

NOT  
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

B 137/97

BETWEEN NORMAN JAMES ELVY

Debtor

AND THE COMMISSIONER OF INLAND  
REVENUE

Judgment Creditor

Hearing: 11 March 1998

Counsel: M J Hay for Debtor  
B K Cunningham for Judgment Creditor

Judgment: 12 MAR 1998

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JUDGMENT OF MASTER J.C.A. THOMSON

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Solicitors:  
Crown Solicitor, Wellington  
Michael J Hay, Wellington

The Commissioner of Inland Revenue applied to bankrupt the debtor in October 1997. By consent the matter was adjourned from time to time to give the debtor an opportunity to sell his taxi licence and apply the proceeds in reduction of the debt. That was not achieved and the Commissioner now applies for an order for adjudication. That is opposed. The debtor relies on s.26 of the Insolvency Act 1967 and seeks to persuade the Court that it would not be just and equitable, in the circumstances, that he be adjudicated bankrupt. The debtor accepts that the onus of satisfying the Court that it is just and equitable that he not be made bankrupt is on him.

Mr Hay for the debtor submitted that the judgment creditor was the only creditor and that the only property that could be passed to the Official Assignee would be the sale proceeds of the debtor's taxi business. That is expected to produce around \$27,750. The judgment debtor however also has an interest in a residential property which is settled as a joint family home. The equity in the property is \$91,000 and the judgment debtor's share about \$45,500.

Mr Hay submits that the only property that would be immediately available in the bankruptcy would be the proceeds of the sale of the taxi licence. The debtor's only present source of income is National Superannuation. In those circumstances the debtor says that to make him bankrupt would not be just and equitable. In effect he says the Court would be doing a 'vain thing'.

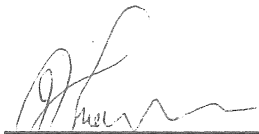
In opposition an affidavit has been filed by Mrs Pryor for the Commissioner. She deposes that ever since the debtor started business he has made little effort to

comply with his tax obligations. It appears that some \$60,000 of the outstanding tax which is owing, and which as at today stands at \$191,502.25 in GST. The debtor has been prosecuted in the past for failure to make returns. The debtor's net assets would therefore appear to equate only about half his tax liability. The debtor admits that in 1990 he transferred a share which he had in a property at Worcester Street, Wellington, to his son as a wedding present, even though at that time he had considerable outstanding tax liabilities.

Mr Cunningham for the Commissioner submits that there is an element of public interest here in adjudicating the debtor bankrupt. He submits that failure to pay taxes is a matter that has an effect on the general community. That was considered in *Re Rua ex parte Opotiki District Council* (20/5/96) High Court Rotorua B196/95 where the Master considered that failure to pay local body rates over a number of years was a factor to be considered in the context of public interest.

Mr Cunningham submits that the position is exactly the same in respect of payment of Government taxes. I accept that submission. I think it is also a factor that this debtor has had a long history of failing to pay taxes and he has been prosecuted for failing to meet his obligations. Mr Cunningham also submits that the Court should look with disfavour on the debtor's conduct when in 1990 he transferred his interest in a property at Worcester Street to his son as a wedding present, and when he well knew that he had substantial back tax arising from 1986 onwards. The result was that the Department was deprived of those

funds. Given that this is not a case where a debtor has no assets I do not think the fact that he is no longer in business and draws National Superannuation is sufficient to outweigh the clear entitlement of the Commissioner to obtain an order for adjudication in the circumstances disclosed here. The debtor has failed to discharge the onus on him and is accordingly adjudicated bankrupt. Costs to the creditor, \$1,500 and disbursements as fixed by the Registrar.



Master J.C.A. Thomson