

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

**CIV 2008-404-008255**

IN THE MATTER OF the Insolvency Act 2006

AND

IN THE MATTER OF the bankruptcy of Alister Taylor

BETWEEN COMMISSIONER FOR FAIR TRADING  
Judgment Creditor

AND ALISTER TAYLOR  
Judgment Debtor

Hearing: 25 June 2009

Appearances: G D Neil for the Judgment Creditor  
No appearance for the Judgment Debtor

Judgment: 25 June 2009

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**ORAL JUDGMENT OF ASSOCIATE JUDGE ROBINSON**

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Solicitors:  
Meredith Connell, PO Box 2213, Auckland

A Taylor (Judgment Debtor), c/o NZ Post, Russell, bookshop, Trader's Mall, York Street,  
Russell, Bay of Islands

[1] Mr Taylor does not appear at this hearing. He has forwarded by e-mail a request for an adjournment which is supported by a medical certificate from his psychiatrist, Mr McCallum. The reason for seeking an adjournment advanced by Mr Taylor is to give him further time to instruct counsel and to consider his defence to these proceedings. He also wants further time to negotiate a settlement.

[2] His e-mail questions the method of service of these proceedings on him and also the method of service of the proceedings involving registration of the judgment the judgment creditor has in its favour which was entered against the debtor in New South Wales. Furthermore, he claims that the requests he has made for documents have not been complied with.

[3] In opposing the application for an adjournment, counsel for the creditor points out that there have been considerable difficulties in locating the debtor which resulted in the need for orders for substituted service. Requests by the debtor for documentation relating to registration of the judgment in Auckland and service of the bankruptcy notice and bankruptcy proceedings have, according to counsel, been met in a timely fashion. I observe in this respect that the debtor claims a request for documents has only been partly complied with. He says that on 1 June he received part only of the documents and further documents on 22 June 2009. He also claims that requests for documents relating to the orders in New South Wales have not been complied with and is seeking an order of this Court directing the creditor to supply those documents.

[4] In support of his submission that requests for documents relating to the registration of the New South Wales order and bankruptcy proceedings have been met in a timely fashion, counsel for the creditor has supplied copies of correspondence with the courier to the effect that documents relating to the bankruptcy proceedings were couriered to the debtor on 25 May 2009. I observe the debtor's address is given as at c/o NZ Post, York Street, Russell. Further documents relating to the registration of the judgment in Auckland were couriered to the debtor on 19 June 2009. At that stage, the debtor's address was at NZ Post, Russell, Bookshop, Trader's Mall, York Street, Russell. That is the only address available to

the creditor and if there was any delay in obtaining those documents from the address to which they were couriered, then such delay has been caused by the debtor because he has not supplied his residential address to the creditor to enable prompt service.

[5] These proceedings result from the debtor's failure to pay an order for costs made in the Supreme Court of the State of New South Wales. That order was registered under a reciprocal Enforcement of Judgments Act in this Court. There are very limited grounds available to the debtor to set aside registration. The debtor has had ample opportunity of investigating those grounds and in particular I observe that when this matter was set down for hearing on 27 May 2009, at the request of the debtor the proceedings were adjourned for one month to the day to enable the debtor to instruct a lawyer. The joint memorandum which he signed at that time recorded that he considered a one month adjournment sufficient to enable him to instruct counsel. Consequently, the debtor has had plenty of time to instruct counsel and to investigate any defences that may be available to him.

[6] I certainly do not consider it necessary or appropriate to make any orders requiring the creditor to supply any further documents to the debtor in the absence of any indication by the debtor that there is a genuine dispute relating to payment.

[7] So far as service is concerned, the affidavit of Mr Ward, the process server who endeavoured to serve the bankruptcy notice and other proceedings on the debtor, establishes that efforts to locate the debtor at the debtor's last known address, being 2/23 Airdrie Road, Swanson, were unsuccessful. Mr Ward claims to have previously served the debtor at that address. He says that when he visited the address on 29 April 2008 at 5:40 pm, the warehouse was closed up and appeared vacant. He observed that the door to the upper storey apartment was sealed up with duct tape and that a pallet was wedged against the door. On speaking to a neighbour, Mr Ward was advised that the property had been condemned by the Waitakere City Council due to asbestos contamination and that the former occupant had vacated the property some three months earlier. Information relating to the former occupant supplied by the neighbour led Mr Ward to believe the former occupant was the debtor. Mr Ward says he checked databases in an effort to locate the debtor's

current address, without success. Having regard to that evidence, it is not surprising that the Court made an order for substituted service. In any event, the debtor's signature to the joint memorandum seeking an adjournment signed on 25 May 2009 must constitute an appearance and to a certain extent an acknowledgement that the proceedings have been properly served.

[8] In the circumstances, I have concluded that it is not appropriate to adjourn these proceedings. The purpose of the adjournment, according to the debtor and his psychiatrist, is to enable the debtor to instruct counsel. However, the debtor already has had more than sufficient time to instruct counsel. He says that he is unable to instruct counsel because he cannot afford the costs involved and has been unable to obtain legal aid.

[9] I fail to see how a further adjournment is going to change that situation and there is every likelihood that during the next month the debtor will not be able to obtain the funds to instruct counsel or to obtain legal aid. He has made efforts to settle. Quite properly, I am not advised of the exact proposals. Those efforts have been unsuccessful. This Court cannot compel the creditor to accept offers of settlement from the debtor unless, of course, the offer involves complete satisfaction of the amount claimed. Consequently, further adjournments for the purpose of enabling further investigation or further efforts to settle are pointless.

[10] The debtor, I am satisfied, has had ample opportunity to present his defence. He has not done so. He has not advanced any good grounds for an adjournment. In the circumstances, therefore, his application for an adjournment is declined and I direct that the matter proceed today. The creditor has submitted a certificate in accordance with the rules, establishing that the debt has not been paid. In the circumstances, therefore, I am satisfied the debtor has committed an available act of bankruptcy and accordingly he will be adjudicated bankrupt.

[11] There will be an order that the debtor pay the creditor's costs on a 2B basis with disbursements as fixed by the Registrar.

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MD Robinson  
Associate Judge