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**NOT
RECOMMENDED**

IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY
IN BANKRUPTCY

B. NO.70/92

IN THE MATTER of the Insolvency Act 1967

A N D

IN THE MATTER of an application by **BERNARD CHRISTOPHER
FRANCIS** a Bankrupt, for discharge from Bankruptcy

Hearing: 22 October 1996

Counsel: Mr Walsh for the applicant
Mr Milroy for the respondent

Judgment: 22 October 1996

(ORAL) JUDGMENT OF MASTER KENNEDY-GRANT

This is an application by Mr Francis for an order discharging him from Bankruptcy.

He was adjudicated bankrupt on his own petition in May 1992. Objection to his discharge from Bankruptcy was lodged by the Official Assignee in May 1995 shortly before the expiry of the three year period provided in the Act.

I have received Mr Francis' affidavit in support of his application two reports from the Official Assignee and a lengthy statement from Mr Francis. I have also presided today over an examination of Mr Francis.

Mr Francis seeks an absolute discharge.

The Official Assignee seeks a conditional discharge with the usual restrictions on entry into a business or engagement in the management or control of a business of a relative or acting as a director or taking part directly or indirectly in the management of any company or class of company. The Official Assignee seeks an order that these restrictions remain in force indefinitely from the date of order of discharge.

Mr Francis has had a checkered career.

This is his first bankruptcy.

The principal debt incurred before his bankruptcy was one to a Mr Geater. Mr Francis denies liability for this; but, on the papers and on the evidence I have heard, I am of the view that what Mr Francis did prior to his bankruptcy in relation to the money obtained by him from Mr Geater was morally reprehensible. Mr Geater was an elderly gentleman who had

had some dealing with Mr Francis in the context of Mr Francis's then business. He invested some \$79,000 in that business according to Mr Francis. According to Mr Geater's statement of claim the investment had been for lending on security of a first mortgage. I was not impressed by Mr Francis' answers to my questions in relation to that matter.

In the course of his bankruptcy, Mr Francis was also found guilty of having committed an offence against s188(1) of the Companies Act 1955 in that he was concerned in the management of a particular company, The Centre of Activity Ltd, without the leave of the Court. One offence was in terms of s128(1)(g)(i) of the Insolvency Act 1967, in that he had incurred credit without informing the person giving the credit that he was an undischarged bankrupt, and two offences were pursuant to s164 of the Insolvency Act 1967, in relation to willfully attempting to mislead the Official Assignee in two respects in relation to that same company. He was sentenced to prison and served his term on those offences.

He has more recently been convicted of eleven offences of obtaining credit while an undischarged bankrupt without disclosure of the fact that he is a bankrupt; but that conviction is under appeal. Because it is under appeal, but also more particularly because the District Court Judge who heard the case said in sentencing Mr Francis that he was not going to sentence him to prison because

"... there are a number of problems in your life and the sooner you stay in the community, or the sooner you are free to stay in the community and turn to an honest day's work, the better. But if one hurdle after another is continued to be placed before you, I

can see that you are just going to find ways to earn some form of income from your own devices"

I propose to take a course which does not run counter to the intention expressed by the District Court Judge as to Mr Francis's future.

One of the matters on which Mr Francis has been examined today is the question of whether or not he has been engaged in the management of a number of companies during the period of his bankruptcy. The evidence is not clear enough to enable me to form a conclusion on this. Certainly Mr Francis has been heavily involved in these various companies. He must have come fairly close to managing them; but I cannot make a finding that he was and I note also that he has not been charged with having been.

Given the facts that I have stated and given the fact that the period of Mr Francis' bankruptcy has already extended some 18 months beyond the automatic three-year period, I have come to the conclusion that the appropriate order is one of a conditional discharge that enables Mr Francis to return to the community. It will enable him, with the leave of this Court, to enter into business or to be engaged in the management or control of a business or to act as a director. I am going to place a limit of a further year on those conditions.

I therefore make the following orders:

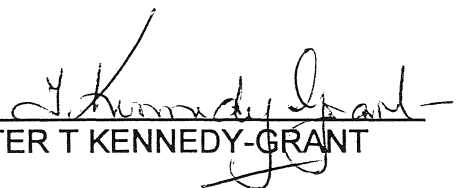
- 1 Mr Francis is discharged from bankruptcy subject to the condition that he shall not without the leave of the Court:
 - (a) enter into or carry on any class of business either alone or in partnership with any other person;

- (b) be engaged in the management or control of any business carried on by or on behalf of any of the following persons: namely, his wife for the time being, a lineal ancestor or descendant of the bankrupt, the wife or husband of such ancestor or descendant, a brother or sister of the bankrupt (if there are any such) and the wife or husband respectively of that sibling;
- (c) act as a director or take part directly or indirectly in the management of any company or class of company;

for a period of one year from today's date.

- 2 Leave is reserved to both parties to apply to the Court in the event of non-compliance with any of the terms of this order.

In view of the fact that Mr Francis has been granted legal aid for the purpose of this application I make no order as to costs.


MASTER T KENNEDY-GRANT