

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

**CIV 2013-463-000063  
[2013] NZHC 1317**

BETWEEN	THE COMMISSIONER OF INLAND REVENUE Judgment Creditor
AND	HUBERT HAYES Judgment Debtor

Hearing: On the papers

Appearances: M Brown for the Judgment Creditor  
H Hays in person the Judgment Debtor

Judgment: 5 June 2013

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**JUDGMENT OF ASSOCIATE JUDGE CHRISTIANSEN**

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*This judgment was delivered by me on  
05 June 13 at 4:30pm, pursuant to  
Rule 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar  
Date.....*

[1] By my minute dated 15 May 2013 I informed the parties that it appeared Mr Hays had not filed any challenge to the Commissioner's bankruptcy notice within 10 working days of service of that notice upon him. I advised that it appeared therefore that the Court had no jurisdiction to treat as a challenge to the bankruptcy notice, the notices Mr Hays filed after the 10 working day period. I requested the parties to file a response to these comments.

[2] Both the Commissioner and Mr Hays have responded.

### **Mr Hays' response**

[3] It advises:

We completely reject your MINUTE without dishonour as We believe it perverts facts, truths and is not required as is stipulated below... I believe that it is impossible without intention to intimidate, diminish rights, avoid accepted facts/agreement, to make so many mistakes in such a document as referred to above.

...

1. In paragraph [1] of the MINUTE states the bankruptcy notice was served on Mr Hays. I reject your presumption, as MINUTE was accepted by Master Hubert in being (Genesis 2.7).
  - a) Is the vessel Mr Hays not an artificial construct/Crown entity? I require your answer to this question be made under the penalties of perjury.
  - b) Should subparagraph a) above be true, can it perform anything? I require your answer to this question be made under the penalties of perjury.
  - c) Are you not trying to mislead Us and make a joinder between Master Hubert in being and Mr Hays? I require your answer to this question be made under the penalties of perjury.

[4] Later in the notice it is stated:

7. I am providing response to your MINUTE on time as you requested in paragraph [6] of the MINUTE, however We reject your offer to issue judgment about this matter. The reason for that rejection is the fact that we reached a lawful and legal binding agreement between the parties THE COMMISSIONER OF IR and HUBERT HAYS and the assistance of Court is not necessary. Is not the agreement of the parties the law of the contract. Stated Account of Obligation

including with Obligation payment advice was already sent to Naomi Ferguson CEO of IR/Commissioner of IRD on twenty-first day of May AD2013 (copy attached) to perform in accordance with agreement.

[5] And later:

...

In the case of repeating your tactic to twist facts as in MINUTE, and questioned above, we will take your action as harassment which includes a penalty and liability of five thousand (5,000) NEW ZEALAND SILVER PROOF ONE DOLLAR COINS of lawful substance money, or any equivalent value in current NEW ZEALAND legal currency, as compensation for loss of life.

[6] Attached to that notice is a document headed 'Stated Account of Obligation' dated 20 may 2013 requiring payment by the Commissioner of Inland Revenue Department the sum of \$1,211,000 in "NEW ZEALAND SILVER PROOF LAWFUL TENDER ONE DOLLAR COINS", claimed to be due:

In the matter arising from the agreement of the parties... by way of the tacit acceptance by silence and your failure to rebut Our counterclaim, [to] satisfy the obligation to Hubert, being the agreed costs, compensation and reimbursements, as stated in the Counter Claim Notices.

[7] The basis for this purported counterclaim debt is the apparent failure of the Commissioner of Inland Revenue to respond to the counterclaim documents that were filed in response to service of the Commissioner's bankruptcy notice.

## **Background**

[8] The Commissioner has a sealed order for judgment in respect of Mr Hays' failure to pay tax. Execution of that judgment has not been halted by a Court. Mr Hays has been served with a bankruptcy notice and has not within the time permitted by s 17(4) of the Insolvency Act 2006 (the Act) complied with the requirements of that notice, nor has he satisfied the Court within 10 working days of service of the bankruptcy notice, that he has a cross claim against the Commissioner.

## **Considerations**

[9] Section 17 of the Act requires any cross claim to be filed and served within 10 working days of service of the bankruptcy notice. In this case service of such was required by 16 April 2013. Mr Hays' notices were not received until 18 April 2013. Apparently they were not served upon the Commissioner.

[10] Although the Court has a general power under s 417 of the Act to "extend any time limit imposed by this Act, or by rules or regulations made under this Act, for doing any act or thing", it is clear that the time limitation in s 17(1)(d) does not "limit" the time for doing of an act, rather it defines an "act of bankruptcy" and thus s 417 has no application.<sup>1</sup>

[11] In any event it is clear that Mr Hays counterclaim documents fall far short of qualifying as a "cross claim". Section 17(7) requires that the cross claim must "equal to, or greater than, the judgment debt" and it is one which "the debtor could not use as a defence in the action of proceedings in which the judgment or order... was obtained".

[12] Further and pursuant to r 5.61 of the High Court Rules there is an absolute prohibition on a defendant advancing any set off or counterclaim in a proceeding by the Crown for recovery of taxes, duties or penalties: *Attorney-General v Bell-Booth Group Limited* (1991) 3 PRNZ 416. In short a judgment debtor cannot raise a set off or counterclaim in bankruptcy proceedings where the debt consists of income tax and penalties.

## **Conclusions**

[13] Mr Hays' papers were filed out of time.

[14] Mr Hays is not legally entitled to file a notice of counterclaim. The Court has no jurisdiction to address it.

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<sup>1</sup> *Brookers Insolvency Law in Practice* 1-214.

[15] An act of bankruptcy has now occurred and the Commissioner is entitled to commence proceedings on that basis.

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**Associate Judge Christiansen**