

IN THE MATTER of the Insolvency Act 1967

1483

AND

IN THE MATTER of MANOA TAVATI JACOB of Flat  
136, Arlington Apartments, 54  
Hopper Street, Wellington, Taxi  
Driver

**LOW  
PRIORITY**

Debtor

EX PARTE THE COMMISSIONER OF INLAND  
REVENUE

Judgment Creditor

Hearing: 9 July 1990

Counsel: Mr B K Cunningham for Judgment Creditor  
Mr D G Kember for Judgment Debtor

Judgment: 6 August 1990

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JUDGMENT OF MASTER J H WILLIAMS QC

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The Commissioner of Inland Revenue petitions the Court for an order adjudicating the judgment debtor, Mr Jacob, bankrupt. The Commissioner obtained a default judgment against Mr Jacob in the District Court at Wellington on 8 December 1989 for \$22,229.88 plus Court costs of \$113, a total of \$22,342.88. No payment having been received, a bankruptcy notice was issued against Mr Jacob on 29 March 1990 for \$22,487.88, the amount of the District Court's judgment plus additional fees. That bankruptcy notice was served on Mr Jacob on 23 April. He took no action in response and accordingly on 26 June the Commissioner issued this petition. The amount claimed as owing

by Mr Jacob by that stage was \$29,591.74. The petition was served on Mr Jacob on 30 June 1990 and finally, on 6 July, Mr Jacob filed a notice of his intention to defend the matter seeking the exercise of the Court's discretion in his favour and claiming that, given time, he could meet the amount owed to the Commissioner who he said was his only creditor. He also claimed that the amount for which the petition was issued was incorrect and that it was not in the public interest that he be bankrupted. He accordingly sought either dismissal or stay of the proceedings.

In his supporting affidavit and an affidavit filed by the accountant who has been assisting him since February 1990, Mr Jacob claimed that the amount which he owes the Commissioner was approximately \$21,832.15. The accountant puts in evidence a calculation which he had made in support of that statement. But the officer of the Inland Revenue Department who gave the usual formal evidence at the hearing produced a certified statement of account. That statement said that the "judgment held" was for \$17,556.15. That would appear to be the Department's calculation of the balance due to it by Mr Jacob after crediting, against the tax and penalties for which the Commissioner sued in the District Court, the payments which Mr Jacob has made rather than crediting those payments against any other tax owed by him. The credits in the Department's statement do not wholly reconcile with the payments in the accountant's statement but since Mr Jacob and his accountant both agree that he owes the Department a considerable sum, it is not necessary for the Court to reconcile the two calculations of the debt precisely. In addition, the certified statement produced by the Departmental officer included additional income and Goods and Services Tax and self-employed ACC levy not yet sued for and totalling \$13,683.01 giving a total claimed by the Department as owing to it of \$31,239.16.

Concerning his primary submission, a claimed ability to meet the debt given time, Mr Jacob says that since he has been

assisted by his accountant, he has been able to pay something over \$4,000 towards his taxation liabilities (the accountant's calculation totals \$4,510.17) and that he believes that with his accountant's continuing assistance he will be able to pay at least \$1,000 per month in reduction of the amount still owing. That contribution is calculated even after allowing for his hire purchase commitments on his taxi. Mr Jacob acknowledges that he made a previous arrangement with the Commissioner for payment by instalments but failed to keep to that arrangement. His failure, he says, was brought about by an unexpected requirement from his taxi company to replace his taxi. His accountant supports Mr Jacob's assessment of his ability to meet the amount owing to the Commissioner "provided he does not have any major breakdowns or repair bills" and notes that one of Mr Jacob's hire purchase commitments terminates in May 1991 at which point Mr Jacob's contributions to the Department may be able to be increased.

Secondly, Mr Jacob claims that the Commissioner is his only creditor. That view is clearly erroneous since there are two companies involved in financing his taxi but the evidence suggests that the instalments owing to those companies are up to date. Were he to be bankrupted, Mr Jacob says that, following deregulation of the taxi industry, the amount which his taxi-cab might realise on sale would be unlikely to exceed to any great degree the amount owing to the finance companies.

Mr Jacob's third submission is that it is not in the public interest for him to be bankrupted. He says that following an order for adjudication and the consequent sale of his taxi-cab, he would be unlikely to be able to find alternative work as he is untrained for any other job and would therefore probably finish up on the unemployment benefit. In submissions, Mr Kember said that Mrs Jacob is a guarantor of Mr Jacob's obligations to the finance company so that, depending on the outcome of the sale of the taxi, there must be a possibility of her bankruptcy as well. Counsel for the Commissioner, however,

pointed out that that possibility seems reasonably remote given Mr Jacob's assessment of the likely result of the sale of his taxi business and he noted that there is no evidence from Mr Jacob as to any other assets which he or his wife may own.

In the light of that evidence, this Court is of the view that the following matters are relevant in relation to the exercise of the discretion conferred by the Insolvency Act 1967 s 26.

First, although Mr Jacob has breached previous arrangements with the Commissioner for payment, the parties agree that with his accountant's help he is now paying the Commissioner enough to more than meet his current taxation liability and is doing something towards payment of the arrears. The Commissioner is Mr Jacob's only creditor who is taking any action against him, a factor which bears on the public interest (Re Nisbett, ex parte Vala [1934] GLR 553; Re Sturdee (A Debtor) [1985] 2 NZLR 627, 635; Re Fidow (A Debtor) [1989] 2 NZLR 431). On that basis there seems not to be any public interest imperative for Mr Jacob's adjudication and the probable consequential loss of his position as a self-employed person (Re Sturdee (supra) at 635).

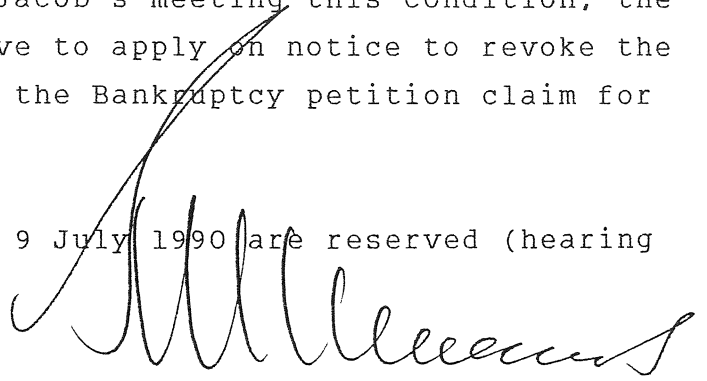
There are, it is true, difficulties in lengthy adjournments of bankruptcy petitions or in stays because of the operation of the doctrine of relation back pursuant to the Insolvency Act 1967 s 42 but s 26(7) expressly empowers applications for stay and there are some cases, such as Re Sturdee (supra), where a stay was held to be appropriate.

Having regard to all those factors, this Court is of the view that this is also a matter where a stay of proceedings is appropriate to enable a reconciliation to be undertaken as to the exact amount owing by Mr Jacob to the Inland Revenue Department and for payments to continue to be made at at least the offered rate on account of those arrears. It is appropriate that the stay be for sufficient period to enable at

least one of the hire purchase debts to be met with the consequential increase in the amount which Mr Jacob will be able to pay to the Inland Revenue Department on account of his liability.

In those circumstances, the Court directs that the petition for Mr Jacob's bankruptcy be stayed until the first bankruptcy list in the Wellington High Court in June 1991 and shall then expire unless extended in the light of the then circumstances. The stay will be a condition that in the interim Mr Jacob pays at least \$1,000 on account of his liability to the Commissioner plus any tax which falls due for payment on account of income earned after the date of delivery of this judgment. In the event of any default in Mr Jacob's meeting this condition, the Commissioner is to have leave to apply on notice to revoke the stay of proceedings and set the Bankruptcy petition claim for further hearing.

The costs of the hearing on 9 July 1990 are reserved (hearing time 30 mins).



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Master J H Williams QC

Solicitors: Crown Solicitor, Wellington for judgment creditor  
Kember & Kember, Wellington for judgment debtor

Bankruptcy No 149/90  
IN BANKRUPTCY

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

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Act 1967

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