

## CASE SUMMARY

# Supreme Court dismisses Mr Hampton's application for leave to appeal

Decision date: 13-November-2020

CSUM 21/01

## CASE

**Hampton v MinterEllisonRuddWatts [2020] NZSC 123**

## LEGISLATIVE REFERENCES

Insolvency Act 2006, ss 67(1), 101(1), 173-181, 290, 292, 295 and 309

High Court Rules 2016, rr 17.2 and 17.29

Court of Appeal (Civil) Rules 2005, r 12

Senior Courts Act 2016, s 74(2)(a) and (b)

Supreme Court Rules 2004, r 20

## LEGAL TERMS

application for leave to appeal, general or public importance, miscarriage in relation to civil appeals

## Summary

This was an unsuccessful attempt by Mr Hampton for leave to appeal the Court of Appeal's decision dismissing two appeals; the first seeking to stay the enforcement of his bankruptcy, and the second challenging a High Court order imposing conditions on his discharge from bankruptcy.

## Impact

Rule 17.29 does not apply to bankruptcy adjudications.

Conditions imposed on bankrupt upon discharge do not raise issues of general or public importance nor any risk of miscarriage of justice.

## Facts

Mr Hampton has been engaged in litigation with IR since the 1990s. In 2008 he commenced proceedings against the Commissioner of Inland Revenue ("the Commissioner"), the Attorney-General, a solicitor and 20 departmental officers claiming damages for misfeasance in public office (the misfeasance claim). In March 2013, the Court of Appeal stayed that proceeding pending the filing of a statement of claim settled by a lawyer who had reviewed the available evidence.

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 later) and was to be discharged from bankruptcy in 2017.

The Official Assignee objected to his discharge from bankruptcy. The Commissioner sought conditions be imposed on Mr Hampton's discharge in the public interest. 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. He sought an unconditional discharge but applied for a further order that the discharge be suspended pending the redrafting of the misfeasance claim.

Before the appeal was heard, Mr Hampton instructed senior counsel to finalise his statement of claim. That pleading was completed in 2019. Mr Hampton considered he could then re-litigate his misfeasance claim. But since he was a bankrupt, his interest in that claim had vested in the Official Assignee. There was no question that discharge from bankruptcy does not re-vest in the bankrupt their former property. The misfeasance claim was thus no longer Mr Hampton's to bring and he could not apply for the stay to be lifted.

Mr Hampton applied to the High Court for interlocutory orders under r 17.29 of the High Court Rules 2016 to stay both his original adjudication of bankruptcy and Venning J's discharge order. He hoped this procedure would have the effect of unravelling, with retrospective effect, the divestment of the misfeasance claim. This would then give him standing to apply for the Court of Appeal's stay to be lifted.

Osborne J heard this application in July 2019 and found there was no jurisdiction to entertain a stay of the original adjudication order and that r 17.29 did not provide a basis for staying Venning J's discharge order. In August 2019, Mr Hampton filed an appeal against Osborne J's decision.

The Court of Appeal decision that Mr Hampton seeks leave to appeal addresses both the discharge appeal and the interlocutory stay of adjudication appeal.

### ***Court of Appeal Decision***

The Court of Appeal held there was no jurisdiction under r 17.29 to stay the bankruptcy adjudication:

The rule provides that a "liable party" may apply for a stay of enforcement or other relief against a judgment on the ground that a substantial miscarriage of justice will likely result if the judgment were enforced. The Court considered that Mr Hampton was not a "liable party" under a judgment, as bankruptcy is a status, not a liability.

Nor could the bankruptcy be "enforced".

Furthermore, the Court held that Mr Hampton was effectively seeking a temporary annulment so that his assets in bankruptcy would revert to his ownership and control. The Court of Appeal considered this is not contemplated by the Insolvency Act and would cut across the bankruptcy regime entirely.

## **Issues**

The issue raised by Mr Hampton was that he is in fact a "liable party" under r 17.29 because he continues to be a judgment debtor and a liable party in relation to creditors until discharged from bankruptcy.

Whether the relationship between r 17.29 and the insolvency regime is a matter of general or public importance.

## Decision

The Supreme Court dismissed Mr Hampton's application for leave to appeal.

The Supreme Court was satisfied that Mr Hampton's prospects of succeeding in his arguments were insufficient either to give rise to any issue for general or public importance, or to meet the heightened standard or risk of miscarriage in relation to civil appeals.

## About this document

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