

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

CIV-2009-485-1448

IN THE MATTER OF the Insolvency Act 2006
AND IN THE MATTER OF the Bankruptcy

BETWEEN THE COMMISSIONER OF INLAND
REVENUE
Judgment Creditor

AND PHILIP JOHN STRATFORD
Judgment Debtor

Hearing: 24 November 2009

Appearances: P.Latimer - Counsel for Judgment Creditor
No appearance for Judgment Debtor

Judgment: 24 November 2009 at 10.25 am

ORAL JUDGMENT OF ASSOCIATE JUDGE D.I. GENDALL

Solicitors: Inland Revenue Department, PO Box 1462, Wellington
Langford Law, PO Box 344, Wellington

[1] Before the Court is an application by the judgment creditor to have the judgment debtor adjudicated bankrupt.

[2] On 10 August 2009 the judgment creditor served the judgment debtor with a Bankruptcy Notice claiming the sum of \$1,046,630.41 which represented a judgment plus costs obtained by the judgment creditor against the judgment debtor in the District Court at Wellington on 12 March 2009.

[3] The judgment debtor did not respond to the Bankruptcy Notice and the creditor's application for an adjudication order was filed on 8 September 2009.

[4] Those bankruptcy proceedings were then served upon the judgment debtor on 10 September 2009.

[5] The matter was first called in this Court on 12 October 2009. At that stage counsel appearing for the judgment debtor requested an adjournment to 2 November 2009 to enable the judgment debtor to lodge a s. 113 Tax Administration Act Application and to provide full details of his asset and liability position both to the judgment creditor and the Court.

[6] That adjournment was agreed to by the judgment creditor.

[7] This matter was next called on 2 November 2009 when again it was adjourned this time to 23 November 2009. This was to enable the judgment debtor to complete amended taxation returns and for a reconsideration of past taxation assessments to be made.

[8] Yesterday 23 November 2009 the matter was called again. According to the judgment creditor the debt then outstanding from the judgment debtor which had continued to grow including penalties and interest totalled nearly \$2.3 million. The judgment creditor sought an order for adjudication yesterday but this was opposed by the debtor. This was on the basis that he said he was continuing to assemble

information to apply for a reassessment of the taxation assessed against him for several years and was confident this would rectify the situation.

[9] Noting that the debt was substantial, and that there was no evidence before the Court on 23 November 2009 of the defendant's efforts to obtain a reassessment of the taxation concerned, and over the objection of the judgment creditor, a short adjournment of this matter to today, 24 November 2009 was granted.

[10] The matter was called today, 24 November 2009 at 10.00 am. Mr. Latimer appeared as counsel for the judgment creditor. There was no appearance by Mr. Langford or any other counsel for the judgment debtor.

[11] Instead, Mr. Langford had properly advised the Court that he did not intend to appear today and instead he provided both to the Court and to the judgment creditor a copy of a debtor's petition for bankruptcy which had been signed by the judgment debtor Mr. Stratford and apparently lodged with the Official Assignee's office, yesterday 23 November 2009 at about 4.00 pm.

[12] From the copy of that Debtor's Petition provided to the Court, it is noted that the date stamp of the NZ Insolvency & Trustee Service on 23 November 2009 has been affixed. The Debtor's Petition does appear to have been signed by the judgment debtor, Mr. Stratford but rather curiously it seems to be dated 5 October 2009.

[13] Notwithstanding that this Debtor's Petition was provided to the Official Assignee yesterday, 23 November 2009, the Court has received a message from the Official Assignee this morning relating to this matter. The message is to the effect that in the Official Assignee's view, there are deficiencies with this Debtor's Petition and certainly issues surrounding this whole matter, given that the judgment creditor's application is before the Court and was to be called today, which raise concern.

[14] That said the Official Assignee has advised that he has not accepted the Debtor's Petition pursuant to s. 47(1) Insolvency Act 2006.

[15] It is clear from s. 47(1) Insolvency Act 2006 that a debtor who files an application with the Official Assignee to have himself adjudicated bankrupt is automatically adjudicated bankrupt when the application is filed. In terms of s. 47(2) Insolvency Act 2006 that adjudication is to have the same consequences as if the debtor had been adjudicated bankrupt by the Court.

[16] Notwithstanding this directive in s. 47(1) Insolvency Act 2006, the current position appears to be that the Official Assignee has not accepted that Debtor's Petition, (a copy of which is before the Court) as a valid application for adjudication by the debtor, Mr. Stratford.

[17] That said, the present creditor's application before the Court is to be considered on its merits.

[18] Filed in the Court is a certificate signed on behalf of the judgment creditor confirming that a current debt of \$2,285,981.08 remains outstanding from the judgment debtor. That is a substantial sum. There is no statement of defence or opposition to the present application filed by the judgment debtor. Nor are there any details of his asset and liability position.

[19] Effectively therefore the application before the Court is unopposed. An order for adjudication is clearly appropriate given that the judgment debtor has committed an act of bankruptcy which remains unremedied.

[20] The application by the judgment creditor therefore succeeds. The following orders are now made:

- (a) An order for adjudication of the judgment debtor, Philip John Stratford is made.
- (b) Costs are awarded to the judgment creditor on a 2B basis together with disbursements as fixed by the Registrar.

(c) This order is timed at 10.25 am.

‘Associate Judge D.I. Gendall’