

HONG KONG / JUDGMENT

RE CHEUNG KO CHING

COURT

Court of First Instance

DECIDED

4 April 2007

CASE / FILE NUMBER

HCB272/2001

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bjbj HCB 272/2001 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO. 272 OF 2001

Re: Cheung Ko Ching

Coram : Before Master J. Wong in Court Date of Hearing : 19 March 2007 Date of Decision : 4 April
2007

DECISION

Application

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

Background

2. On 15 January 2001, based on a judgment under MP 1302/1999, Wing Hang Bank Limited as Judgment Creditor filed a petition for bankruptcy against Mr. Cheung Ko Ching (the Bankrupt) for failure to pay the judgment sums of HK\$11,116,988.47 and US\$237,265.63 together with interest and costs. It appeared that the Bankrupt did not oppose the petition. On 16 May 2001, this Court made a bankruptcy order against him in his absence.

3. On 24 July 2001, this Court further appointed the Official Receiver () as Trustee to summarily administer the estate of the Bankrupt. However, the OR could hardly perform his job, and on 14 April 2005, he took out a summons under section 30A of the Bankruptcy Ordinance () and rule 88 of the Bankruptcy Rules () against the Bankrupt to object his automatic discharge from bankruptcy which should have happened on 16 May 2005, i.e. 4 years from the making of bankruptcy order against the Bankrupt.
4. The summons was premised on 2 grounds, sections 30A(4)(c) and (d) BO. The OR complained that the Bankrupt had failed to co-operate in the administration of his estate and his conduct during the said 4 years was unsatisfactory.
5. The summons was first heard on 11 May 2005 and adjourned for a couple of times pending for an important issue to be resolved by the Court of Final Appeal in other similar cases. In the meantime, an interim order was made to suspend the automatic discharge. On 20 July 2006, the Court of Final Appeal, by a majority, ordered, inter alia, that section 30A(10)(b)(i) BO was unconstitutional. In short, the practical result thereof is that the bankrupt need not notify the OR of his leaving of Hong Kong after the commencement of the bankruptcy.
6. The matter was restored before me for substantive argument on 19 March 2007. Mr. Harry Ho represented the OR and the Bankrupt acted for himself. Having heard from the parties, I reserved my decision to be handed down. I now do so.

Ruling

7. Upon consideration of all the evidence authorities and submissions before me, I have decided that the automatic discharge of the Bankrupt should be suspended for 2 years in the circumstances. My reasons appear below. The Law
8. In assessing the appropriate period for suspension of the automatic discharge of the bankruptcy order, I bear in mind the underlying principle of such scheme as per paragraph 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.
9. 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 apprised 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. The Application

10. Applying the above principles in the present case, I note the following factors to be taken into account.
 - (a) The OR's application was premised on 2 grounds, sections 30A(4)(c) and (d) BO. The major complaints of the OR were two-folded. The Statement of Affairs was only filed until November 2004, more than 3 years after the making of the bankruptcy order. The 5th annual Statement of Earnings and Property was also filed late for a few months. To these complaints, the Bankrupt did not seek to dispute but try to explain why he did so. He told this Court that he was suffering from huge stress and therefore became forgetful. On balance, I regret that I decline to accept such explanations. No medical evidence has been adduced to support the physical or mental condition of the Bankrupt. To the contrary, there is ample evidence to satisfy this Court that the OR has duly informed the Bankrupt of his obligation by all possible means. He was and/or should have been aware of the same. There are also some other minor factual disputes between the parties, including the number of attendances by the Bankrupt at the OR's office and the fact that if the Bankrupt had informed the OR of his departures from Hong Kong. On balance, I accept the OR's versions of facts because they were backed up by contemporaneous documents when those of the Bankrupt were mere allegations without particulars and corroborating evidence. Mr. Lo suggested that a suspension of 2 years was appropriate. In this regard, I heard no strong objection from the Bankrupt apart from asking me to exercise my lenience over him. I agree with Mr. Lo in his suggestion. Costs At the end of the hearing, Mr. Lo also asked me to summarily assess the costs of the OR in case that I would be with him. He agreed to waive all fees for preparing the various reports filed as well as attendances for call-over hearings. Based on his statement of costs submitted, I agree to assess his fee at the hourly rate of \$3,000 as he was admitted in 1988. I award his costs (order nisi) as follows: \$ (a) Preparation of skeleton 3,000 Preparation of hearing on 19 March 2007 1,500 Hearing on 19 March 2007 3,000 7,500 The assessed costs shall be payable by the Bankrupt to the OR upon his discharge on 16 May 2007. (Jack Wong) 1udk 1udk L M N O P Q R S T U V (#p# hsvg 3nzipW hsvg & 6" Normal.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc

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Prepared on 25 October 2026 · Esheria