

HONG KONG / JUDGMENT

RE WU CHUN KWAN

[2019] HKCFI 2802

COURT

Court of First Instance

DECIDED

15 November 2019

CASE / FILE NUMBER

HCB4259/2018

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bjbj ioners / Lam Frankie Chak Ming Judgment Creditors

Before: Deputy High Court Judge William Wong SC in Chambers Date of Hearing: 7 November 2019 Date of Decision: 7 November 2019 Date of Reasons for Decision: 15 November 2019
REASONS FOR DECISION

Introduction

The Petitioners, the Debtor's major creditors, seek an appointment of interim trustee and special managers in respect of the Debtor. I am told that this is the second application for appointment of interim trustee and special manager. I will give my reasons. The Petitioners are judgment creditors of the Debtor and are owed approximately RMB 350 million plus interest, pursuant to two judgments awarded in May 2017 (the Judgments). As a matter of jurisdiction, the Court may appoint an interim manager to protect the Debtor's estate before the making of a bankruptcy order. In the present case, the Debtor's assets include a complex web of substantial interests in companies incorporated in Hong Kong and the Mainland. It is submitted that the Debtor had been dissipating assets and evading service. As a result, the Petitioners have not been able to enforce their judgment or progress the bankruptcy petition. Most recently, the Petitioners learned that the Debtor might have passed away in the autumn of 2018, but no confirmation could be obtained. Nonetheless, the Petitioners learned that the Debtor's assets were still changing hands this year, as late as June 2019. This application was made on an urgent ex parte but on notice to the Official Receiver basis because the Debtor's assets and affairs are in dire need of management, preservation and investigation. Material facts The Debtor was a businessman carrying on the business of hotel and restaurant operation and property development mainly in the Mainland. The Petitioners are in the business of property development in Hong Kong and the Mainland. Prior to some of the transfers, the Debtor's assets included controlling shareholdings in Weldon Holdings Limited (Weldon), Pak Ho Hotel International Investment (HK) Limited (Pak Ho), China New City Holdings Limited, Guangzhou Chao Hao Restaurant Co Ltd (GZ

Restaurant) and Kai Tak Holdings Limited (Kai Tak). Weldon holds 70% of the shares in Guangdong Weldon Hotel Co Ltd (GD Weldon), a company incorporated in the Mainland. GD Weldon holds substantive assets including a hotel in Guangzhou namely, Weldon Hotel- Guangzhou. In the course of 2010 and 2011, the Debtor borrowed money from the Petitioners. In May 2017, because of the Debtor s default, the P through Kai Tak paid approximately HK\$73 million to his then wife, Madam Chan Hoi Ching (Madam Chan), or to her credit for the purchase of a residential property in Hong Kong. Between September 2016 and January 2017, the Debtor paid approximately HK\$27 million to his son () or to his credit for the purchase of a residential property in Hong Kong. In January 2017, the Debtor assigned to Madam Chan his share in a jointly owned property for no consideration. The Debtor further transferred his share to 018, the Petitioners issued a bankruptcy petition against the Debtor. However, the Petitioners have not been able to serve the bankruptcy petition on the Debtor because the Debtor was evading service. In February 2019, the Petitioners commenced an action under section 18 with intent to defraud creditors. After the Petitioners unsuccessful attempt to serve the bankruptcy petition on the Debtor in the Mainland in September 2019, the Debtor has completely disappeared. Recently the Petitioners learnt of the Debtor s alleged demise in these circumstances: On 11 April 2019, the Official Receiver or of any creditor or creditors, and if satisfied that the nature of the debtor s estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the Official Receiver, appoint a manager thereof accordingly, who shall have such powers (including any of the powers of a receiver) as may be entrusted to him by the Official Receiver. The appointment of interim trustee is equivalent to the appointment of provisional liquidator of convenience according to the circumstances. I am of the view that, similarly, the principal purpose of appointing an interim trustee is the urgent protection of the debtor s estate. An example is *Barker v Baxendale-Walker* [2018] EWHC 2518 (Ch) which concerned the appointment of interim receivers under section 109 of the Insolvency Act 1986. The court held that the appointment of interim receivers was equivalent to the appointment of provisional liquidator of convenience according to the circumstances. I am of the view that, similarly, the principal purpose of appointing an interim trustee is the urgent protection of the debtor s estate. An example is *Barker v Baxendale-Walker* [2018] EWHC 2518 (Ch) which concerned the appointment of interim receivers under section 109 of the Insolvency Act 1986. The court held that the appointment of interim receivers was equivalent to the appointment of provisional liquidator of convenience according to the circumstances.

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