

HONG KONG / JUDGMENT

RE HO YIN WING

COURT

Court of First Instance

DECIDED

10 December 2007

CASE / FILE NUMBER

HCB6918/2007

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

bjbj @o&(HCB6918/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE IN BANKRUPTCY NO. 6918 OF 2007

RE: HO YIN WING Debtor EX PARTE: BANK OF CHINA (HONG KONG) LIMITED Creditor

Before: The Hon. Barma J in Court Date of Hearing: 10 December 2007 Date of Judgment: 10
December 2007

J U D G M E N T

1. This is a petition for bankruptcy presented by the Bank of China (Hong Kong) Limited against Mr Ho Yin-wing. The debt relied upon arises out of a guarantee by the debtor of the debts of Stereo Limited under a mortgage of 30 June 2002 and a facility letter dated 2 April 2003 between Stereo Limited and the petitioner.
2. According to the petitioner, Stereo Limited is indebted to the petitioner in the sum of \$9-odd million but, as far as the guarantee is concerned, the amount said to be due under the guarantee is a principal sum of \$1,489,352.66 together with accrued interest thereon. As at the date of the petition, which is 9 August 2007, the amount of the debt was said to be slightly over HK\$1.8 million.
3. The debtor has filed an affirmation in opposition to the petition in which he suggests that his liability under the guarantee has been discharged or has been brought to an end by virtue of the fact that the petitioner and the company, Stereo Limited, have entered into a scheme of arrangement in respect of Stereo's debts to the petitioner. He exhibited to his affirmation a letter dated in March 2004 in which the proposals for the scheme were put forward among which were included a provision that debts arising under guarantees given by himself and

one of his siblings should be waived by creditors as part of the scheme. In the event, it appears that the scheme as eventually agreed upon by the creditors of Stereo Limited did not contain any such term.

4. Mr Fong, who appears for the debtor, has suggested that there was an express term of the scheme or that his client's debts under his guarantee would be waived. However, as I have said, it is quite clear from the terms of the scheme that were eventually entered into that no such term was included as part of the scheme. There is a reference to persons in the position of the debtor in the scheme. He is defined as a related party being a sibling of the person principally responsible, it seems, for the affairs of Stereo Limited. That said, however, the only relevance of his being a related party for the purpose of the scheme by virtue of that relationship is that any debts that he was owed by Stereo were to be excluded from the scheme so that he would not be entitled to participate in the scheme and receive a dividend from scheme funds in respect of any debt that was owed to him by Stereo Limited. Moreover, it is quite clear from clause 10 of the guarantee that was given by the debtor, that he agreed with the bank that no steps taken by the bank to grant any indulgence or settlement or composition or arrangement between the bank and the company would lead to the discharge of the bank's rights against him and that he would remain liable to the bank notwithstanding that the bank had compromised or entered into an arrangement with the company, Stereo Limited, in respect of its debt.
5. It seems to me, therefore, that the fact that the scheme of arrangement had been entered into so that the company, Stereo Limited, and the petitioner have, in effect, compromised the debt of the company as between themselves does not in any way affect the liability of the guarantor, that is, the debtor, under his guarantee.
6. Mr Fong also suggested that there might be some dispute as to the amount of the underlying indebtedness of the debtor under the guarantee. However, no particulars of this could be provided and it does not appear to me that this provides any basis for concluding that the debtor has a bona fide dispute of substance in relation to the debt that is claimed.
7. In these circumstances, I am satisfied that there is no bona fide dispute of substance in relation to the underlying debt and I shall make the usual bankruptcy order with costs.
(Aarif Barma) Judge of the Court of First Instance High Court Miss Wong Wai-yin, of Gallant Y T Ho & Co., for the Petitioner Mr Dickson Fong, instructed by Messrs S Y Fung, for the Respondent Miss Anne Chow, for the Official Receiver
PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V & `#\$ JUDGE.DOT setup Microsoft Word 9.0 judiciary 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=59681

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/re-ho-yin-wing-2007>

Prepared on 28 October 2026 · Esheria