**IN THE HIGH COURT OF NEW ZEALAND**
**CHRISTCHURCH REGISTRY**

**CIV 2007-412-001061**

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| IN THE MATTER OF | AN APPLICATION UNDER SECTION 88B OF THE JUDICATURE ACT 1908 |
| BETWEEN | ATTORNEY-GENERAL<br>Applicant |
| AND | DAVID STANLEY HEENAN<br>Respondent |

Hearing: 25-27 May 2009

Court: Randerson J
Hugh Williams J

Appearances: P J Gunn for Applicant
Respondent in Person
D M Lester as Amicus Curiae

Judgment: 19 August 2009

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## RESERVED JUDGMENT OF THE COURT

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This judgment was delivered by me on 19 August 2009
at 2 pm, pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Solicitors: Crown Law, PO Box 2858, Wellington 6140
Counsel: D M Lester, PO Box 825, Christchurch 8015
Copy To: D S Heenan, PO Box 868, Queenstown 9348

**Introduction**

[1] The respondent Mr Heenan was adjudicated bankrupt on 11 December 2000 having failed to pay a judgment entered against him by Judge Saunders in the District Court at Alexandra on 3 April 2000. The judgment was in favour of a Mrs Gore who sued Mr Heenan on a dishonoured cheque for $20,000.

[2] Nine years later, Mr Heenan is still a bankrupt. The Official Assignee has consistently opposed Mr Heenan's discharge from bankruptcy asserting that Mr Heenan has a vintage Buick motorcar which forms part of his bankrupt estate. This vehicle has not been delivered to the Official Assignee despite a Court order. Mr Heenan claims that the vehicle is owned by a family trust and admits he has the vehicle in hiding so the Official Assignee cannot seize it.

[3] Ever since his adjudication, Mr Heenan has brought a plethora of court proceedings essentially designed to have the original judgment set aside and his bankruptcy annulled or discharged. He has also become embroiled in further disputes relating to two other vintage cars and a residential property at 11 Brunswick Street, Queenstown which has since been sold at mortgagee sale.

[4] The Attorney-General now applies for an order under s 88B Judicature Act for an order preventing Mr Heenan from bringing or continuing any legal proceedings without the leave of this Court. The application proceeds on the statutory ground that Mr Heenan has persistently and without any reasonable ground instituted vexatious legal proceedings in this Court and in the District Court.

[5] Thirteen separate proceedings are identified in the statement of claim, some of which have been instituted by Mr Heenan personally and some by him on behalf of family trusts. The proceedings identified in the statement of claim are by no means all of those Mr Heenan has instituted. While there is a degree of overlap between the proceedings, they fall into three broad categories relating to:

a) The dishonoured cheque, the entry of judgment leading to his bankruptcy and attempts to set aside his bankruptcy.

b) The ownership of the Queenstown property, the mortgagee sale and the ownership of the proceeds of sale.

c) The vintage cars.

[6] None of the proceedings instituted by Mr Heenan from April 2000 until the present has been successful and a number have been struck out. A feature of them is Mr Heenan's failure to exercise available rights of appeal from the District Court to the High Court or from this Court to the Court of Appeal. Rather, he has generally sought to challenge adverse findings by collateral means including applications for rehearing and review along with repeated applications for annulment of his bankruptcy. Only two appeals appear to have reached the Court of Appeal. Neither was successful, one being struck out as an abuse of process and the other as inarguable.

[7] Some of the legal proceedings have been instituted by Mr Heenan purportedly on behalf of a trust, which Mr Heenan asserts was formed in 1960, called the Heenan Family Trust 1960. Mr Heenan asserts that the 1960 trust is the true owner of the vintage cars and the Queenstown property prior to its sale. He makes that assertion notwithstanding that, by a deed dated 1 August 1999, a second family trust known as the Heenan Family Trust (No. 2) was established and despite the fact that he was a party to the transfer of the Queenstown property to the No. 2 trust by transfer dated 11 August 1999.

[8] The Queenstown property was registered in the name of Mr Heenan, his wife and an accountant (a Mr Fagerlund) who were the trustees appointed under the 1999 deed. Two mortgages were subsequently registered over the property which was sold by the second mortgagee in January 2005. The net sale proceeds amounted to a little over $728,000. Part of the proceeds of sale have been distributed to Mr Heenan's former wife. The remainder of $281,000 is held by the Public Trust which is now the trustee of the No. 2 trust.

[9] Mr Heenan continues to assert that the funds held by the Public Trust belong to the 1960 trust, claiming that the creation of the No. 2 trust was a sham instigated by Mr Fagerlund for the purpose of avoiding creditors following a disastrous

investment Mr Heenan and his former wife made in a scheme promoted by others which was subsequently found to have been fraudulent. Mr Heenan claims he knew the No. 2 trust was a sham from inception but went along with it on Mr Fagerlund's advice.

**The contentions of the parties**

[10] Mr Gunn for the applicant submits that an order under s 88B is justified because the proceedings instituted by Mr Heenan and his conduct of them are characterised by:

- Their plainly untenable nature.
- Their often complex, prolix, and incomprehensible pleadings.
- Extravagant claims.
- Serious and unfounded allegations against officers of the Court.
- Repetitive and overlapping claims.
- An extension of proceedings to encompass an ever-increasing circle of potential defendants including virtually every judicial officer who has been involved in Mr Heenan's litigation.
- A refusal to accept adverse decisions.

[11] Mr Heenan's contentions are that:

- There has been a proper foundation for all of the proceedings instituted.
- He is not a vexatious litigant.
- Mrs Gore or her son fraudulently altered the date on the cheque in respect of which judgment was given in the District Court.
- There has been fraud by a wide range of people associated with his affairs.
- The justice system and judicial officers are corrupt.
- He has suffered a serious injustice which he should have the opportunity to put right through court proceedings.

[12] Mr Lester was appointed as *amicus curiae* to assist the Court. We gratefully acknowledge his assistance both prior to and during the hearing. Mr Lester emphasised that Mr Heenan had brought the proceedings out of a genuine sense of grievance which he claimed had been recognised in a number of judgments. Mr Lester also raised an issue as to whether proceedings instituted by Mr Heenan in a representative capacity (as agent or trustee for a family trust) qualified as the institution of proceedings in terms of s 88B. He identified five proceedings which could fall into that category. Mr Lester also submitted there were four proceedings which did not qualify as proceedings instituted for the purposes of s 88B because they were interlocutory in nature or were appeals. As such, he submitted they did not constitute a separate proceeding. Mr Lester supported Mr Heenan's contention that there were issues relating to the cheque which had not been properly explored and submitted there were reasonable grounds for the proceedings he instituted.

**The issues**

[13] The central issues are:

a) Has Mr Heenan persistently and without any reasonable ground instituted vexatious legal proceedings in the High Court and District Court?
b) If so, should this Court exercise its discretion to grant the relief sought either on an unqualified basis or on terms?

[14] In discussing the first issue, we will consider what amounts to the institution of legal proceedings for the purposes of s 88B and whether the institution of proceedings in a representative capacity qualifies under the section.

**The scope of the evidence**

[15] The evidence adduced by the applicant included three affidavits by a legal executive in the Crown Law Office producing copies of relevant judgments, minutes and pleadings and two affidavits from the Registrar of the High Court in

Christchurch, Mr P R Fantham, relating to his dealings with Mr Heenan in relation to the filing of documents. Mr Fantham's affidavits produced relevant pleadings and samples of correspondence. Mr Heenan has filed three affidavits in opposition to those of the applicant. At our request, Mr R A MacDuff, a senior investigating solicitor at the offices of the Official Assignee in Christchurch, produced an affidavit relating to aspects of Mr Heenan's proceedings and his bankruptcy. We also received, through Mr Heenan, a further affidavit from Mr MacDuff sworn on 9 March 2009 for the purposes of a substantial hearing which recently took place before Heath J (CIV 2005-425-76) in respect of which judgment was delivered on 12 May 2009.

[16] Before us, Mr Heenan made extensive submissions referring to a file of documents he produced to the Court relating to the merits of the three issues we identified at [5] above. Some of these documents may not have been formally received into evidence but many of them have no doubt been produced in earlier proceedings. We have considered them as part of our disposition of this application, there being no objection from Mr Gunn. In doing so however, we are conscious of Mr Gunn's submission that the persons against whom Mr Heenan made accusations (such as Mrs Gore, her son and Mr Fagerlund) had no opportunity before us to respond.

## Legal principles

[17] Section 88B provides:

> **88B Restriction on institution of vexatious actions**
>
> (1) If, on an application made by the Attorney-General under this section, the High Court is satisfied that any person has persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior Court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, order that no civil proceeding or no civil proceeding against any particular person or persons shall without the leave of the High Court or a Judge thereof be instituted by him in any Court and that any civil proceeding instituted by him in any Court before the making of the order shall not be continued by him without such leave.

> (2) Leave may be granted subject to such conditions (if any) as the Court or Judge thinks fit and shall not be granted unless the Court or Judge is satisfied that the proceeding is not an abuse of the process of the Court and that there is prima facie ground for the proceeding.
>
> (3) No appeal shall lie from an order granting or refusing such leave.

[18] Applications under s 88B Judicature Act and its predecessors have been relatively few. As the Court of Appeal observed in *Brogden v Attorney-General* [2001] NZAR 809 at [20]:

> This reflects an appropriately conservative approach by successive Attorneys-General, no doubt mindful of the fundamental constitutional importance of the right of access to the Courts. Recognition of that value does, however, need to be balanced against the desirability of freeing defendants from the very considerable burden of groundless litigation.

[19] The power under s 88B is not lightly exercised since, as Staughton LJ said in *Attorney-General v Jones* [1990] 1 WLR 859, 865:

> The power to restrain someone from commencing or continuing legal proceedings is no doubt a drastic restriction of his civil rights, and is still a restriction if it is subject to the grant of leave by a High Court Judge.

[20] On the other hand, as Staughton LJ went on to remark at 865 in the same case:

> ... there must come a time when it is right to exercise that power, for at least two reasons. First, the opponents who are harassed by the worry and expense of vexatious litigation are entitled to protection; second, the resources of the judicial system are barely sufficient to afford justice without unreasonable delay to those who do have genuine grievances, and should not be squandered on those who do not.

[21] In *Brogden*, Blanchard J summarised the relevant principles at [21] to [23]. Paraphrased, these are:

a) An order under the section may only be made when multiple proceedings have been commenced by the respondent.

b) Whether proceedings have been instituted persistently does not depend merely on the number of the proceedings but on their character, their lack of any reasonable ground and the way in which they have been conducted.

c) Even if the number of proceedings is quite small, if they are shown to amount to an attempt to relitigate an issue already conclusively determined against the respondent they may amount to the degree of persistence required, particularly if accompanied by extravagant or scandalous allegations which the litigant has no prospect of substantiating or justifying.

d) The Court may also take into account patterns of behaviour involving a failure to accept the outcomes after all available methods to challenge the decisions have been exhausted.

e) A relevant factor may be the range of defendants drawn into a widening circle of litigation.

f) The fact that one or more proceedings have been struck out does not inevitably lead to the conclusion that the litigation has been vexatious but this may be a strong indication (see also *Attorney-General v Collier* [2001] NZAR 137, 149).

g) What is required is an appropriate assessment of the whole course of the respondent's conduct of the litigation including the manner in which and apparent purpose for which each proceeding has been conducted, and whether resort to the appeal process has been undertaken without any realistic prospect of success.

h) The test is whether, overall, the various proceedings have been conducted by the litigant in a manner which properly attracts the epithet "vexatious". In that respect, the concern is not whether the proceeding was instituted vexatiously but whether it is properly described as a vexatious proceeding (adopting the observations of the Full Court in *Attorney-General v Hill* (1993) 7 PRNZ 20, 22).

[22] Relevantly to the present case, a proceeding may be vexatious even if it "may contain the germ of a legitimate grievance, or may disclose a cause of action or a ground for institution": see *Hill* at [23] citing *re Chaffers* (1897) 45 WR 365 and *Attorney-General for New South Wales v Solomon* (1987) 8 NSWLR 667.

[23] Counsel also referred to an essay by Professor Michael Taggart and Jenny Klosser "Controlling Persistently Vexatious Litigants" in Groves (ed) *Law*

*and Government in Australia: Essays in Honour of Enid Campbell* (2005) 272. We accept the proposition stated at 16 in this essay that:

> The issue of whether the defendant has instituted vexatious legal proceedings is determined objectively, and not by reference to the subjective beliefs or motives of the defendant.

[24] And we also endorse the following passage from the essay:

> It is important to emphasise that proceedings are described as vexatious because of their nature and substance (or, more accurately, lack thereof), not because of the manner in which they are conducted. Conduct such as making unfounded allegations, cannot make a meritorious case vexatious. Each proceeding is characterised as being vexatious or not (that is, relevant or not relevant in terms of s 88A) by looking at each proceeding and then the totality of the relevant proceedings.

[25] We also acknowledge the observation made by the learned authors that, in general terms, the conduct of the litigation is relevant to the court's discretion to make an order and should be considered "once the test has been found to be satisfied, not before".

*What constitutes the institution of legal proceedings for the purposes of s 88B?*

[26] Mr Lester submitted that, to the extent the Attorney-General relied upon interlocutory applications or appeals brought by Mr Heenan, these did not amount to the institution of legal proceedings for the purposes of s 88B.

[27] Mr Gunn accepted that interlocutory applications do not amount to the institution of proceedings for the purposes of s 88B: see the discussion by the Full Court comprising Elias CJ and Heron J in *Collier* at [31]. We respectfully agree with this proposition.

[28] The position in respect of appeals is less clear. In *Attorney-General v Wiseman* (Supreme Court, Auckland, M672/67, 20 February 1968) Woodhouse J accepted a submission that the proceedings referred to in the section were not limited to the institution of an action by writ. Woodhouse J was of the view that it was necessary to look "at the whole of the litigious activity of the defendant" (at 5). This broader view also found favour in the Court of Appeal in

*re Wiseman* (CA10/68, 26 May 1969). Delivering the judgment for the Court, McCarthy J held (at 12) that appeals lodged to the Court of Appeal involved the institution of proceedings. The Court of Appeal relied on a decision of the English Court of Appeal in *re Vernazza* [1960] 1 QB 197. However, an analysis of their Lordships' judgments in *re Vernazza* suggests that the point was discussed but not finally decided: see Ormerod LJ at 209-210 and Willmer LJ at 215.

[29] The Full Court in *Collier* considered the point had not been determined in New Zealand. Elias CJ and Heron J said at [32]:

> Whether appeals are properly to be characterised as "proceedings" for the purposes of s 88A has not yet been determined in New Zealand. In other jurisdictions, opinions have been expressed that the "institution of proceedings" includes appeals from final determinations: *Hunters Hill Municipal Council v Pedler* at p 488 per Yeldham J; *Re Vernazza* [1960] 1 All ER 183 per Ormerod and Willmer LJJ at pp 187-188 (a decision under the former legislation, before the 1981 Act put the matter beyond doubt in the United Kingdom). In *Attorney-General v Hill* (1993) 7 PRNZ 20, the Full Court, comprising Henry and Doogue JJ, thought it arguable that appeals were included, but expressed no concluded view on the matter. In the present case, too, we have not thought it necessary to rely upon Mr Collier's persistent filing of appeals which have been proved to have no merit. While they are part of the overall background against which the proceedings instituted and conducted by Mr Collier fall to be considered, some caution is necessary in an expansive approach to the language of a section which impacts upon rights of access to the Courts as recognised by s 27 of the New Zealand Bill of Rights Act 1990. In deciding whether the grounds in s 88A have been made out by the applicant, we have not treated appeals as the institution of proceedings.

[30] It is unnecessary for us to determine this issue in the context of this case since very few appeals have been filed by Mr Heenan and the case largely depends on the litigation he has instituted at first instance. We are content to proceed on the footing that an appeal may at least be taken into account in the overall assessment of the respondent's litigious behaviour.

[31] Although the point was not canvassed in argument, we note Mr Heenan issued or attempted to issue a counterclaim at one stage of this saga. We are satisfied that the issue of a counterclaim amounts to the initiation of legal proceedings for the purpose of s 88B since a counterclaim is treated as if it were the commencement of an independent proceeding: r 5.58(3) High Court Rules and its predecessor r 151; *Star-Kist Overseas Inc v The Ship "MV Fijian Swift"* [1982]

1 NZLR 721 (CA); and *Nippon Credit Australia Ltd v Girvan Corp NZ Ltd* (1991) 5 PRNZ 44, 52.

*Is a proceeding brought by the respondent in a representative capacity included within s 88B?*

[32] Several of the proceedings relied upon by the Attorney-General have been brought in the name of one or other of the Heenan family trusts (or both) and, in one case, in the names of trustees of the family trusts including Mr Heenan.

[33] An issue arises as to whether proceedings brought in this manner amount to legal proceedings instituted by Mr Heenan for the purposes of s 88B. This issue arose in a case heard by the English Court of Appeal, *In re Langton* [1966] 1 WLR 1575. The respondent had instituted a number of legal proceedings in his capacity as an administrator of the estate of his late mother. The Attorney-General applied for an order under s 51(1) Supreme Court of Judicature (Consolidation) Act 1925 which is in identical terms to our s 88B. In delivering the judgment of the Court, Lord Parker CJ held that the expression "any person" referred to in the section included someone acting in a representative or fiduciary capacity. At 1579, Lord Parker stated:

> For my part, I am quite unable to see any ground for giving a restricted meaning there to "any person." Certainly, as it seems to me, it covers any person acting in a representative or fiduciary capacity. After all, as Mr. Solicitor has said, the whole purpose of this section is to protect those against whom these actions are being brought, and to prevent them from being subjected to the burden of costs which they will never recover. In my judgment, there is no ground for giving any restricted meaning to the words; accordingly I think this is a proper case in which an order should be made.

[34] Advancing the contrary view as *amicus*, Mr Lester referred us to a passage of the decision of the Full Court in *Hill* at 23. There, it was observed that the expression "instituted" in the relevant section could not extend to proceedings brought by another in which the defendant has, as an executor, been substituted as a plaintiff. The Court observed that "instituted" is to be given "a fair, large and liberal interpretation but not a strained one".

[35] With respect, we entirely agree with the observations made in *Hill*. However, the present case does not involve a substitution of Mr Heenan as plaintiff. To the extent that proceedings have been instituted by or on behalf of the Heenan Family trusts, we are satisfied they fall within s 88B as legal proceedings instituted by Mr Heenan in his capacity as a sole trustee or purported trustee of the Heenan Family trusts.

[36] Neither the 1960 Trust nor the No. 2 Trust has been incorporated. It follows that any legal proceedings instituted by either of those trusts must be brought in the name of the trustee or trustees since the trusts themselves have no separate legal identity. This is confirmed by r 4.23 High Court Rules which provides that trustees, executors and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees, executors or administrators.

[37] In principle, we agree with Lord Parker that there is no reason to restrict the application of s 88B by excluding persons bringing legal proceedings in a representative or fiduciary capacity. Where proceedings are responsibly brought or, as Mr Lester submitted, as a matter of duty, by a trustee or executor, then there is little prospect of any finding that the proceedings have been brought vexatiously and without reasonable grounds. But where a person purporting to act as a trustee persistently, and without any reasonable ground, institutes vexatious legal proceedings, the Court's discretion to make an order under s 88B is available to the same extent as it is in the case of such proceedings brought by a person in their own right. We would include in this category proceedings issued by two or more trustees (including the alleged vexatious litigant) in circumstances where the others are under the effective control or direction of the alleged vexatious litigant.

**The proceedings relating to the cheque issue and Mr Heenan's bankruptcy**

*The hearings before Judge Saunders (NP25/99) – Judgments of 3 April 2000 and 3 August 2000.*

[38] We accept that Mr Heenan has a deep sense of injustice arising from the judgment in the cheque case which led to his bankruptcy. This is not so say that his sense of injustice is justified either in fact or law. Although the cheque issue has

been explored in detail in several judgments of this Court (most recently in the judgment of Heath J mentioned above), we have ourselves examined the original transcript of the hearing before Judge Saunders over the cheque, the exhibits produced, related documentation and the judgments of the various courts dealing with this issue. We have done so for the purpose of establishing whether Mr Heenan had reasonable grounds for the undoubtedly persistent series of proceedings instituted by him in respect of this issue.

[39] The essential facts are that, in 1998, Mrs Gore invested $20,000 in an investment scheme known as the MHT Fund (No 2). She did so through Mr Heenan who had become involved in a business venture in which various individuals deposited monies in the expectation of receiving very high returns. Mr Heenan has always insisted that his role was purely as an intermediary. Mrs Gore accepted that one of the terms of the investment was that she could not seek the return of her principal until after 30 June 1998. Mrs Gore needed money for unexpected expenses following a motor accident and asked Mr Heenan by a letter of 4 June 1998 for return of her $20,000 investment after 30 June 1998.

[40] On 14 June 1998 Mr Heenan issued a cheque drawn on his personal account at the Westpac Bank, Invercargill to Mrs Gore for the sum of $20,000. The cheque was post-dated to 27 July 1998 when first issued. At some stage, the date on the cheque was changed to 27 August 1998. Mr Heenan asserts that he did not change the date. His case is that it was changed in February the following year either by Mrs Gore or her son. The cheque was endorsed with the following words:

> "Post Dated To Ring and Confirm"

[41] Neither Mrs Gore nor Mr Heenan are able to say in whose hand-writing these words were added to the cheque but both accept that they were endorsed on the cheque at the time it was issued.

[42] Mr Heenan stopped payment on the cheque on 23 July 1998, four days before the date originally endorsed on the cheque. He explained his actions in a letter he wrote to Mrs Gore dated 24 July 1998 expressed in the following terms:

> Regarding my personal cheque 162793, issued to you on the 14th June 1998, and post dated to the 27th July 1998.
>
> As we stated to you on the 14th June 98 that this cheque which was issued to you that day, for the purchase of your shares of $20,000.00 in "The Group" was only issued to you on the grounds that personal monies which I was expecting to arrive by the 27th July 98, has not arrived.
>
> Therefore please be advised that I have yesterday 23rd July 98 cancelled my personal cheque, and I now request that you return my cheque back to me forthwith, please.

[43] Mrs Gore did not return the cheque to Mr Heenan but eventually banked it on 26 February 1999 when it was dishonoured. Thereafter, Mr Heenan made an offer to pay Mrs Gore $20,000 but on terms which were not acceptable to her. She then issued proceedings in the District Court at Alexandra.

[44] The claim by Mrs Gore was heard by Judge Saunders on 20 March 2000. Mrs Gore was legally represented but Mr Heenan appeared on his own behalf as he has in almost all of the relevant proceedings since. Mr Heenan's handwritten statement of defence stated that he gave the cheque to Mrs Gore under duress and that he was not responsible for the refund of Mrs Gore's investment. He had acted only as an intermediary. The allegations in the statement of claim were all denied. No reference was made in the statement of defence to the alteration of the cheque or to any issue relating to the endorsement on the cheque. It appears this issue arose for the first time during the hearing when Mr Heenan sighted the cheque which he says had been in the possession of Mrs Gore or her son from the time it was issued in June 1998.

[45] Mrs Gore accepted in evidence that there had been discussions between herself and Mr Heenan about the availability of funds to meet the cheque. The evidence given on that subject at the hearing before Judge Saunders is not entirely clear as to the terms of any stipulation upon which the cheque was issued. Mrs Gore accepted she was told by Mr Heenan when the cheque was issued that there were insufficient funds to meet the cheque and she was "told not to bank it yet". She accepted it might have been she who wrote the words on the cheque "Post Dated to Ring and Confirm" but denied altering the date on the cheque. Mrs Gore accepted at

one point that she was aware that before banking the cheque she "had to ring or confirm with [Mr Heenan] that it was okay to bank it".

[46] Later in the transcript when the point was raised again, Mrs Gore stated:

> When you first gave it to me you told me to hold on to it for a while and to let you know when it was going to be cashed.

[47] Later again, Mrs Gore stated in answer to a question from Mr Heenan:

> When you gave me the cheque you said to me that I had to confirm with you right back at the beginning, but there was never anything else.

[48] Mr Heenan made lengthy submissions before Judge Saunders and also gave evidence. In his submissions (not explicitly confirmed later in his evidence) he stated that Mrs Gore had agreed not to bank the cheque "until she clearly had my approval". This put the matter rather differently from the assertion Mr Heenan made in his letter of 24 July as to the basis on which the cheque was issued: [42] above.

[49] It was a feature of the hearing before Judge Saunders that Mr Heenan refused to disclose where Mrs Gore's $20,000 investment had gone. Nor was he willing to disclose the names of those involved in the investment scheme and who had authority to operate the relevant bank accounts. Mr Heenan maintains he was not at liberty to disclose these details because a term of the investment scheme prevented him from doing so. Possibly because of Mr Heenan's refusal to disclose the background to the underlying transaction, the reason for his issuing a personal cheque was never satisfactorily addressed. It may have been because Mr Heenan was personally buying Mrs Gore's shares in MHT. If he was merely arranging a refund of her investment, there was no apparent reason for a personal cheque being issued.

[50] In his decision delivered on 3 April 2000 Judge Saunders rejected the defence of duress, making adverse credibility findings against Mr Heenan and commenting:

> I do not accept that the plaintiff, having seen and heard her give evidence, took what could be seen as steps amounting to duress to obtain the cheque from the defendant. If the behaviour and manner of the defendant, as exhibited at the hearing, is anything by which to judge this matter, it is quite apparent that Mr Heenan is no 'shrinking violet'. I found the defendant to

> display a bombastic, arrogant and abusive demeanour in the way he conducted himself during the hearing. It was necessary, on more than one occasion, to remonstrate with Mr Heenan when his behaviour was bordering on contempt.
>
> I, therefore, have no difficulty in rejecting the defendant's claim that the cheque issued by him for $20,000.00 was written under duress. If anyone acted under duress at this time, I would find that it was the plaintiff who was placed under extreme emotional pressure by the defendant as a result of his conduct. My assessment of the plaintiff was that she was a person who initially trusted the defendant but soon found her trust misplaced based on his failure to act honestly.

[51] Judge Saunders went on to find:

> In relation to assessment or credibility, the Court has no difficulty in concluding that the defendant has a very selective view of the facts and is not a person who can be relied upon to tell the truth. Indeed, Mr Heenan has a very distorted view of the case and one only has to refer to his misguided attempts alleging that the plaintiff has sworn a false statement in filing her list of documents.

[52] As to Mr Heenan's subsequent conduct, the Judge found:

> After the cheque was presented in February 1999, the defendant continued to act in a manner contrary to someone who was acting in an honest and above board fashion. I refer to the letter sent to the solicitors for the plaintiff dated 9 May 1999 and signed "The Group".
>
> As a result of somewhat bizarre allegations made in that letter, the defendant confirmed that on 14 May 1999 he offered the plaintiff a cheque for $20,000.00 but upon the condition that she sign a document the defendant had prepared. That document was not produced before me as the plaintiff said that the defendant would not allow a copy of it to be viewed by her solicitor. His actions were confirmed by the letter dated 14 May 1999. Again, the contents of this letter gives the Court some insight into the way in which this defendant thinks and behaves.

[53] As to the post-dating of the cheque, the Judge found:

> In any event, I accept that, in response to the requesting [of] the return of her funds, the defendant issued her with a cheque for $20,000.00 and noted that it was post dated in order that he would have time to get the money back.

[54] Judgment was given in favour of Mrs Gore for the amount of the cheque as well as damages for distress – an aspect of the case later criticised by William Young J.

[55] Mr Heenan then applied for a "rehearing or new trial, whichever the Court deems appropriate, as well as an application for defamation, damages and compensation and other orders for costs for general or other relief as the Court thinks fit".

[56] In a decision delivered on 3 August 2000, Judge Saunders rejected the application for a rehearing. One of the grounds for the rehearing application relied upon by Mr Heenan related to the cheque and his allegation that Mrs Gore had succeeded "by means of dishonest practices". In that respect, Judge Saunders found:

> I am aware that at the heart of this application is the defendant's belief that the successful party has achieved a result through dishonest practices, in particular the tampering with the date of a cheque which was post-dated.
>
> I do not accept that it has been shown that the cheque was interfered with by the plaintiff or her family. The evidence was that the cheque was given to her in payment for her shares and she was asked not to bank it until Mr Heenan had funds. The plaintiff initially accepted that she would hold the cheque pending notification of the repayment of funds from the overseas investment. She was asked to be patient. She waited and eventually, upon legal advice, banked the cheque.
>
> Mr Heenan claims that prior to 27 July, being the date he inserted on the cheque in June 1998, the cheque had already been stopped by him. In terms of whether an alteration was then made to the cheque or not, and by whom, it would not make any difference to his liability from 27 July 1998 as he says the validity of the payment had been put to rest on 23 July 1998 and communicated to the plaintiff by his letter of 24 July 1998.
>
> I do not accept that it has been established that the plaintiff did deal dishonestly with the cheque either individually or with the assistance of her family or counsel.
>
> The real issues are, firstly, did the defendant issue the cheque as part of an agreement he reached with the plaintiff over the repayment of her $20,000; and, secondly, if the defendant did issue the cheque, was this done under "pressure and duress" as he claimed in his statement of defence.
>
> Those matters were squarely in issue before the Court and findings of fact were made based on the evidence that Mr Heenan had given the plaintiff a cheque for $20,000 and that was not undertaken under pressure or duress.

[57] On the evidence at the hearing before Judge Saunders, it is clear that Mrs Gore at least agreed not to bank the cheque before 27 July and to notify Mr Heenan when she intended to do so. But in our view it was not clearly established that the cheque could only be banked if Mr Heenan approved Mrs Gore

doing so or upon his receiving sufficient funds to enable the cheque to be cleared. The onus of proof was on Mr Heenan to prove such a condition. We observe that a cheque issued on the footing that it could only be banked when the drawer agreed would be of little value and it is most unlikely Mrs Gore would have agreed to an arrangement of that character which was entirely conditional on Mr Heenan's agreement. At best for Mr Heenan, the arrangement could be interpreted as giving him until 27 July to obtain the funds to satisfy the cheque. The post-dating of a cheque does not, by itself, render the cheque invalid: s 13 Bills of Exchange Act 1908.

[58] Mr Heenan did not fulfil his obligation to Mrs Gore because he did not wait until 27 July when she would have been entitled to bank the cheque. Instead, he cancelled it four days earlier on 23 July. We are satisfied that Mrs Gore was entitled to bank the cheque on 27 July and to sue upon it if it was dishonoured. Mr Heenan recognised his continuing obligation to Mrs Gore by offering to pay $20,000 to her in 1999.

[59] If Mr Heenan had legal counsel at the time of the hearing before Judge Saunders, it is possible that more could have been made of the endorsement on the cheque. For example, if the evidence had clearly established that the cheque was issued on a condition or subject to a contingency, it may not have been valid: s 3 Bills of Exchange Act 1908 and *Byles on Bills of Exchange and Cheques* (28 ed 2007) at paras 2.001 and 2.002. Similarly with the alteration of the date of the cheque. But neither issue was raised in the statement of defence nor explored in any detail in evidence or argument before Judge Saunders.

[60] Judge Saunders found that Mrs Gore had filed a sworn list of documents on 1 October 1999 which disclosed the cheque and gave its date as 27 August 1998. He also found that Mr Heenan had failed to inspect the documents prior to the hearing. Had he done so, he would have been alerted to the issues which arose during the hearing. Judge Saunders concluded, we consider correctly, that there was no basis upon which to order a rehearing. The issues raised by Mr Heenan since the hearing were all available to him to explore at the hearing and could have been had he

chosen to do so. The fact that he chose not to be legally represented is not a ground upon which a rehearing could be ordered.

[61] As to the alteration in the date on the cheque, Judge Saunders found there was no dishonesty on the part of Mrs Gore, her family, or Mrs Gore's lawyer. Subsequent to the hearing, Mr Heenan sought to establish that Mrs Gore or her son had been guilty of forgery or dishonesty in relation to the alteration of the date. He placed before us, as he has done before the court on a number of occasions previously, various materials including statements made to the police by Mrs Gore and her son in an endeavour to establish that they were responsible for the alteration. While it is possible that Mrs Gore or a member of her family changed the date on the cheque without Mr Heenan's consent, he accepts that any alteration was not made until February 1999 some seven months after he cancelled the cheque on 23 July 1999.

[62] It follows, as other judicial officers have found in subsequent decisions, that any alteration to the cheque was not material to the outcome of the claim before Judge Saunders. Mr Heenan's liability on the cheque arose solely as a result of his own action in prematurely cancelling the cheque on 23 July 1998. Any alteration of the date thereafter could not affect his liability. His single-minded pursuit ever since of allegations of fraud and forgery in relation to the alteration of the cheque has therefore been completely misguided.

[63] Section 64 Bills of Exchange Act renders void a cheque which has been materially altered without the consent of the drawer of the cheque. The possible relevance of this provision was not considered at the time Judge Saunders heard Mrs Gore's claim. But the application of s 64 is immaterial to the outcome of Mrs Gore's claim on the cheque for the same reasons discussed in the previous paragraph.

[64] We conclude there has never been any principled basis for setting aside the judgment of Judge Saunders. Yet this has been Mr Heenan's goal in the many proceedings he has launched since that time.

**Proceedings relating to attempts to overturn the judgment of Judge Saunders and/or Mr Heenan's adjudication in bankruptcy**

*Judicial Review application heard by William Young J (CP 6/00 Invercargill Registry) – Judgment 1 December 2000*

[65] Mr Heenan did not appeal against Judge Saunders' judgment of 3 April 2000 nor against his decision of 3 August 2000 refusing to order a rehearing. By the time of the second decision, Mr Heenan was out of time for an appeal. Instead, he commenced an application for judicial review against Mrs Gore and the District Court. The application was heard by William Young J. Mr Heenan had legal counsel on this occasion. William Young J dismissed the application for review in a reserved judgment issue on 1 December 2000. He was extremely sceptical about the MHT Fund, describing it as bizarre and observing that the documentation was expressed in the "now familiar language of prime bank instrument scams ...".

[66] William Young J said of Mr Heenan's conduct of the case before Judge Saunders in the District Court:

> His conduct of his defence served to obscure the issues in the case. So identifying what was truly in issue was not easy for the judge. His behaviour was also offensive and, at the very least, could be said to have bordered on the contemptuous. There were numerous altercations between him and the Judge.

[67] After reviewing Mr Heenan's complaints about the District Court's judgment, William Young J found there was no merit in the argument that the judgment was in error for lack of consideration for the cheque. The Judge found there was consideration since Mrs Gore was entitled to a refund of her investment at least with effect from 30 June 1998 and her acceptance of a post-dated cheque was "necessarily a giving of time". It followed there was consideration irrespective of whether Mr Heenan was primarily liable in terms of the initial receipt of the $20,000.

[68] The Judge was troubled about some aspects of an ancillary part of the claim relating to a bank draft of US$1,000.00 and an award made for stress and inconvenience but those matters could not affect the basic liability on the cheque.

Notwithstanding some doubts on those aspects, the Judge refused to grant relief. He also upheld an award of solicitor and client costs which Judge Saunders had made against Mr Heenan in relation to the District Court proceedings. William Young J observed:

> Mr Heenan behaved in an extravagant and over-wrought way throughout the case. As I have said, his behaviour bordered on the contemptuous. It was also offensive. He was warned by the judge as to the impact that this might have on costs. Yet he continued to act in an offensive way. His general behaviour *vis a vis* Ms Gore as evidenced by the correspondence was also seriously unimpressive, blustering, bullying, threatening and generally bombastic. I might also add that his behaviour in terms of the initial financial arrangements (that is persuading a lady of Ms Gore's age to put money into a PBI scheme) left a good deal to be desired.

*Proceedings before John Hansen J (M18/01 Invercargill Registry) – Judgment 12 June 2001*

[69] Master Venning (as he then was) made an order adjudicating Mr Heenan a bankrupt on 11 December 2000. He refused Mr Heenan's application for an annulment on 31 January 2001. On 15 May 2001 Mr Heenan filed an application which was the subject of a reserved judgment by John Hansen J delivered on 12 June 2001. The judgment records that the initiating document filed by Mr Heenan recorded on its first page:

> Seeks special leave for an application to the High Court of Invercargill, to rehear, review and recind (sic) the decisions of that court, or any Judge/Master thereof under this Insolvency Act 1967, pursuant to section's 8(1), 10 and 119 1(a) that the adjudication should NOT have been made, and ought to be now 'QUASHED' because the judgment order which the adjudication was based upon was fraudulently obtained, knowingly, and has caused a gross miscarriage of justice to occur. JUSTICE HAS BEEN DENIED

[70] The confused description of this application is typical of the proceedings brought by Mr Heenan which are frequently incomprehensible and pay little or no regard to the rules of court.

[71] Mrs Gore was cited as the defendant to the application. The application was followed by some 15 pages of what John Hansen J described as "grounds, facts and submissions". The application concluded with the following:

> PLEASE ALSO NOTE:
> Application's are also made pursuant to every known Court and High Court Rules, acts, etc, etc, which are NOT known to this lay person, and also for slander and defamation's damages and exemplary damages. Therefore I shall have to rely upon the Judge on the days hearings of these matters to ensure that the law's are being up held, pursuant to those rules acts etc to help and assistances. Every person has the rights and is entitled to see justice is seen to be done properly, this time.
>
> COSTS:: are also hereby applied for, plus exemplary costs and damages, and also should the applicant be put to any further costs, or be forced to have to engage Professional help or assistance's in any shape or form, that those costs shall also be 100% borne by the Defendant De Vella June Gore.
>
> COSTS shall be for and to the Applicant in any case, we believe.

[72] The judgment of John Hansen J goes on to describe the submissions made by Mr Heenan in a pattern which he also followed before us. Mr Heenan referred extensively to five further affidavits in various proceedings, produced a bundle of documents relating to a complaint he had made to the police and handed in two newspaper cuttings. Mr Heenan is recorded as having addressed the Court for more than three hours. John Hansen J observed that it became apparent that Mr Heenan's "real focus was an attempt to obtain a rehearing of the whole underlying dispute in the District Court." This observation may also be applied to many of the proceedings Mr Heenan subsequently initiated.

[73] The Judge found that Mr Heenan's real intention was to seek a review of Master Venning's adjudication and his refusal to grant an annulment. Although the Judge found that Mr Heenan's application was out of time, he gave a judgment on the merits in any event. Although Mr Heenan did not appeal the judgment of William Young J in the judicial review proceedings, he challenged the findings of William Young J in the hearing before John Hansen J. Mr Heenan once again raised issues relating to the endorsement on the cheque given to Mrs Gore and the alteration of the date of the cheque. John Hansen J concluded there were no grounds to interfere with Judge Saunders' decision on either of those bases. He noted that they had been addressed by Judge Saunders in the rehearing application and before Master Venning.

[74] Dealing with Mr Heenan's complaint that a search warrant sought by him and issued in the District Court in relation to the cheque had not been executed by the

police and his complaint that the police had not pursued Mrs Gore and her son for alleged forgery over the cheque, John Hansen J noted that a senior police officer had written to the Registrar of the Invercargill Court on 11 December 2000 explaining why the search warrant was not executed. Two matters stand out in this explanation. The first is that the police said Mr Heenan had told them:

> I'm not saying I didn't write August on the cheque but if I did, I don't remember. I can't be 100% sure.

[75] The second is an observation made by the police in the letter to the Registrar that no person suffered financial loss as a result of the possible alteration of the cheque.

[76] We note that these very same issues were canvassed before us, nearly eight years after the hearing before John Hansen J. We find no more validity in them now than John Hansen J did in 2001.

[77] John Hansen J found that there were no grounds to challenge either the adjudication or the refusal to grant an annulment. His observations at [60] and [61] summarise an on-going pattern of Mr Heenan's litigation:

> In the proceedings before me, Mr Heenan has yet again tried to relitigate the whole history of this matter. He did not appeal the District Court decision. He took no steps to challenge the refusal of a rehearing. He has taken no steps to appeal the refusal of Young J to grant judicial review. Finally, he has not seen fit to timeously appeal the adjudication decision.
>
> None of the matters raised by Mr Heenan are new. They have all been before the Courts at various stages, and, of particular significance, the matter relating to the alleged forgery of the date of the cheque was never raised in the review proceeding before William Young J when Mr Heenan was represented by counsel.

*Judgments of Chisholm J (CP2/02 20 December 2002 and CIV 2002-425-15 31 October 2003*

[78] In 2002, the Official Assignee brought two sets of proceedings against Mr Heenan in the Invercargill Registry of this Court (CP2/02 and CIV 2002-425-15). These proceedings related to the Official Assignee's attempts to recover from Mr Heenan a 1939 Buick motor vehicle. This series of proceedings will be

discussed later in this judgment but we refer to them now to the extent that Mr Heenan raised again (by way of attempted counterclaim) issues relating to the cheque and the validity of his bankruptcy.

[79] The Official Assignee had obtained an order from John Hansen J on 9 May 2002 for the delivery of the vehicle to the Official Assignee followed by a sequestration order on 20 August 2002. In response to the attempts by the Official Assignee to enforce these orders, Mr Heenan applied "to stay and appeal the sequestration order, to stay the bankruptcy, for leave to pursue a counter-claim, for judgment by default on a claim he had brought in the District Court under NP123/01, consolidation, joinder of parties, security for costs and for an order requiring the Official Assignee to make a payment into court of $3 million."

[80] After considering these issues, Chisholm J issued an interim judgment on 20 December 2002 in CP2/02. It is evident from his judgment that Mr Heenan wished to raise again issues about the alteration of the cheque, his contention that the Court system and the police had failed to deal with these issues properly and his allegations of improper and dishonest practice by Mrs Gore and others.

[81] Chisholm J noted (at [5]):

> The original, and indeed only, subject matter of this proceeding relates to one aspect of the administration of the estate in bankruptcy, namely, whether the Buick cars form part of the Heenan estate in bankruptcy. That can be contrasted with the wide ranging counterclaim that Mr Heenan seeks to bring against the Official Assignee and others. Without repeating detail already given, it is enough to say that the counterclaim seems to be a full scale attempt to re-litigate both the claim originally brought by Mrs Gore against Mr Heenan (NP125/99) and the bankruptcy adjudication. It would be unrealistic to conclude that the relief sought in the counterclaim is related to or connected with the original subject matter of the proceeding. On that ground alone the counterclaim cannot survive. Two other factors seal its fate. First, it is well out of time and given that it does not fit within Rule 150 and it is effectively seeking to re-litigate matters already determined in the District Court and this Court, I am not prepared to extend time. Secondly, as a bankrupt person Mr Heenan's property and powers (including the right to institute proceedings) became vested in the Official Assignee when he was adjudicated bankrupt in terms of s42(1) of the Insolvency Act 1967 and it is difficult to see how he could pursue the claims against Mrs Gore, her son and others without the Official Assignee's blessing or the leave of the Court. Leave to bring the counterclaim having been refused, it will have to be struck out.

[82] Chisholm J considered it was necessary to deal cautiously with the Official Assignee's application for an "unless" order for Mr Heenan's arrest and committal. Accordingly, Chisholm J examined the transcript of the hearing before Judge Saunders in relation to the alteration of the date on the cheque. He concluded "... there must be a lingering issue about who was responsible for the alteration to the cheque". The Judge went on to consider s 64 of the Bills of Exchange Act 1908 and considered it desirable to have the cheque examined by a document examiner. He directed that the Official Assignee take steps to recover possession of the original cheque. It transpired however that the cheque had been destroyed or lost and forensic examination was therefore not possible. There is affidavit evidence that the cheque was probably thrown away by Mrs Gore or her son with other papers sometime after the completion of the proceedings before Judge Saunders and after any appeal period had expired.

[83] In a judgment issued on 31 October 2003 in CIV 2002-425-15 the Judge summarised Mr Heenan's primary points, every one of which he sought to canvass before us again in the current application.

[84] While Chisholm J expressed "unease" about the alteration to the cheque, he considered he was not in a position to resolve the conflicting arguments. Despite his misgivings, Chisholm J considered it was appropriate to make an order for Mr Heenan's arrest and committal to prison for 28 days unless he complied with the court order for delivery of the Buick by 12 November 2003. Mr Heenan did not comply with the order and served a short period in prison in consequence.

*Proceedings before Associate Judge Christiansen CIV 2005-425-76 Judgments 13 May 2005 and 27 June 2005*

[85] Perhaps encouraged by Chisholm J's remarks about the cheque and s 64, Mr Heenan continued to raise these issues. In proceedings brought by Mr Heenan against Mrs Gore in the Invercargill Registry (CIV 2005-425-76) Mr Heenan applied for a discharge from his bankruptcy. This application (which Associate Judge Christiansen treated as an application for annulment) was dismissed by a judgment delivered on 13 May 2005. Associate Judge Christiansen recorded the Official

Assignee as opposing the application noting that Mr Heenan continued to defy the Court order requiring him to deliver up the 1939 Buick to the Official Assignee. It remained, as it does now, the only matter preventing the winding up of the bankrupt estate.

[86] Associate Judge Christiansen recorded the Official Assignee's submissions and the Judge's view on them in the following passages:

> [3] ...
>
> > (iii) Mr Heenan has throughout obstructed the Official Assignee in his administration of the estate. Mr Heenan as much acknowledges this. Moreover his demeanour in the witness box yesterday leaves this Court in no doubt that he is a difficult man; he is an obsessive man; and he has difficulties with perceptions of truth. Mr Heenan desires a release from bankruptcy to enable him in his own name to pursue various claims against the original judgment creditor, the Official Assignee, the Police, a number of Judges, and Court officials, among others. He desires also to prevent the settlement following mortgagee sale of a home owned he says by a family trust of which apparently he is neither trustee or beneficiary.
>
> [4] This application is yet another attempt to have this Court reconsider the merits of his dispute with the judgment creditor. I am not prepared to let this happen. By his own admission, this is Mr Heenan's twenty-fifth Court appearance in his attempt to obtain justice as he perceives it. To grant an annulment would require me to reach the decision that he should never have been adjudicated bankrupt. That would fly in the face of the various decisions of this Court and the District Court which have already made judgment in the matter, including, I am advised, upon an previous application by Mr Heenan for annulment.

[87] Associate Judge Christiansen dismissed a further application by Mr Heenan for an annulment in the same proceeding on 27 June 2005 noting that the application amounted to an abuse of process involving "yet a further attempt to litigate matters that have already been determined by this Court". Associate Judge Christiansen noted that the documents Mr Heenan produced on this occasion were the same as those he had produced on earlier occasions and that the issue of forgery or fraud in relation to the cheque was "incapable of proof".

[88] It was after Associate Judge Christiansen's refusal to grant Mr Heenan a discharge or annulment of his bankruptcy that Mr Heenan purported to file an appeal to the Court of Appeal (CA201/05). Delivering judgment for the Court of Appeal on

23 February 2006, Anderson P described the purported notices of appeal lodged by Mr Heenan respectively as follows:

> Quash and annul the fraudulently obtained bankruptcy
>
> Discharge the fraudulently obtained bankruptcy
>
> Quash the corrupt judgement (sic) of Judge Saunders
>
> Stop, CIV 2005 425 101 from being struck out
>
> Appeal the judgement (sic) of Justice Chisholm to refuse interim injunctions, relief, on CIV 2005 425 101.

[89] The Court of Appeal had earlier directed Mr Heenan to show cause why the proceeding should not be struck out as vexatious and abusive. After hearing Mr Heenan the Court of Appeal concluded:

> [3] There is no doubt that Mr Heenan is deeply troubled by a sense of injustice over the course of the litigation he has been involved in. Nevertheless, for the reasons set out in the minute of 21 September 2005 and endorsed by the Court in this judgment, the proceedings must be struck out, and they are, as an abuse of this Court's procedure.

[90] During 2005 and 2006, Mr Heenan brought various proceedings in the name of the Heenan Family Trust No. 2 and the Heenan Family Trust 1960 which we deal with later in this judgment.

*Proceedings before Heath J CIV 2005-425-76 Judgment 12 May 2009*

[91] On 12 May 2009, Heath J delivered his judgment previously mentioned in CIV 2005-425-76. This proceeding was Mr Heenan's original bankruptcy file (B55/00) but re-numbered in 2005. Mr Heenan's "statement of claim" dated 22 April 2005 sought an "immediate discharge from this fraudulently obtained bankruptcy", a range of remedies against persons associated with the cheque case and an interim injunction to restrain the sale of the Queenstown property. By the time of the proceedings before Heath J (which occupied four days in March and April this year) the Official Assignee had been substituted as respondent in place of Mrs Gore. The applications by Mr Heenan considered by Heath J were:

a) An application to review a decision by Associate Judge Doogue (17 December 2008) refusing yet another application by Mr Heenan for annulment of his bankruptcy; and

b) An application to join some 57 parties to the bankruptcy proceeding.

[92] In relation to the refusal of the annulment, Heath J found there was no right of review of such an application under s 8 Insolvency Act 1967 but considered the merits of the application in any event. He found that Master Venning was right to adjudge Mr Heenan bankrupt on the basis of non-payment of the judgment debt entered in favour of Mrs Gore. The statutory preconditions for adjudication were met. Addressing the possibility that Judge Saunders' judgment could be overturned if procured by fraud, Heath J expressed some "unease" about the circumstances in which the cheque was altered. Nevertheless, he did not consider that the possibility of fraud justified the Court in overturning an adjudication order which appeared, on its face, to be a judgment validly obtained, was not subjected to any appeal, and was upheld in judicial review proceedings.

[93] Heath J made some observations about the Bills of Exchange Act 1908 in relation to material alterations of cheques and when a cheque becomes "stale". Critically, the Judge then concluded (as several other Judges had in previous decisions):

> [105] Another problem arises from the timing of the cancellation. The bank was not allowed to make payment on the cheque because Mr Heenan had cancelled it at a time that predated the date for payment. Accordingly any post cancellation alteration to the date made no difference to whether the cheque could validly be paid. Whether the cheque had been presented by Mrs Gore on due date or seven months later, it would have been dishonoured.
>
> [106] Mr Heenan's other complaints were that the cheque was procured by duress and that it was presented on a conditional basis. Judge Saunders found against Mr Heenan on those points. The findings were not disturbed on judicial review by William Young J. There is no legal basis on which I can properly interfere with Judge Saunders' view.
>
> [107] Because there was a valid and enforceable debt on foot at the time the order of adjudication was made and all other statutory prerequisites had been met, Master Venning had no option but to adjudge Mr Heenan bankrupt. There is no reason now to hold that the judgment was irregularly obtained. Hence, no order of annulment can be made under s 119(1)(a) of the 1967 Act.

[94] Addressing the application to join 57 parties to the bankruptcy proceeding, Heath J noted:

> [110] The joinder applications stem, primarily, from disputes about the validity of the judgment debt in favour of Mrs Gore, the original ownership of the Queenstown property, the circumstances that led it to be registered in the names of trustees of the No 2 Trust, whether the HFK Trustees Ltd mortgage ever fell into arrears before the mortgagee sale ever took place and how the Public Trust has dealt with the proceeds of the mortgagee sale.

[95] Heath J went on to note:

> Although Mr Heenan made it clear that he sought to join parties to the existing bankruptcy proceeding, his application shows the 1960 Trust and himself as plaintiffs and the proposed 57 defendants in that capacity. All defendants are sought to be joined on the basis of their complicity in criminal activity designed to lock Mr Heenan into a fraudulently obtained bankruptcy and to prevent him from recovering what is rightfully property of the 1960 Trust. While that expresses Mr Heenan's complaints in very broad language, it does capture the flavour of the applications.

[96] Heath J then carefully dealt with the application to join specific groups of defendants. He found that there was no valid ground for the joinder of any of them and dismissed the application accordingly. We do not intend to discuss Heath J's conclusions in any detail. We simply note that we see no reason to differ from Heath J's conclusions in any respect. However, the flavour of the application may be gained from a description of the proposed defendants. These were:

- 15 of the proposed defendants comprised the judicial officers who had dealt with Mr Heenan's proceedings. It was alleged that the Judges had acted fraudulently and corruptly.
- Her Majesty the Queen and the Attorney-General .
- Parties associated with the cheque case including Mrs Gore and her son, Mrs Gore's solicitor and three police officers alleged to have made inadequate inquiries when investigating whether the cheque had been forged. All of this group were alleged to have committed fraud.
- The Official Assignee and a number of officers and lawyers associated with the Official Assignee or with legal proceedings taken on his behalf.
- The mortgagee of the Queenstown property, HFK Trustees Limited, and a range of people associated with the mortgagee sale. Mr Heenan's

complaint was that all of these proposed defendants were involved in a fraudulent attempt to deprive him of property.

- The purchaser of the Queenstown property and the company's directors and advisers.
- Mrs Heenan, her solicitors and the No. 2 Trust.
- The Public Trust and one of its officers.
- Parties associated with the seizure of one of the vintage cars.

[97] While finding that Mr Heenan continued to suffer from the frustrations caused by the events that led to his bankruptcy in 2000 and to the subsequent loss of the Queenstown property, Heath J concluded by observing that there were aspects of Mr Heenan's predicament which could be explored in an endeavour to resolve outstanding issues. These focused on the remaining funds held by the Public Trust. Heath J urged the Official Assignee to make inquiries of the Public Trust to establish the true position of the funds held in respect of the Heenan Family Trust No. 2 and "if possible to ensure monies were available both to meet outstanding debts and to direct any surplus to Mr Heenan".

[98] Heath J's final remarks were:

> [170] My final comment relates to Mr Heenan's personal position. I have no doubt that Mr Heenan feels genuinely aggrieved at what has happened to him. It is plain that there were issues that, if raised properly and with the benefit of competent counsel, could have been explored earlier, at a time when a Court may have been able to review earlier decisions in an appropriate way, particularly on appeal. I am thinking primarily of the allegations in relation to the cheque provided to Mrs Gore and to the possible prevention of sale of the Queenstown property until issues relating to the mortgage finance involved had been clarified.
>
> [171] Now, some nine years after Mr Heenan's bankruptcy, it is necessary for him to accept that the bankruptcy will remain in place and that there is no basis on which it can be challenged further.
>
> [172] I would urge Mr Heenan to accept this decision and to co-operate with the Official Assignee in attempting to resolve bankruptcy issues, if possible without the need to sell the classic motor vehicles. Whether the vehicles need to be seized will depend on the personal choices that Mr Heenan makes.
>
> [173] While I have no real expectation that Mr Heenan will accept this decision, I would like to be proved wrong.

[99] Heath J directed that the Registrar was not to accept for filing any further applications or memoranda arising out of the proceeding, other than a notice of appeal.

[100] Mr Heenan informed us that he intends to appeal against the judgment issued by Heath J.

**Summary in Relation to the Cheque Proceedings**

[101] By the time of William Young J's decision in the review proceedings of 1 December 2000, Mr Heenan had exhausted the available legal remedies to challenge the judgment in the cheque case upon which his adjudication in bankruptcy was founded. He did not appeal against William Young J's decision. Notwithstanding that, Mr Heenan has persistently and wholly unsuccessfully continued to challenge the judgment by Judge Saunders at every opportunity. On occasions, he has done so in response to proceedings brought by the Official Assignee but he has also sought to challenge Judge Saunders' judgment by a variety of other proceedings. These have included:

- The proceedings before John Hansen J determined on 12 June 2001.
- The attempted counterclaim in the proceedings before Chisholm J.
- Repeated applications for a discharge or annulment of his bankruptcy including those determined by Associate Judge Christiansen on 13 May 2005 and 27 June 2005 and by Associate Judge Doogue on 17 December 2008.
- The proceedings before Heath J determined on 12 May 2009.

[102] The application to join parties to the bankruptcy proceeding which Heath J determined could be considered to be interlocutory in nature but the other "applications" of various sorts are properly treated as the institution of legal proceedings for the purposes of s 88B. These include the application for judicial review before William Young J (CP6/00) and the application for review of Master Venning's decisions on the adjudication and the annulment application which John Hansen J dealt with (M18/01). Both of these were brought as discrete

proceedings by Mr Heenan separately from the bankruptcy file. The other applications for discharge or annulment brought in the bankruptcy proceedings file are in our view legal proceedings instituted by Mr Heenan. They were not brought by the filing of an entirely fresh proceeding but nor can they be properly treated as interlocutory in nature. They seek substantive relief in the form of setting aside the bankruptcy adjudication.

**Proceedings Relating to the Family Trusts and the Property at 11 Brunswick Street, Queenstown**

[103] Mr Heenan has also instituted many proceedings in relation to family trusts, the ownership of the Queenstown property, and the vintage cars. The history of the family trusts as described by Mr Heenan is recited in Heath J's judgment of 12 May 2009 at [11] and need not be repeated.

[104] In brief, Mr Heenan's proceedings relate to a trust purportedly established by deed dated 2 November 1960 known as the Heenan Family Trust 1960 and the Heenan Family Trust (No. 2) created by deed dated 1 August 1999.

[105] As several Judges have observed, the 2 November 1960 deed constituting the "Heenan Family Trust 1960" does not resemble a conventional trust deed. Heath J described it in the following terms:

> [12] The trust deed for the 1960 Trust produced to me is handwritten. It describes Mr Heenan's mother (Evelyn) as "settlor" and Mr Heenan, together with his two brothers (Ivan and Donald) as beneficiaries. Mr Heenan told me that the deed was prepared without the assistance of a lawyer. It is (in my words) cobbled together from a number of similar documents.

[106] After noting the purchase of a property at Bainfield Road, Invercargill as an investment, Heath J described what then happened (at [14]):

> [14] Ultimately, Willowbank and the Bainfield Road properties were sold. The proceeds of sale were used to acquire a property at 11 Brunswick Street, Queenstown (the Queenstown property), in 1985. The dwelling, which was intended to be the Heenan family home, was designed and (at least partially) built by Mr Heenan. On acquisition, the property was registered in the joint names of Mr and Mrs Heenan. Subsequently, the Queenstown property has been held to have been transferred into the Heenan

Family Trust No 2 (the No 2 Trust): *HFK Trustees Ltd v Heenan* (High Court, Invercargill, CIV 2005-425-233, 7 September 2006, John Hansen J).

[107] The position concerning the Heenan Family Trust 1960 is complicated by the fact that by deed dated 2 November 1960 the trust was said to have been amended "for the fourth time" to the Amended Heenan Family Trust 1960, with the trust funds said to be able to be used for the "100 per cent purchase of 11 Brunswick Street, Queenstown by the Heenan Family Trust 1960". These assets were said still to be held in trust by the Amended Heenan Family Trust 1960. The amended deed is typewritten and appears to follow a rather more conventional form than the original.

[108] The situation is further complicated by the Heenan Family Trust No. 2 said to have been constituted by deed dated 1 August 1999 under which Mr Heenan, his then wife and the accountant, Mr Fagerlund, were appointed trustees. That typed deed also appears to follow conventional form. It appears that on 11 September 2003, shortly after Mr Heenan served his then wife with an application to dissolve their marriage, the Heenan Family Trust No. 2 was amended by substituting a Mr Lee and a Ms Wadsworth as trustees for those originally appointed and deleting Mrs Heenan as a beneficiary.

[109] It was Mr Heenan's submission that, notwithstanding those matters, the Heenan Family Trust 1960 (or the Amended Heenan Family Trust 1960) remained in existence and was the registered proprietor of 11 Brunswick Street, Queenstown and that the Heenan Family Trust No. 2 (or the Amended Heenan Family Trust No. 2) was a sham from its inception. He adhered to that position despite having himself executed the original Heenan Family Trust No. 2 deed.

[110] He particularly relied on what he regarded as concessions said to have been made by Mrs Heenan and Mr Fagerlund that they never personally contributed funds to the purchase of Brunswick Street. How that affected the issues was not explained.

[111] In his submissions to us, Mr Heenan claimed there had been "massive fraud" wrought by all of those involved in Queenstown – registered proprietors, mortgagees, trustees, solicitors, real estate agents and the purchasers to mention a few. He also maintained that the second mortgagee was powerless to have sold

Brunswick Street because the mortgage was never in arrears. He elaborated at some length on that submission.

[112] The first of the numerous difficulties facing Mr Heenan's submission as to ownership of Brunswick Street is that, on 11 August 1999, the title to it was transferred by Mr and Mrs Heenan to Mr and Mrs Heenan and Mr Fagerlund for $510,000 and on 11 May 2002 the three registered proprietors transferred the property to Mrs Heenan and Mr Fagerlund "pursuant to a deed". Again, Mr Heenan personally signed the transfer. The transfer was presumably prompted by Mr Heenan's adjudication in bankruptcy on 11 December 2000 and his failures to have this decision annulled. The relevant title evidences those changes with a second mortgage to HFK Trustees Ltd (a company associated with Mr Fagerlund's accounting practice) registered on 19 December 2002.

[113] The evidence before us also showed a notice of demand issued to the two trustees on 22 June 2004 by HFK Trustees Ltd for $73,000 principal and $10,660 interest due but unpaid under the mortgage. A transfer to Vasili Enterprises Limited pursuant to the power of sale was registered on 15 February 2005.

[114] Mr Heenan has persisted with proceedings relating to the issue of ownership of the Queenstown property despite several court determinations against him.

[115] The first Court proceeding concerning the trusts was dealt with by Judge MacAskill in the Alexandra District Court (NP7/02) in a minute dated 7 August 2002. This proceeding was filed by Mr Heenan as trustee of the Heenan Family Trust 1960 and the Heenan Family Trust No. 2. The Judge recounted most of the terms of the 1960 handwritten deed before observing (paras [4] and [5]):

(a) Additions purporting to oust the jurisdiction of the Courts of New Zealand were handwritten and unlikely to have been drafted by a solicitor.

(b) Clause 10 of the deed said the Heenan Family Trust 1960 was outside the jurisdiction of the New Zealand "District or High

Courts" when neither Court existed under those names before 1980.

(c) For the reasons he described the Judge took the view that Mr Heenan had "cut and pasted" parts of two or more documents to produce the deed put in evidence.

(d) The Judge did not accept that the "handwritten copy of the deed is evidence of the alleged deed of trust" and that it "appears to be a forgery or to contain forged elements" and was "plainly unreliable".

[116] The position of the claimed trusts was also discussed by Panckhurst J in further proceedings instituted by Mr Heenan in the name of the "Heenan Family Trust" (*Heenan Family Trust v Gore* HC INV CIV 2003-425-105 9 December 2004). After citing the conclusion in Judge MacAskill's minute the Judge observed (at [30]) that of the copies of the Heenan Family Trust 1960 and the Heenan Family Trust No. 2 deeds handed to him by Mr Heenan, the former did not contain the ouster provision and the latter was a heavily overwritten photocopy. The Judge concluded that the trusts, said to be the plaintiffs in the case before him, had no interest or connection with the cause of action relating to the cheque and struck out the claim.

[117] Further proceedings instituted by Mr Heenan, this time purporting to be brought by the Heenan Family Trust (No. 2), the Amended Heenan Family Trust (No. 2) and the Amended Heenan Family Trust 1960 were struck out by Associate Judge Christiansen on 27 July 2005 (*Heenan Family Trust (No.2) and Others v RJM Heenan* HC INV CIV 2005-425-01 27 July 2005). For present purposes the relevant portion of the judgment reads:

> [1] The intitulment of the document indicates that proceedings are filed in the name of three plaintiffs, being the Heenan Family Trust (No.2), the Amended Heenan Family Trust (No.2), and the Amended Heenan Family Trust 1960 respectively. The proceedings have been filed by Mr D. S. Heenan. He has filed with the Court a photocopy of a Power of Attorney by which he claims authority to act in the plaintiffs' interests.
>
> [2] The first defendant is the estranged wife of Mr Heenan. She and the second and third defendants have interests connected to a property at 11 Brunswick Street, Queenstown, which was sold by mortgagee sale on

> 15 December 2004 to the nineteenth defendant. The sale was settled on 10 March 2005, and a credit balance after payment of costs and incidental expenses totalling $728,124.99 remains. Mrs Heenan, who is the registered proprietor of the property, claims ownership of the surplus sale proceeds, but Mr Heenan says the monies belong to the plaintiffs. Separate inter pleader [*sic*] action has been commenced in this court with a view to determining those claims.

[118] The reference to the interpleader proceedings relates to a proceeding brought by the vendor of the Queenstown property as mortgagee to determine who was entitled to the balance of the funds: *HFK Trustees Ltd v RJM Heenan and Public Trust, DS Heenan and PJ Wadsworth* HC INV CIV 2005-425-223 13 October 2006. The judgment in this case is the most definitive ruling as to the status of the trusts.

[119] In his judgment dated 7 September 2006, John Hansen J observed:

> [9] Notwithstanding that, in this proceeding Mr Heenan once more attempted to raise matters that had been ventilated in this Court on a number of occasions, and had been the subject of an unsuccessful attempt to appeal to the Court of Appeal. Despite my ruling Mr Heenan attempted to pursue these matters in cross examination of Mrs Heenan, although I attempted to limit him in that regard. His submissions rehearsed and repeated all of these matters ad nausem [*sic.*] as is apparent from a consideration of them. Again, that is a matter to which I will return.
>
> [10] Mr Heenan views the justice system and the Judges of the High and District Courts of New Zealand as corrupt, liars and dishonest. He accuses Judges of simply mimicking one another because they have not agreed with the position he takes.
>
> [11] These are serious and outrageous allegations without any evidence to support them. It is also ironic that Mr Heenan makes allegations of corruption and dishonesty against others, for reasons that will become apparent in the course of this judgment.

[120] John Hansen J considered the evidence in considerable detail. His conclusion on the validity of the Heenan Family Trust 1960 was:

> [43] Regrettably, I have reached the inevitable conclusion that the deed of the Heenan Family Trust 1960 produced to the Court is a forgery. Further, I am satisfied, to even a criminal standard of proof, that it was created by Mr Heenan to further his own ends. If that was not abundantly clear from the first 7 pages of the document it is made clear by the crudely created composite document, which on its face is made up of at least three, but probably four or five different documents. The method, which Mr Heenan has used in another document in this case, appears to be to use parts of various documents to create what he wants and then to photocopy the whole and present that as a purported copy of an original document.

[121] The Judge also concluded that deeds purporting to establish an "Amended Heenan Family Trust 1960" and an "Amended Heenan Family Trust No 2" were invalid as not being executed by the purported settlor.

[122] John Hansen J's conclusions were:

> **The Right to the Funds**
>
> [113] I have no doubt that the Heenan Family Trust No.2 has a right to the funds interpleaded by the plaintiff.
>
> [114] The property in Brunswick Street was transferred to Mr & Mrs Heenan jointly on 10 July 1985. I am satisfied that was in their own capacity, and there is no such legal entity as the Heenan Family Trust 1960. The Heenan Family Trust No.2 came into existence on 1 August 1999. Shortly thereafter, on 11 August 1999 the property was transferred from Mr & Mrs Heenan jointly to Mr & Mrs Heenan and Neville Petrie Fagerlund. The transfer was registered on 5 October 1999. The consideration was shown to be $510,000-00. There is no evidence of any gifting programme or such matters that are normally associated with such transfers, but there has been no suggestion in the course of this hearing that that was not undertaken.
>
> [115] Mr Heenan's argument that Mrs Heenan and Mr Fagerlund are merely proprietors is ill-conceived. They clearly hold Brunswick Street as trustees for the Heenan Family Trust No.2.
>
> [116] Mr Heenan retired from the Trust on the 14th day of May 2002. I am satisfied he did that of his own volition. Mr Heenan is clearly not a man who could be coerced or cajoled into doing things he did not wish to do. As a consequence of that retirement there was a transfer registered on the title on 27 June 2002 to Mrs Heenan and Mr Fagerlund. In my view, it is clear beyond peradventure that the Heenan Family Trust No.2 is entitled to the funds presently held by the plaintiff.
>
> [117] I direct that the current trustees of that Trust are the Public Trust and Mrs Roberta Jane Mary Heenan. I also direct that the proceeds of sale should be paid to the Public Trust and lodged in an interest-bearing account on behalf of the Heenan Family Trust No.2. There will be a further order that the costs of the Public Trust be paid from the proceeds of sale.
>
> [118] I further order that the said funds should be held by the Public Trust pending further order of the Family Court in respect of the Property (Relationships) Act proceedings between Mr & Mrs Heenan.
>
> ...
>
> [120] The Registrar of the High Court at Invercargill is to refer the two documents annexed to this judgment [Heenan Family Trust 1960 deed and affidavit of service of dissolution proceedings] to the New Zealand Police for investigation, given my findings in relation to them.

[123] Mr Heenan unsuccessfully appealed to the Court of Appeal against John Hansen J's findings: *Heenan v HFK Trustees Ltd* [2007] NZCA 93. In delivering the judgment of the Court, Hammond J described at [2] Mr Heenan's approach as "inappropriate, vexatious and indeed outrageous, by way of commentary on the High Court judgment and the position of various other Judges in this Court". The Court of Appeal held the "Judge was entitled to proceed on the basis that the titles to the property and the various documents before him meant exactly what they said (save for the forged, purported 1960 Deed of Trust)" and that there was "no arguable case for the position taken by Mr Heenan": at [22] and [23].

**Conclusions in Relation to the Trust Proceedings**

[124] The findings of John Hansen J and the Court of Appeal bind Mr Heenan. The attempts by him since 7 September 2006 - or, at the latest, 23 March 2007 – to re-litigate issues concerning the sale of Brunswick Street must be regarded as presumptively vexatious. They include *Heenan as trustee of the Heenan Family Trust 1960 and Lee, Wadsworth and Heenan as trustees of the Amended Heenan Family Trust 1960 and Amended Heenan Family Trust No.2 v Gore and Others* (DC DUN 5 December 2006, Judge C P Somerville), *Heenan Family Trust 1960 and Amended Heenan Family Trust 1960 and Amended Heenan Family Trust No.2 v Gore and Others* HC DUN CIV 2006-412-1023 and 1031, 8 October 2007 and 19 December 2007 (Costs) and 1 April 2008 (Costs) Associate Judge Gendall). We note that in Associate Judge Gendall's judgment of 8 October 2007 he identified (at [86]-[89]) a number of reasons additional to those discussed by John Hansen J and the Court of Appeal which also showed the Heenan Family Trust 1960, the Amended Heenan Trust 1960 and the Amended Heenan Family Trust No. 2 were invalid.

[125] Mr Heenan presented lengthy submissions to us covering the same issues as had failed before John Hansen J and other Judges. He claimed that the formation of the Heenan Family Trust No. 2 was Mr Fagerland's idea and that he merely "went along with it". He also claimed that the trust was established "to prevent the banks

taking the property", a claim that lends weight to the adverse findings made by a number of Judges as to his credibility.

**The Vintage Cars**

[126] We deal with the issue of motor vehicles only because they have formed part of the extensive litigation in which Mr Heenan has been involved. In the main, the proceedings in relation to the cars have not been instituted by him. At heart, Mr Heenan asserts that the vehicles are owned by the Heenan Family Trust 1960 and do not form part of his bankrupt estate. The litigation record put in evidence before us was incomplete – no doubt because most of the proceedings relating to the vehicles were instituted by the Official Assignee. Thus, what follows may itself be incomplete.

[127] Following Mr Heenan's adjudication, the Official Assignee concluded the assets of his bankrupt estate included at least one classic car. He required Mr Heenan to deliver it to him. Mr Heenan refused.

[128] After a defended hearing, John Hansen J made an order on 9 May 2002 (HC INV CP2/02) restraining Mr Heenan from disposing of a 1939 Buick convertible and requiring him to deliver it to the Official Assignee. As earlier noted, Chisholm J made an order on 31 October 2003 for Mr Heenan's committal if he did not obey the order. Mr Heenan refused to do so and was imprisoned.

[129] Panckhurst J on 20 December 2006 granted an application by the Official Assignee on formal proof and in Mr Heenan's absence directing Mr Heenan to deliver up the Buick convertible, registration "IBUICK", forthwith (*Official Assignee v Heenan* HC INV CIV 2002-425-15). The Judge recorded that the Official Assignee had recovered parts of a second Buick but Mr Heenan continued to refuse to disclose the whereabouts of the complete vehicle.

[130] Describing the only contentious issue as whether the Buicks were owned personally by Mr Heenan on 11 December 2000 or whether they were owned by the Heenan Family Trust 1960, Panckhurst J referred to Judge MacAskill's judgment

before concluding Mr Heenan was the owner of the vehicles on adjudication. He continued:

> [15] … About the only indication to the contrary is a Certificate of Registered Ownership of a Motor Vehicle issued by the Transport Registry Centre on 23 April 2001. This certificate records that the 1939 Buick convertible, bearing registration plate IBUICK, was acquired by the owner in August 1992, the registered owner being:
>
> DAVID STANLEY HEENAN
> 11 BRUNSWICK STREET
> QUEENSTOWN
>
> Beneath this description of the registered owner appears:
>
> Preferred/Trading Name :
> HEENAN FAMILY TRUST
>
> [16] Does this document lend substance to Mr Heenan's claim that the Heenan Family Trust 1960 owned the vehicles, or at least the one registered IBUICK? I do not think so. The certificate impresses me as a very curious document. It records Mr Heenan to be the registered owner. What is to be made of the reference to a "preferred trading name", I do not know. In any event, the Trust is identified as the Heenan Family Trust, whereas the two trusts of that name are said to be distinguished by the addition of the description "1960" in one case, and "No. 2" in the other.
>
> [17] I regard the date of the certificate as highly significant. It was issued on 23 April 2001, at about the very time of the intended auction to be conducted by Todds Car Auctions of Invercargill. In my view the only sensible inference is that the certificate was obtained in an endeavour to lend substance to the claim that a Trust, rather than Mr Heenan personally, owned both the vehicles which were about to be sold.
>
> [18] I am satisfied on the basis of the affidavit evidence that Mr Heenan, in person, was the owner of the two vehicles at the relevant time. There is no evidence to establish the existence of the 1960 Trust, let alone that it owned the subject vehicles.

[131] Mr Heenan continues to refuse to disclose the whereabouts of the Buick. He was unabashed in saying the vehicle was secreted and would continue to remain so until he achieved what he regarded as justice. He made plain he has not the slightest intention of complying with the various orders against him, even though he recognised he risks further imprisonment for contempt in maintaining that stance.

[132] Mr MacDuff, a senior investigating solicitor for the Official Assignee, said in an affidavit sworn for this hearing that surrender of the 1939 IBUICK "is the only

matter preventing the winding-up of the bankrupt estate". If Mr Heenan had "given up his car earlier he would have been entitled to his discharge".

[133] As far as we are aware Panckhurst J's judgment has not been appealed but Mr Heenan continues to attack it. He claimed it was a "blatant lie" and the Official Assignee's stance concerning the vehicle was only "done to keep me in bankruptcy".

[134] He put before us material suggesting Mrs Heenan accepted the 1924 Studebaker and the two 1939 Buicks were owned by the Heenan Family Trust 1960 because she abandoned any claim to them in her Property (Relationships) Act 1976 proceedings. He also put before us a number of documents concerning what he said were the registration and insurance records concerning the vehicles. The photocopies he handed up would appear to have been the same photocopies as he has handed the various Judges who dealt with this issue in the judgments reviewed.

[135] Whatever may be the true position concerning the motor vehicles, for the purposes of the present application, the fact remains that Panckhurst J's judgment of 20 December 2006 (and the other judgments reviewed) holding Mr Heenan was the owner of the two Buicks at the date of adjudication, coupled with John Hansen J's finding that the Heenan Family Trust 1960 does not exist, determines the issue of the motor vehicles definitively against Mr Heenan.

**Conclusions**

[136] Viewed overall it is abundantly clear that for a period of nearly nine years Mr Heenan has instituted multiple proceedings in both this Court and the District Court attempting, wholly unsuccessfully, to have his bankruptcy set aside and to challenge the mortgagee's sale of the Queenstown property and the disposition of the proceeds. He has also been engaged in extensive efforts through the Courts to avoid the vintage cars falling into the possession of the Official Assignee. We acknowledge that, in the latter case, Mr Heenan has not himself instituted the proceedings in relation to the vintage cars which have been largely brought by the Official Assignee.

[137] There can be no doubt that the proceedings instituted by Mr Heenan either in his own name or purportedly as a trustee of the family trusts have been instituted persistently and without reasonable grounds. We reach that conclusion on the footing that Mr Heenan has continued to relitigate the issues long after they have been definitively determined by the High Court and on appeal to have no merit. The same or similar arguments have been constantly repeated and consistently rejected. In his recent judgment, Heath J found there to be no substance in Mr Heenan's complaints. Our own review of his complaints has led us to the same conclusion.

[138] We have no doubt that the proceedings instituted by Mr Heenan thoroughly deserve to be described as vexatious. They bear many of the features identified in *Brogden* (above). They involve a deeply entrenched pattern of behaviour characterised by a refusal to accept adverse decisions; extravagant and baseless allegations against a wide range of people including judicial officers; an abject failure to comply with the rules of Court; the filing of prolix and confusing pleadings; and a failure to recognise any distinction between pleadings, evidence and submissions.

[139] We conclude that Mr Heenan has persistently and without any reasonable grounds instituted vexatious legal proceedings in terms of s 88B Judicature Act 1908.

[140] We also conclude, as a matter of discretion, that it is appropriate to make an order in terms of s 88B(1). Mr Heenan's conduct of the litigation brought by him can only be described as contemptuous. He has persisted in making scandalous and baseless allegations of corruption, fraud and perjury against officers of the Court and a wide range of other individuals who have been in any way connected with his affairs. In addition, he has refused to comply with Court orders and directions and has been deliberately evasive in his dealings with the Court and the Official Assignee.

[141] We also draw on the affidavits of Mr Fantham who has taken responsibility for checking documents which Mr Heenan has sought to file in the Invercargill, Dunedin and Christchurch registries of this Court. He confirms that the documents

have consistently failed to comply with the requirements of the High Court Rules or have needed extensive amendment before they could be accepted for filing. He deposes that copies of his correspondence with Mr Heenan now fill four Eastlight folders. He produced samples of documents Mr Heenan has attempted to file. These confirm our earlier comment about the scandalous and prolix nature of all Mr Heenan's attempts at pleadings and his general protracted interactions with the Court. In a second affidavit sworn on 1 April 2009, Mr Fantham updates his earlier affidavit and deposes that on at least 10 occasions between September 2008 and March 2009 he either rejected documents presented for filing by Mr Heenan or advised him the registry would not process other requests by him.

[142] Notwithstanding advice given by the Court to Mr Heenan about the limits of the Court's jurisdiction in this current proceeding, Mr Heenan continued to file documents seeking remedies beyond the Court's jurisdiction and continued to make the extravagant and unsupportable allegations he has made throughout the proceedings examined in this judgment. He repeated allegations of this kind throughout the submissions before us.

[143] We have no confidence whatsoever that Mr Heenan will voluntarily desist from continuing to institute further vexatious proceedings. We are satisfied the time has well and truly come when a stop must be brought to Mr Heenan's litigious activities. The resources of the judicial system should no longer be squandered on him. Nor should the opponents to his litigation be any further harassed. The courts' resources must be reserved for those who have genuine grievances to be settled. An order under s 88B will therefore be made.

[144] We have considered whether leave should be made on terms, given observations by Heath J in his judgment of 12 May 2009 about some unusual features surrounding the HFK mortgage on the Queenstown property and some apparent short-comings in the financial statements of the Public Trust in relation to the Heenan Family Trust No. 2. However, we have decided to make an order on an unconditional basis. If Mr Heenan considers he has proper grounds for leave to commence a proceeding under s 88B(2), he is entitled to apply. We give no indication as to whether leave will be granted if he does.

**Result**

[145] We order that:

a) No civil proceeding shall, without the leave of this Court, be instituted by the respondent in any court either on his own behalf or in any fiduciary or representative capacity; and

b) No civil proceeding instituted by the respondent in any court either on his own behalf or in any fiduciary or representative capacity shall be continued by him without the leave of this Court.

[146] If the Attorney-General seeks costs against the respondent, a memorandum should be filed and served within 14 days of the date of this judgment. The respondent will have 14 days thereafter to file and serve any memorandum in response.

[147] We have already mentioned our appreciation for Mr Lester's helpful role in this proceeding as *amicus*. We conclude this judgment by recording our thanks to Mr Gunn who conducted the case throughout with conspicuous fairness and restraint.

_____

A P Randerson J
Chief High Court Judge

_____

Hugh Williams J