

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

CIV 2009-463-000223

IN THE MATTER OF the Insolvency Act 2006

AND

IN THE MATTER OF the bankruptcy of Brian John Payne

BETWEEN BRIAN JOHN PAYNE
 Judgment Debtor

AND VERNA CHRISTINE MCGREGOR
 Judgment Creditor

Hearing: 29 September 2009

Counsel: R Vigor-Brown for judgment creditor
 A Wills for judgment debtor

Judgment: 29 September 2009

ORAL JUDGMENT OF ASSOCIATE JUDGE ABBOTT

Solicitors:
East Brewster, PO Box 1742, Rotorua for judgment debtor
R Vigor-Brown, PO Box 1032, Rotorua for judgment creditor

[1] The judgment creditor, Mrs McGregor, has applied to adjudicate the judgment debtor, Mr Payne, bankrupt. The application was to be heard on a defended basis today.

[2] The parties reached agreement on terms to settle their dispute immediately before the commencement of the hearing. They ask that the Court record the terms of their agreement by way of consent orders.

[3] The application is based on a consent order of the Family Court at Rotorua sealed on 25 February 2009. Under that order Mr Payne was to have paid Mrs McGregor the sum of \$72,500 on 29 January 2009 in settlement of her claim in respect of relationship property. The payment was not made. Mrs McGregor issued a bankruptcy notice. Mr Payne did not take steps to challenge that notice. Mrs McGregor subsequently filed the application that is now before the Court. Mr Payne opposed that application, essentially on the basis that he had assets from which the debt could be paid but was having difficulty realising those assets. He was inviting the Court to exercise its discretion not to adjudicate him bankrupt.

[4] I make the following orders by consent:

- a) Mr Payne is indebted to Mrs McGregor as at today's date for the sum of \$74,480, comprising the judgment debt, costs claimable on the bankruptcy notice of \$790, and costs claimable on issue of the present application of \$1,190.
- b) Mr Payne is to pay Mrs McGregor today the sum of \$20,000, by bank cheque.
- c) Mr Payne is to pay Mrs McGregor the balance of \$54,480 on or before 5:00pm on 19 February 2010, again by bank cheque.

- d) In the event that Mr Payne defaults in payment of the balance by the due date he agrees to withdraw his opposition and to consent to an order adjudicating him bankrupt.
- e) Mrs McGregor's application is adjourned to the Bankruptcy List at 10:00am on 22 February 2010 for determination.
- f) The parties agree that arrears of approximately \$3,000 due by Mrs McGregor to Mr Payne for rent for the occupation of the downstairs flat at 2A Okawa Bay Place, Lake Rotoiti are forgiven by Mr Payne as a contribution towards Mrs McGregor's costs in respect of this application.
- g) Mrs McGregor is to resume payment of rent for her occupancy of the flat at 2A Okawa Bay Place, at the rate of \$140 per week, and continue those payments until she ceases to reside in the flat. The payments are to be made weekly in advance, on Thursday of each week, with the next payment due this Thursday, 1 October 2009.
- h) No further costs are payable by Mr Payne to Mrs McGregor in respect of this application, provided the payment due on 19 February 2010 is made. In the event that that payment is not made, and Mrs McGregor seeks an order for adjudication on 22 February 2010, the parties are agreed that she will be entitled to seek costs in respect of that appearance and any succeeding appearances.

Associate Judge Abbott