

CASE SUMMARY

High Court issues a 28-day temporary halt of Commissioner's bankruptcy proceedings pending payment of sum

Decision date: 26 August 2024

CSUM 24/06

CASE

***The Commissioner of Inland Revenue v McGuire* [2024] NZHC 2404**

LEGISLATIVE REFERENCES

Insolvency Act 2006, s 38

CASE LAW REFERENCES

Commissioner of Inland Revenue v McGuire [2022] NZDC 12179

McGuire v The Commissioner of Inland Revenue [2024] NZHC 883

Re Koroniadis ex parte Bank of New Zealand [2013] NZHC 2865 at [11]

RPW v H [2022] NZHC 2344

The Commissioner of Inland Revenue v McGuire [2023] NZHC 1314

Waimauri Ltd v Mahon [2022] NZHC 1622 at [40]

Waitomo Adventures Ltd v O'Hagan [2014] NZHC 2477

Summary

This was an application by Mr McGuire, the judgment debtor, to halt bankruptcy proceedings against him, brought by the Commissioner of Inland Revenue (the Commissioner) on 1 March 2023.

Mr McGuire has judicially reviewed the District Court judgment which underlies the Commissioner's application for bankruptcy. On 22 April 2024, Justice Johnstone dismissed Mr McGuire's claim for Judicial Review by way of a strike-out judgment.¹ Mr McGuire has filed a notice of appeal to the Court of Appeal in respect of Justice Johnston's decision. The current proceeding is an application to halt the bankruptcy proceedings pending the Court of Appeal decision.

After consideration, Associate Judge Skelton was not satisfied that it was appropriate to grant a halt of the Commissioner's application for adjudication pending the outcome of the appeal to the Court of the Appeal.

However, his Honour granted a temporary halt of the bankruptcy proceedings for 28 calendar days from the date of this judgment to allow Mr McGuire to pay the sum of \$92,858.67 which covers the remaining debt and interest, unpaid costs awards and the indemnity costs sought in judicial review proceedings. If the sum is not paid, then the bankruptcy proceedings will continue.

Impact

The decision reaffirms the discretion given to the Court under s 38 of the Insolvency Act to consider factors which must evidence an appropriate case to halt an application for adjudication.²

Facts

On 7 March 2024, a part-hearing of Mr McGuire's application to halt bankruptcy proceedings was heard. The basis for the application is that Mr McGuire has applied for judicial review of the District Court judgment underlying the Commissioner's application for bankruptcy. At the time of the hearing on 7 March 2024, an application by the Commissioner for strike out of the judicial review hearing had been heard but not determined. Associate Judge Skelton adjourned the halt application pending the determination of the strike out application.

¹ *McGuire v The Commissioner of Inland Revenue* [2024] NZHC 883.

² Section 38(2).

On 22 April 2024, the decision was issued by Justice Johnstone in favour of the Commissioner, dismissing Mr McGuire's claim for judicial review.

Mr McGuire has since filed a notice of appeal to the Court of Appeal in respect of Johnston J's decision to strike out his judicial review claim. The current proceeding is an application to halt the bankruptcy proceedings pending the Court of Appeal decision.

Issues

The issue for consideration is whether to halt the Commissioner's application for adjudication pursuant to s 38 of the Insolvency Act pending the outcome of the appeal to the Court of Appeal.

Decision

The legal principle governing applications to halt bankruptcy proceedings is s 38 of the Insolvency Act, which provides that the court may at any time halt the creditor's application for adjudication on the terms and conditions for the period that the court thinks is appropriate. Section 38 does not set out the matters the court must consider; the rule provides flexible discretion.³ Associate Judge Skelton set out the considerations that are invariably brought into account.

The considerations include the history of the litigation and the conduct of the parties, the impression that the court can gain of the merits of the appeal, the stage reached in the appeal and any information to hand as to when it may be disposed, of the relative consequences for both parties of making or refusing the order sought and any known consequences for third parties.

Associate Judge Skelton considered that the history of the proceedings, including the fact that Mr McGuire has only sought to challenge the underlying judgment after enforcement action was taken, and the further delay are factors against halting the Commissioner's application for adjudication.

The merits of Mr McGuire's challenge to the underlying judgment debt have already been tested in the strike out application, which was found to have no reasonably arguable cause of action. This was a further factor against halting the Commissioner's application for adjudication.

³ *Waimauri Ltd v Mahon* [2022] NZHC 1622 at [40] citing *Michael Wilson & Partners Ltd v Sinclair* [2020] NZHC 2546 at [9].

Associate Judge Skelton dismissed counsel for McGuire’s argument that bankruptcy would have implications for Mr McGuire’s professional career and the opportunity for appeal will be rendered nugatory. Associate Judge Skelton noted that Mr McGuire’s evidence is that he is a primary beneficiary of a trust which has sufficient assets. Furthermore, Associate Judge Skelton considered that the Commissioner will be further delayed from collecting the debt, in circumstances where the Commissioner has had to oppose several applications made by Mr McGuire at a significant cost.

Associate Judge Skelton was not satisfied that it was appropriate to grant a halt of the Commissioner’s application for adjudication pending the outcome of the appeal to the Court of the Appeal.

However, his Honour granted a temporary halt of the bankruptcy proceedings for 28 calendar days from the date of this judgment to allow Mr McGuire to pay the sum of \$92,858.67 which covers the remaining debt and interest, unpaid costs awards and the indemnity costs sought in judicial review proceedings. If the sum is not paid, then the bankruptcy proceedings will continue.

About this document

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