

HONG KONG / JUDGMENT

RE MOK LOK KONG

COURT

Court of First Instance

DECIDED

28 November 2007

CASE / FILE NUMBER

HCB10615/2006

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Before: Mr Recorder Jat, SC in Court Date of Hearing: 28 November 2007 Date of Judgment: 28 November 2007

J U D G M E N T

On 21 March 2007, Mr Mok Lok Kong was adjudged bankrupt by the order of Master S Kwang (the Bankruptcy Order) upon a Petition filed on 27 December 2006 by Shui On Building Contractors Ltd (the Creditor). By summons dated 11 July 2007, Mr Mok applied to annul the Bankruptcy Order pursuant to section 33 of the Bankruptcy Ordinance and for leave to show cause out of time. The main ground relied on by Mr Mok is that he had no knowledge of the Petition. Further, he wished to contest the Creditor s claim. Section 33 empowers the court to annul a bankruptcy order if it at any time appears to the court that on any grounds existing at the time the order was made, the order ought not to have been made. Service of the Statutory Demand and Petition The Petition was based on a debt in the sum of \$2,400,000, said to have arisen under a Guarantee dated 4 April 2005 executed by Mr Mok in favour of the Creditor (the Guarantee). Mr Mok used to run a New Zealand Fire Service Engineer Co Ltd (NZFS), which was a sub-contractor of the Creditor in a construction project. The Guarantee was given in relation to NZFS s liability to the Creditor. Unfortunately NZFS ran into difficulties and was wound up on 14 December 2005. The Creditor claimed that NZFS was liable to it for \$3,553,333.70. The Statutory Demand, dated 21 July 2006, was addressed to Mr Mok at two addresses, referred to in the evidence as the Shatin Address and the Arran Street Address. There is no suggestion that the Creditor had any other address of Mr Mok. Mr Mok did receive the Statutory Demand in July 2006 through the post office s re-directed mail service. However, Mr Mok s evidence is that the 1-year period of the re-direction service expired in the end of 2006. He did not renew the service until early February 2007. Upon receiving the Statutory Demand, Mr Mok sought advice from his solicitors. They sent

a letter to the Creditor s solicitors stating that the amount claimed in the Statutory Demand is disputed, in particular in relation to an item 15% Extra administration costs , and a request was made for the particulars and breakdown of this item. The Creditor s solicitors replied on 22 September 2006 pointing out that irrespective of that disputed item, Mr Mok had admitted liability for \$2,400,000 by a letter written by him dated 29 March 2006. The Creditor s solicitors also made it clear that the Creditor would proceed with bankruptcy petition against Mr Mok for the admitted sum of \$2,400,000. There was no suggestion by Mr Mok s solicitors in the correspondence that the addresses stated on the Statutory Demand were incorrect. Mr Mok did not take any steps to set aside the Statutory Demand. The Petition was presented on 27 December 2006. The Creditor s solicitors attempted to serve the Petition at the Shatin Address and the Arran Street Address. Such attempts failed. The Creditor therefore applied to court for an order for substituted service. Master Ho made the order for substituted service on 21 February 2007. Advertisements were placed in newspapers pursuant to that order. There is no dispute that the order for substituted service was properly made. Mr Mok says in his affirmation that he did not read newspapers and thus did not know of the Petition. However, whether the advertisement actually came to his knowledge is irrelevant: see Lam Michael Alan Nigel HCB 3929/2000, Kwan J, 28 May 2002 20. In those circumstances, I have no doubt that the Petition had been properly served. Merits of defence Mr Mok disputes the amount owed by NZFS to the Creditor. However, in a letter dated 29 March 2006 written by himself, Mr Mok agreed to repay the Creditor the entire amount and agreed to pay \$2,400,000 by 4 instalments, with the payment date for the balance to be agreed. Mr Mok has not advanced any evidence to explain that letter. In his affirmation, Mr Mok mentioned that the Guarantee was given for a short term loan given to NZFS by the Creditor, and that he signed the Guarantee without reading it, and somewhat in a rush. However, whether he had read the document before signing it is irrelevant. Further, the Guarantee does not appear to be a document signed in haste. Mr Mok initialled every page of the Guarantee, which was signed by him in the presence of a witness. I also take into account the fact that Mr Mok s solicitors never mentioned any of these grounds in their letter to the Creditor s solicitors responding to the Statutory Demand. I am therefore not satisfied that Mr Mok has raised anything which may suggest a bona fide defence to the Creditor s claim. Result Accordingly, this application is dismissed with costs of this application to be paid out of Mr Mok s estate. I also order that the Official Receiver s costs be assessed at the sum of \$4,500, to be paid out of the estate. (Jat Sew Tong, SC) Recorder of the Court of First Instance High Court Mr Jonathan Wong, 1udk 1udk D E F G H I J K L M N O P Q R S T U V i\$&`G hcb.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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