

HONG KONG / JUDGMENT

RE CHRISTOPHER EDWARD RILEY

[2023] HKCFI 774**COURT**

Court of First Instance

DECIDED

16 March 2023

CASE / FILE NUMBER

HCB7135/2021

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bjbj HCB 7135/2021

**[2023] HKCFI 774 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO 7135 OF 2021**

Re: CHRISTOPHER EDWARD RILEY Debtor Ex-parte: KHOUMRI MUSTAPHA Petitioner

Before: Deputy High Court Judge Le Pichon in Court Date of Hearing: 9 March 2023 Date of
Handing Down of Judgment: 16 March 2023 J U D G M E N T This is the petition of Khoumri
Mustapha (the Petitioner) for a bankruptcy order against Christopher Edward Riley (the
Respondent) based on an unmet statutory demand dated 29 June 2021 in the sum of \$145,000
(the debt). At the conclusion of the hearing, judgment was reserved which I now give.

Procedural history

The statutory demand was served on the Respondent on 30 June 2021. The petition was presented on 29 December 2021. The Respondent filed his notice to show cause against the petition together with an affirmation of truth statement on 25 February 2022. The petition was amended pursuant to leave granted on 12 April 2022 and on 10 May 2022, the Respondent filed his amended notice of intention to oppose the amended petition (the amended notice) in which he admitted (under oath) that parts of the debt were true personal payments made by the Petitioner to [the Respondent] as loans and had been received by the Respondent from the Petitioner as personal payments . The hearing of the amended petition was adjourned for 2 months to allow time for the Respondent to pay the undisputed part of the debt in the sum of \$69,000 (the undisputed debt) under the amended petition. At the adjourned hearing in July 2022, not only had the Respondent not paid the undisputed amount, he attempted to retract his admission. Directions were then given for the filing of evidence which is now before the court. Background facts The Respondent and his wife incorporated The Water Buffalo Brewery & Restaurant Limited (the

Company) in June 2015 and conducted the restaurant business by the name of The Water Buffalo Pub (the restaurant) in Pui O. The Petitioner is a former close friend of both the Respondent and his wife. The Petitioner became a shareholder in the Company on 4 June 2018, at a time when the restaurant was already struggling. He invested \$150,000 and acquired 9 shares in the Company with the Respondent and his wife each holding 25 of the remaining 50 shares. By late August 2018, the restaurant was contemplating closure but in discussions between the Petitioner and the Respondent, the Respondent did not consider it wise to close the restaurant then as September to December had been good business months in previous years. Following those discussions, on around 25 August 2018, the Petitioner invested a further \$50,000 into the Company on the basis that it would represent the last investment he would make in the Company. He was issued with 3 shares. The debt particularized in the statutory demand is made up of the following items: When Incurred Description of Debt Amount due as at the date of this demand (HK\$)

Date	Description of Debt	Amount due
19/08/2018	Unpaid Personal Loan	26,000
12/10/2018	Payment to debtor for purchase of shares in The Water Buffalo Brewery and Restaurant Ltd which were never issued	50,000
14/11/2018	Unpaid Personal Loan	12,000
12/01/2019	Unpaid Personal Loan	45,000
05/07/2019	Unpaid Personal Loan	12,000

Chronologically, the 1st item should rank last in time in that the evidence shows that it took place 19 August 2019 rather than 19 August 2018 as stated in the statutory demand. Accordingly, I will deal with that item as the last of the 5 that make up the statutory demand. 12 October 2018 - \$50,000 On 12 October 2018, the Petitioner was informed by the Respondent that business was still very very slow and the Company had used up the money. The Respondent asked if the Petitioner was agreeable to one last investment of \$50,000 , on the same arrangement as the last occasion (i.e. in return 3 shares) to which the Petitioner agreed (the promised shares) and that the money would be sent within 2 days . On Monday, 22 October 2018, the Respondent was asked to prepare the share certificate by the end of that week. It is the Petitioner s evidence that despite that promise, no shares were transferred and no share certificate was issued to him by the Company in respect of the promised shares. Some 33 months later and only after service of the statutory demand on 12 July 2021, the Respondent sought to issue and allot shares in the Company to the Petitioner by which time those shares were essentially worthless as the Company had no viable business and was technically insolvent. The Respondent relied on the following transcript of WhatsApp messages that took place later the same day on 22 October 2018:

Petitioner: Respondent: Hi Chris can you please prepare share certificate by end of this week. Better near Friday as I have 7 days to report. Hi Mustapha, Sure. Tomorrow or Wednesday. I ll let you know when it s ready. The Respondent highlighted the fact that the Petitioner s transcript for that day omitted his last message (i.e. better near Friday). The Respondent interpreted that message as meaning a rejection of Tuesday and Wednesday in favour of Friday. Pausing there, it is to be noted that, for reasons not apparent, Thursday (which is near Friday) was passed over and did not get a mention. The Respondent s evidence is that he had the share certificate ready for Friday, 26 October 2018 when he met with the Petitioner that evening but allegedly the Petitioner refused to accept the share certificate and requested the Respondent to take it back. The Respondent went on to state that it later transpired that by that time [the Petitioner] had already missed his fiduciary reporting deadline. However, there is no evidence as to what event later transpired that could give rise to the Respondent making that assertion. Building on the

Petitioner's reference to his having 7 days to report, the Respondent has made serious allegations, accusing the Petitioner of having missed the reporting deadline imposed by his employer, and breaching US and Hong Kong regulatory/compliance obligations as a result. However, what the Petitioner was obligated to report to his (unidentified) employer and how the 7 days is to be reckoned are unexplained and entirely obscure. The Respondent sought to substantiate his case by producing various certified true extracts of board minutes. All were certified by the Respondent himself as Company Secretary on 19 February 2022. They relate, inter alia, to board meetings held on 27 October 2018 and 12 July 2021. The evidence presented regarding those board meetings is highly problematic: it has an air of make-believe about it. First, it has not been explained why copies of the original minutes of those meetings could not be exhibited. Second, the certified true extracts were all made on the same day (19 February 2022). They are but computer-generated documents that conveniently and coincidentally replicate the Respondent's version of events and are entirely self-serving. Third, there are no minutes exhibited that record the resolution for the issuance of 3 shares to the Petitioner the certificate of which the Respondent allegedly had with him on 26 October

2018. Fourth, the cancelled share certificate is not in evidence. The very serious allegations made against the Petitioner affecting his personal and professional reputation are also not supported by any credible evidence. First, the Petitioner's employer is not even named, nor are the actual applicable reporting rules/regulations in evidence. Second, the reporting requirements that allegedly had been contravened are neither identified nor explained. Third, the relevant Hong Kong reporting requirements are also not identified. Those accusations bear the hallmarks of having been conjured up to smear the reputation and character of the Petitioner who, by all accounts, had been unquestioningly supportive and helpful to the Respondent when the latter experienced financial difficulties. They do not reflect well on the integrity of the Respondent. According to the Respondent, \$17,000 out of the sum of \$50,000 was paid as directors fees to himself and his wife Jennifer Riley (Jenny) on the same day; \$25,500 on 15 October 2018 for 2 months rent for the business premises and the balance of \$7500 was used to pay for other pertinent business costs. It is the Petitioner's case that the Respondent has deliberately involved the Company, using it as the ostensible recipient and hiding behind it to avoid his personal debt obligation. It is obvious that the Respondent (and his wife Jenny) derived personal benefit by immediately helping themselves to approximately half the sum advanced. In any event, in my view, the Petitioner is entitled to the return of the \$50,000 on the basis of failure of consideration. 14 November 2018 - \$12,000 The Respondent's request for a short term loan of \$12,000 is evidenced by the following WhatsApp exchange: 14 NOVEMBER 2018 Respondent: Hi Mustapha I am in big trouble again. Your last investment was used up quickly. Now I need to pay Awa house rent of \$12,000 by tomorrow. I meant what I said that your last investment would be the final one. But the market is still very slow. Please let's consider a short term loan of \$12,000 to be paid back by the end of this month? What do you think? I don't know what else to do. Thanks Chris Petitioner: Hi Chris. I am staying in HK this night. I made a transfer in buffalo account of 12000HKD. The Respondent has acknowledged that this sum

was mistakenly paid by the Petitioner into the Company's bank account on 14 November 2018. Despite clear evidence of the payment being a short term loan, at the hearing, the Respondent alleged that the sum transferred by the Petitioner was a gift on the basis that there were no follow-up references to this loan and no requests for repayment until service of the statutory demand. Given the basis upon which that payment was made, I do not accept that the fact that no request for repayment was made until the statutory demand (made within the limitation period) could transmogrify the basis of that payment into a gift.

12 January 2019 - \$45,000 The Respondent made another plea to the Petitioner for a short-term loan. He had the intention of making repayment from the remaining funds in his UK pension to offset this payment which was made into his personal account at HSBC on 12 January 2019. Contrary to the Respondent's expectation, that route for repayment did not prove possible. According to the Respondent, when he told the Petitioner this, the Petitioner had responded that repayment was not necessary. The Respondent's explanation is unsubstantiated by any independent evidence. For example, no correspondence with the relevant UK authority for the withdrawal of his UK pension is in evidence and the alleged communication with the Petitioner on this matter was entirely oral which, given the matters earlier described, the Respondent's evidence has to be taken with a pinch of salt. I would add that it is somewhat surprising, given the multiplicity of WhatsApp messages passing between the parties that have been exhibited, that this matter did not merit a WhatsApp message. In those circumstances, the Respondent has not shown by cogent evidence that the advance was a gift rather than a short-term loan.

5 July 2019 - \$12,000 This payment was made by the Petitioner into the Respondent's bank account on 5 July 2019. There is a letter dated 7 November 2022 from Jenny to the court relating, inter alia, to this payment of \$12,000. She explained that the transfer was made as a result of a conversation she had with the Petitioner alone without the Respondent's knowledge of her intention to borrow a short-term loan from a money lender to pay that month's rent for the home. The Petitioner told her not to go to moneylenders and that she could come to him any time for help. The WhatsApp messages the Respondent sent to the Petitioner on 1 and 5 July 2019 are as follows:

1 JULY 2019 Respondent: Hi Mustapha, Thank you so much for the rent money. I cannot express how much this means to us! It was [a] wonderful surprise. Thank you so much, bro.

5 JULY 2019 Respondent: Hi Mustapha, We're still not open for operational reasons but Jenny and I would like to meet up with you to thank for your wonderful generosity regarding our house rent. Are you in Pui [O] tonight? The Respondent explained that those messages were sent on 1 July 2019 upon learning from Jenny of the Petitioner's offer to pay that month's residential rent as his gift to both of them, and on 5 July upon receipt of the transfer. It is the Petitioner's case that this is another instance of the Respondent involving an intermediary (i.e. Jenny) to extract money from the Petitioner from which the Respondent derived personal benefit.

19 August 2019 - \$26,000 On 19 August 2019, Jenny sought help from the Petitioner. She sent the following message to the Petitioner:

19 AUGUST 2019 Jenny: Good morning [Mustapha]. I need your help. I found a place to rent in Tong Fuk. 2 bedroom[s], ground floor for 7k. I've been given two days to secure the place. I need to pay 1 month advance, 2 months deposit plus agent fee of

5k...Total 26k. I will return the said amount to you once I get the refund from the government Family Support Scheme. Please I need your reply Thank you Petitioner: The Petitioner agreed to help and the sum was delivered in cash via an intermediary to Jenny. The rental agreement in Jenny s name with a commencement date of 1 September 2019 was signed on 22 August 2019. On 10 September 2019, Jenny filed a divorce petition. There is an affidavit of service from a third party in the court file of FCMC 10841/2019 to the effect that it was served on the Respondent personally at the restaurant on 20 September 2019 by the third party. Surprisingly, in his acknowledgement of service but not made until 5 weeks later and dated 29 October 2019, the Respondent stated that he received it at his business address in Pui O in an unmarked, unaddressed, and unsealed envelope which he did not read until recently and could not recall the date it was served/delivered. In his Certificate as to Family Mediation also dated 29 October 2019, the Respondent stated that he did not wish to seek mediation. Nevertheless, according to Jenny, there was a period of reconciliation but no particulars were given as to how and when that came about. Jenny s decision to move out to different accommodation with her children could not have been lightly made given the upheaval it must have involved. Then, even on 29 October 2019, the Respondent was apparently not amenable to mediation. In those circumstances, one is left to wonder how and when reconciliation could have come about. Jenny withdrew her divorce petition in the 2nd half of November 2019 after a period of reconciliation the duration of which is not stated and accepted the Respondent into her home in December 2019 since which date, they have been and are still living there together. Jenny s letter to the court stated that during her period of separation, Jenny offered twice to repay the Petitioner the \$26,000, or even just half but he flatly refused both times saying it was a gift to [Jenny s] family . There is no evidence in support such as WhatsApp messages. It turns solely on Jenny s credibility. At first blush, at the time it was made, this payment was entirely for the benefit of Jenny and her children. As matters turned out, the Respondent enjoyed and is continuing to enjoy the fruits of that payment. While divorce proceedings had been filed, their short duration, the apparent untruthfulness of the Respondent in relation to service of the divorce proceedings on him, the lack of specificity relating to the timing and duration of the reconciliation period and how and when it occurred, the Respondent s apparent refusal even to mediate as at 29 October 2019, are all matters that cause grave misgivings and which give rise to considerable doubt and unease as to the genuineness of the alleged marital breakdown and reconciliation.

Conclusion

The Respondent has failed to adduce cogent evidence in support of his submission that items (b) to (d) (inclusive) were gifts from the Petitioner. In my view, \$69,000 of the debt is undeniably due and owing, reinforced by the Respondent s admission on oath and beyond dispute. That alone would warrant a bankruptcy order under section 6 (2) (a) of the Bankruptcy Ordinance, Cap 6. The immediate payment of the directors fees upon receipt of the \$50,000 in item (a) and application of the balance after the payment of rent to defray unspecified business costs are

particularly telling, given the financial straits of the Company at the time. Those matters lend support to the Petitioner's submission that the Respondent has taken advantage of and abused their former friendship by soliciting and extracting monies from the Petitioner for his personal benefit. In respect of items (a) and (e), he has resorted to using connected intermediaries (i.e. the Company and Jenny) as a facade and a sham to disguise his efforts in extracting money from the Petitioner who relied on the various representations made. The Respondent has undeniably taken the ultimate benefit of the various payments making up the debt. Taking a holistic view of the evidence before the court, I agree and accept the Petitioner's submission. In any event, as regards item (a), there is the additional reason why the Respondent should be liable for the \$50,000. As regards item (e), even if I were wrong, it makes no practical difference since, on any view, the amount of the debt well exceeds the \$10,000 threshold for the meeting of a bankruptcy order. Accordingly, it is ordered that the Respondent be adjudged bankrupt and the Official Receiver be the provisional trustee of the estate of the Respondent. (Doreen Le Pichon) Deputy High Court Judge

The Debtor appeared in person Mr Li Long Fung of Bowers, for the Petitioner Attendance of the Official Receiver was excused See 3 and 7 of the amended notice. See the WhatsApp exchange of 12 October 2018: B2/388. Those record the Petitioner's request on 26 October 2018 that no shares be issued for his capital investment \$20,000 made on 12 October 2018, the Company's resolution acceding to that request by "cancelling the share certificate" and further resolving that as the Petitioner remains entitled to receive 3 new shares following receipt of the capital investment, the Company would issue the 3 shares at a future date decided either by the Petitioner or a further board resolution. Those record receipt of the statutory demand which included the \$50,000 paid to the Company on 12 October 2018 as a personal loan as the Petitioner had not received the 3 shares, resolving that the Company immediately issues the share certificate and to report the new share issuance to the Companies Registry. However, there is no evidence of any filings made at the Companies Registry for that share issuance. The Code of Ethics/Personal Investment Policy exhibited by the Respondent (at pages 25-30 of CER-1) are not applicable to the Petitioner or his employment as Citigroup's US asset management business was acquired by a 3rd party in 2005 since which date Citigroup Asset Management had ceased to operate: see the Petitioner's 2nd affirmation dated 1 December 2022 See Company Statement of the Board dated 20 February 2022 signed by both directors ("the Company Statement") There is no breakdown or detailed description of items making up those costs. See the Company Statement. See 24 above. This WhatsApp is curiously worded since the transfer was not received until 5 July 2019. See 27 above.

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