

CASE SUMMARY

Two appeals by DJ Hampton dismissed by Court of Appeal: His bankruptcy not stayed using High Court Rule 17.29 and High Court conditions on his discharge from bankruptcy confirmed

Decision date: 15 July 2020

CSUM 20/08

Case

David John Hampton v Minter Ellison Rudd Watts, Official Assignee and CIR [2020] NZCA 291

Legislative References

High Court Rules 2016 ("HCR")

Insolvency Act 2006

Legal terms

N/A

Summary

An unsuccessful attempt by Mr Hampton to stay the enforcement of his bankruptcy and, in the alternative, to have his bankruptcy discharged without conditions.

Impact

The main area of interest in this judgment was the novel use of HCR 17.29 seeking to effectively annul an order of bankruptcy by staying its enforcement. The Court of Appeal recognised an order of bankruptcy is not itself an enforcement order. Rather it determines the status of the bankrupt. That status has consequences for the administration of the bankrupt's affairs by operation of law but is not the enforcement of a liability. Also, such an order would undercut the purpose of the insolvency regime.

Facts

Mr Hampton has been engaged in litigation with Inland Revenue since the 1990s. In 2013 he was bankrupted by Minter Ellison for not paying his legal bills. In 2014 he filed his statement of affairs (about one year late) and was to be discharged from bankruptcy in 2017.

The OA objected to his discharge from bankruptcy. The CIR sought conditions be imposed on Mr Hampton's discharge. This meant a public examination was held. In a judgment in 2018 Venning J discharged Mr Hampton from bankruptcy subject to conditions. Mr Hampton appealed.

Pending the appeal, Mr Hampton applied to the High Court for a stay of Venning J's judgment and a stay of the original bankruptcy order (made in 2013) relying on High Court Rule 17.29 which allows the stay of enforcement of orders made by the High Court. As the Court of appeal explained at [8]:

...Mr Hampton therefore sought first for his discharge to be stayed under r 17.29, and hence for him to be returned to bankruptcy; and secondly for the adjudication itself to be stayed, and thus for the entire bankruptcy to be, in effect, undone. His interest in the Misfeasance Claim would, he suggested, therefore re-vest in him and he would be able to reapply to the Court for the 2013 stay to be lifted. In his view, a stay would lift all the associated restrictions on him personally and the Official Assignee would, thereafter and for the period of the stay, have no interest in his affairs.

These applications were before Osborne J in the High Court and he stayed Venning J's judgment to allow the appeal to proceed (relying on Court of Appeal (Civil) Rule 2005, r12). Osborne J dismissed Mr Hampton's HCR 17.29 application on the basis there was no jurisdiction to stay the adjudication order. Mr Hampton appealed the dismissal of his HCR 17.29 application.

An important point to understanding these appeals is the existence of a Misfeasance claim against the Commissioner of Inland Revenue ("CIR"). Lodged in 2008, this claim was stayed by the Court of Appeal in 2013 pending redrafting and review by a practicing lawyer and further review by a High Court judge. Because of the bankruptcy, Mr Hampton's interest in this claim vested in the Official Assignee ("OA") (so Mr Hampton could not seek to lift the stay of the Misfeasance claim). After Mr Hampton's bankruptcy ended the claim will not revert to him, effectively ending his interest in the claim.

Issues

- Does jurisdiction exist under HCR 17.29 to stay Mr Hampton's adjudication of bankruptcy?
- Did Venning J err ordering conditions on Mr Hampton's discharge from bankruptcy?

Decision

Does jurisdiction exist under HCR 17.29 to stay Mr Hampton's adjudication of bankruptcy?

The court dismissed Mr Hampton's appeal to Osborne J's decision. The court considered the purpose of HCR 17.29:

[19] The purpose of the rule is to enable parties who are held liable under a judgment of the Court to apply for a stay of enforcement of the judgment or other relief against it. That is a poor fit for the situation here because Mr Hampton is not a liable party under a judgment: rather, he has been adjudicated bankrupt, and bankruptcy is a status rather than a form of liability. Before us, Mr Hampton maintained that he was a judgment debtor to MERW and thus a "liable party" in terms of r 17.1. However, that confuses the original judgment obtained by MERW in February 2010 with the adjudication order made ... in June 2013.¹¹ Unlike the 2010 judgment, the adjudication order could not be "enforced" by MERW. Once made, it took effect by operation of law: there is nothing further the creditors could do.

[20] Mr Hampton further contended that the word “judgment” could be defined broadly to encompass an adjudication order and pointed to the suggestion a court order could be “enforced in the same way as a judgment” in r 17.2 and the broad definition adopted elsewhere in r 11.1. Again, however, we reject that submission simply because it misdescribes the nature of an adjudication order, which as we have noted, cannot be “enforced” and is not what is contemplated by r 17.2.

The Court also concluded a HCR 17.29 stay of enforcement of a bankruptcy order would defeat a fundamental part of insolvency law: the gaining and realisation of assets by the OA:

[24] Mr Hampton now seeks, in effect, a temporary annulment, an order not contemplated by the [Insolvency] Act and which would cut across the insolvency regime in its entirety. His proposition is that his assets, including those represented by the benefit (such as it may be) of the Misfeasance Claim, would revert to being his property, in which the Official Assignee would have no interest nor any right to determine disposition. There is simply no room, given the fundamental principles of insolvency law and the specific terms of the Act, for such an order. We are satisfied that, howsoever r 17.29 might be interpreted, it cannot have that effect.

Did Venning J err ordering conditions on Mr Hampton’s discharge from bankruptcy?

In a largely fact driven judgment on whether conditions should be imposed on Mr Hampton’s discharge from bankruptcy, the Court was satisfied that Venning J was correct to impose conditions and the appeal was dismissed.

The Court of Appeal concluded Venning J was correct to be concerned about “Mr Hampton’s failure “to properly distinguish between the assets, liabilities and general affairs of the separate Chesterfield entities” ...”(at [34]) and “Mr Hampton’s lack of co-operation with the Official Assignee during his bankruptcy, as demonstrated by the delay in filing the Statement of Affairs...” (at [34]).

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