

IN THE MATTER of the Insolvency Act,
1967

- AND -

IN THE MATTER of a proposal under Part
XV of the Insolvency Act
made by FRANCIS KEITH
NICHOLSON, an insolvent

Hearing: 5th April, 1984.

Counsel: P. G. Proverbs for provisional trustee.
J. McFetridge for R. J. Mahon.
Miss H. G. MacColl for Bartholomew Timbers Ltd.

Judgment: 5th April, 1984.

ORAL JUDGMENT OF TOMPKINS, J.

The insolvent person, Francis Keith Nicholson, has made a proposal to his creditors pursuant to s.140 of the Insolvency Act, 1967. That proposal was referred to the provisional trustee who, in accordance with s.141(2), called a meeting of creditors that commenced on the 1st February, 1984, and concluded on the 8th February, 1984. The provisional trustee then prepared and has had filed in court a report in which, for the reasons set out in detail in his report, he recommends adoption of the proposal.

At the hearing before me Mr. Proverbs appeared for the provisional trustee in support of the proposal, Mr. McFetridge appeared for Mr. R. J. Mahon, a creditor for \$6,285.24, and Miss MacColl appeared for Bartholomew Timbers Ltd., a creditor for \$39,225.70, both to oppose. The provisional trustee gave evidence. He said that

since the preparation of the proposal Lot 12, DNS.22069, has been sold pursuant to an agreement for sale and purchase for \$33,500 for settlement on the 12th April, 1984. As a consequence of that sale and the fact that there will therefore be no longer any liability for payment of interest on mortgage H.282878, Mr. Nicholson proposes that the proposal be amended by reducing the wages to be paid to him from \$500 per week gross, as set out in paragraph 1(iv) of the proposal, to \$350. Mr. Dunn also gave details of the result of the meeting of creditors, to which I have already referred. The creditors total \$233,193.18. There were absent from the meeting creditors owed \$3,599.94. Therefore those present at the meeting, who numbered thirty, were owed \$229,593.24. Those voting in favour of the proposal were owed a total of \$175,205.76. This exceeded 75 per cent of the amount of the debts of those attending the meeting. It also represented 21 out of 30 creditors present. On the evidence given by Mr. Dunn a resolution was passed by the majority required by s.142(3) of the Act.

Evidence was also given by Mr. Curnow, a registered valuer, who assessed the value of the unit proposed to be completed at \$115,000. This is within \$5,000 of the sale price upon which the proposal is based.

Having considered the proposal, the evidence that has been called, and the submissions made, I am satisfied that with one amendment the proposal should be approved. The amendment is that clause 1(iv) of the proposal be deleted and the following substituted:-

" The insolvent is to be employed as the builder of the unit and is to draw monies from the available fund at the rate of \$350 per week gross for each week upon which he is engaged full time in the construction of the unit, for the time taken to construct the unit to the shell stage and to complete the unit, but the total period for which such wages are to be paid shall not exceed 17 weeks. "

Since that amendment reduces the amount payable to the insolvent and limits the time for which it is paid, I do not regard it as an alteration in the substance of the proposal, and hence is an amendment that the court can properly make in accordance with s.143(6) of the Act. With the proposal thus amended it is approved.

A handwritten signature in dark ink, appearing to be 'W. J. Mahon', written in a cursive style.

Solicitors:

Evans, Bailey & Co., Hamilton, for provisional trustee.

Norris, Ward & Co., Hamilton, for R. J. Mahon.

Tompkins, Wake & Co., Hamilton, for Bartholomew Timbers Ltd.