

HONG KONG / JUDGMENT

RE THE WORLD ENTERPRISES HOLDINGS LTD

COURT

Court of First Instance

DECIDED

2 October 2007

CASE / FILE NUMBER

HCCW294/2007

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bjbj HCCW 294/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE COMPANIES (WINDING-UP) NO. 294 OF 2007

IN THE MATTER of The World Enterprises Holdings Limited and IN THE MATTER of the
Companies Ordinance (Cap. 32)

Before: Hon Kwan J in Court Date of Hearing: 2 October 2007 Date of Judgment: 2 October 2007

J U D G M E N T

This is a petition presented by Hong Kong Island Development Limited to wind up The World Enterprises Holdings Limited (the Company). In High Court Action No. 4602 of 2000, the Company was one of two plaintiffs claiming against the petitioner damages for breach of an alleged tenancy agreement. The claim of the plaintiffs was dismissed by Deputy Judge Carlson after trial. On appeal by the Company and its co-plaintiff, the appeal was allowed by the Court of Appeal on 23 March 2005 and judgment was entered for the Company and its co-plaintiff in the sum of \$3,114,492.00 with costs. On 30 August 2005, the Company and its co-plaintiff gave an undertaking to the court that in the event execution was levied in respect of the judgment sum ordered by the Court of Appeal or any part thereof and any sum for which execution had been levied was ordered by the court to be repaid to the petitioner, the Company will be liable to repay any such sum. Pursuant to the Court of Appeal judgment, the petitioner paid to the Company and its co-plaintiff the total sum of \$4,888,058.08. On 8 December 2006, the Court of Final Appeal unanimously allowed the petitioner s appeal in FACV No. 6 of 2006 and set aside the judgment of the Court of Appeal. Hence, the amount of \$4,888,058.08 has become repayable by the Company

and its co-plaintiff to the petitioner. By letter dated 5 January 2007, the petitioner served on the Company a demand under section 178(1)(a) of the Companies Ordinance, Cap. 32, seeking repayment of \$4,888,058.08. The Company failed or refused to comply with that demand. On 30 March 2007, the Court of Final Appeal ordered the Company and its co-plaintiff to pay the sum aforesaid to the petitioner forthwith with interest. The petitioner's solicitors served the sealed order of the Court of Final Appeal on the Company's solicitors on 17 April 2007 demanding payment of the aforesaid sum. This petition was presented on 3 July 2007. The petition first came before a judge on 10 September

2007. It was adjourned for three weeks for the Company to file evidence in opposition within 14 days. The Company filed evidence out of time and without leave on 28 September 2007. It would appear from the Company's evidence that it does not (and it cannot) dispute the petitioning debt. The Company seeks a further adjournment of four weeks to enable it to take such steps as necessary to grant a security it has proposed to the petitioner to secure the petitioning debt. The petitioner does not accept the Company's offer of security and seeks a winding-up order today. No other creditor has given notice of intention to appear on the petition, although I understand there are trade creditors and one financial creditor of the Company. I would only grant an adjournment if it serves a useful purpose. As an unpaid judgment creditor of a debt that is not in dispute, the petitioner is entitled, *ex debito justitiae*, to an order to wind up the Company. It is not sufficient for the Company to say that it has substantial net assets on the basis of financial statements, audited and unaudited, and that given sufficient time, it would pay off the petitioning debt in stages with the realisation of its assets. The Company is and was engaged in the manufacturing, trading and retailing of jewelleries, diamonds and gold. I was asked to note that a very substantial part of the Company's assets is its inventory being jewelleries, diamonds, gold and other precious stones of about \$41 million at the end of March 2007 and \$38 million as in July 2007. The cash and bank balances was only \$2.3 million in March 2007, this was \$2.2 million in July 2007. The Company does not have sufficient cash to pay off the petitioner, let alone other trade creditors and the financial creditor. The Company is deemed unable to pay its debts under section 178(1)(a). Even though the Company may appear to have net assets on the balance sheet test, the petitioner is entitled to present the petition, as the persistent non-payment of the petitioning debt for over six months would suggest that the Company was unable to pay its debts (*Cornhill Insurance plc v Improvement Services Limited & Ors* [1986] BCLC 26). The Company says it is unable to realise its inventories within a short time, and if forced to do so, it would have to offer a 50% discount to the purchasers. There is a valuation report on the inventories dated 24 September 2007, giving a fair market value of the inventories as at 14 September 2007 in the sum of \$33 million odd. On a liquidation scenario, the valuer estimated that this would fetch about \$16 million. The Company has put forward a proposal to realise its inventories within three years, offering its inventories to the petitioner as security by way of a floating charge, and that this proposed security is to rank after the first floating charge of the Company to the financial creditor to secure a net sum of about \$3.52 million. I should mention there is in fact a

second floating charge over the Company s assets, granted by the Company in favour of one of its directors in October 2006 to secure a director s loan of an undisclosed amount, but this director has indicated willingness to give up his security if the petitioner is willing to accept the proposal. The petitioner does not accept this proposal, nor can the proposal be forced on the petitioner. It would serve no purpose to adjourn the petition as the petitioner is simply unwilling to enter into the proposed arrangement with the Company. In the circumstances, I see no reason not to wind up the Company. I therefore make a winding-up order. The petitioner s costs are to be paid out of the Company s assets. (S. Kwan) Judge of the Court of First Instance, High Court Mr Kenny Liu, instructed by Messrs D S Cheung & Co., for the Petitioner Mr Anson Wong, instructed by Messrs B C Chow & Co., for the Company Miss Vivian Yeung, for the Official Receiver 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 1udk 1udk i\$&`G 5<>| Z-|Y(G^0} Z-| Y HCCW.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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