

HONG KONG / JUDGMENT

RE NG CHI WAI

COURT

Court of First Instance

DECIDED

26 November 2007

CASE / FILE NUMBER

HCB7850/2007

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bjbj HCB7850/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE IN BANKRUPTCY NO. 7850 OF 2007

NG CHI WAI Debtor

Before: Hon. Barma J in Court Date of Hearing: 26 November 2007 Date of Judgment: 26
November 2007

D E C I S I O N

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1. This is a petition for bankruptcy presented by Mr Ng Chi-wai in respect of himself. Mr Ng says that he is unable to pay his debts and therefore wishes to petition for his own bankruptcy. In support of his bankruptcy petition, Mr Ng filed a statement of affairs setting out his assets and his liabilities and providing a statement of his current income and the expenses which he has to meet out of it. The statement of affairs indicated that Mr Ng had seven unsecured creditors, all of which were banks, finance companies or credit card companies, and the Inland Revenue Department, who were owed some HK\$700,000 or HK\$800,000. He indicated that he had a number of bank accounts but that these had less than HK\$1,000 in them in total and that his only other assets were worth a total of some HK\$314,000, these consisting of a Provident Fund scheme and MPF account, and 1,000 shares in the Bank of China Limited.

2. Following the presentation of his petition, a number of other individuals filed notices of intention to appear on the hearing of the petition. They said that they were acquaintances or friends of Mr Ng to whom he was indebted. The amount of the debts that Mr Ng owed them ranged from tens of thousands of Hong Kong dollars to hundreds of thousands of Hong Kong dollars and, in one case, that of Madam Tse Poon Lai-hing, her notice of intention to appear on the petition stated that she was owed some HK\$13 million by Mr Ng.
3. Mr Ng subsequently filed an amended statement of affairs in which he included a substantial number of individual creditors who had not been included in his original statement of affairs. According to the amended statement of affairs, the amount owing by Mr Poon to his creditors was some HK\$3.6 million odd but, in relation to Madam Tse, she was recorded as being a creditor for only HK\$1 million.
4. When the petition first came before me, I gave directions for Mr Ng to file evidence to respond to the allegations as to the level of indebtedness that was asserted by his creditors, to provide an explanation of the reasons why it was that he found himself in a situation of having to apply for his own bankruptcy and to respond to the suggestions by a number of the creditors that his application for his own bankruptcy was, in effect, premeditated and designed to enable him to avoid his obligations to them.
5. Mr Ng filed evidence to indicate that he disputed the amount of the claim of Madam Tse and to explain that the reason for his application for bankruptcy was because of the failure of various business ventures on which he had embarked for the purpose of which he had borrowed money from various friends and acquaintances including the opposing creditors.
6. A number of the creditors who had served notice of intention to appear made submissions. Madam Tse had herself recently filed an affirmation in which she said that the amount that Mr Ng owed her and which she claimed to be a creditor in respect of, was now some HK\$3.5 million in support of which she attached an IOU or acknowledgment of debt for that amount signed by Mr Ng. She also complained of the fact that Mr Ng had, according to her, made use of one of her credit cards in an unauthorised manner to pay for various expenses of a third party and said that this was a matter which she had reported to the police. Madam Tse explained that it was her position that the presentation by Mr Ng of this bankruptcy petition was simply part of a plan on his part to avoid having to repay his creditors what he owed them. She also stated, and exhibited supporting evidence to show, that Mr Ng was, at one time, the owner of a property in Aberdeen which he appears to have transferred in about November 2004. Madam Tse suggested that this transfer was something either done to defeat his creditors or, alternatively, that having made the transfer, this was something which was not disclosed to creditors and he continued to represent himself to be the owner of the property in question when borrowing money from the various persons who are now his creditors.

7. The other creditors who have appeared today all made much the same points and all of them suggested that this was something that Mr Ng had planned all along and they all indicated that they regarded the presentation of this petition by him as, in effect, a furtherance of the fraud which they felt he had perpetrated on them. A number of them said that he had misled them into thinking that he was the owner of a property in Aberdeen in the course of either asking them for loans or to put them off when they tried to obtain repayment of their loans.
8. Under the Bankruptcy Ordinance, a debtor can petition for his own bankruptcy only on the ground that he is unable to pay his debts. See section 10(1) of the Ordinance. Where the court is satisfied that the debtor is unable to pay his debts, it may then make a bankruptcy order on his petition. If it becomes clear that the debtor is, in fact, able to pay his debts, the petition will be dismissed as an abuse of the process of the court.
9. However, in this case, on the evidence before me, far from it being suggested that there is any basis on which it could be said that the debtor is able to pay his debts, the evidence appears to establish overwhelmingly that he is not in a position to do so. The level of the debts that he faces, which is, on his own admission, some HK\$3.6 million or, according to the creditors who have appeared, taking all of their claims together with the other admitted debts, some HK\$6.1 million. It is not suggested that Mr Ng has sufficient assets to repay that level of indebtedness. Even if it were - which, at this stage, it is not - established that he had other property, such as the property in Aberdeen, there is nothing to suggest, that any other property would be anywhere near sufficient in value to meet the total of his debts.
10. It may also be an abuse of process for a debtor to deliberately incur debts with a view to avoiding them, or avoiding the consequence of having incurred them by petitioning for bankruptcy, particularly where this is a course of conduct that has been embarked upon on more than one occasion. However, it has to be said that Mr Ng has not previously petitioned for his own bankruptcy and although it is understandable that his creditors should feel suspicious about the fact that he has petitioned for his own bankruptcy when he is heavily indebted to them, that is not, in itself, sufficient evidence to establish that there has been a fraud practised by him on his creditors so as to disentitle him from petitioning for his own bankruptcy.
11. In these circumstances, as Mr Ng appears to be clearly unable to pay his debts, I think that the right course would be to make the bankruptcy order which he seeks. In doing this, I recognise the concerns that the creditors have but it seems to me that all of the matters which they have raised are matters which can, and no doubt will, be investigated in the course of the administration of Mr Ng's affairs in bankruptcy by the Official Receiver.
12. The question of the disposal of his property is a matter that, if it is raised by any of the creditors, will no doubt be looked into by the Official Receiver with a view to seeing if there is any substance in the allegations that have been made.

13. Similarly, the Official Receiver will no doubt investigate the reasons why Mr Ng has found himself in this position and will look into his behaviour prior to his bankruptcy to see if there are any areas in respect of which that has been so unsatisfactory as to call for either further investigation or other steps to be taken in the course of or towards the end of his bankruptcy.
14. I am therefore of the view that the points raised by the opposing creditors do not amount to grounds for refusing to make a bankruptcy order but are, in fact, matters that can and should properly be investigated in the course of Mr Ng's bankruptcy and I shall therefore make the usual bankruptcy order against Mr Ng. However, so far as costs are concerned, since all of the parties were unrepresented and the Official Receiver has no doubt received the usual deposit in respect of his costs, I propose to make no order as to costs in relation to this petition. (Aarif Barma) Judge of the Court of First Instance High Court Debtor, Ng Chi Wai in person, present Opposing Creditors, Poon Nga Lin, Chan Chuen Ngai, Poon Kwok Leung, Tse Poon Lai Hing Ina, Poon Chi Cheung, in person, present Mr Benny Cheng for the Official Receiver PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V 9!AB 9!ABa\$ & `#\$ JUDGE.DOT setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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