

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

CIV-2010-404-1954

UNDER the Insolvency Act 2006
IN THE MATTER OF the bankruptcy of Jian Hua Liao
BETWEEN XUE YING ZHU
Judgment Creditor
AND JIAN HUA LIAO
Judgment Debtor

Hearing: 3 September 2010

Appearances: Anthony Ram for Judgment Creditor
Penelope Stevenson for Judgment Debtor

Judgment: 3 September 2010

JUDGMENT OF BREWER J

*This judgment was delivered by me on 3 September 2010 at 4:00 pm
pursuant to Rule 11.5 High Court Rules.*

Registrar/Deputy Registrar

SOLICITORS

Amicus Law Ltd (Auckland) for Judgment Creditor
Phillips Solicitors (Auckland) for Judgment Debtor

COUNSEL

Penelope Stevenson

[1] On 11 August 2010 the judgment creditor (by amended application) applied to this Court for an order adjudicating the judgment debtor bankrupt. The sum involved, \$13,524.60, is the total of two orders for costs made against the judgment debtor by this Court on 14 August 2009 and 17 December 2009. The orders were sealed on 10 March 2010. The act of bankruptcy relied upon is failure to comply with a bankruptcy notice issued on 30 March 2010 requiring the payment of this amount.

[2] The judgment debtor responded by filing applications to stay the enforcement of the costs orders and to set aside the bankruptcy notice.

[3] All three matters were set down for hearing before me on 3 September 2010.

[4] The judgment debtor is the remaining defendant in a civil proceeding brought by the judgment creditor. The costs orders were in respect of interlocutory skirmishing in that proceeding.

[5] By memorandum dated 31 August 2010, counsel for the judgment debtor advised that her client had applied to the Official Assignee on or about 19 August 2010 to be placed in bankruptcy on a voluntary basis. Counsel submitted that there should be an adjournment of these matters until the judgment debtor's application to be placed into bankruptcy had been determined.¹

[6] By minute of 1 September 2010 I directed that the hearing proceed on 3 September 2010 and I further directed counsel for the judgment debtor to advise whether her client's applications would now be discontinued and the judgment creditor's application for adjudication of bankruptcy no longer contested. By memorandum dated 2 September 2010 counsel for the judgment debtor advised that her instructions were to proceed with the applications to stay enforcement of judgment and to set aside the bankruptcy notice. If successful, there would be no basis for the judgment creditor's application for bankruptcy to proceed.

¹ Section 47 of the Insolvency Act provides that bankruptcy is automatic upon the filing of the application. However, s 46 prohibits the filing of an application unless the applicant has first filed a statement of affairs in the prescribed form.

[7] When the case was called on 3 September 2010 Ms Stevenson for the judgment debtor advised that her client was not yet bankrupt and that the Official Assignee's office had requested further information. After some discussion about whether continuing with the applications would not simply be a waste of the Court's time and resources, I acceded to a request by Ms Stevenson for an adjournment so she could take further instructions.

[8] On reconvening, Ms Stevenson advised that her instructions were now to discontinue the judgment debtor's interlocutory applications. Ms Stevenson then gave a brief statement of her client's position in relation to the substantive proceeding. In summary, that position is that the judgment debtor believes that the substantive claim against her has no merit and she was determined to establish that in Court. The judgment debtor has secured a grant of legal aid to enable her to do that. However, other losses arising from the sale of the family home has meant that her application for voluntary bankruptcy had become a necessity.

[9] The judgment debtor's interlocutory applications having been discontinued I then heard from Mr Ram for the judgment creditor on the application to have the judgment debtor adjudicated bankrupt. Mr Ram confirmed that his instructions are to proceed with that application and to seek costs. I reserved my decision.

[10] On perusing the file it is clear that there has been an act of bankruptcy, namely a failure to comply with a bankruptcy notice. The bankruptcy notice is based on a sealed order of this Court relating to two awards of costs made by the Court against the judgment debtor.

[11] The prerequisites for invoking the jurisdiction of this Court to adjudicate the judgment debtor bankrupt having been fulfilled, the Court nevertheless retains a discretion in the matter.² The Court may refuse adjudication if it is just and equitable to do so or for any other reason which the Court finds compelling.³

² Section 36 Insolvency Act 2006.

³ Section 37.

[12] In my view, I have little real choice in the matter. Orders for costs against the judgment debtor have been made by two Judges of this Court. Those orders have been sealed, a bankruptcy notice issued and not complied with. I well understand the judgment debtor's wish to continue to defend a claim which she believes is unfounded. However, her background financial position has led her to apply for voluntary bankruptcy and so, regardless of what I do, whether or not the claim against her will be defended will be a matter for the Official Assignee.

[13] The judgment creditor is entitled to an order adjudicating the judgment debtor bankrupt and I accordingly make that order and in compliance with s 57(1) of the Act record the timing of the making of the order as being 4:00 pm, 3 September 2010. The judgment creditor is also entitled to an order for costs and I accordingly award her costs on a 2B basis.

Brewer J