

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

B.112/89

701  
IN THE MATTER of the Insolvency Act 1967

AND

IN THE MATTER of ANDREW MORRIS JAMIESON  
of 151 Cecil Road,  
Wellington

Judgment Debtor

A N D:

the OFFICIAL LIQUIDATOR  
of NEWSMAKERS  
INTERNATIONAL LIMITED (In  
Liquidation) of Napier

Judgment Creditor

Hearing: 12 July 1989  
Counsel: Applicant in Person  
Mary Peters for Judgment Creditor  
Judgment: 18 July 1989

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JUDGMENT OF JEFFRIES J.

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Before the court is an application by Andrew Morris Jamieson (hereafter referred to as the "applicant") to set aside a Bankruptcy Notice. The Judgment Creditor is the Official Liquidator of Newsmakers International Limited (In Liquidation) of Napier and he obtained an order against the applicant in the sum of \$6,132.01 arising out of a proceedings. The exact circumstances were as follows.

Before Tomkins J. sitting in Napier in September 1988 were several applications concerning the company Newsmakers International Limited (the "company") which was then in liquidation. It is necessary to mention only the position of the applicant in those proceedings. Applicant was a director

and shareholder of the company and Tomkins J. at his hearing accepted the submission made by the Official Liquidator that the need for the applications then before the court was because this applicant and a man called McKay purported to carry on the business in the name of the company when the company did not in fact do so. He further found that the Official Liquidator had notified Messrs McKay and Jamieson that orders for costs would be sought against them and neither appeared at the hearing. In consequence an order for \$4,500 was made against them and \$1,632.01 disbursements. In short the judgment found the conduct of the applicant was responsible for the situation that arose and in the Originating Application for Directors and Declarations made by the Official Liquidator pursuant to ss.241 and 250 of the Companies Act 1955 it was made plain that in the event of circumstances being established then remedies would be sought "against one or more of the former officers of the Company".

It is not disputed by applicant that he had been served with all the necessary documents for the proceedings of September 1988 and neither is it denied that he chose to enter no appearance at those proceedings. Furthermore, there was evidence before the court that there had been correspondence and discussions between the Official Liquidator's office and applicant before the September 1988 hearing. There was also evidence that letters were sent to Mr Jamieson after the hearing telling him of the result, but Mr Jamieson denies receiving any advice of the result of the hearing. It was confirmed in evidence that no letters had been returned to sender that had been dispatched as aforesaid.

The Bankruptcy Notice, grounded in the order for costs and disbursements, was served on applicant. In a letter undated but received by the Official Assignee in April 1989, applicant asked for information on how such an order could have

been made against him. A reply was sent setting out full details and Mr Jamieson responded saying that letter was the first he had received relating to the date of hearing, the judgment and costs award and the demands for payment.

The original application served on applicant was set down for the nominal date of 20 April 1988, but, as stated, no appearance was entered and Mr Jamieson had once practised as a solicitor in Napier, and it is assumed would not have been unfamiliar with these sorts of proceedings and how they are in fact handled. The Official Liquidator deposes that Mr Jamieson was informed of the fixture for 15 September 1988 notwithstanding he had not entered an appearance. The letter dated 8 September 1988 sent to Messrs Jamieson and McKay and another, set out in fair detail what would be requested by the Official Liquidator at the hearing on 15 September.

Besides the application to set aside the Notice Mr Jamieson has now applied for stay of execution and to set aside the judgment. That was not done, I was informed, until 1 May 1989. That, of course, is not for this court. Much of Mr Jamieson's affidavits relate to that judgment, but it has not been set aside and, therefore, remains as a High Court judgment.

Mr Jamieson appeared for himself and conceded that the grounds for setting aside are other than those endorsed on the Notice form. However, he submitted that there was inherent jurisdiction in the court to set aside on other grounds, which really relate to the earlier judgment of September 1988. Mr Jamieson maintained he was not a party to the proceedings in that he was not named nor served as an interested party. He was not at the hearing and received no notice that orders were to be sought. Neither did he receive advice of the hearing or the result of the hearing. The Bankruptcy Notice was the first

he had heard of the result of the hearing. What Mr Jamieson is in effect asking this court to do is to set aside a Notice because it is based upon an incorrect judgment. It would be surprising indeed if the court undermined that judgment without the presence of other parties involved.

Without deciding the jurisdiction point the court makes these findings. It is indisputable that applicant was an officer of the company. He was served with papers and in those papers it was plainly stated that in the event of certain circumstances arising he, as an officer of the company whose conduct was in question, could have orders made against him. He chose to enter no appearance and from that moment onwards by his conduct put himself at risk of what happened. He voluntarily made that decision and now seeks to have every probability that can arise in advice of fixtures and proceedings found in his favour. In particular the court notes that after service on him of the proceedings containing vital information, which he as a former practising lawyer would have understood would involve him, he made no enquiries himself as to the fate of a company in which he had held administrative office, or the proceedings of which he had been served. The court also finds on the evidence that the Official Liquidator more than fulfilled his obligations in fairness in the conduct of the proceedings involving applicant.

The application to set aside the Notice is dismissed and an award of \$350 is made in favour of the Official Liquidator.



Applicant in Person:

151 Cecil Road, Wellington

Solicitors for Judgment  
Creditor:

Sainsbury Logan & Williams,  
Napier