

16/12

NZLR

X  
J

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

B.1264/85

IN THE MATTER

of the Insolvency Act 1967

AND

1298

IN THE MATTER

of BRUCE ALFRED  
NORMAN EBBETT

Debtor

EX PARTE

DOMINION  
BREWeries LIMITED

Creditor

Hearing: 11 December 1985

Counsel: No Appearance for Debtor  
P. Wright for Creditor

Judgment: 11 December 1985

---

(ORAL) JUDGMENT OF BARKER J

---

This is a petition for adjudication on the grounds set out in s.19(1)(c) of the Insolvency Act 1967 ("the Act"). The act of bankruptcy alleged is that the bankrupt, with intent to defeat or delay his creditors, has departed from his dwellinghouse or otherwise absented himself, or kept to any premises or to part thereof to avoid his creditors.

Substituted service to the bankruptcy petition was ordered by Henry J on 16 October 1985; I have used the affidavits filed in support of that application as evidence in support of the substantive bankruptcy petition.

The evidence shows that the debtor owed the creditor, Dominion Breweries Limited, the sum of \$245,858 principal, plus accrued interest in respect of a guarantee given by the debtor to the creditor in respect of liquor supplied to a company in which the debtor was a director called Mansion Taverns Limited; this company is said to have

operated the Foundry nightclub.

The debtor normally resided at 95 Meadowbank Road, Auckland; repeated attempts, as outlined in the affidavits, to locate him have been unsuccessful. He appears to have left the property.

Letters were sent to him by various officials of the creditor; no satisfactory reply was received. On 8 March 1985, Mr Carter, the Credit Manager of Dominion Breweries Limited, spoke to the debtor by telephone. He was upset and acknowledged that he owed a substantial amount of money to the creditor which he was unable to pay.

A licensed private investigator stated that, up until 7 June 1985, he had visited the premises at Meadowbank Road on about 20 occasions in an attempt to see the debtor. He made other enquiries with the Post Office, the power board and other agencies, but was unable to find the debtor's residence. The property at Meadowbank Road is still registered in the debtor's name.

It seems that a ground has been made out that the debtor has departed from his dwellinghouse or is otherwise absenting himself therefrom to avoid his creditors. The notes in Spratt and McKenzie (2nd Edition) at p.43 refer to the decision of the English Court of Appeal in Re Stanger (1892), 22 Ch.D. 436. The note says that, where the act of bankruptcy is departure by the debtor from his dwellinghouse, the petitioner must show that the debtor is alive and in some other place.

Upon reading the note, I found that statement a little hard to accept. Reference to the authority cited indicates that it was decided on different facts to the present. In Stanger's case, there had been a motion for probate of the alleged bankrupt's will filed; the application before the Court was for an annulment of the

bankruptcy. Sir James Hannen said at p.440:

"The question is whether the proper inference to be drawn from the facts is that this missing man has run away from his creditors or that he is dead".

The conclusion was reached that, because of the application for probate having been filed, he was dead; there were also indications that the debtor did have funds.

It seems clear from the evidence that this debtor is seeking to evade his creditors. He owes large debts; in my view, Stanger's case has no application.

I therefore consider that the ground for the petition has been met. There will be an order for adjudication accordingly.

Costs to the petitioner on the higher undefended scale, together with disbursements as fixed by the Registrars.

*R. D. Barker J.*

SOLICITORS:

Bell Gully Buddle Weir, Auckland, for Creditor.