

HONG KONG / JUDGMENT

Re Widecorp Development Ltd.

COURT

Court of First Instance

DECIDED

23 November 2000

CASE / FILE NUMBER

HCCW387/2000

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCCW387/2000 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE COMPANIES WINDING UP PROCEEDINGS NO.387 OF 2000

IN THE MATTER OF Widecorp Development Limited and IN THE MATTER OF the Companies
Ordinance, Chapter 32 of the Laws of Hong Kong

Before : Hon Chu J in Court Date of Hearing : 23 November 2000 Date of Judgment : 23 November
2000

J U D G M E N T

In these proceedings, the petitioner, Kenny Finance Company Ltd, petitions for a winding up order be made against the respondent company, Widecorp Development Ltd (the Company) on the ground that the Company is unable to pay its debt. The debt in question is in the sum of \$4,378,206.82, being the outstanding balance of a judgment debt together with interest. The validity and the subsistence of the judgment debt are not in issue. What the Company disputes is the amount of the outstanding balance of the judgment debt and whether the Company is unable to pay its debt.

Background

By a legal charge dated 12 August 1994, the petitioner lent \$7 million to one Citybridge Holdings Ltd secured by eight lots of land in DD Lot No.107 (collectively the Land) owned by the Company. Since February 1997, there had been defaults in the repayment of the loan. Subsequently in November 1998, the petitioner commenced High Court Action no.19927 of 1998, claiming for the outstanding amount under the legal charge and possession of the Land. On 23 March 1999, summary judgment was entered against the respondent for possession of the Land and for

damages to be assessed. On 2 August 1999, vacant possession of the Land was delivered to the petitioner. On 7 October 1999, damages was assessed and final judgment was entered for the sum of \$7,525,477.10 together with interest and costs. On 31 January 2000, the petitioner sold the Land to a Mr Mok Chung Sum at \$3.8 million. On 25 March 2000, the petitioner served a demand on the Company for the payment of the balance of the judgment debt. The demand was not complied with. On 3 May 2000, the petitioner issued the present Petition. Application for stay The Company contests the Petition on the basis that the sale of the Land to Mr Mok was substantially undervalued and that the petitioner had failed in its duty as a mortgagee to take reasonable precautions to obtain the best price. What happened was in about May 1999, the petitioner commissioned a surveyor, Albert So Surveyors Limited (the petitioner s 1st surveyor) to assess the open market value of the Land as at 21 June 1999. According to the surveyor s report, the open market value was \$6.24 million. On 12 July 1999, the petitioner sent out invitations for offer to purchase to several estate agents and investment companies which the petitioner believed might be interested in acquiring the Land. According to the petitioner, no offers were received by the deadline, i.e. July 1999. Shortly thereafter, on 6 August 1999, part of the Land was zoned for railway reserve whereas the other part was zoned for industrial use. The petitioner s case is that one of its shareholders and directors, Mr Wan Chi Hing, approached some individuals to offer the Land for sale. Eventually, Mr Mok, who was a former colleague and a friend of Mr Wan, was prepared to buy the Land at \$3.8 million. A provisional agreement for the sale and purchase of the Land at \$3.8 million was signed on 4 December 1999 and completion took place on 31 January 2000. On the same day, Mr Mok mortgaged the Land to the petitioner. The Company had commissioned its own surveyor, Francis Lau & Co. (the Company s surveyor) to assess the open market value and the valuation was similar to that of the petitioner s 1st surveyor. The petitioner subsequently engaged another surveyor, Prudential Surveyors International Ltd, (the petitioner s 2nd surveyor) and the valuation given was \$4,426,782, some 14% above the sale price of \$3.8 million. In the meantime, the Company had commenced High Court Action no.6371 of 2000 (HCA6371/2000) claiming for an enquiry and account into the sale by the petitioner to Mr Mok. Although the action was commenced in June 2000, the petitioner has yet to file a defence and it had taken out an application for security of costs, which has been adjourned for argument with the date of the resumed hearing yet to be fixed. Against these backgrounds, the Company applies for a stay of the winding up petition pending the determination of HCA6371/2000. The Company s argument is that had the Land been sold at the open market value of \$6.24 million, the balance of the judgment debt would only be in the region of \$1.2 million. The Company says it has secured the agreement of a third party, one Mr Kwok Chi Wan, to lend \$1 million to it. With that, the Company will be able to repay the balance of the judgment debt owed to the Petitioner. The Company therefore contends that it is premature for the Petition to be heard when there is a pending High Court action which may affect the amount of debt owed, hence the Company s ability to pay the debt. There can be no doubt that the court has an unfettered discretion to stay or dismiss a winding up petition where there is a bona fide dispute of the debt on substantial ground or where there is a pending cross claim which equals or exceeds the debt : see *Re Finbo Engineering Co. Ltd* [1998] 2 HKC 480, *Re FSA Business Software Ltd* [1990] BCC

465. It is equally well established that a dispute as to the quantum of the debt is not a sufficient answer to a winding up petition, particularly where the company is not in a financial position to make any payment : Re CDCP International Ltd [1987] 2 HKC 324, Re ICS Computer Distribution Ltd [1996] 3 HKC 440. In the present case, the Company is disputing the amount of the debt owed to the petitioner. This dispute is currently the subject matter of a pending litigation. The Company also relies on this litigation as a cross claim against the petitioner. Counsel for the Company submitted, and I agree, that the merits of the Company's complaint, hence the dispute and the cross claim, is not for this court, but for another forum. Counsel for the petitioner, however, had endeavoured to convince this court that the allegations of collusion and failure of duty levied against the petitioner were mere conjecture and unsubstantiated by the evidence before the court. It was argued that the dispute on the debt was neither bona fide nor on substantial ground and that the cross claim was on very thin ground. I had observed that the question of whether the petitioner had acted in breach of its duty in exercising the power of sale is not for me. Suffice it therefore for me to say that I do not agree with the submission that there is a total lack of evidence and basis to support the Company's complaint and the dispute on the debt. It may be that the fact that Mr Mok is a friend of the petitioner's shareholder and director, and that the petitioner had granted mortgage facilities to Mr Mok, presumably to finance the purchase of the Land, do not necessarily by themselves give rise to cause for complaint. But a combination of these factors and the fact that the sale price was significantly below the open market value assessed by the petitioner's 1st surveyor does provide cause for concern. Even on the valuation of the petitioner's 2nd surveyor, the sale price was some 14% below the open market value. Although the surveyor had commented that the sale price was not unreasonable, the court is not bound to come to the same view. It is further to be noted that the Land was offered for sale in July 1999 when the zoning was classified as undetermined . But the user was completely changed as a result of the zoning in August
1999. The difference in user would no doubt have an impact on the value and potential of the Land. The petitioner, however, had taken no step to put up the Land on the market again in the light of the change in user. It is, in my view, not one of those cases where the Company's dispute or complaint can be brushed aside as being mere hypothesis of facts or lacking in substance. Having said that, it remains a fact that the dispute does not have the effect of extinguishing the debt. The dispute only goes to part of the debt. It is the Company's contention that if HCA6371/2000 is resolved in its favour, then the amount of the debt will be significantly reduced. That, however, is not the end of the matter. The question that remains is, assuming that the debt is reduced, whether the Company is in a position to meet the debt in the reduced amount. On the evidence before the court, the answer is plainly . There is no indication at all that the Company is in a financial position to pay any part of the debt, not even the undisputed part of about \$1.2 million. All that the Company is relying on is a third party who has agreed to lend \$1 million to it. Even with this \$1 million loan, it is still insufficient to satisfy the undisputed part of the debt together with interest. It is also a fact that the Company has not sought or offered to pay any sum to the petitioner. In

the premises, the dispute to the debt is no more than a dispute as to the quantum of the debt and that is plainly insufficient to answer the Petition. Counsel for the Company had suggested in her submissions that if the Company were successful in HCA6371/2000, the sale to Mr Mok would be set aside. With the change in user, it is possible that the Land can be resold at a price that is sufficient to extinguish the entire judgment debt. This suggestion has overlooked the fact that in HCA6371/2000, the Company only claims for reliefs of enquiry and account. There is no prayer for an order setting aside the sale. That being the case, there is no question of the Land being resold, let alone being resold at a price that is sufficient to repay the entire judgment debt. Having regard to the above matters and considering that HCA6371/2000 is unlikely to reach judgment within the near future, I am not convinced that the court should keep the Petition in abeyance. The application for stay is therefore refused. Other considerations The Company also applies to adjourn the Petition for two months so as to enable it to arrange for the payment of \$1 million to the petitioner. As indicated above, taking the Company's case to its highest, even with the payment of \$1 million, there is still a shortfall of at least \$200,000. There is no indication from the Company as to how it proposes to pay this shortfall. The adjournment is not going to serve any useful purpose. At any rate, the Petition has been adjourned for more than four months since it was first listed for hearing. There is no good reason why the Company should be afforded a further period, not to mention two months, to meet its obligation. The application for adjournment is therefore refused.

Conclusion

By reason of the matters aforesaid and since the Company has not put forward any other ground for resisting the Petition, there will be the usual winding up order with costs. (C. Chu) Judge of the Court of First Instance High Court Mr Sanjay Sakhrani, instructed by Messrs Hau, Lau, Li & Yeung, for the Petitioner Miss Barbara Wong, instructed by Messrs Benson Li & Co., for the Company The Official Receiver, not attending with leave of the Court - PAGE - "@AB "@AB & 6" Alice Normal.dot Microsoft Word 8.0 Title _PID_GUID #D:\ Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=33510

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/re-widecorp-development-ltd-2000>

Prepared on 27 October 2026 · Esheria