

HONG KONG / JUDGMENT

RE LO MAN

COURT

Court of First Instance

DECIDED

18 October 2007

CASE / FILE NUMBER

HCB11786/2002

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HCB 11786/2002 IN THE HIGH COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION COURT OF FIRST INSTANCE BANKRUPTCY NO. 11786 OF 2002

IN THE MATTER OF the Bankruptcy Ordinance and IN THE MATTER OF Lo Man (a bankrupt)

Before: Hon Barma J in Court Date of Hearing: 29 August 2007 Date of Judgment: 18 October 2007

J U D G M E N T

Introduction

On 4 September 2002, a bankruptcy order was made against Mr Lo Man (Mr Lo). Subsequently, Mr Stephen Liu Yiu Keung and Mr Yeo Boon Ann (the Trustees) were appointed as Mr Lo s trustees in bankruptcy. As a first-time bankrupt, Mr Lo would, pursuant to sections 30A(1) and (2) (a) of the Bankruptcy Ordinance (Cap. 6), have been automatically discharged from his bankruptcy on 4 September 2006, four years from the date of the bankruptcy order. However, on 11 August 2006, the Trustees brought this application, objecting to Mr Lo s automatic discharge, and seeking an order that the relevant period (of four years) mentioned in sections 30A(1) and (2) (a) should cease to run for such period, not exceeding four years, as the court might think fit. Their application was based on the grounds mentioned in section 30A(4)(c) and (d) of the Ordinance. These provide that the court may exercise its power to make such an order, thereby suspending the automatic discharge of a bankrupt on the grounds that he has failed to co-operate in the administration of his estate (section 30A(4)(c)) or that his conduct, either in respect of the period before or the period after the commencement of the bankruptcy, has been unsatisfactory (section 30A(4)(d)). The basis of the Trustees objection The Trustees contend that Mr Lo has been guilty of failing to cooperate in the administration of his estate in a number of respects. These

may be summarised as follows:-

- (1) Mr Lo had failed to provide a full set of his banking records despite the Trustees' requests, thereby hindering the Trustees in their attempts to ascertain and verify his financial position.
- (2) Mr Lo had failed to provide the Trustees with assistance in relation to properties in Canada and the United States that were believed to belong to him or members of his family, in that he failed to provide the Trustees with the correct address of, or land searches in respect of, such properties, notwithstanding the Trustees' requests for these.
- (3) Mr Lo had failed to communicate directly or satisfactorily with the Trustees during the course of the bankruptcy, in that he had provided the Trustees only with an address in Dongguan on the Mainland for communications with him, and had otherwise required the Trustees to communicate with him through Messrs. Tai, Mak and Partners, solicitors acting for him. It is said that this resulted in delays and difficulties in obtaining information from, or communicating with, Mr Lo.
- (4) Mr Lo had failed to provide information requested by the Trustees in relation to the source of the funds that were used to pay his solicitors to deal with the Trustee in the course of his bankruptcy.
- (5) Mr Lo had failed to respond to the Trustees' requests for an explanation as to why his monthly expenditure indicated in his annual reports for 2004 and 2005 had increased by some RMB 920 per month, as compared with the budget that he had provided in October 2002, shortly after he was made bankrupt.
- (6) Mr Lo had failed to make any monthly contributions to his estate between April 2005 and December 2006, when he should have been contributing HK\$1,700 per month during that period. The Trustees say that these matters also constitute unsatisfactory conduct on the part of Mr Lo during the period after his bankruptcy. In addition to these matters, they also make one complaint in respect of his pre-bankruptcy conduct. This is that on Mr Lo's own admission, he had lost over HK\$5 million through gambling at casinos in the two years immediately before his bankruptcy, losses which were reflected in proofs of debt for some US\$533,631.24 filed by casinos with the Trustees. The Trustees say that even though the amount of such losses and debts might be relatively small compared with Mr Lo's total indebtedness (which was some HK\$156 million), most of which stemmed from guarantees given by him in connection with the business Hayward Knitters Limited (of which he was a director) and a group of companies associated with it, it was nonetheless unsatisfactory conduct, as he should have been aware of the precarious financial position of those companies and the likelihood of his guarantees being called upon, but nonetheless obtained credit from the casinos concerned. At the hearing, Mr Jimmie Ho, who appeared for the Trustees, submitted that these breaches were so serious as to merit a suspension of automatic discharge of four years, the maximum period of suspension possible under section 30A(3)(a). Mr Ho's position Initially, Mr Lo disputed that grounds for a suspension of

his automatic discharge had been made out, although he also submitted, as a fall back position, that there should alternatively be a discharge subject to the imposition of conditions, such as a condition requiring him to continue to make a contribution to his estate for a limited period after discharge. In his affirmations, he disputed the allegations of lack of cooperation, saying that he had in fact cooperated with the Trustees as best he could, and that any lack of cooperation was relatively minor. In relation to the complaint about his gambling debts, he contended that his gambling losses and debts were relatively small in the overall scale of his debts, and that these could not be said to have been a material contributing factor to his bankruptcy, so as to constitute an offence under section 133(1)(a) of the Ordinance. At the hearing, however, Mr Brian Wong, appearing for Mr Lo, indicated that his client did not intend to dispute that there were grounds on which the court could and should order a suspension of Mr s automatic discharge. However, he submitted that Mr Lo s explanations of his conduct should be taken into account, and that in all the circumstances of the case, Mr Lo s lack of cooperation was not such as should attract the maximum period of suspension contended for by the Trustees, but should be visited with a period of suspension of between one and a half and two years. In support of this contention, Mr Wong drew my attention to a number of authorities, which I shall consider below. In addition, just two days before the hearing, Mr Lo caused payment of a sum of HK\$22,000 to be made to the trustee, in respect of his unpaid monthly contributions to his estate. These were paid in respect of the period from November 2005 down to August 2007, at the rate of HK\$1,000 per month. Although acknowledging that he had not paid any contribution for the period from April to October 2005 inclusive, he said that he did not think that he should have to do so, as he was unemployed during this time. He also accepted that this was less than the amount of contribution which had been agreed (which was HK\$1,700), but said that as a result of the increases in his expenditure by some RMB 920, this was all that he could realistically contribute. Mr Wong suggested that this payment, although belated, should also be taken into account in Mr Lo s favour. Lack of co-operation with the Trustees and post-bankruptcy unsatisfactory conduct The first complaint of lack of co-operation relates to Mr Lo s failure to provide full sets of his banking records and cheque stubs to the Trustees, following the Trustees request for these items. The Trustees requests were made in letters of 22 April, 15 May and 29 May 2003. Mr Lo responded to the first two letters through his solicitors, but no response was ever given to the third letter. Mr Lo s position was that he kept all of his personal financial documents at his offices at Hayward Knitters Limited, and that he had had no access to those offices following the appointment of receivers to that company in (he said) January 2001. In fact, however, the receivers (who were not the Trustees) were not appointed until January 2002. He went on to say that as the Trustees were also the liquidators of Hayward Knitters Limited, they should already have had access to these documents. Mr Lo also claimed not to remember the account numbers of such bank accounts as he had. The fact is that the trustees have not recovered a full set of these banking documents. In the absence of Mr Lo s assistance in providing them with the relevant account numbers, they would be unable to know whether they had in fact identified all of his bank accounts. Moreover, the Trustees say that when they were appointed

liquidators of Hayward Knitters Limited, they found that some of its financial data had been erased from computers on the premises, and some of its documents and accounting records had been packed into cartons, apparently with a view to their removal. The trustees suggest, and I think it likely, that this is unlikely to have been done without some involvement or instructions on the part of Mr Lo. I am satisfied that Mr Lo has not been fully cooperative with the Trustees in respect of this matter. It is difficult to believe that he would have forgotten his bank account numbers, and he appears to have done little to assist the Trustees to obtain the documents and information requested. As for the complaints in respect of the properties in Canada and the United States, these were also the subject of a number of letters from the Trustees in April and May 2003. Mr Lo's response, through his solicitors, was that the properties were not owned by him, but by his parents, and that he could not recollect their addresses. He does not appear to have made any effort to obtain such addresses, whether from his parents or other sources. Although he suggested that he would obtain land searches in respect of the properties and supply them to the Trustees, he has never in fact done so. This has hampered the Trustees in looking into the ownership position in respect of these properties. In this respect also, it would appear that Mr Lo has been less than fully cooperative with the Trustees. So far as the complaint about difficulties in communication with Mr Lo are concerned, the Trustees say that apart from one address in China, they were provided with no means of contacting Mr Lo, other than through Tai, Mak & Partners, which proved not to be a very efficient means of communicating with or obtaining information from Mr Lo on a number of occasions, no response to enquiries was received at all, while on other occasions, a response was only forthcoming after the lapse of some weeks. Moreover, from about April 2006 onwards, Tai, Mak and Partners no longer acted on behalf of Mr Lo, and no alternative means of contact was given. While I would be prepared to accept that a bankrupt may appoint solicitors to represent him in his dealings with his trustees, I do not think that this can absolve him of the need to respond to the trustees reasonably promptly when information is sought from him. In the circumstances, having regard to the difficulties that did arise in relation to communications between the Trustees and Mr Lo, and the failure to make alternative arrangements when they ceased to act for him, I would accept that there has been an element of lack of cooperation in this regard also. So far as the complaint about failing to provide information as to his source of funds is concerned, however, I do not think that this ground is made out. Mr Lo informed the Trustees that his legal expenses were being provided for by a friend of his, a Mr Wong Lai. Although the Trustees appear to have some residual suspicions as to the nature of this arrangement, I do not see that much in the way of further explanation can realistically be expected of Mr Lo. As for the complaint in relation to the increase of his estimated expenditure over that originally estimated in early 2003, Mr Lo's position, which I accept, is that the revised breakdowns which he provided were self-explanatory, in that they showed the increases in the various items of expenditure which went to make up his total expenses, and thereby explained the overall increase of RMB 920 per month. Although there is a further complaint about the failure by Mr Lo to provide supporting document to substantiate the claimed increase in expenditure, it seems to me that having regard to the

amount of the increase, which was of the order of about 10% of his previous expenses, the increase cannot be said to be unreasonable, having regard to the passage of time. I am therefore not satisfied that this complaint is made out. The failure to make monthly contributions from April 2005 onwards is admitted by Mr Lo. He has sought to rectify the position by the recent payment of HK\$22,000. However, the failure to make the payments on time is, in my view, unsatisfactory conduct, particularly in the absence of any good explanation for the failure. While some explanation might be provided in respect of the period from April to October 2005 by Mr Lo's unemployment, it is to be noted that he did not inform the Trustees of the change in his situation at the time. Similarly, he has sought to reduce his contribution without first discussing or agreeing the matter with the Trustees. Although it may be that Mr Lo could be excused for non-payment during the period of his unemployment, and for making smaller payments thereafter owing to the changes in his circumstances, it does seem to me that it was unsatisfactory for him to have failed to make any payments at all for the whole period from April 2005 onwards, when, even on his own case, he was employed and in a position to make a contribution (albeit a reduced one) from November 2005 onwards, or to have discussed the position with the Trustees rather than acting unilaterally. Pre-bankruptcy unsatisfactory conduct Although Mr Lo did undoubtedly lose substantial sums of money in the two years prior to his bankruptcy, bearing in mind that his gambling losses would not appear to have contributed (materially or at all) to his bankruptcy, I do not think that this amounts to a ground for ordering a suspension of his automatic discharge. Although Mr Ho suggested that there might have been an element of misleading of the casino creditors in Mr Lo's obtaining credit from them at a time when he should (according to the Trustees) have been aware of the Hayward group's (and thus his own) precarious financial position, there is simply no evidence before me that would enable such an inference to be drawn. Summary on grounds of complaint I am therefore satisfied that Mr Lo has been guilty of a lack of cooperation with the Trustees, in particular in relation to the failure to provide sufficient information concerning his own banking accounts and transactions, and the properties in Canada and the United States, and in failing to make the agreed or any monthly contributions from at least November 2005 onwards. I also think that Mr Lo has been less helpful than he could have been in the manner in which he chose to communicate with the Trustees. Appropriate period of suspension I do not think that the areas of lack of cooperation or unsatisfactory conduct that I have outlined above can be said to be so serious as to merit a suspension of Mr Lo's automatic discharge for as long as four years. By way of comparison, a four year suspension of automatic discharge was ordered in *Re Yeung Kwok Lai* [2003] 2 HKLRD 44. In that case, however, the bankrupt had rendered no cooperation at all with the Official Receiver in the four years of his bankruptcy, despite being fully aware of his duties. He also continued to act as a director of a company notwithstanding his bankruptcy, causing the Official Receiver to waste time and money in bringing proceedings against him, which ultimately proved abortive. He also maintained an extravagant lifestyle, and made no contribution at all to his estate. It will be apparent that the failings of Mr Lo in this case are substantially less serious. Although he has not been fully cooperative with the Trustees, in the respects which I have identified above, I do not

think that it can be said that he has not cooperated with them at all, or neglected his duties entirely. While the means of communication which he insisted upon has proven to be less than satisfactory, it is not the case that he has avoided communicating with them altogether. Further, although he did not make contributions to his estate timeously, he appears to have done so for a time, and has belatedly made efforts to make good (at least partially) this failure on his part. There is no evidence to suggest that he has led a particularly extravagant or inappropriate lifestyle following his bankruptcy, on the contrary, he appears to have taken up employment on the Mainland, and maintained a fairly modest standard of living. In *Re Wu Wing Lung* (unreported, HCB 1415/1999, Master Ho, 19 January 2004), a period of suspension of three years and nine months was ordered, in a case in which the bankrupt had been guilty of obtaining credit while a bankrupt without disclosing the fact of his bankruptcy, failing to provide information as to his sources of income in his annual statement, failing to make contributions to his estate while maintaining a high level of personal expenditure on non-necessary items, and failing to provide documents requested by the Official Receiver. Again, the failings of the bankrupt in that case would appear to go some way beyond those of Mr Lo here. By contrast, in *Re Tang Yiu Hong, Eric* (unreported, HCB 72 of 1999, Master Kwang, 11 December 2003), a bankrupt who had failed to explain what had become of some HK\$22 million withdrawn from his bank accounts within 6 months prior to his bankruptcy, and had failed to prepare his annual statements of earnings for all except one year of his bankruptcy was subjected to a suspension of automatic discharge of two years, although it appears that the Master in that case felt that there were some mitigating factors. Taking all of the grounds which I have found to be established into account, it seems to me that the failings of Mr Lo in this case are much closer in severity and magnitude to those in the *Tang Yiu Hong, Eric* case, than in either of the other two decisions cited to me. In the circumstances, I shall order that the relevant period cease to run in respect of Mr Lo for a period of two years, as I consider this to be a period of suspension commensurate with the nature and severity of the complaints which I have found to be established. Costs So far as costs are concerned, Mr Wong accepted that these should be paid by Mr Lo to the Trustees, and I shall therefore make an order that Mr Lo is to pay to the Trustees their costs of this application, such costs to be taxed on the party and party basis if not agreed. (Aarif Bama) Judge of the Court of First Instance High Court Mr Jimmie Ho, instructed by Messrs Tsang & Co, for the Joint & Several Trustees of the Bankrupt Mr Brian Wong, instructed by Messrs Hastings & Co, for the Bankrupt

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