

HONG KONG / JUDGMENT

RE CHAN LAI SZE

COURT

Court of First Instance

DECIDED

3 April 2007

CASE / FILE NUMBER

HCB10035/2002

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bjbj HCB 10035/2002 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO. 10035 OF 2002

Re: Chan Lai Sze

Coram : Before Master J. Wong in Court Date of Hearing : 19 March 2007 Date of Decision : 3 April
2007

D E C I S I O N

Application

1. This is an application for suspension of automatic discharge of bankruptcy.

Background

2. Madam Chan Lai Sze (the Bankrupt) filed a petition for her own bankruptcy on 22 May 2002. She said that she was unable to pay a total amount of debts for about \$360,000.00.
3. One of the Bankrupt s creditors, Standard Chartered Bank, instructed Messrs. Lee & Chow () to oppose the petition on, inter alia, the ground that she had failed to make full disclosure of the disposal of her half interest in a property. The Bankrupt then filed 2 affirmations to explain that she had sold her share of the property in January 2002 and obtained a net sum of \$377,684.94. From March 2002 to September 2002, she spent the sum in the followings:
 - (1) I paid mobile phone charges for HK\$2,800 from March to September;
 - (2) I paid rental payment of HK\$14,000 from March to September;

- (3) I spent HK\$28,000 on food and drinks from March to September;
- (4) I spent HK\$10,000 on apparel and transportation from March to September;
- (5) I spent HK\$22,500 on purchasing Chinese Tea from March to May ;
- (6) HK\$10,000 and HK\$15,000 were spent on the trip to Macau on 19 March 2002 and 5 April 2002 respectively;
- (7) HK\$9,800 was spent on the trip to Chu Hoi in Mainland China for the period from 30 April 2002 to 1 May 2002;
- (8) On 13 May 2002, I repaid HK\$70,000 to Mr. Lee Fong Tak (HKID No. K505743(4));
- (9) I repaid HK\$45,000 to 4 independent Finance Companies from March 2002 to 21 May 2002;
- (10) I paid a total legal costs of HK\$26,000 for the Bankruptcy Petition.
- (11) I repaid HK\$125,000 to an individual creditor whose name is Ah Keung on 27 March 2002. (Affirmation of the Bankrupt filed herein on 7 September 2002)
4. The Bankrupt by her supplemental affirmation filed on 28 September 2002 further elaborated the nature of the above spending and exhibited all documentary proofs thereof.
5. On 7 October 2002, Deputy High Court Judge Poon (as he then was) made the usual bankruptcy order upon the Bankrupt. Later, L&C was appointed Trustee in Bankruptcy for the Bankrupt at the General Meeting of Creditors on 6 December 2002.
6. Under sections 30A(1) and (2)(a) of the Bankruptcy Ordinance (), the Bankrupt should be discharged, commonly known as automatic discharge, on 7 October 2006, i.e. 4 years from 7 October 2002. However, L&C applied on 7 September 2006 under section 30A(3) BO and rule 88 of the Bankruptcy Rules () to suspend the automatic discharge.
7. Master Kwang mentioned the application on both 3 October 2006 and 28 December 2006. He issued an interim order to suspend the automatic discharge, gave usual directions for the parties to file evidence and adjourned the matter for argument after the handing down of the Judgment of three cases, HCB 9461/2002, HCB 8989/2002 and HCB 8789/2002, to be heard by the Hon. Madam Justice Kwan.
8. The learned Judge handed down her detailed Judgment on 9 January 2007. The parties thereafter restored the matter and I heard the substantive argument of it on 19 March 2007. Mr. E. Gopaoco of L&C acted for the Trustee in Bankruptcy and Mr. W. Ho of Counsel represented the Bankrupt. Having heard from the parties, I reserved my decision to be handed down.

Ruling

9. Upon consideration of all the evidence authorities and submissions before me, I have come to the conclusion that discretion of this Court should be exercised in not suspending the automatic discharge in the circumstances. My reasons appear below. Unsatisfactory Conducts
10. Mr. Ho did not dispute the conducts of the Bankrupt complained by L&C. Upon discussion, the parties agreed the followings as common ground.
7. To take the filing of the SOA as starting point, it is indisputable that there was an omission of the Proceeds from the list given. Further, the Respondent's luxurious spending of the Proceeds and the repayments to certain creditors were clearly unsatisfactory conducts to the detriment of the interest of the other creditors. In the circumstances, the Respondent concedes that her conduct prior to the Bankruptcy Order was unsatisfactory (the Unsatisfactory Conducts). (skeleton submission of Mr. Ho) Discretion
11. The parties further agreed that this Court should consider all the circumstances of the case in order to exercise his discretion to determine if the automatic discharge should be suspended or not, and if so, for how long. In so doing, I ask myself to bear in mind paragraphs 17.6 and 17.24 of the Law Reform Commissions Report on Bankruptcy (1995) 17.16 The introduction of automatic discharge should, with the objection system, have two-folded effect. Firstly, bankrupts should have a greater incentive than at present to co-operate with the trustee, as failure to co-operate could result in the trustee objecting to a bankrupt's discharge. Secondly, the rehabilitation of a bankrupt from bankruptcy would be assured, subject to rehabilitation being delayed as a consequence of a bankrupt's own failings. 17.24 The introduction of automatic discharge would shift the emphasis from discharge being a privilege to its being a right. This right, however, must be set alongside a bankrupt's duty to co-operate with the trustee in the administration of the estate. If he fails to co-operate with the trustee after bankruptcy, or if a bankrupt's conduct before bankruptcy was unsatisfactory, he should not be automatically discharged. Further, useful guidance can be located in comment of Mrs. Justice Le Pichon (as she then was) in two authorities, viz: *Re Hui Hing Kwok* [1999] 3 HKC 683 and *Re Li Tak Kong* [2000] 3 HKC 360 Rehabilitation is the sense of enabling the bankrupt to resume a normal life in society is a key, if not the key consideration. It should only be delayed by bankrupt's own failings In exercising its discretion, the court would have regard to the scope and purposes of the statutory provisions conferring the discretion, the interests of commercial morality and the public interest. Before a discharge was granted or permitted to occur, there should be an adequate investigation of a bankrupt's conduct and affairs, and such investigation should generally be concluded. It was incumbent on the bankrupt to make a full and frank disclosure and to proffer all pertinent information regarding his assets and financial dealings to the Official Receiver. In seeking a discharge, the bankrupt had to show that he had taken all reasonable steps to ensure that his estate was available for distribution among his creditors and that the trustee was appraised of all relevant information; it was not good enough for him to adopt a

purely passive or reactive role. Where there had been concealment or lack of co-operation on the part of the bankrupt, it would not be unfair to delay his discharge.

12. Further, in relation to pre-bankruptcy conduct, the Hon. Madam Kwan made the following remarks in her Judgment of the aforesaid three cases:
44. It is the common submission of all three counsel that unsatisfactory conduct of the bankrupt in section 30A(4)(d) connotes a broad and low jurisdictional threshold. Although it is recognized in the LRC Report (at para. 17.42) that the pre-bankruptcy behaviour of some bankrupts will effectively disqualify them from any chance of automatic discharge, Mr. Bartlett submitted that pre-bankruptcy conduct should be of a significant magnitude or quality to justify suspension of the running of the relevant period.
45. As mentioned earlier, a balanced view should be taken by the trustee in objecting to automatic discharge. In a case involving excessive credit in which loans were obtained when the debtor should have known he would not be able to repay, where the bankrupt has been co-operative with the trustee and made voluntary contributions to the estate, and provided there is no other misconduct, I am inclined to think that the pre-bankruptcy conduct is not such as to warrant suspension of the running of the relevant period. Consideration
13. Applying the above principles to the present case, I note the following factors.
 - (a) L&C only relied on a single ground, namely section 30A(4)(d) BO the unsatisfactory pre-bankruptcy conducts of the Bankrupt to oppose the automatic discharge.
 - (b) The unsatisfactory conducts of the Bankrupt, in my view, have not hampered the administration of the estate by the Trustee in Bankruptcy. It was not disputed the Bankrupt had not stated the said sum of \$377,684.84 in the Statement of Affairs when she filed her petition for bankruptcy. However, it was fully remedied by her affirmations and exhibits filed subsequently. At the material time when this Court made the bankruptcy order, F&C and the Official Receiver had been made aware of the explanations given to the Court. After all, the Trustee in Bankruptcy has not established any specific prejudice he had suffered as a result of the unsatisfactory conducts complained.
 - (c) The Bankrupt gave explanations for her unsatisfactory conducts. Briefly, at the material times, she suffered from stress and depression because of her then financial difficulties, breakdown in marriage and constant harassment from debt-collectors. The Trustee in Bankruptcy apparently was not satisfied with the explanations. However, with respect, apart from persuading this Court to disbelieve or to be skeptical on the Bankrupt, Mr. Gopaoco has no or insufficient evidence to discredit the Bankrupt. Hence, on balance, I am prepared to accept the Bankrupt's case.

- (d) I agree with Mr. Ho that there was no complaint against the Bankrupt for the 4 years after the making of the bankruptcy order. Indeed, it appears that she behaved properly during such period. She was co-operative with the Trustee in Bankruptcy and did contribute a total sum of \$32,300 to her estate during April 2004 to August 2006. Costs
14. I have not heard from the parties in relation to the question of costs. On the one hand, by agreement, the Trustee in Bankruptcy has established unsatisfactory conducts of the Bankrupt. On the other, the Bankrupt has convinced me to exercise discretion in her favour. It therefore appears to me that there should be no order as to costs in the circumstances. I make such an order nisi accordingly. (Jack Wong) Master Mr. E. Gopao 1udk 1udk I J K L M N O P Q R S T U V (#p# hsvg 3nzpW hsvg & 6" Normal.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8
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