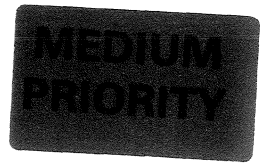


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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY



B. NO. 1228/95
IN BANKRUPTCY

IN THE MATTER of the Insolvency Act 1967

A N D

IN THE MATTER of HKA FRANCIS-ROBERSON

Debtor

EX PARTE

CHURCHILL GROUP
HOLDINGS LIMITED AND
FACILITY FINANCE LIMITED

Creditor

Hearing: July 18, 1996

Counsel: JA Colvin for Creditor
DW Milliken for Debtor

Judgment: July 18, 1996

(ORAL) JUDGMENT OF MASTER ANNE GAMBRILL

Solicitors for Creditor

DE Wackrow
DX CP20503, Auckland

Solicitors for Debtor

Vlatkovich & McGowan
DX CP36011, Auckland

I have before me a bankruptcy petition B.1228/95. Judgment therein was obtained in the District Court at North Shore under proceedings NP.391/95, both against the First Defendant Miss Francis-Roberson and her mother, the guarantor of a lease, Mrs Francis-Roberson. A charging order was obtained and registered against the property owned by Mrs Francis-Roberson who is not the debtor in the present proceedings.

Some discussion took place in the Courtroom but both Counsel now accept that the charging order that exists can be regarded by this Court as a secured debt in relation to any obligation Mrs Susan Jill Francis-Roberson may owe to the Creditor. I am informed from the Bar that no bankruptcy petition has issued against her.

The question then arises as to whether this petition should issue and be determined against the daughter and whether the Court should take into account the existence of the security for the debt arising under the proceedings against both parties in the application for adjudication against the daughter.

Counsel for the Petitioning Creditor relies on s 2 of the Insolvency Act 1967 and the definition of a secured creditor:

“A person holding a mortgage, charge, lien, or security on the property of the Debtor, or any part thereof, as a security for the debt due to him from the Debtor, whether given directly or indirectly through another person as security for a debt due to the Creditor.”

The word “debtor” per se is not defined, understandably so. Counsel for the Petitioning Creditor notes that security is defined as security “on the property of the debtor”. See s 2.

I refer to the passages from Spratt & McKenzie’s Insolvency Laws page 12, s 2, para 2/3. Unfortunately I am of the view that the security that the creditor holds from Mrs Susan Francis-Roberson is not a security that can benefit the estate of Holly Karensa Alexandra Francis-Roberson and therefore is not a secured debt within the terms of the Act that can entitle the debtor to oppose the making of an order of adjudication.

This matter had had to be recalled for a variety of circumstances and the fact that time did not permit it to be dealt with initially when the matter was raised. I had been concerned about the existence of a charging order and was not in a position to be fully informed at the time; time was not available to consider it. I asked Counsel for a submission hereon. It is clear when one looks at the definition held in Spratt & McKenzie (supra) that Mr Colvin is prima facie entitled to his order. Mr Milliken has returned today to assist the Court. As in all bankruptcy matters it is work that there is little opportunity for a reward for Counsel and I appreciate the attendance of both Counsel today to sort out the matters in respect of this file.

It seems to me appropriate that at this stage I will stay the petition. An order of adjudication can be made in approximately four weeks time in the bankruptcy list

on 21 August 1996 at 10 am if steps have not been taken to resolve the matters between the parties.

I have reserved the question of costs and if an order is to be made, Counsel may file a memorandum in respect thereof.



MASTER ANNE GAMBRILL