

HONG KONG / JUDGMENT

RE LI SAU YING

COURT

Court of First Instance

DECIDED

11 December 2007

CASE / FILE NUMBER

HCMP2384/2007

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

bjbj SEQ CHAPTER \h \r 1 HCMP 2384/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL MISCELLANEOUS PROCEEDINGS NO. 2384 OF 2007 (On an Intended Appeal from HCB 5072/2006)

RE: LI SAU YING Ex Parte: The Bank of China (Hong Kong) Limited, a Creditor

Before: Hon Yuen JA in Chambers (open to the public) Date of hearing and decision: 7 December 2007 Date of reasons for decision: 11 December 2007

REASONS FOR DECISION

Hon. Yuen JA: On 31 October 2007, Deputy Judge L. Chan made a bankruptcy order against Li Sau Ying. Appeals from orders in bankruptcy proceedings Appeals from orders given in bankruptcy proceedings are governed by s.98(2) of the Bankruptcy Ordinance Cap. 6. This section provides that every order of the court shall be subject to appeal to the Court of Appeal, and the appeal should be commenced within 21 days from the time when the decision appealed against is pronounced or made. In the context of this case, the appeal should have been commenced within 21 days of 31 October 2007, i.e. by 21 November 2007. Miss Li says on affirmation that she had been informed by the staff of the Unrepresented Litigants Resource Centre that the appeal period was 28 days, and therefore after preparing her Notice of Appeal on 22 November 2007, she sought to file it on 27 November 2007. Of course by then the appeal was out of time. I pause to note that this was not the first case where litigants (even those with legal representation) had missed the deadline for appealing an order in bankruptcy proceedings because of the shorter time limit in s.98(2), as in ordinary civil proceedings the time limit is 28 days from the sealing of the order (see e.g. re Li Tat-kong [2003] 2 HKC 72, Prudential Assurance Co. Ltd v Edward Ho [2003] 3 HKLRD L4, re Lau Kwok Fai, Bernard HCMP2224/2005). Happily this anomaly has now been addressed by

way of the Bankruptcy (Amendment) Ordinance, which however does not apply to the present case. Coming back to this case, on 27 November 2007 Miss Li had to make an application to extend time for appealing. This was done by way of a summons which was filed in Miscellaneous Proceedings. The summons was fixed to be heard by a single judge of the Court of Appeal. Bankruptcy Rule 204 not applicable to appeals The Petitioner opposed Miss Li's application. In Mr Wong's written submissions on behalf of the Petitioner he argued that the application for extension of time to appeal was governed by r.204 of the Bankruptcy Rules which provides: The court may, under special circumstances and for good cause shown, extend or abridge the time appointed by these rules or fixed by any order of the court for doing any act or taking any proceeding . (Emphasis added). The wording is identical to that of r.386 of the English Bankruptcy Rules 1915. Mr Wong referred to a number of cases in the English courts (in re Vitoria [1894] 1 QB 259, in re Helsby [1894] 1 QB 742, Re a Debtor (no.692 of 1910) [1910] WN 224, Re a Debtor (No.36 of 1952) [1953] 1 All ER 776) in which, in the context of other provisions although not directly r.386 of the English Bankruptcy Rules 1915 the courts considered whether a mistake by litigants or their legal advisers as to time limits could be regarded as special circumstances or good cause shown . Mr Wong also referred to my decision as a judge in the bankruptcy court in re Li Wai Man [2000] 3 HKC 265 in which I considered Bankruptcy Rule 204 in the context of an application to extend time not to appeal, but to set aside a statutory demand. After reading Mr Wong's written submissions, and as Miss Li was not legally represented, I asked the Official Receiver to attend the hearing to address the court on the issue whether an application to extend time to appeal a Bankruptcy Order should be governed by Bankruptcy Rule 204. In written submissions, the Official Receiver submitted that Bankruptcy Rule 204 did not apply to appeals because the time limit for appeals was fixed by s.98(2) of the Bankruptcy Ordinance, not by the Bankruptcy Rules. Mr Wong rightly conceded this at the hearing. Application to extend time to appeal under s.100(4) B.O. The Official Receiver pointed out in his written submissions that applications to appeal an order made in bankruptcy proceedings are governed by s.100(4) of the Bankruptcy Ordinance, which provides: Where by this Ordinance or by general rules the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof upon such terms, if any, as the court may think fit to impose . (Emphasis added). Applications to extend time to appeal should be heard by Bankruptcy Court This however led to another problem under s.2 of the Bankruptcy Ordinance, court means the Court of First Instance sitting in its bankruptcy jurisdiction . Accordingly I asked Mr Wong and the Official Receiver to address me on the further issue whether the power under s.100(4) could only be exercised in the first instance by the Bankruptcy Court and not by the Court of Appeal. Mr Wong argued that the Court of Appeal had the power to exercise the Bankruptcy Court's jurisdiction by reason of s.13(4) of the High Court Ordinance which provides (where material): For the purposes of and incidental to

- (a) the hearing and determination of any appeal to the Court of Appeal; ... the Court of Appeal shall have all the authority and jurisdiction of the court ... from which the appeal was brought . However it appears from the language of this section that it is premised on an appeal having already been brought. Accordingly I am not persuaded (in the absence of any

materials supporting Mr Wong's contention) that this section can apply when there is at yet no appeal in existence. Mr Wong also referred to paras.59/4/12 and 59/4/14 of Hong Kong Civil Procedure 2008. However the Official Receiver argued (rightly in my view) that Order 1 rule 2(2) of the High Court Rules specifically provided that the High Court Rules did not have effect to bankruptcy provisions, and s.99 of the Bankruptcy Ordinance applied High Court Rules only where they were not inconsistent with the provisions of the Bankruptcy Ordinance. As s.100(4) clearly stipulated that it was for the Court of First Instance sitting in its bankruptcy jurisdiction to consider applications thereunder, that would override any High Court Rules permitting the Court of Appeal to deal with applications for extension of time in ordinary civil actions. Order In the circumstances, on Miss Li giving an undertaking that she will within 7 days make an application to the Court of First Instance sitting in its bankruptcy jurisdiction to extend time for appealing, I made no order on her application in these proceedings. As for the costs of the hearing, the general consensus was that they should be costs in the cause of the application before the Bankruptcy Court, but as far as quantum was concerned, I considered the Official Receiver's gross sum costs of \$4,500 to be reasonable, whereas the quantum of the Petitioner's costs should be taxed if not agreed. (MARIA YUEN) Justice of Appeal The Debtor/Bankrupt/Applicant in person, present. Mr Melvin Wong instructed by Tsang Chan & Wong for the Petitioner. Mr Harry Lo for the Official Receiver. - PAGE - - PAGE - @\\Hc-oa-ws-656\HP LaserJet 1200 Series PCL 6 Ne00: winspool HP LaserJet 1200 Series PCL 6 \\Hc-oa-ws-656\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) \\Hc-oa-ws-656\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong 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=59458

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/re-li-sau-ying-2007>

Prepared on 28 October 2026 · Esheria