

HONG KONG / JUDGMENT

RE MOHAMMAD AMEEN

COURT

Court of First Instance

DECIDED

24 April 2009

CASE / FILE NUMBER

HCB11202/2004

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bjbj HCB 11202/2004 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO. 11202 OF 2004

Re: Mohammad Ameen

Coram : Master J. Ko in Court Date of Hearing : 20 April 2009 Date of Decision : 24 April 2009

DECISION

On 19 November 2004, Mr Ameen petitioned for his own bankruptcy and a bankruptcy order was made on 18 January 2005. On 22 April 2005, Messrs Wong Ka Sek and Wong Ka Lam King were appointed trustees of his property. Under section 30A of the Bankruptcy Ordinance (Cap.6), a bankrupt is automatically discharged from bankruptcy upon the expiration of 4 years from the commencement of the bankruptcy, unless the court is satisfied on application that a valid objection based on one or more of the grounds set out in section 30A(4) has been made. If there is a valid objection, the bankruptcy period may be extended for a maximum of 4 years. This is the trustees application for an order that the bankruptcy period of the bankrupt should cease to run for a period not exceeding 4 years. The application is opposed by the bankrupt. In the absence of any objection, the bankrupt would have been discharged on 18 January 2009. When the application first came before the court on 16 January 2009, an interim order was made suspending the automatic discharge of the bankrupt pending the disposal of this application. The bankrupt is absent at the hearing on 20 April 2009. By a written statement dated 24 March 2009, the bankrupt acknowledges receipt of the papers and informs the court that he is in the United Kingdom and elects not to attend the hearing. The application The trustees application is based on the following grounds: that the bankrupt has failed to co-operate in the administration of his estate (section 30A(4)(c)); that the conduct of the bankrupt in respect of the period after the

commencement of his bankruptcy has been unsatisfactory (section 30A(4)(d)); and that the bankrupt has failed to prepare an annual report of his earnings and acquisitions for the trustee (section 30A(4)(h)). The facts in support of the application have been set out in an affirmation filed by the trustees. These can be summarized as follows: According to the statement of affairs filed by the bankrupt at the time of the petition, he was indebted to the extent of \$1,834,253.40. After the making of the bankruptcy order, the bankrupt was interviewed by the representative of the Official Receiver on 20 January 2005. The bankrupt claimed he had been unemployed since October 2002. He was given a booklet entitled Simple Guide on Bankruptcy setting out his duties and obligations as a bankrupt, and four blank Annual Statement of Earnings and Property Acquired forms for completion and return on each anniversary of the making of the bankruptcy order. On 13 July 2005, the bankrupt was further interviewed by the staff of the trustees. He claimed he had been working as a part-time interpreter for the Government since November 2004. He was interviewed again on 29 August 2005 and his monthly income and expenses were assessed at \$408 and \$4,700 respectively. The bankrupt has failed to submit income proof to the trustees since April 2007. The bankrupt has also failed to submit annual statement of his earnings and acquisitions to the trustees at each anniversary of his bankruptcy. The trustees have attempted to contact the bankrupt but to no avail. To date, the bankrupt has made no contribution to his bankruptcy estate. Without full information on the bankrupt's income and expenditure, the trustees had been unable to ascertain the amount of contribution the bankrupt should have made to his estate. The opposition The bankrupt has put forward the following facts and arguments in his written statement to oppose the application: He did submit monthly statements to the trustees up to 2007. He did not submit further statement because there was no activity in his bank account. He has exhibited copies of his bank statements to his written statement to confirm that there has indeed been no activity and that the current balance stands at \$47.17 only. He did not submit annual statements of his earnings and acquisitions because the trustees had told him he did not have to do so as his circumstances were such that there was nothing to be put in the statements. He argues that if the trustees were so concerned about his annual statements, they would have written to him to demand for them. He has moved to the United Kingdom and is currently staying with his children. He did not inform the trustees of his departure because he did not know if he would eventually settle in the United Kingdom. He challenges the trustees to state the frequency and nature of their attempts to contact him since April 2007. He says he has arranged for his mails sent to his former address in Hung Hom to be forwarded to him and he remains contactable by email. He is unable to make any contribution to his bankruptcy estate. He has not been able to obtain employment and is supported by his children and state benefits in the United Kingdom. According to the bank statements enclosed in the written statement, the current balance of his bank account is only \$47.17. His creditors have not objected to his automatic discharge. No benefit would be achieved for granting the trustees application. Discussion Mr. King Wong, one of the trustees, submits at the hearing that the complaint against the bankrupt is three-fold: failure to provide income proof; failure to submit annual statements; and failure to inform the trustees of his departure from Hong Kong. In relation to the first and second complaints, the bankrupt has since provided to the trustees copies of his bank statements and an IR56C form detailing his income presumably as a part-time

interpreter. The trustees are now satisfied with the new information and no further investigation is considered necessary. Mr. Wong clarifies at the hearing that the trustees did not have the bankrupt's email address and had mostly attempted to contact him by telephone. The trustees might have also sent Chinese letters to the bankrupt but since the bankrupt may not read Chinese, the trustees will not rely on these letters as evidence against the bankrupt in this application. Mr. Wong denies that the trustees had told the bankrupt that he did not have to submit annual statements if he had nothing to report on. In any event, I find the bankrupt's allegation most incredible. First, section 43A(6) of the Bankruptcy Ordinance provides that an undischarged bankrupt shall submit to the trustee on each anniversary of the making of the bankruptcy order against him, a statement of his earnings during the preceding year and details of any property he acquired during that period. The obligation is not prompted by the trustee's demand or dependent on whether there is anything to report on. I find it very unlikely that a professional trustee (such as the trustees in this case) would have misunderstood the requirement and misrepresented it to a bankrupt. Secondly, the bankrupt's case is inconsistent with the fact that he had been provided with a copy of Simple Guide on Bankruptcy detailing his duties and obligations as a bankrupt and four blank annual statements. The trustees have exhibited in their affirmation the bankrupt's signed acknowledgment for the receipt of these documents. Thirdly, it is not true that the bankrupt had nothing to report on. The IR56C form recently provided by him shows that the bankrupt had received a modest income during the period between 1 April 2007 and 31 March 2008 and the bankrupt is obliged to report such income. It is clear from the evidence that the bankrupt failed to submit income proof and to notify his trustees of his departure from Hong Kong. He has failed to provide annual statements to the trustees. In my view, the bankrupt has failed to co-operate in the administration of his estate and his conduct in respect of the period after the commencement of his bankruptcy has been unsatisfactory. An objection based on section 30A(4)(c), (d) and (h) has been made out. The bankrupt has submitted that he has suffered humiliation and great hardship as a consequence of his bankruptcy. He has been in grave financial difficulties in terms of his income and has still not been able to re-establish himself. He remarks that he is an honest and genuine person but is still suffering from the mistakes he made in the past. He asks rhetorically what benefit will be achieved by granting the application. A short answer to the bankrupt's query is that his conduct has fallen short of what was required of him as a bankrupt. Without his co-operation and because of his failure to comply with his statutory duties, the trustees had been unable to assess whether any contribution could have been made by him. The bankrupt has only recently amended his wrongs by providing the relevant information to his trustees. This is evidence of his belated co-operation in the administration of his estate. Based on the new information, the trustees have assessed that the bankrupt would not be required to make any contribution to his estate. The trustees have fairly conceded that, in those circumstances, the bankrupt's failures have not materially prejudiced his creditors and thus may not be regarded as serious. I bear in mind the main objectives of our modern bankruptcy legislation, namely: the rehabilitation of the bankrupt by allowing him to resume a normal life in society after his bankruptcy; and the public interest in ensuring that the return of the bankrupt to the commercial world will not carry with it the unacceptable risk to persons likely to be engaged in commercial relations with him and that

commercial morality is preserved. In my view, the society is not prepared to condone the bankrupt's conduct in the circumstances of this case without any expression of disapproval. The bankrupt's conduct is so unsatisfactory that, in the exercise of my discretion, I should suspend his automatic discharge albeit for a short period of time. The trustees have advertised notice of their intention to object to the bankrupt's discharge in newspapers and have received no objection from the bankrupt's creditors.

Conclusion

In all the circumstances of this case, I order that the relevant period shall cease to run for a period of 6 months from 17 January 2009. (J. Ko) Master of the High Court Mr. Wong Ka Lam King, the trustees, appearing in person The bankrupt, acting in person, abse 1udk 1udk (#p#no+L 0>i0 7'P(pt hsvg 3nzpW hsvg FOND & 6" Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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