

HONG KONG / JUDGMENT

MARC DRANSENE CONCEPTION AND ANOTHER v. CNG LTD AND ANOTHER

COURT

Court of First Instance

DECIDED

22 January 2007

CASE / FILE NUMBER

HCCW357/2006

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bjbj HCCW 357/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE COMPANIES (WINDING-UP) NO. 357 OF 2006

IN THE MATTER of CNG LIMITED and IN THE MATTER of Sections 177(1)(d) and 177(1)(f) of the Companies Ordinance, Chapter 32 of the Laws of Hong Kong

BETWEEN MARC DRANSENE CONCEPTION 1st Petitioner FAN CHUNG PUI 2nd Petitioner and CNG LIMITED 1st Respondent LIM POH SUAN 2nd Respondent

Before: Hon Kwan J in Court Date of Hearing: 22 January 2007 Date of Judgment: 22 January 2007

J U D G M E N T

I have before me a petition presented by Marc Dransene Conception, a company incorporated in France, and Fan Chung Pui, seeking a winding up of CNG Limited (the Company). When the petition was first presented on 10 July 2006, it was only on the basis that the Company should be wound up on the just and equitable ground. The petition was amended on 11 December 2006, to add another ground for winding up, that is, the ground of insolvency under section 177(1)(d) of the Companies Ordinance, Cap. 32. It is alleged that the Company is indebted to the 2nd petitioner, Fan Chung Pui, in the sum of \$53,000, being his unpaid salary. Evidence has been filed by the 2nd petitioner, who is also a director of the Company. According to his affirmation, the financial position of the Company has been unhealthy in the past few years. Accumulated losses of \$3 million were recorded as at 30 June 2005, as appeared from the balance sheet as at that date.

Payment of the salary of the 2nd petitioner has been often delayed. The salary for June 2006 was paid, but the salary for July 2006 was outstanding. No further payment was made by the Company as from 8 July 2006, as its bank account was frozen. The employment of all staff of the Company was terminated by the Company's letter dated 25 July 2006. The 2nd petitioner and the other staff reported to the Labour Department the arrears of wages in early August 2006. The Company has issued a statement of its inability to pay the employees as listed. The total amount owed to employees was at least \$170,000. The petitioners have confirmed that they are content with seeking a winding up on the ground of insolvency alone. No evidence has been filed on behalf of the Company or by the 2nd respondent to dispute the debt of the 2nd petitioner or the inability of the Company to pay. As the ground for winding up under section 177(1)(d) is made out, I will make an order to wind up the Company. The summons of the 2nd respondent for security for costs is dismissed, and the hearing date is vacated. I am informed by counsel for the petitioners there is agreement between all parties that on the making of a winding-up order, there should be no order as to costs of the petition as between the petitioners and 2nd respondent. I therefore make an order accordingly. The Official Receiver's costs are to be paid by the petitioners and are to be deducted out of the petitioners deposit in the sum of \$7,700. (S Kwan) Judge of the Court of First Instance High Court Ms Rachel Lam, instructed by Messrs Sit, Fung, Kwong & Shum, for the 1st and 2nd Petitioners Messrs Yu & Associates, for the 1st Respondent, absent Messrs Boase, Cohen & Collins, for the 2nd Respondent, absent Mr Harry Lo for the Official Receiver PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L 1udk 1udk T U V i\$&` 5<>| HCCW.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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