Inland Revenue
Te Tari Taake

CASE SUMMARY

Application to set aside bankruptcy notices dismissed

Issue date: 29 October 2026

CSUM 26/16

The High Court dismissed Mr McGuire's application to set aside bankruptcy notices issued for unpaid costs judgments. The Court found no genuinely triable cross claim or basis to set aside the notices as an abuse of process.

Case	*The Commissioner of Inland Revenue v McGuire* [2026] NZHC 3361
Legislative References	Insolvency Act 2006, s 17(1)(d)(ii); Tax Administration Act 1994, ss 109, 113, pts 8 and 8A; High Court Rules 2016, rr 1.3(1), 5.61(2), 15.15; Crown Proceedings Act 1950, s 30; Supreme Court Rules 2004, r 30(1); Income Tax Act 2007, s RM 2.
Case Law References	*Commissioner of Inland Revenue v McGuire* [2022] NZDC 12179; [2023] NZHC 1314. *McGuire v Commissioner of Inland Revenue* [2024] NZHC 2796. *McGuire v Commissioner of Inland Revenue* [2026] NZCA 329. *McGuire v Commissioner of Inland Revenue* [2024] NZHC 883. *McGuire v Commissioner of Inland Revenue* [2025] NZCA 641. *McGuire v Commissioner of Inland Revenue* [2026] NZSC 52. *Re McGuire, ex parte Commissioner of Inland Revenue* [2026] NZHC 1355. *Robertson v ASB Bank Ltd* [2014] NZCA 597. *Re Iskandar, ex parte Ministry of Business, Innovation and Employment* [2024] NZHC 2123. *Re Sigglekow ex parte Turner* [2012] NZHC 3334. *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153, [2012] BCL 402. *Ch'elle (NZ) Properties Ltd v Commissioner of Inland Revenue* [2007] NZCA 299. *Re Lau, ex parte Commissioner of Inland Revenue* [2017] NZHC 2013. *Alp v Commissioner of Inland Revenue* (2011) 25 NZTC 20-060, [2011] TXHNZ 54. *Re Commissioner of Inland Revenue, ex parte Bruce* [2012] NZHC 1913. *Re Iskander, ex parte Chief Executive of the Ministry of Business, Innovation and Employment* [2026] NZHC 2410. *Commissioner of Inland Revenue v McGuire* [2026] NZHC 103.

Legal Terms	Bankruptcy notices; set aside; genuinely triable cross claim; costs judgments; tax assessments; tax refunds; set-off and counterclaim.
Court	High Court of New Zealand Palmerston North Registry
Judge	Associate Judge Skelton
Decision/Judgment date	29 October 2026

Summary

1. Mr McGuire applied to set aside five bankruptcy notices issued by the Commissioner for unpaid costs judgments, relying on three alleged genuinely triable cross claims. The High Court found no valid cross claim existed, and Mr McGuire's application to set the bankruptcy notices aside was dismissed.

Impact

2. This decision confirms that the Court, in the absence of any abuse of process, will not set aside bankruptcy notices unless the judgment debtor can establish a cross claim which is genuinely triable, equals or exceeds the judgement debt, and could not have been a defence in the proceedings in which judgment was entered.
3. Further, it confirms the strict application of the prohibition in r 5.61(2) of the High Court Rules 2016 that prevents a defendant from advancing any set-off or counterclaim arising out of a right or claim to payment in respect of any taxes, duties or penalties in any proceeding by the Crown.

Facts

4. The Commissioner obtained District Court judgment against Mr McGuire for a debt of $39,763.48. Mr McGuire did not pay and unsuccessfully sought to set aside a bankruptcy notice and halt the proceedings. Before a substantive hearing, he paid the core tax, interest and penalties. Costs awards in the underlying and related proceedings totalled $62,584.28, including $50,247.71 in indemnity costs for unsuccessful judicial review proceedings.

5. The costs awards remain unpaid. The Commissioner issued bankruptcy notices for the judgment debts. Mr McGuire applied to set them aside and the Commissioner opposed.

Issue(s)

6. Whether any of Mr McGuire's three alleged cross claims were genuinely triable as to liability and quantum, equalled or exceeded the judgment debts, and could not have been used as a defence in the proceedings in which judgment was entered.

Decision

First alleged genuinely triable cross claim

7. Mr McGuire contended that the Commissioner had admitted in judicial review proceedings a 2015 tax liability of $6,587.61 rather than $26,197.41, making the District Court judgment on which the bankruptcy notice is based wrong. He argued that no costs should have been awarded in the District Court (and subsequent proceedings) because the costs were a consequence of an incorrect debt claim by the Commissioner.

8. The Court found no such admission of incorrect tax debt was made by the Commissioner. Further, this was not an argument for a genuinely triable cross claim. Rather, it was an argument that the bankruptcy notices should be set aside as an abuse of process. However, the difficulty with this argument is that the District Court judgment had not been appealed but had been unsuccessfully challenged through judicial review and subsequent appellate proceedings. The Court considered it unimpeachable. There was no stay of the indemnity costs judgment, so the Commissioner is entitled to enforce the judgment by issuing a bankruptcy notice.

Second alleged genuinely triable cross claim

9. Mr McGuire referred to separate proceedings seeking a declaration that the Commissioner was required to assess the 2015 liability at $6,587.61 in accordance with a Disputes Review Unit (DRU) report. If this declaration were to be granted, he estimated resulting refunds at $110,274, which would exceed the judgment debts.

10. The Court stated that s 109 of the Tax Administration Act 1994 provides that tax assessments may only be challenged in objection proceedings under pts 8 or 8A of the TAA. Mr McGuire did invoke the relevant statutory procedure to challenge his income tax and shortfall penalty assessments for the 2014 tax year and the shortfall penalties for the 2015 year, and these proceedings were settled on 9 December 2020.

11. The Court found that the Supreme Court, in the judicial review proceedings, has also already dealt with the issue on which Mr McGuire is seeking a declaration and emphasised the correct process for challenging a tax assessment.

12. The Court noted that at this stage, Mr McGuire has not obtained any declaration to the effect that the Commissioner was required to assess Mr McGuire's 2015 tax liability at $6,587.61, and it seems unlikely that any such declaration could be obtained. There is no present basis for any genuinely triable cross-claim.

13. In any event, r 5.61(2) of the High Court Rules 2016 expressly prohibit this argument.

Third alleged genuinely triable cross claim

14. Mr McGuire submitted that he has overpaid taxes for at least ten years due to an error by his accountant, and that once the correct tax position is established he will be entitled to a refund of at least $36,886.69. This argument was raised in previous bankruptcy proceedings, in which the Commissioner agreed to a temporary halt to allow Mr McGuire to make an application requesting the Commissioner to review and possibly amend his assessments under s 113 of the TAA. Mr McGuire did not comply with the timetable to make an application, and did not make an application to extend the timetable. The halt was lifted, and Mr McGuire did not challenge this.

15. The Commissioner has not refused to conduct a review, but no application supporting consideration of amendment of his assessments has been made. The tax assessment is therefore deemed to be correct in all respects, and Mr McGuire is not entitled to a refund. There is no genuinely triable cross claim. In any event, r 5.61(2) of the High Court Rules 2016 expressly prohibit this argument.

Result

16. The application to set aside the five bankruptcy notices was dismissed. Costs and disbursements were awarded to the Commissioner on a 2B basis.

About this document

These are brief case summaries prepared by Inland Revenue of decisions made by the Taxation and Charities Review Authority, the District Court, the High Court, the Court of Appeal or the Supreme Court in matters involving the Revenue Acts. For Taxation and Charities Review Authority matters the parties' names are anonymised. The findings of the court described in a case summary are no longer current law where the matter has been successfully appealed or the relevant legislation has been amended.