

"Finding of Fact"

Eric Rosenkranz

eric.rosenkranz@yahoo.com

136 Tanjong Rhu Road, 01-07

65 9880 6775

Singapore 436921

56

FXC3943/6867

IN THE HIGH COURT OF SINGAPORE

COURT OF FIRST INSTANCE

BANKRUPTCY PROCEEDING NO392/09

**IN THE MATTER OF THE BANKRUPTCY
ORDINANCE**

and

**IN THE MATTER OF
WIMON KASEMSARN (A BANKRUPT)**

The Hon Mr. Samuel Chong presiding

Date of Hearing: 13 February, 2009

Date of Handing Down of Decision: 19 April 2009

D E C I S I O N

1. This is a most curious, not to mention singular, case. It arises out of the bankruptcy of Mrs. WIMON "Kaek" KASEMSARN ("Mrs. Kaek" or "The Bankrupt") who was adjudged bankrupt on 16 October 2007. The question being addressed today is whether one Mrs. WIMON "Pui" KASEMSARN ("Mrs. Pui") is in fact the Bankrupt. The Thai name of Mrs. Pui and Mrs. Kaek are the same. The issue is solely one of identity.
2. To begin with, it is important to note two curiosities of Thai nomenclature. Firstly, that unlike in China where over 90% of the people have one of the same 100

names (Wu, Chong, Han, etc), in Thailand 81% of all family names are unique. For two people to have the same name is quite rare.

3. Second, it must be noted that in Thailand, it is quite common to use a nickname instead of the given or “Christian” name.
4. Mrs. Wimon “Kaek” Kasemsarn is the Defendant in HBB1568/56 brought by Oasis Technologies Pvt. Ltd Singapore claiming the sum of SGD1,500,000. It was alleged that Mrs. Kaek borrowed that sum on 13 March, 2006 to build a boathouse in Phuket for an annual regatta to celebrate the anniversary of the King’s accession to the throne. In the event, The Bankruptcy Court adjudged Mrs. Kaek to be guilty for failure to repay the loan, and ordered her to make payment in full. Mrs. Kaek did not attend the Bankruptcy hearing, nor at any time did a court appointed officer meet her.
5. Shortly after the hearing, a solicitor filed an affidavit opposing the judgment on the basis that his client is not the Bankrupt. His client, whose name is also Wimon Kasemsarn, claimed that she had no knowledge of the bankruptcy proceedings. She claimed that her nickname was “Pui” and that she was a different person, albeit with the identical first and last name, as Mrs. Kaek.
6. Mrs. Pui further stated that she was born on 28 December 1985 which is different from the date of birth of Mrs. Kaek (28 January, 1981).
7. I ordered Mrs. Pui to sit for cross-examination to determine whether she is the Bankrupt, and ordered her to produce proof of date of birth. Mrs. Pui showed the Court a passport showing her Date of Birth to be 28 December 1985. However, the passport produced by Mrs. Pui was from the country of Tanzania (formerly Tanganyika).
8. Upon being asked how a Thai citizen could carry a Tanzanian passport, Mrs. Pui claimed to be married to a Mr. Mizengo Pinda, the Prime Minister of Tanzania. As evidence, she produced a marriage certificate issued by Tanzania referring to Mr. Pinda as “Principal Private Secretary to the Prime Minister”. No further evidence was presented showing that Mr. Pinda is currently either the Principal Private Secretary or the Prime Minister himself, although a Wikipedia search has shown the latter to be true (inasmuch as a Singapore Court can accept a Wikipedia entry). (N.B. This point needs further study.)
9. This alleged date of birth was rejected by the Court as a Tanzanian passport can be obtained without providing proof of date of birth. Although the passport claims a different date of birth for Mrs. Pui than for Mrs. Kaek, this differing date of birth is not independently verifiable.

10. Upon hearing that her claim had been rejected, Mrs. Pui then filed a petition exempting herself from a claim of Bankruptcy on the grounds of diplomatic immunity.
11. The claim to diplomatic privilege was based on the multiple facts that Mrs. Pui a) was married to the aforementioned Mr. Pinda, b) is a Tanzanian national, and c) is the country's *Cultural Attaché*. Mrs. Pui put in evidence her diplomatic passport No.D008899772 stating that Mrs. Pui was born in Phuket, Thailand and her place of residence at the time of application was "51 Moo 6, Chergtalay, Thalang, Phuket, Thailand".
12. Upon being asked for proof that she is indeed the Cultural Attaché of Tanzania, Mrs. Pui then claimed that she could not possibly be the Bankrupt as she was neither in Thailand nor Singapore during the time in question, being in Tanzania. Her Counsel put into evidence a letter from Mr. Pinda stating that "Mrs. Pui from 2006-2008 was remained in Tanzania (ex Tanganyika)".
13. Upon taking further instructions, Counsel for the Defense informed the court that Mrs. Pui had changed her mind and was not prepared to be cross-examined on a voluntary basis although she was present in court.

So the question in front of the Court is whether in fact Mrs. Pui is the Bankrupt (Mrs. Kaek).

The claim of Mrs. Pui rests on four pillars:

1. Her "nickname" is different
2. Her date of birth is different
3. Diplomatic Immunity
4. She was not in either country during 2006-2008

To deduce the answer, it is important to note the following:

1. As 81% of Thai names are unique, it is against the odds (although not impossible) of two people having the exact same name. The fact that their nicknames are different is judged irrelevant, as many Thai people change their nicknames frequently throughout their life.
2. Mrs. Pui produced a passport showing her DOB to be 28 December 1985. The copy of the Bankrupt's identity card in the possession of the Official Receiver shows the Bankrupt's DOB as being 28 January, 1981. However, since a passport can be obtained without showing proof of date of birth, the fact that the Bankrupt and Mrs. Pui may or may not have different dates of birth is not a determining factor.

3. Research by this Court has unearthed the fact that Mrs. Pui appears to hold *three different* Tanzanian passports (nos No.008899772, 008899773 and 008899774) only one of which is a diplomatic passport upon which her claim to immunity is based.
4. Mrs. Pui states that she could not be the Bankrupt as she was not present in either Thailand or Singapore during 2007. This Court believes that this is not only an assertion unsupported by fact, but that, *even if it were true*, the fact that Mrs. Pui “remained” in Tanzania merely proves that she may have been there during the dates in question, not that she never left the country. It follows that this Court is unable to find that Mrs. Pui was not in Singapore during the dates in question when the Bankrupt borrowed the money, failed to return it, and was adjudged Bankrupt.

Subsequent to the date of the bankruptcy order, the Official Receiver made several attempts to interview the Bankrupt (Mrs. Kaek). A letter was received at the Court, written in Thai and signed by Mrs. Kaek, to reschedule one of the meetings. The letter was written on the official letterhead of “Kasem Holistic Properties” with the address of 51 Moo 6, Cherno Talay, Thalang, Phuket, Thailand (“The Company”).

- 1- A search of the official records in Thailand shows that a “Kasem Holistic Properties” was formed on October 28, 2004 with paid up share capital of 3m THB. There were two registered shareholders: a CHAKRIT WONGSAWAT and a WIMON KASEMSARN, listed as “husband and wife”. That the registered shareholder Wimon Kasemsarn is the Bankrupt is undisputed as a search of the marriage records in Phuket shows the name of the Bankrupt's spouse to be one Chakrit Wongsawat. Thus the connection can be clearly shown between the Bankrupt and the Company since the Bankrupt was and has been one of its shareholders since the incorporation of the company.
- 2- The date of birth of the Wimon Kasemsarn listed on the Company Directory as a shareholder is the same date of birth as the Bankrupt, Mrs. Kaek, and not the date of birth subsequently claimed by Mrs. Pui in her defense of *not* being the Bankrupt.
- 3- The registered address of the Company is the same as the address listed on the Tanzanian passport as the address of Mrs. Pui.
- 4- Mrs. Pui is President of “Kasem Holistic Properties”. That fact is noted in an interview with and photo of Mrs. Pui in the Phuket Gazette, a publication costing 35 baht but usually given away for free in restaurants and pubs throughout the island.
- 5- Mrs. Pui made a point of difference comparing her physical appearance with the photo in the Gazette. However, the Court notes that it is quite common to undertake plastic surgery to alter facial features. This Court

cannot reasonably conclude that Mrs. Pui and Mrs. Kaek cannot be the same person based on physical features.

- 6- Who exactly, the Court asks, is this Chakrit Wongsawat, and what role does he play in these proceedings? If he is in fact the husband of Wimon Kasemsarn, then who is Mr. Mizengo Pinda married to? Is Mrs. Wimon (Kaek or Pui) married to one, the other, both or neither of these gentlemen? The Court boggles its own mind at the permutations.
- 7- Most importantly, the Bankrupt, in the Annual Report of her Company, is referred to as Mrs. Pui.

The Court notes that these facts cry out for an explanation. Yet Mrs. Pui chooses to shield herself from embarrassing questions by sheltering under a dubious claim of diplomatic immunity.

In an amazing twist of events, days before this Court was to render a verdict in this case, a quite unexpected event occurred. We received a letter, *written in English* and on the stationary of a hotel in Phuket, Village of Kata, named “Mom Tri’s Boathouse”. (It is noted that this is a quite well known and respected establishment, and none of the disturbing events that have been recounted here should be laid at the doorstep of this hotel). This letter, postmarked from the Northeast of Thailand and notarized, claimed to be from none other than the Bankrupt, Mrs. Kaek. Her letter in its entirety states:

“I, WIMON “Kaek” KASEMSARN, am the Bankrupt of the Singapore Bankruptcy Proceedings HBB1568/56. I was born on 28 January, 1981 in Loie District, Isaan, Thailand where I also now live. I have just learned that a lady of Phuket is mistakenly identified by the Official Receiver in Singapore as me. The matter is very worrying to me. I state for the record that I am the Bankrupt in question and that the other lady is not. Because of my personal problems, I have to look after my family and my farm and cannot come to Singapore to testify. I welcome the staff of the Official Receiver of the Court to come to Loie District, Isaan for clarification.”

The Court immediately attempted to contact this Wimon Kasemsarn “claimant”. When reached on the phone, speaking only in Thai, the woman claiming to be Wimon Kasemsarn was uncooperative and evasive and declined to answer questions.

Finding of fact

In my judgment, the evidence that Mrs. Pui and the Bankrupt are one and the same person is overwhelming. I have no hesitation in finding that Mrs. Pui is the Bankrupt. I therefore make an Order in Terms of the Summons.

Samuel Chong

Judge of the Court of First Instance
High Court
Singapore

File Note: Subsequent to the Order, several attempts were made to serve the Notice. The Order was returned unopened and stamped "Undeliverable" when sent to the address of Kasem Holistic Properties in Phuket. The Court has received a letter from a Wimon Kasemsarn but with the nickname of "Sao", which claims that the writer, "Mrs. Sao" is neither Mrs Kaek nor Mrs. Pui. The Court has begun its investigation and will shortly make its finding.

Tong Kuat "Regina" Chan

Clerk to the Hon. Judge S. Chong