

HONG KONG / JUDGMENT

RE VINCENT KAY LO IP

COURT

Court of First Instance

DECIDED

17 July 2007

CASE / FILE NUMBER

HCB1209/2000

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bjbj HCB1209/2000 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE BANKRUPTCY PROCEEDINGS NO. 1209 OF 2000

BETWEEN Re : VINCENT KAY LO IP Ex-Parte : ANDREW KEE SUAN KOH

Before : Recorder Ambrose Ho, SC in Court Date of Hearing : 10 July 2007 Date of Handing Down
Decision : 17 July 2007

REASONS FOR DECISION

AUTONUMOUT This is yet another application by the debtor to annul the Bankruptcy Order made on 14 August 2000 (the Bankruptcy Order). AUTONUMOUT The debtor invokes section 33(1)(a) of the Bankruptcy Ordinance (the Ordinance), which provides The court may annul a bankruptcy order if it at any time appears to the court that

- (a) on any grounds existing at the time the order was made, the order ought not to have been made AUTONUMOUT At the end of the hearing, I dismissed the debtor s application. I now give the reasons. History of the proceedings AUTONUMOUT The debtor was the defendant in the action, HCA699/1992. By a Judgment and a Supplemental Judgment respectively given by Deputy High Court Judge Li on 15 December 1999 and 13 January 2000, the debtor was adjudged to have to compensate the plaintiff for a sum of \$1,500,000 with interest. AUTONUMOUT A statutory demand based on the said judgment sum was served on the debtor on 22 February 2000. AUTONUMOUT On 21 March 2000, the judgment creditor petitioned for the bankruptcy of the debtor on the basis of the debtor s failure to comply with the statutory demand. AUTONUMOUT In the meantime on 25 February 2000, the debtor lodged an appeal against the judgment. Eventually, on 18 July 2000, the appeal was partially allowed by the Court of Appeal and the judgment sum was reduced from \$1,500,000 to

\$1,170,422.40. The Order of the Court of Appeal was sealed on 31 July 2000. AUTONUMOUT In the light of the Court of Appeal's decision, an affirmation was filed in the bankruptcy proceedings on 25 July 2000 by the solicitor acting for the judgment creditor to the effect that the debtor remained indebted for the reduced judgment sum of \$1,170,422.40 plus interest and the same remained outstanding (the Affirmation of Continuing Debt). AUTONUMOUT The bankruptcy petition was amended on 4 August 2000, but the amendment did not relate to the judgment sum. The reference to the judgment debt in the petition, as amended, was still the sum of \$1,500,000 plus interest. Also, no amendment was sought in respect of the statutory demand. AUTONUMOUT The petition came to be heard before Chung J on 14 August 2000. The debtor was represented by solicitors at the hearing who, according to the record of the learned judge, indicated that they were not in a position to oppose the making of the Bankruptcy Order. AUTONUMOUT There have since been a number of repeated applications to annul the Bankruptcy Order. AUTONUMOUT The first of such application was taken out on 3 February 2004 seeking, inter alia, the following relief Annul a bankruptcy order in relation to Chapter 6 Section 33 Subsection The application was dismissed by Deputy Judge Poon (as he then was) on 29 March 2004. AUTONUMOUT The second application was the summons dated 23 August 2004. The debtor sought To annul the Bankruptcy Order HCB 1209/2000 dated 14th August 2000 The debtor based his application on both subsections

- (a) and (b) of section 33(1) of the Ordinance. The application was dismissed by Yam J on 16 September 2004. AUTONUMOUT The debtor made yet another application by summons dated 1 February 2006 To annul the Bankruptcy Order HCB 1209/2000 dated 14th August 2000 The debtor invoked only subsection
- (a) of section 33(1) on this application. The application was dismissed by Chung J on 27 February 2006. AUTONUMOUT The debtor appealed the decision. His appeal was dismissed by the Court of Appeal on 27 June 2006. AUTONUMOUT At paragraph 5 of the Court of Appeal's judgment, Rogers VP said At the end of the day, there is simply nothing in this appeal. It was a complete waste of time. This Court has considered whether or not an order should be made in respect of Dr Ip to prevent any further applications being made to court without leave. In my view, the time has come when the Court must now seriously consider that. However, it seems that perhaps the best course would be to leave the matter as it is, but to indicate that in this judgment so that, if Dr Ip chooses to make any further similar applications to the Court of First Instance, the judge may consider that. AUTONUMOUT Undeterred, the debtor made this fourth application by summons dated 18 June 2006 [sic], seeking To annul the Bankruptcy Order HCB 1209/2000 dated 14th August 2000 AUTONUMOUT The ground relied on was that as a result of the Court of Appeal's decision of 18 July 2000, the judgment debt was no longer \$1,500,000. Insofar as the statutory demand and the petition were founded upon the said sum, they were defective. The debtor contended that the Bankruptcy Order ought not to have been made on 14 August 2000 because this judgment debt of \$1,500,000.00 did not exist on 14 August 2000 : see Affidavit dated 18 June 2007, paragraph 2. Reasons for dismissal AUTONUMOUT It is clear that section

33(1) confers upon the Court a discretion whether to grant the application for annulment. The power must be exercised with great caution : *Ex p May* (1884) 12 QBD 497 at p. 501, per Cotton LJ. AUTONUMOUT First, irrespective of the merits of the debtor s complaint about the defects in the statutory demand and the petition, as already noted, the debtor was represented at the hearing of the petition and his legal representative indicated no opposition. Almost seven years have elapsed since the making of the Bankruptcy Order. The debtor had already made three failed attempts to have it annulled. By now it must be far too late to accede to yet another request to reopen the matter. AUTONUMOUT In any event, I am of the view that the present application is misconceived. AUTONUMOUT The essence of the debtor s complaint is that the amount of the debt was overstated in the statutory demand and the petition. However, as is clear from the authorities, overstatement of the debtor s indebtedness to the creditor, will not automatically entitle the debtor to have the demand set aside. The question in every case is whether, on the facts, injustice would be caused to the debtor by allowing the particular demand to stand: see *In re A Debtor* (No. 64 of 1992) [1994] 1 WLR 264 at 267, per Colin Rimer QC sitting as a deputy High Court judge, citing *In re A Debtor* (No. 1 of 1987) [1989] 1 WLR

271. Both of these English authorities were cited with approval by Cheung JA in *Bright Islands Corporation v. Chao* [2002] 2 HKLRD 97 at 118. See also *Brillouet v. Hachette Magazines Ltd* [1996] BPIR 518; *Re Kwok Chok Yee* [2000] 2 HKC 543 at 548, per Le Pichon J (as she then was). AUTONUMOUT Similarly, in *Winterthur Life Insurance Company v. Au Oi Fong Susana*, unrep., HCB1178/1999 (28 November 2000), Chu J said The amount of the debt, appearing on the statutory demand is therefore erroneous, but that does not necessarily render the statutory demand defective or void. It has to be demonstrated that injustice would be caused to the debtor by allowing the statutory demand to stand : *In re Kwok Chok Yee* HCB670/1999 applying *In re A Debtor* (No.1 of 1987) [1987] WLR 271, 276 and 279. In the present statutory demand, the debt is over-stated by less than \$6,000. Notwithstanding that, there has never been any suggestion by the debtor that she is in a position or is prepared to pay the debt or any part of it. That being the case, these can be no injustice occasioned to her as result of the over-statement. In short, the debtor s objections based on the amount and computation of the debt have no substance and must fail. AUTONUMOUT In the present case, it is clear according to the Affirmation of Continuing Debt that the judgment debt, based on the reduced amount, remained outstanding. The debtor could not have laboured under any misapprehension as to the basis of the petition for his bankruptcy. AUTONUMOUT There was no evidence or suggestion that the debtor would have been able or prepared to pay any part of the judgment sum. Indeed, he indicated through his legal representative that he was not in a position to oppose the petition. AUTONUMOUT Clearly, in these circumstances, no injustice had been caused to the debtor. AUTONUMOUT Those principles relating to the statutory demand must apply equally to the petition. AUTONUMOUT Accordingly, I am not satisfied that the debtor has made out a case under subsection (1)(a) of section 33 that the [Bankruptcy Order] ought not to have been made . But even if I am wrong, by reason of the matters mentioned in paragraphs 20, 24 and 25 above, I

am of the view that the present application is an abuse of the process of the Court. On that alone, the discretion must be exercised against the granting of the application.

AUTONUMOUT The debtor s application to annul the Bankruptcy Order is dismissed.

AUTONUMOUT In addition, I would respectfully adopt the view of the learned Vice-President that the time has come for the Court to consider whether a restricted application order should be made to protect its process from further abuse by unmeritorious applications of similar nature. I have accordingly directed a hearing to give the debtor and other interested parties an opportunity to address the Court for that purpose. (Ambrose Ho, SC) Recorder of the High Court Debtor in person, present Miss Anne Chow, for 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 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ & 6" ABC.dot setup Microsoft Word 9.0 4,SR Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 28 October 2026 · Esheria