

NOT
RECOMMENDED

IN BANKRUPTCY
IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

23/7

B No 55/93

IN THE MATTER of the Insolvency Act 1967

A N D

1066

IN THE MATTER of GRAHAM ROBERT
FLYNN

A Debtor

EX PARTE

MARIAN KAZIMIERZ
SADOWSKI

A Creditor

Date of Hearing: 12 July 1993

Counsel: J L Williams for Judgment Debtor
N O Harris for Official Assignee
N G Smith, a creditor, appeared for himself

Date of Judgment: 15 JUL 1993

JUDGMENT OF MASTER J C A THOMSON

This is an application for an order annulling the bankruptcy of the judgment debtor made in the High Court at Wellington on 28 June 1993 upon the grounds:

- "A. The order of adjudication should not have been made.
- B. The liability of the bankrupt to pay his debts should be revived because since the date of adjudication there has been a substantial change in the financial circumstances of the bankrupt.

- C. Upon the further grounds appearing in the affidavit of the Judgment Debtor filed herein."

The amount of the judgment debt upon which the debtor was adjudicated bankrupt was just over \$5,000.00.

Mr Williams, counsel for the judgment debtor, informs me that the judgment creditor will agree to the annulment and an arrangement has been entered into acceptable to the judgment creditor for repayment of her debt.

The judgment debtor has filed two affidavits. In his first affidavit he deposes that his assets exceed his liabilities by some \$300,000.00.

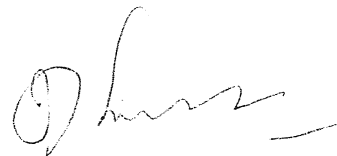
A report has been filed the Official Assignee who, although not in a position to verify the claims made by the judgment debtor as to his asset position, does confirm that the judgment debtor has interests in substantial assets.

It appears that Mr Flynn, in 1992, operated a company known as Park Lane Real Estate Ltd. Its branch manager was a Mr Smith who was also a director of the company but who resigned some five months ago. Mr Smith, in oral submissions made to me, challenged the correctness of some of the information which was relied on by Mr Williams and which is contained in the affidavits made by Mr Flynn. Mr Smith's complaint really is that he is owed wages of some \$1,600.00 and it seems that Mr Flynn had assured him of payment of his outstanding wages and that he would be paid regardless of whether other creditors were paid or not. His position is set out in Exhibit "D" to the Official Assignee's report, this being a letter dated 5 July 1993 which he wrote to the Commercial Affairs Division of the Department of Justice at Wellington. On the face of that letter, it does seem clear, as Mr Williams contends, that the wages would be owed not by Mr Flynn personally but by the

company, Park Lane Real Estate Limited. If Mr Smith is correct in his allegation that he was in effect given a personal guarantee by Mr Flynn that he would be paid, that does not seem to me to be a factor which I should weigh in deciding whether to annul Mr Flynn's bankruptcy or not. Indeed, if the position is as stated by Mr Smith, then, on annulment, he will be able to take steps to recover the wages which he says Mr Flynn personally owes him by claiming in the Small Claims Court. Certainly, I do not think that it would be proper to make it a condition of the annulment that Mr Flynn meet the outstanding wages claimed by Mr Smith at this time.

On the sworn material before the Court, Mr Flynn is entitled to the benefit of the exercise of the Court's discretion to annul the bankruptcy order made against him, and I do so, but on the basis that the Official Assignee be paid his costs of \$950.00 and disbursements and that the order for annulment lie in Court until those costs and disbursements are paid.

I may say that I did have a little difficulty with the calculation of costs for the Official Assignee as appears in Exhibit "D". I presume that counsel's fees listed under Costs of \$150,000.00 is an error and should in fact be \$150.00.



.....
Master J C A Thomson

Solicitors: McCulloch Sygrove, Wellington for Judgment Debtor
Sladden Cochrane & Co for Judgment Creditor
Official Assignee, Wellington

0478.0406