

HONG KONG / JUDGMENT

RE LI NGAI

COURT

Court of First Instance

DECIDED

27 November 2008

CASE / FILE NUMBER

HCB23961/2002

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

bjbj HCB 23961/2002 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO. 23961 OF 2002

RE: LI NGAI

Coram : Before Master Levy in Court Date of Hearing : 21 September 2007 and 4 November 2008
Date of Handing Down Reasons for Decision : 27 November 2008

REASONS FOR DECISION

A. INTRODUCTION

1. On 29 September 2003, Mr. Li was adjudged bankrupt on a Creditor Petition, and Huida Asset Management Limited Company (Huida) is one of his creditors. By operation of section 30A of the Bankruptcy Ordinance (Cap. 6), Mr. Li, being a first time bankrupt, would have been automatically discharged from bankruptcy after 4 years, that is, from 29 September 2007.
2. Before Mr. Li was to be automatically discharged, the Official Receiver (), who was appointed as trustee in bankruptcy, sent to Mr. Li s creditors a notice pursuant to section 30A(5) on 22 June 2007, and advised them that the OR did not intend to object to Mr. Li s discharge from bankruptcy.
3. Huida, upon receiving the said notice, on 13 September 2007 issued the application to object to Mr. Li s discharge from bankruptcy.

4. An interim order to suspend the automatic discharge was made on 21 September 2007. It is quite unfortunate that parties have failed to bring the application up for hearing with due diligence. The substantive application was only heard on 4 November 2008.
5. At the end of the hearing, I dismissed the application. In light of the recent Court of Appeal decision of *Re: Chan Kwok Keung, the bankrupt* (unrep.), CACV 247 of 2007, which was just handed down on 28 October 2008, and confirmed that a court has no power to backdate an interim order, I could only discharge Mr. Li from bankruptcy effective from 4 November 2008.
6. These are my reasons for the dismissal. B. GROUNDS OF OBJECTION
7. In the application, Huida relied on all the eight grounds provided in sub-subsections (a) to (h) of subsection (4) of section 30A. Before the hearing, Huida abandoned three of the grounds of objection, and only relied on 5 grounds under sub-subsections (b) , (c) , (d) , (f) and (g) . C. BACKGROUND
8. The facts in support of the application were rather confusing, especially when Huida had abandoned three of the initial eight grounds of objections.
9. What prompted Huida to initiate the application to object was Mr. Li s Statement of Affairs submitted to the OR dated 1 March 2007 ().
10. In the SA, Mr. Li stated that the amount of the unsecured debt he owed to Huida was RMB 62,237,000 (when in fact it was the undisputed amount of RMB 622,370,000) and that the only assets he held were stocks and shares in the value of HK\$336,000.
11. Huida alleged that the said information stated in the SA were untrue. In fact, Mr. Li was found to be a director of a number of companies both in Hong Kong and in the Mainland, and the amount of the outstanding debt Mr. Li said he owed to Huida was misleadingly understated.
12. It is not in dispute that Huida has submitted a proof of debt in the sum of RMB 622,370,000.00. Apart from Huida, according to the 1st Report of the OR, there were 7 remaining unsecured creditors whose proof of debts was in the total sum of HK\$96,310,566.24 and US\$6,018,115.29. After having sold the 300,000 shares in Sino-Tech International Holdings Limited, and realized HK\$336,000, the OR had about HK\$99,000 left with the estate account after settling part of the OR s fees, and paying the taxed costs of the Petition. D. EVIDENCE
13. Both Huida and Mr. Li had each filed two affirmations. The OR, who had maintained a neutral stance in the application, had filed two reports, and reported the various inquiries and investigations he had done in respect of the matters Huida raised against Mr. Li.

14. Before the hearing, the solicitor for the OR had asked to be excused from attending the hearing. As I needed her assistance in respect of the inquiries reported in his reports, I declined to accede to the request.
15. The evidence in support of the application in respect of each of the grounds Huida relied on is now dealt with below. D.1 Grounds under sub-subsections (b), (c) and (d) (A) Huida
16. Huida alleged that Mr. Li had tried to conceal his assets from the OR as he did not in his SA disclose his interests and shareholding in a number of companies, and his active business interests in the Mainland.
17. According to the Annual Return of a company registered in Hong Kong called Wonderful Gate Development Limited (Wonderful Gate) in November 2006, it showed that Mr. Li held 5000 shares out of 10,000 shares in this company. Huida complained that Mr. Li did not disclose them in the SA.
18. Further, Huida also found that Mr. Li held one share (out of 10,000) in another company called Top Revenue Development Limited (Top Revenue), and that he was still a director of Nikson Investment Limited. (Nikson).
19. Huida also further discovered that Mr. Li was registered W?b"u |v gP of which was owned and contributed by Wonderful Gate. Counsel for Huida therefore submitted that the discharge of Mr. Li would prejudice the administration of the estate as Huida was entitled to make further inquiries into his financial state (ground under sub-subsection (b)). Further by failing to disclose all his assets, Mr. Li was alleged to have failed to cooperate in the administration of his estate (ground under sub-subsection(c)), and therefore his conduct has been unsatisfactory. (B) Mr. Li
21. In his first affirmations filed on 18 March 2008, Mr. Li had confirmed that he had made an inadvertent mistake in relation to the actual amount of debt he owed to Huida. He agreed that the actual amount was RMB 622, 370,000.
22. So far as the other allegations were concerned, I think it can be best understood by referring to Mr. Li s relationship with the Jiangmen Shi Municipal Government (JM Government) in Mainland China.
23. In 1989 (so Mr. Li says) Mr. Li was appointed by the JM Government as a vice managing director, representing the JM Government to take care of the business affairs of its window companies held by Strong Bases Development (Holdings) Limited)(SB Holdings). Wonderful Gate was one of the subsidiary companies of SB Holdings. Hence, the 5,000 shares he held in Wonderful Gate in fact beneficially belonged to SB Holdings, which in turn owned by the JM Government.

24. Mr. Li's explanation for his remaining as a director of Top Revenue and Nikson after he was adjudged bankrupt (according to Mr. Li) was due to the oversight of the staff responsible for filing the annual returns of the said companies. Mr. Li had since filed notifications of resignation as directors of Top Revenue, Wonderful Gate and Nikson after the application.
25. Guangzhou Qiaoji (according to Mr. Li) is a Mainland subsidiary of SB Holdings. As Mr. Li was the representative of the JM Government, Mr. Li, owing to his position with the JM Government, would naturally (as Mr. Li said) become the representative of its subsidiary.
- D.2 Ground under sub- subsection (f) (A) Huida
26. Huida also alleged that Mr. Li had continued to trade after knowing himself to be insolvent.
27. The evidence in support of the evidence mainly came from Huida's second affirmation in support of the application. According to its further inquiry, Huida discovered that notwithstanding Mr. Li having been adjudged bankrupt in 2003, he had continued to represent two Mainland Companies in Beijing called Beijing Tianshida Real Estate Development Co N)YBfT 0W"u |v gP ?b0W"u |v gP hich foreign partners was Nikson (of which Mr. Li was a director).
29. Further, Nikson is in fact a sole owner of Tianshida as all the latter's shares were transferred to Nikson.
30. Huida also produced a number of documents for the period between March 2004 and January 2007, showing Mr. Li attend directors meetings either as a director of Tianshida, or legal representative of Nikson, actively managing or participating in the affairs of these two Beijing companies (as Huida alleges).
31. Counsel for Huida submitted that these activities were in fact trading. (B) Mr. Li
32. According to a letter dated 25 July 2008 from Guangdong Development Bank (Mr. Li produced), it stated that this bank had taken control of Nikson in 2000 after Nikson had used the assets of Tianshida and Huang Do as security for loans. Mr. Li, as the director of Nikson before his resignation, was therefore required to sign documents relating to activities of Tianshida and Huang Do even after Mr. Li was adjudged bankrupt. D.3 Ground under sub-sub-section (g)
33. Huida complained that as Mr. Li had failed to state the correct amount of the debt Mr. Li owed to Huida in his SA, he was guilty of section 134 in having failed to keep proper accounts. D.4 The OR's investigation
34. As most of the alleged activities mainly involved Mainland entities, the OR did not carry out any investigation beyond the border of Hong Kong.

35. As a result, all the documents Mr. Li had provided concerning the Mainland entities - such as the document referred to in paragraph 25 above, the copy memorandum issued by the JM Government concerning his appointment as the vice managing director of SB Holdings, the document showing the beneficial ownership of the 5,000 shares of Wonderful Gate by the JM Government - had not been independently verified. E. DISCUSSION
36. On the evidence before me, I now discuss these grounds in turn. E.1 Grounds under subsections (b), (c) and (d)
37. It becomes immediately apparent on the evidence that the alleged interests Mr. Li in the Hong Kong companies of Wonderful Gate, Top Revenue and Nickson as well as his activities in the Mainland companies of Guangzhou Qiaoji, Tianshida and Huang Do, appear to have arisen from an intricate network of investments by the JM Government.
38. According to the evidence, Mr. Li only acted as the representative of the JM Government, and his activities evolving around these related companies (according to the documents Mr. Li has produced) were in connection with his capacity as the appointed representative.
39. Huida did not allege that the documents Mr. Li had submitted were forged or untrue. It had also not cross-examined Mr. Li on the veracity of his assertions. There is therefore nothing before me suggesting what Mr. Li had stated in his affirmations were untrue, and should be rejected.
40. Further, as the OR had submitted, unless the documents Mr. Li had submitted were forged (which Huida did not allege), the documents would have to be accepted on their face value.
41. After I have read the documents Mr. Li had produced, I am not entirely clear as to precisely what role Mr. Li played in the companies mentioned above, or the nature and extent of his interests in these unable to say affirmatively that Huida has instituted the application with bad faith (as Mr. Li's counsel suggests). However, the fact that Huida has chosen to rely on all the grounds provided in s.30A in the application does somehow indicate that it is unsure precisely what its allegations were to be made against Mr. Li. The application does, to a certain extent, smack of fishing. In my view, by refusing a bankrupt to be discharged for the sole purpose of allowing a creditor to make further inquiries when the latter has not done so in a timely fashion, and when especially the creditor does not have yet any clue as to what sort of inquiries it wishes to embark on does not appear to be within the spirit of our automatic regime.
42. It is true that on the evidence, Mr. Li had indeed continued to act as a director of a number of companies in Hong Kong, and could be guilty of the prohibition of s.156 of the Companies Ordinance (which prohibits an undischarged bankrupt from acting as a director of a company). However, whether Mr. Li should be prosecuted for the s.156 infringement would be a matter to the OR, but this infringement cannot be regarded as a valid reason for objecting to his discharge.

43. For these reasons, I am not satisfied that these grounds are established. E.2 Ground under sub-subsection (f)
44. The activities that Huida alleged constitute trading were Mr. Li's continued involvement with the affairs of Tianshida and Huang Do.
45. According to the evidence Mr. Li has provided concerning his relationship with the JM Government, his participation in the affairs of these entities, in my view, could hardly be described as trading.
46. The word trade in this sub-subsection is not defined, but it is accepted that it should be widely construed. According to the meaning given by Halsbury's Laws of England (4th Ed. Reissue) Vol. 47, para. 5, quoted in Butterworth's Bankruptcy Law Handbook (2nd. at 30A.12), trade in its primary meaning is the exchange of goods for goods or goods for money, and in a secondary meaning it is any business carried on with a view to profit, whether manual or mercantile.
47. The restriction imposed against trading on an insolvent bankrupt clearly is to ensure that his activities would not carry any risks of either causing any potential or actual losses to his existing creditors or incurring new debts to new creditors.
48. Hence, an undertaking or activity by an insolvent person in the capacity of an employee, a representative or an agent of an enterprise or a company is unlikely to be tantamount to trading as the person would not be conducting any business in his own account.
49. The evidence concerning Mr. Li's involvement with the two companies in Beijing, in my view, does not - for two reasons - appear to fall within the meaning of trading (construed in the context discussed above). First, there is no clear evidence as to what role Mr. Li exactly played in connection with Tianshida and Huang Do, and there is therefore very little evidence as to whether the alleged activities could incur any risks, whether actual or potential, to creditors.
50. Second, as shown from the discussions above, the evidence regarding Mr. Li's relationship with the Mainland companies is far from clear. It is therefore impossible to say that the activities Mr. Li had been engaging in connection with these companies could be described as trade in the sense intended by the insolvency regime.
51. For the reasons foregoing, Huida also fails to prove this ground. E.3 Ground under sub-subsection (g)
52. This ground is most tenuous as the mistake appearing in the SA is an obvious inadvertence. Besides, Mr. Li had in fact quickly admitted this inadvertence, and did not dispute the debt he in fact owed to Huida.
53. In the circumstances, it is wholly unjustified for Huida to rely on this ground, and more so to continue to pursue this ground after Mr. Li had admitted the inadvertence in his affirmation.

54. I am unable to see that the accounting offence provided in sub-subsection (g) is intended to catch an inadvertent mistake.
55. This ground therefore must be rejected. F. CONCLUSION
56. There will be a costs order nisi that Huida pay the costs of Mr. Li and the OR, to be gross-sum assessed in lieu of taxation.
57. The OR has submitted a statement of gross sum costs for the sum of \$32,750. I have considered the amount, and think it is reasonable. I therefore grant a costs order nisi in favour of the OR for the sum of \$32,750, which is to become an absolute order within 14 days.
58. Upon the costs order nisi becoming absolute (which is 14 days from the date of handing down of this Reasons), the receiving party should, in the absence of any agreement to quantum, fix a 30 minute hearing before me for gross-sum assessment of costs, and shall lodge and serve a statement of costs not less than 14 days before the hearing for assessment. Any response or objections are to be lodged and served 7 days thereafter. (K.Levy) Master of the High Court Mr. L. Lau instructed by Messrs. Ng, Lie, Lai & Chan for Creditor. Mr. P. Chong instructed by Messrs. K.C. Ho & Fong for Bankrupt. Ms. A. Sze of Official Receiver for Trustee. That the discharge of the bankrupt would prejudice the administration of his estate. That the bankrupt has failed to co-operate in the administration of his estate. That the conduct of the bankrupt, either in respect of the period before or the period after the commencement of the bankruptcy, has been unsatisfactory. That the bankruptcy has continued to trade after knowing himself to be insolvent. That the bankruptcy has committed an offence under section 129 or any of sections 131 to 136 of the Bankruptcy Ordinance. - PAGE - A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V (#p# i\$&lPn")%Po)%Po & 6" Normal.dot setup Microsoft Word 9.0 C!jO 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=63457

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/re-li-ngai-2008>

Prepared on 28 October 2026 · Esheria