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N2LR



IN THE HIGH COURT OF NEW ZEALAND  
ROTORUA REGISTRY

B 326/84

IN THE MATTER of the Insolvency Act  
1967

A N D

IN THE MATTER of CLIVE DOUGLAS HUGHES  
of Flat 2, 38 Walker  
Street, Takapuna,  
Auckland, A Bankrupt

Date 8 February 1989

Counsel Mr P Heath for the Official Assignee  
Debtor in Person

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ORAL JUDGMENT OF MASTER TOWLE

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This is an application for a discharge from bankruptcy brought by the debtor who was adjudicated as long ago as the 22 April 1985.

The Official Assignee filed notice on the 13 April 1988 objecting to the normal discharge which would have followed on the three year anniversary of his adjudication and the grounds for this objection have been amplified in a series of very full and helpful reports prepared by the Official Assignee which have been made available to the debtor. He has been advised by solicitors throughout this period but appears on his own behalf today and has indicated that he has discussed the terms on which the Official Assignee is prepared to recommend a conditional discharge with his solicitor and that he accepts these. For myself

I have also gone through the terms with him in Court this morning and made it clear that on the grant of the conditional discharge he has been given a last opportunity of trying to rehabilitate himself. His performance since his adjudication has been most unsatisfactory and his wife has also been adjudicated since 1987. The Court jurisdiction to grant a discharge governed by S 110 of the Insolvency Act and the imposition of conditions following upon the expiry of a three year period where some additional restriction is maintained is by nature of being a penal restriction going beyond the ordinary bankruptcy. Such conditions as are proposed by the Official Assignee are however I believe, warranted by the circumstances of this bankruptcy and the lack of responsibility displayed hitherto by the bankrupt in complying with the requirements of the bankruptcy. Although the penal aspects are warranted in this case I believe that it is not in the general interests of the community that a person should be left saddled with a burden so heavy that it is unreasonable for him to have no hope of bettering himself and I do not believe it would be fair to expect such a penalty to continue indefinitely. The period proposed here for the conditions is five years which is a long period and the debtor is now 45 years of age. Any order that I make will still leave open to the debtor to come back to the Court to apply to have its conditions varied if experience and performance can warrant some relaxation.

I believe it proper to make an order in these terms which have been proposed by the Official Assignee and explained to and accepted by the debtor. The orders therefore will

be that he be conditionally discharged from his bankruptcy with effect from today and the conditions as follows :

1. That without leave of the Court, he shall not enter into or carry on any business or class of business either alone or in partnership with any person for a period of five years from today.
  
2. That without leave of the Court he should not be engaged in the management or control of any business carried on by or on behalf of, or be in the employment of any of the following persons : His wife, any lineal ancestor or descendant of his, the wife or husband of such an ancestor or descendant, a brother of his or the wife of such a brother, a sister of his or the husband of such a sister, for a period of five years from today.
  
3. That without leave of the Court he may not act as a director or take part directly or indirectly in the management of any company or class of company for a period of five years from today.



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MASTER R P TOWLE