" Normal.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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