

HONG KONG / JUDGMENT

RE WILLIAM HUNG YU YANG

COURT

Court of First Instance

DECIDED

17 December 2007

CASE / FILE NUMBER

HCB22514/2002

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bjbj HCB 22514/2002 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE IN BANKRUPTCY PROCEEDINGS NO. 22514 OF 2002

Re: William Hung Yu Yang (the Bankrupt)

Before: Mr Recorder Jat, SC in Court Date of Hearing: 29 November 2007 Date of Decision: 29
November 2007 Date of Handing Down Reasons for Decision: 17 December 2007

REASONS FOR DECISION

Mr William Hung Yu Yang was adjudged bankrupt on 27 February 2003 upon the petition of Eastlite Industries Limited (Eastlite). The Official Receiver () was appointed trustee of the property of Mr Yang by a summary procedure order made on 20 May 2003. Mr Yang s bankruptcy commenced on 5 March 2003 by reason of section 30A(10)(a) of the Bankruptcy Ordinance, Cap 6. (Unless otherwise stated, references herein to sections are to sections of the Bankruptcy Ordinance) Accordingly, under sections 30A(1) and (2)(a), Mr Yang would have been automatically discharged after 4 years from 5 March 2003, ie, 4 March 2007. By summons filed on 17 January 2007, the OR applied under section 30A(3) that the relevant period of 4 years under section 30A(1) and 30A(2)(a) shall cease to run for a period not exceeding 4 years on the grounds set out in sections 30A(4)(b), (c) and (d). The substantive hearing of that application came before me on 29 November 2007. After hearing counsel acting respectively for the OR and Mr Yang, I ruled that I was satisfied that the OR s grounds have been made out, and I ordered that the period of bankruptcy be suspended for 9 months. There are my reasons for making that order. The facts The material facts can be shortly stated. Mr Yang attended the OR s office for an initial interview on 5 March 2003. On that occasion he was given various documents, one of which was a booklet entitled A Simple Guide to Bankruptcy issued by the Official Receiver s Office. It was stated

clearly in the booklet, in paragraphs 4.1 and 4.2, that: 7.1. Upon making of the Bankruptcy Order and throughout the bankruptcy period, a bankrupt must fully co-operate with the OR/trustee in the investigation of his bankruptcy and the realisation of assets. The bankrupt must provide information regarding his assets and liabilities, financial dealings and other relevant matters. 7.2. The bankrupt must hand over all his assets to the OR/trustee. Prior to that interview, the OR had already received information, presumably from Eastlite (which, according to Mr Yang, was controlled by the husband of one of his former sisters-in-law), that Mr Yang was a co-owner of a real property in the state of New York in the USA (the Property), and that he had tried to transfer his interest in the Property to the other co-owner, who was his former wife. During that interview, Mr Yang informed the OR that the Property belonged to his former wife and he had ceased to have any beneficial interest in it for many years. On 10 March 2003, Mr Yang attended the OR's office again and submitted his preliminary examination questionnaire and Statement of Affairs. Amongst the materials supplied by Mr Yang to the OR was a letter from a firm of US attorneys (THSH) dated 14 February 2003 addressed to Mr Yang. THSH represented they were attorneys of Mr Yang's former wife (for convenience I shall refer to Mr Yang's former wife simply as Mrs Yang). The letter provided some background information on the title to the Property and concluded that Mr Yang did not have any beneficial interest in it. After the second interview, the OR sent a letter to Mr Yang drawing to his attention that all his assets, including his interest in the Property, had been vested in the OR as trustee-in-bankruptcy, and expressly informing him that he should not dispose of any of his assets or execute any papers for the transfer of his interest in his assets without the OR's prior consent. Thereafter, on 1 April 2003, Mr Yang wrote a letter to the OR enclosing a legal opinion and related documents concerning the ownership of the Property. Mr Yang's version is essentially as follows. 13.1. He and Mrs Yang acquired the Property in 1975 as their family home. At the time, due to uncertainties over whether they could obtain mortgage financing, they made arrangements with Mrs Yang's sister (who I shall call Christine) to have the Property conveyed to a Delaware corporation as nominee for Christine, who in turn held the Property on trust for Mr and Mrs Yang. 13.2. In April 1976, the Property was conveyed to Christine in her sole name. Christine executed a written instrument, dated 1 April 1976, stating that upon demand [Christine] will transfer to [Mr and Mrs Yang], or to their heirs, executors and assigns title to the [Property] by a duly executed deed in form for recording . 13.3. Thereafter Mrs Yang requested Christine to transfer the legal title of the Property to her, but Christine refused. Eventually, Mr Yang agreed to relinquish his interest in the Property in favour of Mrs Yang. By a handwritten document dated 2 November 1976, signed by Mr Yang and Christine (1976 Letter), Mr Yang stated as follows: I am agreeable to transfer the title of the [Property] for the ownership of my wife and hereto have no complain about her treatment on this house. 13.4. Christine continued to refuse to transfer the legal title back to the Yangs. In the meantime, Eastlite, had commenced action against Mr Yang in Hong Kong and obtained a judgment on 13 July 2000 for \$5.5 million. (It was on the basis of this judgment that Eastlite petitioned for the bankruptcy of Mr Yang). 13.5. In October 2000, THSH on behalf of Mrs Yang commenced action against Christine for the transfer of the legal title of the Property. The action was brought in the joint names of Mr and Mr Yang, because the deed executed by Christine in April 1976 was addressed to both of them. 13.6. Those proceedings were settled and Christine executed a deed dated 14

December 2001 transferring the Property to Mr and Mrs Yang. That deed was registered on 13 February 2002. 13.7. Meanwhile, on 5 December 2001, Mr Yang executed a deed conveying his interest in the Property to Mrs Yang (2001 Deed). However, according to THSH, the 2001 Deed was not registered because by that time they had notice of Eastlite s judgment against Mr Yang in Hong Kong. Returning to the narrative, the OR was not convinced that Mr Yang had no beneficial interest in the Property. They took up correspondence directly with THSH, and sought legal advice from a firm of US lawyers. I need not go into the details here, suffice to record that the OR was advised in October 2003 that Mr Yang remained one of the co-owners of the Property on record, and that the market value of the Property in July 2004 was US\$2,125,000. In around November 2004, the OR was advised by its US lawyers that a deed dated as of 14 December 2001 executed by Mr Yang and notarised on 24 March 2004 in Taiwan (2004 Deed) had been registered on 5 August 2004 conveying Mr Yang s interest in the Property to Mrs Yang for no consideration. Thereafter the OR continued to seek advice from its US lawyers and in April 2005 gave instructions to the US lawyers to commence proceedings in New York to recover Mr Yang s interest. On 26 April 2005, Mrs Yang sold the Property for US\$2,695,000. However, the OR did not know about this until November 2006. It is unnecessary for present purposes to describe the actions taken by the OR subsequent to April 2005, save to observe that any delay had nothing to do with Mr Yang. There was no further direct contact between the OR and Mr Yang from April 2003 to August 2006. The OR did not inform Mr Yang of its correspondence with THSH, although Mr Yang was apparently copied in on the letters sent by THSH to the OR. Nor was Mr Yang informed of the steps the OR took in obtaining legal advice and pursuing proceedings in the US. On 9 August 2006, the OR sent a letter to Mr Yang asking him to offer a settlement proposal. On 5 September 2006, Mr Yang attended the OR s office for an interview. Nothing material resulted from this. Eventually proceedings were commenced in New York in December 2006. The OR filed this application on 17 January 2007. On 14 February 2007, Master Hui made an interim order suspending the automatic discharge of the bankruptcy pending determination of the OR s summons. Grounds of OR s application Originally the OR relied on sections 30A(4)(b), (c) and (d). In his skeleton submissions, Mr Alex Stock, counsel for the OR, sensibly dropped the case based on section 30A(4)(b). Hence only sections 30A(4)(c) and (d) remained relevant. Section 30A(4), in so far as material, provides as follows: The grounds on which an objection can be made to the discharge of a bankrupt under this section are as follows-

- (c) that the bankrupt has failed to co-operate in the administration of his estate;
- (d) that the conduct of the bankrupt, either in respect of the period before or the period after the commencement of the bankruptcy, has been unsatisfactory; The OR s case was, in short, that Mr Yang had disposed of his interest in the Property by executing the 2004 Deed in March 2004 without seeking the prior consent of the OR and despite having been warned not to do so. Such conduct was in breach of his duties to co-operate with the OR and unsatisfactory. Mr Stock fairly accepted that if all that Mr Yang had was a bare legal title with no beneficial interest in the Property, the transfer of that bare legal title would not prejudice the administration of the bankruptcy. However, Mr Stock argued that for the purpose of this application, it was not necessary for this court to find whether Mr Yang still retained a

beneficial interest in the Property as at 5 March 2003 which he had transferred away in 2004. It sufficed for present purposes that there was an arguable case, and the OR had been so advised by reputable US lawyers, that Mr Yang did have an interest in the Property which the OR could legitimately pursue. By executing the 2004 Deed, Mr Yang made it much more difficult for the OR to seek recovery of his interest in the Property, which was the only substantial asset of his available for distribution. Mr Stock reminded me the importance of the bankrupt's duty to co-operate pro-actively with the OR, as emphasised by the court in many cases: see, eg, *Re Li Tat Kong* [2000] 3 HKC 360 at 377C-G per Le Pichon J (as she then was) and *Re Leung Yat Tung (No 2)* [2007] 4 HKC 192 (Yeung JA) at 62. On behalf of Mr Yang, Mr Matthew Tse submitted that the OR must establish that Mr Yang had disposed of a beneficial interest in the Property, which the OR has failed to do. Moreover, Mr Tse submitted that given the undisputed fact that Mr Yang had signed the 1976 Letter and the 2001 Deed giving all his interest to Mrs Yang, to a layman he was doing no more than completing or perfecting Mrs Yang's title to the Property when he executed the 2004 Deed, hence his conduct was not unsatisfactory. Decision I agree with Mr Stock that what the OR has to show in this application is that there is an arguable case that Mr Yang still had a beneficial interest in the Property in March 2003 which he has disposed of in March 2004. Otherwise it would be too easy for bankrupts to dispose of properties or assets situated outside this jurisdiction and escape from the consequence of section 30A(3) unless the trustee in bankruptcy can prove the bankrupt's interest in this court, which may involve complicated questions of foreign law and when there may be pending or intended proceedings over the bankrupt's interest in such property in the foreign jurisdiction. I am satisfied on the evidence placed before me that Mr Yang probably honestly believed that he had already transferred all his interest in the Property to Mrs Yang, and that what he did was no more than repeating or confirming what he had already done in 1976 and 2001. Nevertheless, in my judgment, Mr Yang clearly ought to have informed the OR that he had been asked to execute the 2004 Deed. Had the OR been informed, steps might have been taken to prevent him from doing so or prevent the transfer of his interest (if any) from being perfected. Although in my view Mr Yang executed the 2004 Deed in the honest belief that he had no interest in the Property, in my judgment his conduct fell short of the standard required of a bankrupt. For these reasons, I was satisfied that Mr Yang had failed to co-operate with the OR as fully as he ought to have done, and that his conduct in executing the 2004 Deed without informing the OR was unsatisfactory in accordance with the test as stated in *Re Wong Hing Wah Michael*, HCB 26018/2002, 12.10.07, at 16 per Barma J. I then turned to the next question, whether my discretion should be exercised in suspending the bankruptcy period: see *Re Wong Hing Wah Michael*, at 14. Taking into account all relevant circumstances, in particular the age of Mr Yang (he was about 80 years old), in my view the period of bankruptcy should be suspended for 9 months. Finally, after hearing submissions from counsel, I ordered that Mr Yang should pay the OR's costs, to be taxed if not agreed. Post-script By letter dated 1 December 2007, the solicitors acting for Mr Yang (KCCM) invited me to review my ruling on costs. It is stated in that letter that by reason of section 85(6), it is doubtful whether the OR could ask Mr Yang to pay the costs of the application, as

he was still an undischarged bankrupt on 29 November 2007. By letter dated 13 December 2007, the OR argued otherwise. There is no doubt that before the order is sealed, I can review my ruling on costs. However, having considered KCCM s letter and section 85(6), I can see no reason for me to do so. In particular, it seems to me that section 85(6) has no application at all. There can be no doubt that costs in bankruptcy proceedings are in the court s discretion. Section 100 provides that: Subject to the provisions of this Ordinance and to general rules, the costs of and incidental to any proceeding in court under this Ordinance shall be in the discretion of the court. Further, Rule 32A(2) of the Bankruptcy Rules expressly provides that: Unless the court otherwise directs, the costs of an application to the court which is opposed shall follow the event and shall be taxed on the party and party basis. I also cannot see any reason why I should entertain arguments mentioned in KCCM s letter which counsel failed to advance at the hearing. Accordingly, I decline the invitation to review the costs order made at the hearing. (Jat Sew Tong, SC) Recorder of the Court of First Instance High Court Mr Matthew Tse, instructed by Messrs Kenneth CC Man & Co., for the D 1udk 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 1udk i\$&`G hcb.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 26 October 2026 · Esheria