

HONG KONG / JUDGMENT

RE CROWN RECORD CO LTD

COURT

Court of First Instance

DECIDED

4 August 2011

CASE / FILE NUMBER

HCCW13/2011

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bjbj HCCW 13/2011 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE COMPANIES WINDING-UP PROCEEDINGS NO. 13 OF 2011

IN THE MATTER of Section 177 (1) (d) of the Companies Ordinance, Cap. 32 of the Laws of Hong
Kong and IN THE MATTER OF CROWN RECORD COMPANY LIMITED (j1UGr gP

- (d) of the Companies Ordinance (Cap 32) to wind up Crown Record Co Ltd (the Company). The Petition is presented by Ms Dora Lau (the Petitioner), who is a 16% shareholder and a director of the Company. The Petitioner says the Company owes her a debt (the Debt) of HK\$479,639.00 as a loan advanced in November 2008, which the Company has failed to repay despite her demand. The Petition is opposed by another shareholder and director of the Company, one Mr David Lau . Mr Lau is the Petitioner s brother. With the affirmation filed by Mr Lau, he does not dispute the Debt but opposes the Petition on the ground that the Company has a landed property (the Property) which is worth some HK\$3 million with an outstanding mortgage in the sum of some HK\$800,000.00. The Company is (says Mr Lau) thus in a position to repay the Debt and not insolvent if the Property is sold. He has also provided evidence to show that the Petitioner as a director has however refused to consent to the sale of the Property to repay the Debt. There is however a last minute turn of events. By his solicitor s letter sent to this Court in the afternoon yesterday, Mr Lau informed me that he was no longer opposing the Petition. In the circumstances, given that the Petition is now unopposed, I am prepared to grant the usual winding up order as sought under the Petition. This is particularly so as, and in any event, I am satisfied that the Petitioner has shown that the Company is unable to pay the Debt and is insolvent for the following reasons: The Debt is not disputed. The Company has not repaid the Debt since it was formally demanded to do so by the Petitioner through her solicitors in their demand letter dated 27 October 2010. Although the Company owns the Property, it is subject to an all-moneys mortgage, with no reliable evidence as to its outstanding sum owed to the bank under the mortgage. Mr Lau s allegations that the outstanding mortgage sum was only HK\$800,000 and thus the Company is in a position to repay the Debt and not insolvent is not supported by

any documentary evidence and in fact has been cast on doubt by (a) the bank's unexplained refusal to grant a further loan of HK\$500,000.00 to the Company under the mortgage to repay the Debt, and (b) the lack of evidence to show the current other liabilities of the Company. For the above reasons, I order that the Company be wound up. After hearing submissions, I further order that costs of the Petition be to the Petitioner to be paid out of the assets of the Company, save that the costs incurred since 4 April 2011 be paid by Mr Lau, to be taxed if not agreed. In my view, the circumstances and evidence of the present case show that the opposition raised by Mr Lau is more in the nature of a shareholders dispute between him and the Petitioner. It is also noted that Mr Lau only decided not to oppose the Petition yesterday when the evidence filed was practically completed in late April 2011. It is only fair and just in all the circumstances to order him to pay the increased costs of the Petition by reason of his opposition since 4 April 2011. Cf: *Re Goldcone Properties Ltd* (unrep., HCCW 391/1999, 5 November 1999, Ribeiro J) at pp 2-3; *Re Bathampton Properties Ltd* [1976] 1 WLR 168 at 172C G per Brightman J. (Thomas Au) Judge of the Court of First Instance High Court Mr. Keith K.K. LAU, instructed by Messrs Kelvin Cheung & Co., for the Petitioner. The Company, in person, absent. Mr. Vincent S.K. CHEN, instructed by Messrs Lo, Chan & Leung, for Mr. Lau, David, a director and shareholder of the company. The Official Receiver, attendance excused. It is noted that Mr Lau says the Company has not opposed the Petition solely because the Petitioner, as the other director of the Company has refused to consent to a resolution of the board to instruct lawyers to represent the Company to oppose the Petition. By an Order dated 4 April 2011, Reyes J gave leave to Mr Lau as a director and shareholder of the Company to file evidence to oppose the Petition.

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