

Insolvency Law & Practice

31/10/17 Update Summary

CASES

Commentary on the following cases has been included in this update:

INSOLVENCY ACT

Commissioner of Inland Revenue (CIR) v Wilson [2017] NZCA 100: successful appeal by Commissioner of Inland Revenue from decision approving proposal to pay tax debt – Court of Appeal held that it lacked jurisdiction to approve payment proposal – instead power to approve proposal in s 333 Insolvency Act 2006 – s29(1)(b)(iii) Insolvency Act 2006 did not confer power on court to approve compromise but meant that option of compromising debt to satisfaction of court or creditor must be spelt out to debtor in notice – s 37 Insolvency Act 2006 did not give court discretion not to adjudicate debtor bankrupt when considering payment proposal before adjudication stage – no inherent jurisdiction to approve payment proposal on application to set aside bankruptcy notice where creditor had rejected proposal – such inherent jurisdiction would cut right across proposals regime in pt 5, subpt 2 Insolvency Act 2006: [IN17.02], [IN29.05] and [IN315.03].

Body Corporate 68792 v Memelink [2017] NZHC 905: unsuccessful application for adjudication in bankruptcy by substituted creditor – original application was adjourned on condition debtor made some payments – debtor did not make all payments – both judgments obtained by applicant against debtor satisfied except for a possible liability for costs – court held jurisdiction existed to bankrupt debtor even though he had paid – debtor had failed to pay all amounts due to applicant as they arose – debtor was not unable to pay his debts, just unwilling to pay those he considered he should not have to pay – bankruptcy jurisdiction is not to be used as a means of debt collecting: [IN37.02] and [IN37.03(3)].

Re Commissioner of Inland Revenue, ex parte Brown [2016] NZHC 1232: successful application by Commissioner of Inland Revenue for adjudication of bankruptcy on basis of non-compliance with bankruptcy notice – debtor argued unsuccessfully that the court should exercise its discretion not to adjudicate him bankrupt on basis of just and equitable ground under s 37(c) Insolvency Act 2006: [IN37.02].

Re Coromandel Independent Living Trust, ex parte Hamon [2016] NZHC 392: successful application for adjudication of bankruptcy – respondent argued unsuccessfully that the court should exercise its discretion not to make an adjudication order because no purpose would be served by making her bankrupt: [IN37.02].

Hodder v Official Assignee [2016] NZHC 981: successful application for order under s 119 Insolvency Act 2006 vesting disclaimed property in bankrupt applicant: [IN118.03].

Panther v Panther [2016] NZHC 809: successful application under s 119(1)(b) Insolvency Act 2006 for order vesting half share in two properties in applicant – share previously held by applicant's former wife who had been adjudged bankrupt – her interest had passed to Official Assignee and subsequently been disclaimed as onerous property: [IN118.03].

Re Hanara [2017] NZHC 902: successful application by Official Assignee to vest in her JH's half share in a property – interest formerly disclaimed by Official Assignee – owner of other half share (DH) subsequently adjudged bankrupt and it would be impossible to sell one half without the other – property had increased in value and was no longer onerous – JH discharged from bankruptcy – court held that s 118(a) Insolvency Act 2006 did not prevent claim – Official Assignee had standing to apply under s 119 Insolvency Act 2006 in capacity as assignee of both estates – there needed to be more than post-disclaimer increase in value for s 119 to apply – DH's later bankruptcy did not have effect of converting something which was not a loss into a loss – Official Assignee had not suffered loss as result of disclaimer – application as regards Official Assignee as assignee of JH's estate dismissed – however, Official Assignee representing creditors of DH's estate would not receive what they might have received had it not been for the disclaimer – no unfairness to JH's creditors if order made – JH's half of property vested in Official Assignee as assignee in bankruptcy of DH: [IN119.04].

COMPANIES ACT

Re M Webster Holdings (NZ) Ltd [2017] NZHC 297: successful without notice application for extension of convening period pursuant to s239AT(3) Companies Act 1993 – appropriate to extend convening period due to: (i) size and complexity of administration; (ii) sale of business best opportunity to maximise return to creditors; (iii) sale process would be complex and time consuming; and (iv) creditors and employees would not be prejudiced by extension as applicants meeting ongoing obligations from trading of business: [CA239AT.02].

Commissioner of Inland Revenue (CIR) v Evaluation Consult (New Zealand) Ltd [2017] NZHC 552: successful application to put company into liquidation – company had failed to comply with statutory demand – company applied for stay so it could repatriate some funds – court held that company had not shown any abuse of position, unfairness or undue pressure by CIR – stay application declined and company put into liquidation: [CA241.01(3)].

Diamond Milk Formulas Ltd v T.K. (Hong Kong) Ltd (in rec) [2017] NZHC 774: unsuccessful application for stay of liquidation pending appeal against decision declining leave to file out of time a defence to application for order placing defendant into liquidation: [CA241.01(3)] and [CA290.03].

Fortune Technology Corporation Ltd v Commissioner of Inland Revenue [2016] NZHC 2489: unsuccessful urgent application for stay of advertising of liquidation proceeding pursuant to r 31.11 of the High Court Rules and the inherent jurisdiction of the court: [CA241.01(3)].

Morton-Jones v Rodney Management Ltd (in liq) [2017] NZHC 125: unsuccessful application for order terminating liquidation of company (R) – s 250 Companies Act 1993 – liquidators for company (G) opposed application on basis that it was a remaining creditor of R – liquidators of G had lodged proof of claim with Official Assignee – contention for G that it was appropriate for Official Assignee to complete investigations on behalf of remaining creditor before any termination order made – court held that applicant had failed to satisfy it that there were sufficient grounds for exercise of court's discretion to terminate a liquidation order that was validly made – the Official Assignee had been granted the statutory role and had sufficient authority to investigate disputed debt issues – there was no reason to doubt Official Assignee would not carry out its role with the required diligence, objectivity, and independence – for court to re-establish R only for it to be sued over one disputed debt would absolve the Official Assignee of the statutory responsibilities placed on the office – it would turn inside-out the statutory regime which dealt with resolving disputes of debt for companies in liquidation – it was in the public interest that the integrity of this regime be upheld: [CA250.03].

Adaptable Solutions Ltd v Toon [2017] NZHC 753: successful application for leave to commence proceedings against respondent liquidator seeking order reversing or modifying decision partially rejecting applicant's proof of debt – s 284 Companies Act 1993: [CA284.02].

Madsen-Ries v Greenhill [2016] NZHC 3188: successful claim for compensation against director of liquidated company under s 301 Companies Act 1993 – court held that first defendant had breached s131(1) Companies Act 1993 and that second defendant deemed to surrender its general security under s305(9) Companies Act 1993: [CA284.06], [CA301.10(2)] and [CA305.05].

Ebert Construction Ltd v Sanson [2017] NZCA 239: successful appeal against decision setting aside pre-liquidation payments and transfer of apartment – order for payment of \$1,603,892 by appellant construction company to respondent liquidators with interest from date of liquidation: [CA292.03(5)].

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