

HONG KONG / JUDGMENT

RE HO HUNG ON

COURT

Court of First Instance

DECIDED

30 July 2009

CASE / FILE NUMBER

HCB1799/2005

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCB 1799/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO. 1799 OF 2005

Re: HO HUNG ON

Coram : Before Master J. Wong in Court Date of Hearing : 18 June 2009 Date of Decision : 30 July
2009

D E C I S I O N

APPLICATION

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

BACKGROUND

2. On 8 March 2005, Mr. Ho Hung On applied to this Court for his own bankruptcy. He deposed that he owed debts for over 0.5 million and was unable to pay them.
3. He further deposed that he was a retired police officer and had received a pension of about 0.76 million before his retirement. Requisition was raised as to how the pension was spent. Mr. Ho then filed a supplemental affirmation explaining that he had repaid, inter alia, a total sum of 0.39 million to his mother and brothers.
4. On 10 May 2005, a bankruptcy order was made against Mr. Ho (hereinafter called the Bankrupt).

5. Under the present bankruptcy legislation, the Bankrupt should be discharged on 10 May 2009, i.e. after 4 years from the said bankruptcy order. However, on 30 March 2009, the Official Receiver and Trustee (the) applied to extend the bankruptcy period on 3 grounds.
 - (a) It was discovered that the Bankrupt had conveyed his interest in a landed property in China to his wife without payment.
 - (b) The aforesaid repayment of 0.39 million before the commencement of the bankruptcy was unsatisfactory.
 - (c) The Bankrupt also failed to co-operate with the OR in trying to recover the said sum of 0.39 million.
6. The Bankrupt opposed the application and further asked for mitigation. Interim order was made to suspend the discharge in the meantime and I heard parties argument on 18 June 2009. Miss J. Lam acted for the OR and the Bankrupt appeared in person. At the outset of the hearing, the Bankrupt told me that he had asked the OR to consider a conditional discharge. He proposed a payment of \$2,000 per month for 2 years from 1 July 2009. Miss Lam replied that this Court should only consider such possibility after ruling on the complaints of the OR. Having heard from the parties, I reserved my decision to be handed down. I now do so.
DISCUSSION I. Are the OR s complaints established?
7. On balance, I find that the OR has proved all three complaints.
 - (a) It was not disputed that the Bankrupt, together with another joint owner, did sell the property known j(g- r of law and facts, section 49(3)(a) of the Bankruptcy Ordinance (the) was breached because the Bankrupt did make a gift to his then wife and receive no consideration, and it happened within 2 years from his petition of bankruptcy.
 - (b) The Bankrupt did not deny that, out of his pension received, he paid \$200,000 to his mother, \$50,000 to his 2nd elder brother and \$140,000 to his 3rd elder brother. The total sums exceed 50% of the pension he got about 1 month before he petitioned for his own bankruptcy. He explained to the OR that he did so for reconciling his relationship with the family. He denied any preferences made. At the hearing before me, he supplemented that he did not pay other creditors like banks and finance companies because they would allow further loans to him. It would put him into another round of debt problem. With respect, such explanations are not convincing, in particular under section 50(5) BO, those transactions are presumed to be unfair preferences because they were all made to the Bankrupt s family members or associates as defined in section 50 therein.
 - (c) The OR intended to seek recovery of the sums under the said unfair preferences. She asked the Bankrupt to pass the demand letters on to his mother and brothers. He declined, disputed and asked to be solely responsible for the matter. Having declined the explanations of the Bankrupt in (b) above, his lack of co-operation is established. II. Exercise of discretion: suspension or conditional discharge?

8. I now move to the exercise of the Court's discretion to see if the discharge of bankruptcy against the Bankrupt should be suspended, and if so, for how long, or alternatively, whether a conditional charge should be opted. In this respect, I remind myself of the underlying principle of the current bankruptcy regime as per paragraphs 17.6 and 17.24 of the Law Reform Commission 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* [1993] 3 HKC 683 and *Re Li Tak Kong* [2000] 3 HKC 360 respectively: Rehabilitation in 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.
10. In the present case, the matter in paragraph 7(a) above is relatively minor. The transaction occurred about 1 year before the petition, involving a small sum. If the OR only complained it, I probably would have accepted the option of conditional discharge. However, paragraph 7(b) and (c) are more serious matters. They clearly are something that the legislature intends to avoid, i.e. unfair preferences made to associates of a bankrupt. In exercising of the Court's discretion in the matter, I do not consider this case warrants a conditional discharge. III. How long should discharge be suspended?

11. The Bankrupt is at the age of 49. He divorced with his wife in 1990 and had to pay about \$7,000 maintenance to her and their daughters. He has also re-married. They have a 4 year-old son and are expecting a baby to be born soon. He is now living together with his mother, aged 84, in a public house.
12. He also told me that he decided to retire earlier and applied for bankruptcy in order to get a new start of his living. He tried his best to work with the OR. During the past 4 years of bankruptcy, he made the best contributions he could. Particulars 4 February 2006 HK\$35,000.00 22 April 2006 HK\$4,778.00 16 May 2006 HK\$2,235.00 July 2006 HK\$8,572.00 September 2006 HK\$4,072.00 28 April 2009 HK\$48,287.00 Total: HK\$102,944.00
13. On the other hand, Miss Lam referred me to the judgment of Barma J. in HCB 26018/2002 when the learned Judge suspended the automatic discharge of the bankrupt for 4 months, upon finding, inter alia, that there had been an unfair preference of \$135,000 paid to his mother.
14. In the present case, having taken into the matters raised by the parties, I opine that a period of 8 months is appropriate in the circumstances.

CONCLUSION

15. To conclude, I order that the automatic discharge of the Bankrupt shall be suspended for 8 months and he is only to be discharged from 10 January 2010. COSTS
16. Miss Lam asked her costs to be summarily assessed by this Court in the event that the case of OR would be accepted. I see no reason why it should not be done in such a way. Miss Lam was admitted in 2005 and asked for an hourly rate of 2,000. She spent a total of about 7.5 hours, including attending hearing and preparation of documents. I find them proper in the circumstances. On top of it, there are 3 bundles of documents for hearing, consisting 386 pages each. 3 dollars per page is the usual charge allowed by the Court.
17. Hence, I will summarily assess the OR s costs in the application, including costs reserved and hearing on 18 June 2009 in the sum of \$18,474.00 payable by the Bankrupt. Such order nisi is to be made absolute unless either of the parties will apply within 14 days from today to vary it. (Jack Wong) Master of the High Court Ms. J. Lam for Official Receiver and Trustee. Mr. Ho Hung On, appearing in person. 1udk 1udk (#p# @@&LH7 hsvg 7nN8R 3nzpW hsvg & 6" Normal.dot Administrator Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=67293

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/re-ho-hung-on-2009>

Prepared on 27 October 2026 · Esheria