

HONG KONG / JUDGMENT

THE OFFICIAL RECEIVER v. MO CHAT HOI AND ANOTHER

COURT

Court of First Instance

DECIDED

10 October 2007

CASE / FILE NUMBER

HCMP2508/2006

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

bjbj HCMP 2508/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 2508 OF 2006

IN THE MATTER of ARTSHOP DESIGN & CONSTRUCTION LIMITED (In Liquidation) and IN THE
MATTER of Section 168H of the Companies Ordinance (Chapter 32)

BETWEEN THE OFFICIAL RECEIVER Applicant and MO CHAT HOI

This is an originating summons issued by the Official Receiver on 29 November 2006 under section 168H of the Companies Ordinance, Cap. 32. The Official Receiver seeks a disqualification order against the 1st and 2nd respondents. They were the directors of a company in liquidation, Artshop Design & Construction Ltd (the Company). The 1st respondent opposes the application and has filed 2 affirmations in opposition. The 2nd respondent does not contest the application and has only made submissions on the length of the period of disqualification. She has also filed 2 affirmations, to answer the allegations made against her by the 1st respondent. As there are factual disputes, both respondents have been cross-examined on their affirmations by counsel for the Official Receiver and by each other. The allegations of unfit conduct of the respondents in support of the Official Receiver s application may be stated as follows:

- (1) accounting records offences, in breach of sections 121, 274, 122 of Cap. 32, against the 1st respondent only;
- (2) breach of fiduciary duty, against the 1st respondent only;

- (3) causing the Company to enter into unfair preference transactions liable to be set aside under section 266 of Cap. 32 and/or transactions to the detriment of the general creditors of the Company, against both the 1st and 2nd respondents; and
- (4) misappropriation of funds belonging to the Company, against the 1st respondent only. The background matters I first set out the background matters relating to the application, taken from the first report of the Official Receiver filed on 29 November 2006. The Company was incorporated on 12 March 1985. According to the last audited financial statements for the year ended 31 March 1997, it was engaged in the business of short-term design and construction work. On 24 December 2002, a creditor, R&D Production Limited () presented a petition to wind up the Company in HCCW No. 1420 of 2002, based on a judgment debt in DCCJ No. 4996 of 2002 (the District Court Action) on 4 September 2002, in the sum of \$555,359.20 The winding-up order was made on 19 March 2003. Mr Desmond Chiong and Mr John Lees were appointed provisional liquidators the same day, and they were appointed liquidators on 7 July 2005. Up to the date of the Official Receiver s first report, the total assets realised by the liquidators were \$190,746.60. The total proofs of debt filed amounted to \$979,772.20. Thus, the Company went into liquidation at a time when its assets were insufficient for the payment of debts, other liabilities and the expenses of the liquidation. It is an insolvent company within section 168H(2)(a). The 1st respondent was appointed a director of the Company on 10 April 1985, and remained a director at the time of the winding up. Between 10 April 1985 to 27 November 2002, the 1st respondent s mother, his former wife Lee Ngung Lin (Madam), and his girl friend Ho Ching Dow May (Madam) had in turn served as a director of the Company. The 2nd respondent was appointed a director on 12 April 2002 and resigned on 16 October 2002. Prior to her appointment as director, she had worked as an account clerk of the Company from October 2001 to 7 October 2002. The Company had an issued share capital of \$300,000.00, divided into 30,000 shares of \$10.00 each. The 1st respondent held 29,999 shares. Madam Lee held 1 share. In the last three years before the winding up, the Company had three bank accounts, of which two were closed in October 2001. I am primarily concerned with the remaining account in the Bank of Communications. The 1st respondent was the sole signatory to this account until 15 April 2002, when the 2nd respondent was added as a signatory. This account could be operated by each singly until 12 November 2002, when the 2nd respondent s name was removed. The 1st respondent and the Company were the former directors and shareholders of Decoworks Hong Kong Limited (Decoworks). On 17 June 2002, the 2nd respondent and her husband Chan Yim Keung (Chan) were appointed directors and became the only shareholders of Decoworks, in place of the 1st respondent and the Company. Since 1 July 2002, Decoworks carried on business at the registered office of the Company until 16 October 2002, when the bailiff executed the writ of fieri facias against the goods and chattels of the Company to enforce the judgment debt in the District Court Action. It is not in dispute that the business of the Company was taken over by Decoworks on 1 July 2002. According to the letter of the 1st respondent to the Labour Department dated 30 December 2002, the business of the Company was taken over by Decoworks for repayment of the Company s debts due to the

2nd respondent and her husband. According to the 2nd respondent, the Company's business was transferred to Decoworks because the 1st respondent had decided to cease operation of the Company, as the 1st respondent was often in Shanghai to attend to his business, and there had been a number of outstanding debts due from the Company at the time. On 13 August 2002, the 1st respondent presented a petition for his own bankruptcy. A bankruptcy order was made against him on 16 January 2003. I understand he is now discharged from bankruptcy under the provision for automatic discharge. The 2nd respondent presented a petition for her own bankruptcy on 1 June 2004. A bankruptcy order was made against her on 13 July 2004. The legal principles It is not in dispute that the 1st and 2nd respondents have been directors of the Company, which had become insolvent whether while they were directors or subsequently, as provided for in section 168H(1)(a). The only issue insofar as the 1st respondent is concerned is whether his conduct as a director of the Company makes him unfit to be concerned in the management of a company, as provided for in section 168H(1)(b). If this is satisfied, disqualification is mandatory under section 168H(1). Regarding the unfitness to be concerned in the management of a company, section 168K(1) provides for the matters to which the court should have regard in Parts I and II of Schedule 15 to Cap.

32. The matters relevant in this instance are:

- (1) any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;
- (2) any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;
- (3) the extent of the director's responsibility for any failure by the company to comply with section 121;
- (4) the extent of the director's responsibility for any failure by the directors to comply with section 122;
- (5) the extent of the director's responsibility for the company entering into any transaction or giving any preference, being a transaction or preference liable to be set aside under section 266; and
- (6) any failure by the director to comply with any obligation imposed on him by section 274. For the approach of the court in reaching a determination of unfitness as to justify disqualification, I refer to my judgment in *Re Copyright Limited* [2004] 2 HKLRD 113 at 122J to 124B, paragraphs 28 to 32. I turn to consider each of the allegations made by the Official Receiver to see what findings of fact should be made, and whether the facts as found would justify a determination that the conduct of the respondents as directors was such to render them unfit to be concerned in the management of a company. Accounting records offences Under section 121, the directors of a company are obliged to take all reasonable steps to secure compliance by the company with the requirements to keep or preserve proper books of accounts as necessary to give a true and fair view of the state of affairs of the company

and to explain its transactions for seven years. In this instance, the relevant period was from 20 March 1996 to 19 March 2003, the date of the winding-up order. By section 122, the directors of a company are obliged to take all reasonable steps to cause to be made out and laid before the company at its annual general meeting, a profit and loss account and a balance sheet as at the date to which the profit and loss account is made up. Section 274 imposes an obligation on a director to keep such books of account as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company throughout the period of two years immediately preceding the commencement of winding up. In this case, the relevant period was from 25 December 2000 to 24 December 2002, the date of presentation of the winding-up petition. A treasury accountant of the Financial Services Division of the Official Receiver, Ms Mak Fai Lar, has set out in her affidavit the available accounting records of the Company. As mentioned earlier, the audited accounts were prepared up to the year ended 31 March 1997. I note that the general ledgers, the management accounts and trial balances covered the period from 31 March 1998 to 31 March 2000 only. From an accounting point of view, the general ledgers and periodic financial statements are major accounting records of a company. These accounting records of the Company are not available for the period after 31 March 2000. According to the accountant firm which had prepared the management accounts for the Company in the past, it had been instructed to prepare management accounts up to 31 March 2000 only. Even in regard to the management accounts prepared for the years ended March 1998, March 1999 and March 2000, the accountant firm stated that these management accounts were not properly prepared because of insufficient information provided by the 1st respondent. The 1st respondent accepted in cross-examination that no management accounts were prepared after March 2000. The former auditors of the Company advised the Official Receiver they had only prepared audited financial statements up to the year ended March 1997, as the Company was unable to provide them with sufficient documentary evidence and information to prepare audited financial statements for subsequent years. As the available accounting records are deficient, Ms Mak is unable to advise on the financial position of the Company after March 2000. The deficiency of the accounting records has hindered the investigation work of the liquidators. In the opinion of Ms Mak, the Company had failed to keep and/or preserve proper books of accounts in accordance with sections 121 and 274. I see no reason to differ from Ms Mak. The only defence raised by the 1st respondent was that on 31 October 2002 and 1 November 2002, the 2nd respondent had taken away the books and accounts of the Company. This allegation is denied by the 2nd respondent. According to the 2nd respondent, on 7 or 8 October 2002, she had returned all of the Company's documents and the Company's chop to the 1st respondent at his request. It is pertinent to note that the 2nd respondent had resigned as a director on 16 October 2002. On the evidence of Ms Mak and the undisputed evidence of the accountant firm that prepared the management accounts and the former auditors of the Company, I agree with Mr Cheuk for the Official Receiver that it is unnecessary to deal with the 1st respondent's allegation aforesaid, as that would not have amounted to a defence. In any event, having considered the 1st respondent's evidence here in cross-examination, I do not accept his allegation that the 2nd respondent

had taken away the books and accounts of the Company. His evidence that the 2nd respondent had retained a company chop of the Company all along is plainly incredible. I prefer the 2nd respondent's evidence on this matter. I find the 1st respondent being the controlling director of the affairs of the Company had failed:

- (1) to take reasonable steps to keep or preserve proper books of accounts as necessary to give a true and fair view of the state of affairs of the Company and to explain its transactions as required by section 121;
- (2) to comply with the obligation under section 274 to keep such books of account as necessary to exhibit and explain the transactions and financial position of trade or business of the Company; and
- (3) to take all reasonable steps to comply with section 122, to cause to be made out and laid before the Company at an annual general meeting a profit and loss account and balance sheet. I find the complaint regarding the accounting records offences established against the 1st respondent. Breach of fiduciary duty According to the last audited financial statements for the year ended 31 March 1997 and the general ledgers and management accounts for the years ended 31 March 1998 to 31 March 2000, the 1st respondent was indebted to the Company for the following amounts:
 - (1) \$958,921.00 as at 31 March 1997;
 - (2) \$3,747,272.15 as at 31 March 1998;
 - (3) \$4,886,116.30 as at 31 March 1999; and
 - (4) \$6,735,871.57 as at 31 March 2000. Also, according to the audited financial statements for the year ended March 1997, the Company's advances to the 1st respondent were unsecured, interest-free, with no fixed term for repayment. The 1st respondent admitted that the advances to him in the subsequent years were on the same basis, and that all the loans to him were for his personal use. Based on the information from the available books and records of the Company, Ms Mak has drawn up a list of the drawings made by the 1st respondent from the Company and the repayments he made to the Company, during April 1997 to March 2000. It is not in dispute as at the date the Company was wound up in March 2003, the loans obtained by the 1st respondent had not been fully repaid. Due to incomplete records, Ms Mak is unable to advise if the 1st respondent had made any repayments after March 2000. The 1st respondent admitted in cross-examination he had borrowed further sums from the Company after March 2000 to pay mortgage instalments of a property registered in his name at Taikoo Shing. The 1st respondent told the Official Receiver in March 2006 that he had repaid a substantial part of the amount due from him, so that the outstanding sum would be just around \$1 million as at the date of the winding-up order. The 1st respondent later produced the bank statements of his personal account from May 2000 to August 2001 and claimed that 44 withdrawals from his account were repayments by him to the Company. These 44 entries came up to a total of \$1,301,500.00 only, they were clearly

insufficient to reduce his liabilities of \$6.7 million odd as at 31 March 2000 to \$1 million as at March 2003, as alleged. The 1st respondent confirmed he has not made any repayments after October 2001. The Official Receiver has matched up the alleged repayments of the 1st respondent with the deposits shown in the only active bank account of the Company during the relevant period of April 2000 to October 2001. Of the 44 alleged repayments, only 28 entries, in the total sum of \$1,096,000.00, matched the deposits in the Company's bank account. The 1st respondent has not given any cogent explanation for this discrepancy. He has no records to back up his assertion, mentioned for the first time in cross-examination, that he had made repayments to the Company, not just through his personal bank account but also by credit card. He could not remember the amount or amounts of repayment he allegedly made by using credit card. I do not accept his evidence. I agree with the Official Receiver that at most he had only repaid \$1,096,000.00 after March 2000, leaving \$5,639,871.57 unpaid as at the date of the winding-up order. The 1st respondent gave a different version regarding the loans made to him and his repayments in his 2nd affirmation. He alleged that of the debt of \$6.7 million odd due to the Company as in March 2000, \$1,412,500.00 had been repaid according to the documents he provided to the Official Receiver, that about \$500,000.00 had been taken away by two other persons, and that he had invested the remaining amount on behalf of the Company in purchasing properties, stocks and shares, and setting up a company in Shanghai. In cross-examination, he retracted the allegation about the \$500,000.00, as he was simply unable to explain the relevance of this to his indebtedness to the Company. In respect of the alleged repayment of \$1.4 million odd, the 1st respondent was merely relying on the entries in the Company's bank statements showing transfer deposits. He admitted in cross-examination he is not sure if these transfers were indeed his repayments to the Company, as he has no records of his own to check. In any event, of these deposits, only 28 entries in his own bank statements matched the deposits into the Company's account, and, as mentioned earlier, they totalled only \$1,096,000.00, not \$1.4 million odd. As for his alleged investments on behalf of the Company, the property at Taikoo Shing allegedly bought for the Company was registered in his name instead of in the Company's name, and this property was included in the 1st respondent's assets in the statement of affairs filed in his bankruptcy petition. For the shares allegedly purchased on behalf of the Company, they were all sold and the 1st respondent could not remember how much of the sale proceeds were returned to the Company. Even if he had returned some of the sale proceeds, this would have already been included in the \$1.4 million he had repaid to the Company as alleged. There was no board resolution to authorise the 1st respondent to make any investments for the Company. The company in Shanghai set up by the 1st respondent was not owned by the Company. There is no evidence of any benefit acquired by the Company under the substantial advances to the 1st respondent, of which over \$5 million was outstanding at the time the Company was wound up. He was drawing freely from the Company's funds and treating the Company's money as his own. I find that the advances to the 1st respondent amounted to misapplications of money belonging to the Company and in making loans to himself, he was in breach of his fiduciary duty to the Company, in that he had failed to act bona fide in the interests of the Company.

The second complaint against the 1st respondent is established. Unfair preference or transactions to the detriment of general creditors The background matters to this allegation against both respondents arose in this way. The Company was in financial difficulties in October 2001. According to a Chinese agreement signed by the Company and the 2nd respondent on 20 October 2001 (the Loan Agreement), it was agreed that the 2nd respondent would settle the operating expenses of the Company and that her advances to the Company would be repaid after the Company had received funds from its clients for completed work orders. In addition, the Company agreed to pay the 2nd respondent a management fee for looking after the accounts of the Company and for interest expenses in the total sum of \$725,634.00. The 1st respondent has disputed the Loan Agreement, claiming that it was forged, in that the signature on behalf of the Company was not his. Whether the Loan Agreement was forged is not material for present purpose, as it was admitted by the 1st respondent that he had an oral agreement with the 2nd respondent and her husband, by which the latter was to provide loans to the Company for its operation and that the Company's revenue from October 2001 to March 2002 was to be used to repay the husband's loan. He also admitted there was an agreement that a certain percentage of the revenue would be used to pay interest on the loan. It is not in dispute that between October 2001 to June 2002, funds provided by Chan to the Company to meet the operating expenses were in the total of \$3,702,037.90, and that between December 2001 to October 2002, the Company had made a number of repayments to the 2nd respondent in the total sum of \$3,702,037.90. Of the cheques for the Company's repayments to the 2nd respondent, those drawn on or before 3 May 2002, in the total sum of \$2,759,540.30, were all signed by the 1st respondent. The cheques after 3 May 2002 in the total sum of \$942,497.60 were signed by the 2nd respondent. In addition, on 5 August 2002, the 2nd respondent issued a cheque of the Company to Chief Concept Limited (Chief Concept) for \$725,600.00. Chief Concept was a company owned by the 2nd respondent and Chan. As at 16 October 2002 when the 2nd respondent resigned as a director of the Company, a total of \$4,427,637.90 had been paid by the Company to her in reduction of her current account and by way of management fees. Before November 2002, the Company was unable to pay debts due to other creditors. On 4 September 2002, R&D had obtained a judgment against the Company in the District Court Action for \$555,359.20, for work done and services rendered to the Company between December 2000 to July 2002. Of this amount, a total of \$453,018.20 had accrued due on or before 6 November 2001. During November 2001 to October 2002, the Company had made substantial repayments to the 2nd respondent (\$3,702,037.90) but had only made minimal repayments to R&D (\$118,750.50). In addition, there was \$725,600.00 paid by the Company to Chief Concept in August 2002. On 17 May 2004, the liquidators issued a summons against the 2nd respondent to set aside the Company's payments to the 2nd respondent and Chief Concept on the ground they were unfair preferences within section 266B. At the hearing of the summons on 18 June 2004, I ordered all of the Company's payments to the 2nd respondent and Chief Concept be declared unfair preferences and void, and that the 2nd respondent was to repay \$4,427,637.90 to the liquidators. Shortly before the hearing of that summons, the 2nd respondent presented a petition for her own bankruptcy. What is at issue here is the 1st

respondent's responsibility for the Company's preferential payments to the 2nd respondent and Chief Concept. At the meeting with the Official Receiver in 2006, the 1st respondent claimed he had signed the cheques because of the 2nd respondent's request. As for the cheques signed by the 2nd respondent, he alleged that they were issued without his consent; he also denied knowledge of the Company's payment to Chief Concept. In his 2nd affirmation, he claimed that all the documents produced by the 2nd respondent to the liquidators, being the Loan Agreement, the statement of invoices issued by Chief Concept to the Company dated 30 June 2002, and the list of works mentioned in the statement of invoices were all forged documents. He denied that he had signed the statement of invoices for the Company. In his cross-examination, he mentioned for the first time that after October 2001, he no longer had power to issue cheques for the Company to anyone, whether to himself or to any trade creditor, including R&D, as he could not issue cheques for the Company without the 2nd respondent's consent. I do not accept the 1st respondent's evidence disclaiming knowledge and responsibility for the Company's repayments to the 2nd respondent. He could not explain why important allegations he made against the 2nd respondent in cross-examination were not mentioned in his two affirmations. He is not a credible witness. The 1st respondent admitted he knew that the Company was in financial difficulties between October 2001 to October 2002. He also acknowledged that he knew it would be unfair to other creditors, such as R&D, if the 2nd respondent was paid in priority to them. In the 1st respondent's 2nd affirmation, he said that on 1 July 2002, both sides had agreed that the Company still owed Chan \$582,956.30. This figure matched exactly the sum of the last 3 repayments made by the Company to the 2nd respondent between 30 July 2002 to 7 October 2002. If the 1st respondent had no knowledge of the repayments made by the Company so far, mostly by cheques signed by him and partly by cheques signed by the 2nd respondent, he could not have agreed with the other side the exact amount owing by the Company as on 1 July 2002. I do not accept his evidence that he came to learn of the cheques drawn by the 2nd respondent only in October 2002. As for the 1st respondent's denial of knowledge of the payment to Chief Concept, the 2nd respondent's evidence was that the statement of invoices was handed over to the 1st respondent for his signature in July 2002 and that the 1st respondent had signed it in her presence. Further, the 1st respondent had told her that one of items listed in the statement was incorrect, so she later gave him a cheque of Chief Concept payable to the Company dated 9 October 2002 for \$14,210.00, for refund of the excess amount charged by Chief Concept under the statement of invoices. I am inclined to accept the 2nd respondent's evidence on this, which has a ring of truth about it and is supported by contemporary document. The 1st respondent's evidence here was vague and contradictory. He could not explain what the cheque of \$14,210.00 from Chief Concept was for. I find that the 1st respondent knew by 9 October 2002, if not earlier, of the payment of \$725,600.00 to Chief Concept. I find that all of the Company's cheques to the 2nd respondent and Chief Concept were made with the express or implied consent and knowledge of the 1st respondent. As for the 2nd respondent, she claimed that all of the Company's repayments to her were made pursuant to the oral agreement with the 1st respondent to give her priority, and that the 1st respondent had directed her to draw the

Company's cheques to repay her husband's advances to the Company. Because of the agreement with the 1st respondent, she considered that she did not need to deal with the Company's debts incurred before November 2001, and she had arranged for the settlement of the Company's debts to R&D incurred after November 2001. Since the 2nd respondent's appointment as a director on 12 April 2002, the Company had continued to make repayments to her and Chief Concept in the total sum of \$2,337,315.10. On 24 July 2002, R&D sent a letter before action to the Company demanding repayment of the outstanding debts. Notwithstanding this, the 2nd respondent continued to cause the Company to make repayments to her and Chief Concept. The fact that the 2nd respondent did not know what she did constituted an unfair preference is not material. As a director, and with the knowledge that the Company was in financial difficulty, the 2nd respondent had failed to pay due regard to the interests of other creditors when making or accepting the Company's repayments to her and Chief Concept. Regardless of whether the payment to Chief Concept was for settling the management fees due to the 2nd respondent under the Loan Agreement, or for the settlement of fees due to Chief Concept under the statement of invoices, the payment would be treated as a preferential payment within section 266B. The Company's repayments of \$4,427,637.90 to the 2nd respondent and Chief Concept amounted to unfair preferences liable to be set aside under section 266 and/or transactions to the detriment of general creditors. The 1st respondent is responsible for all of the Company's repayments. The 2nd respondent is responsible for the repayments made during her appointment as a director. I find the 3rd complaint of the Official Receiver established against both respondents. The 2nd respondent in her submissions to the court has accepted responsibility for her actions. As mentioned earlier, she does not contest the application for a disqualification order against her. This will be taken into account when considering the period of her disqualification. Misappropriation of funds belonging to the Company The 1st respondent had authorised these cheque payments in the total amount of \$223,600.00:

- (1) \$60,000.00 to himself on 9 October 2002;
- (2) \$115,200.00 to Madam Ho on 15 October 2002;
- (3) \$20,400.00 to Madam Lee on 19 November 2002; and
- (4) \$28,000.00 to himself on 19 November 2002. In the explanation the 1st respondent gave to the Official Receiver in July 2006, he said that the last three cheques were for payment of his salary at \$28,000.00 a month, due to him since October 2001. In his 2nd affirmation, he said that two of the cheque payments, being \$115,200.00 and \$28,000.00, were to settle his outstanding salary from April 2002 to October 2002, and that the cheque of \$20,400.00 was to pay solicitors fee. When he was asked in cross-examination to explain the discrepancy with what he had said in July 2006, he said his earlier explanation was a mistake. He claimed in cross-examination that the payment of \$60,000.00 was also for his outstanding salary. If he were owed salary for seven months from April 2002 to October 2002 as alleged in his 2nd affirmation, the total amount would be \$196,000.00. However, the total payments of \$60,000.00, \$115,200.00 and \$28,000.00 came up to \$203,200.00. He could not explain

satisfactorily why he was paid more than his alleged entitlement. His assertion that the excess could be for miscellaneous payments is clearly an afterthought. He could not give any reason why such miscellaneous payments had never been mentioned before. Furthermore, in the statement of affairs he made in January 2003 in his bankruptcy petition, he stated that he was paid salary up to April 2002 only. He could not explain at all this conflicting statement. I accept the 2nd respondent's evidence that from April 2002 or thereabouts, the 1st respondent had agreed not to be paid a salary of \$28,000.00 a month as he had to spend more time to look after his own business in Shanghai. There was no good reason why he should be paid his salary up to October 2002 as alleged, bearing in mind that the Company had no activity since July 2002, having transferred its business to Decoworks. I reject the 1st respondent's evidence that the three payments of \$60,000.00, \$115,200.00 and \$28,000.00 were for his outstanding salary from April 2002 to October 2002. As for the \$20,400.00 alleged to be for the payment of solicitors fee, according to the documentary evidence, the solicitors were instructed only on 26 November 2002, after the payment by cheque on 19 November 2002. Besides, the fee paid to the solicitors was \$15,000.00, not \$20,400.00. It was made by a cheque of Madam Ho, not Madam Lee, so there was no apparent reason why the 1st respondent should reimburse Madam Lee for paying the solicitors. The 1st respondent's evidence here does not stand up to scrutiny. I reject his evidence that the \$20,400.00 was for payment of solicitors fee. I do not accept his assertion that the four payments had anything to do with the business of the Company. I do not believe his claim that he was not aware of the demands of R&D for payment of the outstanding invoices at the time these payments were made to him or for his benefit. He admitted that he knew the Company was in financial difficulty at the time of these payments. The timing of these payments was immediately after R&D had obtained judgment against the Company in the District Court Action. R&D only managed to receive \$20,995.00 when execution was levied on the judgment debt. I was asked by the Official Receiver to infer that these payments were made with the view to avoid enforcement action by R&D. Even if that was not the purpose of the 1st respondent, he had chosen to make payments out of the Company funds for purposes unconnected with its business in total disregard of the interests of creditors, knowing that the Company was in financial difficulty and there were demands for repayment by R&D. I find the 4th complaint established against the 1st respondent. Summary I find all four complaints proved against the 1st respondent and the 3rd complaint established against the 2nd respondent. I hold that the complaints established are sufficiently serious misconduct to justify a finding that the conduct of the respondents as directors of the Company was such to render them unfit to be concerned in the management of a company. I make a disqualification order against each of them. Period of disqualification and orders The Official Receiver submitted that in the 1st respondent's case, a disqualification period in the middle bracket, of six to ten years, would be appropriate. In the case of the 2nd respondent, the Official Receiver asked for a disqualification order in the lower bracket of two to five years, having regard to the fact that there was only one complaint against her and she was a director for just over six months. I take into account the personal circumstances of the respondents. The 1st respondent has been unemployed for four years. The 2nd respondent is an undischarged bankrupt. I note

that no dishonesty was alleged against them. In the 1st respondent s case, it seems to me that an appropriate period of disqualification would be at the top end of the lower bracket or the bottom end of the middle bracket. I would impose a term of five years. In the 2nd respondent s case, I take into account the matters urged by the Official Receiver and the fact that she has admitted responsibility and has not contested the application. I impose a term of 2 years. The term of the disqualification period for each would begin from the day of the delivery of the judgment, but the orders are to be suspended for the period prescribed under rule 10 of the Companies (Disqualification of Directors) Proceedings Rules, so the orders will take effect from the beginning of the 21st day after the day on which these orders are made. Costs of the application should follow the event. I make an order that the 1st respondent is to pay the Official Receiver s costs in these proceedings, including all costs reserved. The 2nd respondent has indicated from the start that she will not contest these proceedings, so I make an order she is only to pay the Official Receiver s costs up to the first hearing before the Master on 12 February 2007. (S Kwan) Judge of the Court of First Instance High Court Mr Calvin Cheuk, instructed by the Official Receiver The 1st Respondent, present The 2nd Respondent, present 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\$&j vo 5t+ 3(UB= vo 5 HCMP.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title 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=58815
CASE PAGE	https://chat.esheria.ai/case-law/hong-kong/the-official-receiver-v-mo-chat-hoi-and-another-2007

Prepared on 28 October 2026 · Esheria