

HONG KONG / JUDGMENT

RE LAM KIT SEONG MIRANDA

COURT

Court of First Instance

DECIDED

27 November 2007

CASE / FILE NUMBER

HCB9860/2007

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bjbj HCA 2107/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE ACTION NO. 2107 OF 2006

BETWEEN YUEN OI YEE LISA Plaintiff and LAM KIT SEONG MIRANDA Defendant

AND HCB 9860/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO. 9860 OF 2007

Re: LAM KIT SEONG MIRANDA Ex parte: DAVID & GOLIATH

(Heard together) Before: Hon Lam J in Chambers Date of Hearing: 23 November 2007 Date of
Decision: 23 November 2007 Date of Handing Down Reasons for Decision: 27 November 2007

REASONS FOR DECISION

Despite Yuen s absence at the hearing of 23 November 2007, I am satisfied that we should proceed. She had in fact been at the court in the morning and it shows her pretext of not being able to attend due to the need to answer bail at the Immigration Department as spurious. It is clear to me that she deliberately chose to absent herself at the hearing. Given the grave circumstances of the matter, it is not in the interest of justice to have the hearing delayed. For reasons which would become clear below, I will regard the present matter be heard in the context of HCA 2107 of 2006. More particularly, it should be dealt with as being ancillary to the RPO made by this court on 8 August 2007 in that action. By that RPO, Yuen Oi Yee Lisa [Yuen] is restrained, whether in her personal capacity or in the name of her company from commencing

any fresh proceedings by whatever originating process concerning any matters involving or relating to or touching upon or leading to or arising out of, inter alia, HCA 2107 of 2006. The subject matter of HCA 2107 of 2006 is Yuen's claim against Miranda Lam [] for,

- (a) An amount of \$560,000 as sum allegedly misappropriated by Lam from her brother;
- (b) General or punitive damages for breach of contract in the sum of \$3,600,000. The claim was struck out by this court on 8 August 2007 for reasons set out in my judgment of that date. On 19 November 2007, Yuen came to the Registry of the High Court attempting to present a bankruptcy petition against Lam. The petitioner is David & Goliath, a firm in which Yuen is a partner. Although Form 10C is used, the capacity of David & Goliath in presenting a petition is not a nominee under a voluntary arrangement. Paragraph 2 of the petition identified Yuen herself as the nominee and it alleged that Lam had made a voluntary arrangement to pay \$4,160,000 (viz. \$560,000 and \$3,600,000, precisely the same as the claim in HCA 2107 of 2006) to David & Goliath. Hence, David & Goliath is identified as the creditor rather than the nominee. The way in which Lam is alleged to owe David & Goliath the sum of \$4,160,000 is set out in paragraph 3 of the petition. It is in substance a repetition of Yuen's groundless claim in HCA 2107 of 2006 though she now chooses to formulate the incident of 29 April 2006 as a voluntary arrangement in the petition. The petition is therefore within the scope of the RPO of 8 August 2007. Yuen has not obtained RPO leave from this court to issue the petition. Worse still, Yuen tried to evade the attention of the Registry by using the name of David & Goliath as petitioner instead of herself. Further, Yuen tried to mislead the Registry by using Form 10C. She claimed that there was a voluntary arrangement by Lam under which she herself was appointed as the nominee and David & Goliath was the creditor. The petition was apparently based on the ground in Section 3(1)(c) of the Bankruptcy Ordinance. Yuen claimed herself to be the nominee. It is quite obvious that there had not been any voluntary arrangement. There was never any suggestion of any voluntary arrangement when Yuen referred to the 29 April 2006 incident in HCA 2107 of 2006. Yuen was unable to refer to any interim order for the alleged voluntary arrangement in the petition. Voluntary arrangements are governed by Sections 20 to 20L of the Bankruptcy Ordinance. The scheme of the ordinance is that a Section 3(1)(c) petition can only succeed if Section 20L is satisfied, and that pre-supposes the voluntary arrangement in question is one approved by a creditors meeting under Section 20F, and that in turn pre-supposes a creditors meeting summoned under Section 20E after a report has been made to the court under Section 20D by the nominee. The whole process starts with an interim order made under Section 20. This is abundantly clear from the definition of nominee in Section 2 of the Bankruptcy Ordinance. Plainly, Yuen is not a person coming within such definition. Any purported voluntary arrangement unsupported by an interim order under Section 20 is not binding on any person as a voluntary arrangement and as such cannot be relied upon for the purpose of Section 3(1)(c). In other words, if there has not been any interim order under Section 20, a petition under Section 3(1)(c) is doomed to fail. Rule 51 of the Bankruptcy Rules requires every bankruptcy petition to be attested by a solicitor or the Official Receiver or the Registrar. The petition of Yuen was not attested by any one of those persons. Instead, the

petition was purportedly witnessed by a person identified as Sheu 8^ (W o mention being attested by a proper person. From the above, it can readily be seen that the court should not allow the petition to be issued and it is a serious abuse of process for Yuen to attempt to file the same. As it happened, after a case number was assigned to Yuen for her petition, the staff at the Registry spotted some possible irregularities of the petition. The filing process was not completed and the original was taken away by Yuen without any seal nor with any endorsement by the Registry regarding the presentation of the petition. Therefore, the petition has not yet been presented and there is no original petition in the court file. Despite her knowledge that the petition has not been presented, Yuen wrote to solicitors for Lam on 19 November 2007 saying that she had issued the petition in HCB 9806 of 2007 as an act of revenge against Lam s petition in HCB 8954 of 2007. In para. 6 of that letter, Yuen said, By issuing the attached HCB 9860 of 2007, I want HSBC to freeze all [Lam s] accounts held under her name with immediate effect same as me. If not to be the same as me, I am going to report to the ICAC against HSBC with immediate effect. From this letter, the malicious intent of Yuen is self-evident. The letter caused Lam through her solicitor to issue a summons on 20 November 2007 seeking to strike out the petition. Further, I was told at the hearing that Yuen had notified at least one banker of Lam about the petition. Since the petition has not been issued, there is no need to strike out the same. However, there is obviously a need to impose an injunction on Yuen to prevent her from representing to any person that such a petition has been issued. Notwithstanding the absence of Yuen, I deem it appropriate to grant such an injunction on interlocutory basis. The return date of the injunction is 3 December 2007. Further, in view of the repeated attempts by Yuen to evade the effect of the RPOs previously made against her (this bankruptcy petition is the second attempt by her to issue fresh action in breach of the RPOs, see my judgment in HCA 2281 of 2007, 22 November 2007) I am satisfied that a more extensive RPO is necessary to protect Lam from the abuse of Yuen. I am satisfied that the draft RPO order prepared by Ms Lam is proportionate having regard to Yuen s litigation history with Lam and her avowed intention to revenge and to cause maximum damage to Lam by vexatious legal proceedings. I take a serious view on such vexatious use of the bankruptcy process by Yuen as outlined above. I am considering referring the matter to the Department of Justice for further action. Before I do so, I would ask for a report from the Registrar as regards what precisely happened at the Registry when Yuen attempted to file the petition on 19 November 2007. In the past dealings with Yuen, she would send abusive and/or offensive letters to the court and make harassing phone calls to my clerk when this court handed down judgments against her. Prior to today s hearings, she made at least 10 phone calls to my clerk. She threatened to make report to police if her demands were not entertained. She has in the past few months written to this court on almost daily basis (and sometimes several letters per day), and on many occasions copied to this court her correspondence with others. Such letters and phone calls were usually of no assistance in the bona fide resolution of any disputes before the court and have wasted the resources of the Judiciary. The court should not allow itself to become the subject of such harassment. I also consider such actions on her part arguably constituted contempt in the face of the court, see Archbold Hong Kong 2007 Paras. 30-49 and 30-51. This court will

not tolerate that and I have given her enough warnings in the past. I will therefore make an interlocutory injunction to restrain Yuen from such activities. She will have an opportunity to persuade this court not to continue with the injunction on 3 December 2007. For these reasons, I make an order as attached. (M H Lam) Judge of the Court of First Instance High Court Plaintiff in HCA 2107/2006, absent Ms Anita Lam of Messrs Johnson Stokes & Master, for the Defendant in HCA 2107/2006 No representative from Official Receiver HCA 2107/2006
IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF
FIRST INSTANCE ACTION NO. 2107 OF 2006

BETWEEN YUEN OI YEE LISA Plaintiff and LAM KIT SEONG MIRANDA Defendant

BEFORE THE HONOURABLE MR. JUSTICE LAM IN CHAMBERS

O R D E R

UPON hearing the Solicitors for the Defendant and the Plaintiff being absent AND UPON READING the documents in the court file recorded as having been read and the documents in the file of HCB 9860 of 2007 in which the petition has not been filed and presented IT IS ORDERED THAT UNTIL THE DETERMINATION OF THE COURT WHETHER THE FOLLOWING ORDER SHALL CONTINUE AFTER THE HEARING ON 3 DECEMBER 2007:- _Lu'Yw _Lu'Yw ng judicial review proceedings (fresh proceedings) against any one or more of the parties set out in Schedule 1 without the leave of Lam J or, in his absence, A. Cheung J (the designated judge) being first obtained (the RPO); All applications for leave to issue fresh proceedings covered or which may be covered by the RPO (RPO leave applications) must be made in writing to the designated judge (and not to any other judge or to a master) enclosing a copy of the draft document by which the fresh proceedings are intended to be commenced; At least 5 days before filing an RPO leave application, Lisa Yuen shall notify in writing each intended defendant of her intention to make such application, enclosing a copy of the aforesaid draft document by which the fresh proceedings are intended to be commenced, and if a response is received by Lisa Yuen, that she shall file a copy thereof with her RPO leave application; and that, in any event, each intended defendant shall be entitled, but shall be under no obligation, to place before the court any desired representations regarding any such intended proceedings of which he/she/it has notice; Each RPO leave application filed by Lisa Yuen:-

- (a) shall be confined to one subject matter;
- (b) shall identify clearly at the front page whether it is an application for RPO leave;

- (c) shall state whether Lisa Yuen has received any response from the intended defendants and if she has, such response shall be attached to the application;
- (d) shall not have evidence attached to the same document by which the RPO leave application is made. Affirmation supporting any RPO leave application shall be filed by way of a separate document, identifying clearly at the front page as evidence supporting a clearly specified RPO leave application and setting out clearly and precisely the evidence in support of her application;
- (e) shall be sent to the court by post or in person, and shall not be sent by fax; In the event the designated judges are not available to hear the RPO leave application, the same shall be dealt with by another judge designated by the Chief Judge of the High Court; All RPO leave applications and all matters ancillary thereto shall be dealt with on the papers and without any oral hearing unless the designated judge otherwise directs; If, contrary to the RPO, Lisa Yuen seeks to issue fresh proceedings covered or which may be covered by the RPO without prior leave of the designated judge, and if such fact should come to the notice of the Registry of the High Court, District Court, Small Claims Tribunal, Labour Tribunal or to the notice of any master, judge or judicial officer, the Registry, master or judge or judicial officer in question shall forthwith refer those proceedings to the designated judge for a decision as to whether the proceedings should be permitted to continue or be dismissed; If, contrary to the RPO, Lisa Yuen purports to serve on one or more defendants any fresh proceedings (whether or not the purported fresh proceedings are brought to the notice of the designated or some other judge, master or judicial officer) without at the same time serving on the defendant(s) a copy of an order giving leave to proceed or a direction that leave is not required, such defendant(s) should be entitled to make no response pending notification of the court's decision in relation to those proceedings; and, insofar as necessary, time for acknowledging service or for otherwise responding to such fresh proceedings shall be deemed extended accordingly; The RPO shall not prohibit Lisa Yuen from exercising her right of appeal to the Court of Appeal; The proceedings and applications referred to in the RPO include proceedings and applications of whatever nature in the Court of First Instance, the District Court, the Small Claims Tribunal, and the Labour Tribunal; Notification of this Order shall be given to the respective Registrars of the High Court, District Court, Small Claims Tribunal, Labour Tribunal who shall take note of the terms hereof and shall take all necessary steps to ensure due compliance with this Order; There be liberty to the parties identified in the Schedule to this Order to apply for further directions; Except her written application to the designated judge for RPO or RAO leave made pursuant to this Order or other RPO and/or RAOs made against Yuen by the court,
- (i) Lisa Yuen is prohibited from writing, sending and copying letters to Lam J or his clerk whether by fax or otherwise; (ii) Lisa Yuen is prohibited from making telephone calls to the clerk of Lam J for whatever purposes; (iii) All written applications of Lisa Yuen shall be delivered in person by her to the Registry. The Registry shall not accept documents other than written applications. If Lisa Yuen shall insist on leaving such other documents with the

Registry, they would be disposed of without forwarding the same to Lam J or his clerk. IT IS FURTHER DIRECTED THAT The Registrar shall prepare a report to this court regarding the attempt by Lisa Yuen to present a bankruptcy petition in HCB 9860 of 2007 within 14 days. If she wants this court to take it into account in deciding whether to refer the case to the Department of Justice for further action, the Defendant shall file an affirmation by 30 November 2007 setting out the particulars of her bankers to whom Lisa Yuen has notified them of HCB 9860 of 2007 and the damages or detriment (if any) suffered by her as a result thereof. Dated the 23rd day of November 2007. Registrar Schedule 1 List of Parties Robert Lam; Miranda Lam; Tony Boulton; companies in which Robert Lam and/or Miranda Lam have or had interests (including (a) RobertLam Industrial Properties Ltd. (formerly known as RobertLam Ltd.), (b) RobertLam Apartments Ltd. (formerly known as Ever Concord Holdings Ltd.), (c) RobertLam Properties Ltd. (formerly known as RobertLam Color Ltd.) and (d) Photobition HK Ltd. (formerly known as Imperial Wealth Co. Ltd. and RobertLam Color (Asia Pacific) Ltd.) (individually or collectively known as the Companies:); directors of the Companies; the current/former employees, consultants, officers, agents employed or engaged by any of the Companies, including Kit Yee Lam, Lai Ying Ng, Kam Ling Yip, Yuk Ying Fung, Suet Fong Lam, Jennifer Leung; parties related to Robert Lam, namely Betty Lee, Lam Ying (alias Ying Yeh) and Barbara Poon, and companies in which any one of these individual have or had interest; judges and other officers of the Court or Tribunals, lawyers (including solicitors, trainee solicitors, legal executives, legal clerks and counsel, other than lawyers acting for Lisa Yuen), Johnson Stokes & Master (including all current and former employees, partners, consultants of Johnson Stokes & Master), Messrs. Stevenson Wong & Co. Solicitors (including Mr. Willy Cheng and all current and former employees, partners and consultants of Messrs. Stevenson Wong & Co.) who have or had participation in or conduct of legal proceedings relating to Lisa Yuen, or as a result of their involvement in any of the legal proceedings relating to Lisa Yuen. - 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 1udk 1udk 1udk 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 1udk i\$&lh HCB.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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