IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2016-404-000092
[2017] NZHC 2586

BETWEEN	LESLIE ARNOLD WILLIS Judgment Creditor
AND	EILEEN ANNE WILLIS Judgment Debtor

Hearing: 16 August 2017

Appearances: A Paterson for the Judgment Creditor
H Fulton for the Judgment Debtor

Judgment: 24 October 2017

JUDGMENT OF ASSOCIATE JUDGE SARGISSON

This judgment was delivered by me on 24 October 2017 at 3.30 p.m.
pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date.....

Solicitors:

Rennie Cox, Auckland

H Fulton, Auckland

Application to annul bankruptcy order

[1] Eileen Willis (Anne) was adjudicated bankrupt on 2 June 2016 on the application of her husband, Leslie Willis. At issue is her application to annul that adjudication order. The Official Assignee, who has control of Anne's estate, has agreed to abide by the court's decision.

[2] Leslie bankrupted her to pursue a debt of just over $12,000. The Assignee records that in total, her remaining debts to creditors in her bankruptcy amount to approximately $16,000. There is no question that Anne has not paid — and according to the Assignee *cannot* pay — this amount. Leslie insists the court focus its attention on this and this alone.

[3] But Anne invites the court to take a broader and more robust approach. Relying on s 309(a) of the Insolvency Act 2006, she says that the adjudication order should never have been made. In essence, her claim is that the adjudication was an abuse of process; and she says, in effect, that Leslie's part in it was oppressive. Anne has the onus to satisfy the court that this is so.

[4] Hers are fighting words, yet her characterisation is accurate. Indeed, rare is a case that strikes so directly at the court's conscience. For the reasons that follow, I am satisfied that the s 309(a) threshold is met, and that it is fair and just that Anne's bankruptcy be annulled.

A short narrative — the beginnings of a case for Leslie

[5] I begin with the events highlighted by Leslie, before broadening the discussion to consider the wider and more troubling narrative emphasised by Anne.

Events preceding bankruptcy

[6] The parties met in 1988, and lived together for a number of years before their marriage in 1996. A few years after their separation, relationship property proceedings commenced in 2011 to settle the distribution of their assets.

[7] In the course of those proceedings, Anne was ordered by this Court to pay Leslie $12,263.50 in costs and disbursements. Leslie took action to pursue that debt. It remained unpaid. So on the basis of its non-payment, Leslie served her with a Bankruptcy Notice on 10 February 2016. Anne did not comply, and therefore committed an act of bankruptcy on 25 February. Anne was equally unresponsive to the Summons to Debtor served on her on 28 April.

[8] On 18 March, Leslie had provided Anne with a comprehensive relationship property settlement proposal, which outlined two options for settlement and a third for mediation. A response was required within 14 days, at which it was made clear that Leslie would have "no choice" but to proceed with the bankruptcy application. Anne did not reply.

[9] On 16 May, Leslie's application for an order adjudicating Anne bankrupt was first called before the Court. It was granted by Venning J on 2 June, when she failed to appear.

Events following bankruptcy

[10] Anne's bankruptcy had legal implications for two trusts for which she was both a trustee and an appointor, along with Leslie. These trusts are called the LA & HO Family Trust and the LA & HO Investment Trust.

[11] Both Trust Deeds provided that in the event of a trustee being adjudicated bankrupt, his or her status as trustee (and so also appointor) would be terminated. Anne's bankruptcy triggered these clauses. This left Leslie as co-trustee for both trusts, along with an advisory trustee who for many years had refused to take any active steps as trustee. Leslie also became the sole appointor.

[12] The vast bulk of the parties' substantial assets are held in these two trusts, including three properties. The Family Trust owns the matrimonial home at 5A Jersey Avenue (where Anne currently lives); and the Investment Trust owns the adjacent property at 5 Jersey Avenue, as well as another property on Great Barrier Island. Anne was and remains a discretionary beneficiary of the Family Trust; but currently the only discretionary beneficiaries of the Investment Trust are the Willis' two children.

[13] Now the sole appointor, Leslie appointed a new advisory trustee to both trusts, the solicitor Mr Burnes. Then he and Mr Burnes together removed the original, inactive trustee.

[14] More recently, Leslie and Mr Burnes have filed another summary judgment application in the High Court for vesting orders under the Trustee Act 1956. They seek to replace Anne's name with that of Mr Burnes on the titles to the three properties owned between the two family trusts. This, Leslie contends, is the proper result to normalise trust affairs following Anne's bankruptcy and removal as trustee. Anne opposes the application, and the matter has been adjourned pending the release of this decision.

[15] Central to this summary judgement application is a dispute over the payment of city council rates for one of the trust properties. The rates are severely in arrears (summing to approximately $25,000 at the time documents were filed) and Auckland Council is threatening forced sale of the property if the rates are not paid soon. Leslie says that it is imperative that a property is sold as soon as possible to clear the rates arrears and avoid a forced sale. Anne will not agree to a forced sale, fearing this will further prejudice her relationship property claim. Leslie is thus unable to proceed with the sale until Anne's name is replaced with Mr Burnes' name.

[16] Leslie says Anne agreed to pay the rent arrears and any annulment should be conditional on her first paying this debt. Anne disputes owing any such obligation; she suggests this is another ploy to keep her in a state bankruptcy. I cannot determine the matter on the evidence before me, but for the purposes of this

application I do not consider Anne is required to pay the rent arrears before her bankruptcy could be annulled.

[17] Meanwhile, Anne has delayed for some time before bringing the present annulment proceeding. She indicated in a document filed in Family Court proceedings, dated 21 December 2016, that she would immediately apply for an annulment. But after obtaining an adjournment until 31 March 2017, the present application was not filed until 19 April 2017.

[18] Anne's financial situation remains unchanged, and the judgment debt upon which the bankruptcy notice is based remains unpaid. It can be inferred that Anne cannot pay this debt. Leslie's case flows from this set of basic facts.

The wider and more troubling narrative — the beginnings of a case for Anne

[19] It is a truism that what is said is sometimes less revealing than what is left unsaid. That is certainly true of Leslie's case.

[20] Anne does deny any of the basic facts relied on by Leslie. Her case is not that the facts are wrong so much as they are incomplete. She insists the court contextualise these basic facts into a wider, broader, and altogether more troubling narrative — one which Leslie challenges as simply not relevant.

The parties' relationship

[21] The last few years have not been kind to Anne, and Anne blames her husband for much of it. Anne insinuates that Leslie has treated her unfairly, even cruelly. For one, she accuses him of threatening to bankrupt her many years ago while they were still together. His threat, Anne says, followed her decision to withhold from him funds that she received from her mother's estate on her passing. This evidence of an historical bankruptcy threat is not accepted by Leslie; it is uncorroborated, and I place no reliance on it.

[22] But it is clear that Anne has had to carry a substantial burden since the parties' separation. She says she has had almost continuous care and responsibility

for the children, two twin daughters aged 19. Still cut out from any relationship property assets, she has even retrained as a primary school teacher to support herself and the two girls. Leslie has made only sporadic payments of child support; in fact, it appears that he remains in arrears on his obligations to provide child support and spousal maintenance. While Anne received money on the passing of her late mother, it would appear that this pool of money has run dry.

[23] The financial strain of these circumstances forms an important backdrop to this application. In particular, it helps explain (though not justify) Anne's non-payment of the cost award.

Procedural history of the parties' relationship property litigation

[24] Another aspect of Anne's wider narrative is the tragic procedural history of the parties' relationship property litigation.[1]

[25] That narrative begins on 30 July 2013, with a Judicial Settlement Conference before Judge Southwick QC. The parties attended the conference with their respective legal counsel and there reached a comprehensive settlement agreement as to the division of their relationship property. Two features of this agreement merit attention. First, the division saw Anne receiving a significant division of the assets totalling over $600,000, clearly well in excess of total claims made in her bankruptcy. Those assets, as recorded in the hand-written agreement, are as follows:

(a) A half division of the proceeds of sale of the property on 5 Jersey Avenue, Mt Albert;

(b) $372,500 from Leslie as part of his purchase of the former family home at 5A Jersey Avenue (subject to a satisfactory builder's report being obtained);

(c) $8,000 for Leslie retaining the boat;

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[1] A fulsome account of this procedural history is provided by Duffy J in *Willis v Willis* [2015] NZHC 2626.

(d) $47,500 from Leslie in respect of his Waterfront Industry Super;

(e) $175,000 for Leslie retaining the property on Great Barrier Island;

(f) A number of smaller payments from Leslie for: tax benefit ($2,908); child support arrears ($14,000); settlement of spousal maintenance ($4,000); legal fees ($2,500); to balance ($3,592).

[26] Second, that division was made on the basis that the parties 'see through' the two trusts — that is, they would treat their trust property as available to them for division in terms of their relationship property dispute. Leslie insists that the court has no jurisdiction to do the same in this proceeding; this issue is picked up again later in the judgment.

[27] The agreement was signed by both parties as well as by their respective counsel. The only outstanding contingency was a minor one: Leslie's payment of $372,500 for the purchase of the 5A property was subject to builder's report being obtained.[2] In short, the relationship property proceedings, which had begun two years previous in 2011, could well have ended on 30 July 2013. It was not to be; instead, the proceeding "became mired in a procedural morass" that continues to plague Anne even today.[3]

[28] Issues first arose because the Court did not make any s 179 orders by consent as is necessary to effect final settlement of the issues in dispute.[4] It appears that the Judge intended to delay making orders until the builder's report was obtained, and the $372,500 payment confirmed or modified accordingly. A builder's report was in fact obtained, and it showed that the 5A property was a leaky building and therefore worth considerably less than represented in the settlement agreement. The parties disagreed as to how to deal with this development.

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2 The settlement agreement stipulated that if Leslie was not satisfied with the report, this clause could be renegotiated but the remaining terms of the agreement would still prevail. If the parties could not agree, the property would be sold and the proceeds divided equally between them.

3 *Willis v Willis*, above n 1, at [2].

4 Family Court Rules 2002, s 179.

[29] Anne applied under s 179 to give the agreement legal force, but by the time it came back before the Judge, Leslie no longer agreed to any of the terms of the settlement. As such, the Judge refused to deal with the matter on jurisdictional grounds.[5]

[30] The matter came before Judge Burns in the Family Court who also found he lacked jurisdiction under s 179 because he had not presided over the judicial settlement conference. But he took the view that the court was able to go beyond the relief sought by Anne. In his decision of 10 June 2015, he considered that s 21A and 21H of the Property (Relationships) Act 1976 provided an alternative means to give legal effect to the settlement agreement.

[31] On this point, however, Judge Burns was subsequently overturned on appeal to the High Court. Duffy J's comprehensive decision of 23 October expressed sympathy with the difficult position faced by Judge Burns. She found, nonetheless, that s 21A granted no jurisdiction to make provision for the ownership of trust property, which of course included the bulk of the property dealt with in the settlement division. Justice Duffy also imposed costs against Anne to the tune of just over $12,000. It is on the basis of Anne's failure to pay this award that Leslie applied for her to be placed into bankruptcy.

[32] So, in sum, by the time the procedural dust had settled, Anne was left in a state of bankruptcy with an unenforceable settlement agreement and an adverse costs award. Some four years after proceedings commenced she still had no access to relationship property, and the negotiations were in many respects back to square one.

[33] With that wider narrative in mind, I turn to the legal principles applicable to annulment applications of this kind.

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[5] Family Court Rules 2002, s 180. This section prevents a Judge who presided at a settlement conference from hearing and determining opposed applications.

Legal framework

[34] The only jurisdiction the court has to annul a bankruptcy order is found in s 309 of the Insolvency Act.[6] Before a court can annul a bankruptcy, it must first be satisfied that one of the grounds listed in (1)(a)-(d) are made out. Even if the court is so satisfied it retains the discretion to withhold annulment; such discretion is exercised with regard to the public interest and to the wishes of the parties to the application.[7]

[35] Anne relies on s 309(1)(a), which provides as follows:

> 1) The Court may, on the application of the Assignee or any person interested, annul the adjudication if—
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> > (a) the Court considers that the bankrupt should not have been adjudicated bankrupt;

[36] Section 309(1)(a) empowers the court to annul bankruptcy orders that 'should not have been made' in light of all the material facts pertinent to the adjudication decision, especially facts that were not before the Court which made the adjudication.[8] After all, Venning J's decision was routine and pedestrian; he had no knowledge of the wider factual context that concerns me now.

[37] On a plain reading, therefore, this subsection appears to afford the court a wide discretion. Not so in practice. Courts have consistently tightly constrained the interpretation and application of subs (1)(a).[9]

[38] For instance, section 309(1)(a) is emphatically *not* a vehicle for going behind or challenging a judgement debt upon which a bankruptcy might be founded.[10] It is immaterial that I may have decided Duffy J's decision differently. Anne could have appealed that decision, or else Venning J's decision, yet she elected not to take such steps. Nor does s 309(1)(a) provide a forum for a bankrupt to re-litigate the merits of

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6 *Re Byron (a debtor), ex parte CIR* [1964] NZLR 508 (SC).
7 *Re Guest, ex parte BNZ Finance Ltd* [1991] 1 NZLR 250, (1990) 4 PRNZ 351 (HC).
8 *Holdgate v Blocassa Ltd* HC Auckland CIV-2005-404-2693, 23 March 2006 at [21].
9 *Minter Ellison Rudd Watts v Hampton* [2013] NZHC 2434 at [27]. Also see Re *Hunter ex parte CIR* [1964] NZLR 508 (SC) at [17]-[18], and [55]-[58].
10 *Norris Ward McKinnon v Kaye* [2016] NZHC 3089.

the adjudication application.[11] The principles governing annulments are different, and narrower, than those governing bankruptcy adjudications. Counsel for Anne appears at times to miss this crucial distinction.[12]

[39] The relevant cases under s 309(1)(a) are reviewed by the authors of both *Heath and Whale on Insolvency* and *Brookers Insolvency Law & Practice*.[13] Their commentaries identify three categories of annulment applications that have succeeded on this ground. These categories have been cited with approval by recent High Court authorities.[14] These are where:

(a) There was an abuse of process of the court;

(b) There was a defect in form or procedure;

(c) As a result of human error, a material fact was not drawn to the court's attention at the adjudication hearing.

[40] I do not consider I am obliged to shoehorn my ultimate conclusions into any one of these specific categories; they remain secondary to the question of whether the adjudication 'should not have been made'. But in any case, on the facts of this case, Anne's bankruptcy quite clearly amounts to an abuse of process of the bankruptcy proceeding of the kind contemplated by the relevant commentators.

Abuse of process

[41] The authors of *Heath and Whale* opine that abuse of process arguments made by bankrupt applicants typically move in two directions. Some bankrupts cry foul play because their desire to continue or initiate legitimate litigation has been

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11 *Minter Ellison Rudd Watts v Hampton*, above n 7.

12 Anne's counsel places reliance on *Rabobank Australia Ltd v Tootell* [2013] NZHC 2975, a decision arising out of the adjudication context.

13 P Heath and M Whale (eds) *Heath and Whale on Insolvency* (looseleaf ed, LexisNexis) at 9.26; *Brookers Insolvency Law & Practice* (looseleaf ed, Brookers) at IN 309.5(i).

14 *Page v Wanganui District Council* [2012] NZHC 2622 at [8]; *Minter Ellison Rudd Watts v Hampton*, above n 7, at [27].

thwarted by the bankruptcy. Others contend their creditor's adjudication application was a pointless exercise and/or was motivated by malice.[15]

[42] Anne's case involves an element of an appeal to thwarted litigation, but is more readily framed as an indictment of Leslie's oppressive behaviour. Leslie's reply to such an indictment is essentially three-fold:

(a) He stresses, first, that Anne is currently insolvent and remains unable to pay her debts. She no longer owns the trust assets in her prior capacity as trustee, and so is reliant on *potential future* distributions from these trusts. Moreover, the court cannot rely on the outcome of potential future relationship property proceedings.

(b) Second, the blame for Anne's predicament cannot be laid at his feet. Leslie says he is "simply enforcing a validly obtained costs order which has not been appealed". As for his actions subsequent to the bankruptcy, he is just 'normalising affairs' in response to Anne's bankruptcy.

(c) Leslie's final rejoinder is to rely on authorities to the effect that the mere existence of an indirect object does not furnish a ground for annulment.[16] That is, even if the bankruptcy has created injustice or at least hardship for Anne, his primary motivation was perfectly legitimate: to recover the debt Anne owed him.

[43] Of course, Anne has the onus of establishing that the adjudication amounted to an abuse of process. The most helpful way to demonstrate that Anne successfully discharges that onus is by addressing in turn each of Leslie's three submissions which reply to Anne's central argument. The result of this analysis is a finding that, when considered in its wider factual context, Leslie's adjudication application smacks of abuse and oppression.

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15 Heath and Whale, above n 11, at 9.26.

16 *Re Ell* (1885) 3 NZLR (SC) at 433.

Anne's solvency

[44] The report of the Official Assignee records four claims filed in Anne's bankruptcy, two of which are from Leslie. The first of these is the cost award, plus interest, totalling to $12,552.46. The second is his preferential costs of $27,800 in the adjudication proceedings; Anne disputes she is liable to pay this sum on the grounds that the adjudication should have never been ordered. The other two debts are a bank loan to GE Finance and Insurance and an overdraft loan to Westpac Bank; Anne deposes that up to the point of adjudication she was servicing this loan without any default. It appears she may have at least one other minor debt to ANZ Bank Ltd, but no claim has been filed.

[45] The Assignee has already recovered funds of $12,827.59 from Anne's estate. So in regards to the claims filed in her bankruptcy, Anne's remaining debts total to approximately $16,000 (if Leslie's preferential costs are included in this figure).

[46] That sum pales in comparison with the substantial division of assets (totalling over $600,000) that she would have received following that ill-fated conference in 2013. In the context of those figures, it is absurd that two years later she would be bankrupted by her former partner for failing to pay $12,000; or that she should remain in bankruptcy because of debts summing to $16,000.

[47] Even now, Leslie does not deny that substantial property would be available to Anne on the division of their relationship property. But he maintains that circumstances have changed, and such a division as struck in 2013 would no longer be fair today. Moreover, he says the 2013 agreement is of no assistance in this context. It has been ruled unenforceable by the High Court, and in any case, this court has no jurisdiction to 'look through' the trusts as the parties did in forming that agreement.[17]

[48] These submissions obfuscate and distract from the inescapable reality that Anne will quite clearly receive considerably more than $12,000 or $16,000 from the settlement of the relationship property proceedings.

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[17] *Willis v Willis*, above n 1, at [32].

[49] Of course, Anne would be forced to bring proceedings to obtain these trust and non-trust assets. Because Anne currently has no immediate legal entitlement to the trust money, which comprises the bulk of the property at issue, the Official Assignee's report dated 25 May 2017 indicates that the Assignee cannot pursue the claim.[18] So Anne remains free to pursue to her relationship property claim. If she succeeds, any money or property declared hers will vest in the Assignee as after-acquired property.

[50] Anne may be financially incapable of bringing these proceedings, and to that extent her desire to bring legitimate proceedings to set-off her outstanding debts is arguably thwarted by her bankruptcy.[19] But I have no doubt that if she were to bring proceedings, then the after-acquired property would more than off-set her debts. This is the view expressed with some confidence in the Assignee's report.

[51] In regards to the non-trust assets, Leslie remarks rather flippantly that there is only $6,000 for the boat and "some superannuation". He gives no reason for reducing the $8,000 of value that the settlement agreement afforded that boat. And his remark about superannuation obfuscates that the settlement agreement gave Anne a half share of his then $95,000 in superannuation assets. Leslie also says nothing of what appears to be his outstanding obligations to pay child support and spousal maintenance.

[52] As to the trust property, Anne is not without legal recourse under the Property (Relationship) Act. It would seem that Anne may well have a claim for over $400,000 for debts that the trust owes to Anne personally. A court may also be able to give some weight the 2013 settlement agreement, as an oral agreement albeit uncertified under s 21A. It is striking to my mind that the agreement was impliedly premised on an agreement of the two trustees to treat the trust property as relationship property for the purpose of s 21, and also to appoint themselves as beneficiaries under the Investment Deed.

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18 Property (Relationship) Act 1976, s 20A(2).
19 *Re Burke* (1886) NZLR 4 SC 303.

[53] To continue to focus on Anne's immediate inability to pay the comparatively trifling sum owing to her outstanding creditors is an overly narrow, and frankly uncharitable, perspective on the facts of this case.

A story of control

[54] Leslie is in effect requiring Anne to issue new proceedings, full well knowing that it compounds her emotional and financial strain. There is also some possibility that her bankruptcy — or the attendant consequences of losing trustee status, or potentially soon being removed as registered proprietor of the trust properties — will add new layers of complexity to Anne's litigation.

[55] According to Anne, the bankruptcy together with Leslie's subsequent actions reveal a strategic plan to substantially alter the power balance in his favour, vindictively punish her, and potentially prejudice her relationship property claim. That is a weighty allegation, and I am unwilling on the evidence before me to express matters in such strong terms. But it is hard not to be sympathetic with at least the broad outlines of Anne's complaint.

[56] It is critical to note that in a very real sense, Leslie had considerable influence over Anne's solvency, specifically her ability to meet her outstanding debts and obligations. Leslie, together with the newly appointed independent trustee, had the power to make a distribution to Anne as discretionary beneficiary under the Family Trust. She was after all a discretionary beneficiary of the Family Trust, and this was one very good way to achieve that trust's express purpose of applying net income to "manage assets … for the advancement or benefit of the beneficiaries". Or they could do the same after adding Anne as a discretionary beneficiary to the Investment Trust.

[57] But Leslie chose not to set off or release the $12,000 necessary for Anne to pay her costs award, nor the $16,000 required to lift her out of bankruptcy at present. Instead, he has proceeded to ensure she is removed as trustee, and is now attempting to have her removed from the title to trust properties.

[58] Leslie submits he is just 'normalising the situation' following Anne's bankruptcy. This is plainly a cynical outlook in my view. The 'norm' he chooses to focus on (Anne's bankruptcy) results from Leslie's own adjudication application. Moreover, it conveniently sidelines what to my mind is more obvious choice of 'norms': the 2013 settlement agreement, or at least in Anne's expectation of soon receiving considerable relationship property assets.

Any gain except Anne's pain?

[59] Leslie tries to colour his actions as the routine debt collection of a legitimate creditor. I do not find that position credible.

[60] There is no question that Anne would have paid off her debts as soon as sufficient money was released to her from the trust fund. Or, if the trustees were not so inclined to simply release funds, they could have set-off a trust distribution or even personal payment against the final resolution of the relationship property division.

[61] In these circumstances, I cannot see that Leslie had anything to gain from applying to adjudicate his former partner except Anne's pain. Nor can I see how he benefits from continuing to oppose Anne's annulment application, unless he considered it a 'benefit' to prolong Anne's hardship.

[62] It flows from this finding that I do not consider the oppressive elements of Leslie's adjudication application are in any way indirect, as he would characterise it.

Bringing the strands together

[63] Leslie's approach to this case has been to try to narrow the field of legitimate inquiry. He says Anne lacks standing to speak of the earlier family court proceedings. Anne's financial strife, he considers immaterial; the accusations of psychological abuse, mere slander; his so-called 'power play' with respect to the trust, simply the operation of the law.

[64] Such statements are misleading in how they screen out nuance and additional considerations. What I am confronted with in this case is a man who bankrupted his former wife over a comparative pittance, when two years previous the parties had essentially agreed (barring a procedural irregularity) that she would receive tens of thousands in relationship property. He did this, moreover, seemingly for no good reason except to exacerbate her stress, complicate her legitimate claim in relationship property proceedings, and prolong its final resolution.

[65] The inference I draw is that Leslie has deliberately chosen bankruptcy as a weapon of oppression. I accordingly find that Anne's adjudication application was an abuse of process under subs (1)(a).

The Court's discretion not to annul

[66] Leslie points to a number of factors which he says nonetheless weigh against ordering an annulment. These include Anne's relative delay in bringing the annulment proceedings, and Anne's decision not to pursue her appeal rights with respect to the decisions of Duffy J or Venning J. He also places reliance on the 18 March settlement proposal as an example of his willingness (and her stubbornness) to resolve outstanding issues; though I do not consider the proposal was made in good faith, subject as it was to the threat of bankruptcy. In any case, these factors are germane but certainly not determinative to the exercise of the court's discretion.

[67] On the other hand, the public interest is not served by keeping Anne in bankruptcy for a minor debt that she will pay as soon as her relationship property is released to her. Leslie's callous approach to injecting bankruptcy into the relationship property context also weighs in the interests of intervention. In short, the facts of this case cry out for relief.

Result

[68] The order adjudicating Anne bankrupt is annulled. This annulment takes effect retrospectively from the date of adjudication: s 309(3)(a).

[69] It follows from the reasoning in this decision that costs should be awarded against Leslie, at least on a 2B basis. If counsel cannot agree on costs, they may file memoranda within 15 working days of the date of this judgment.

[70] I also reserve the issue of who (if anyone) will pay the Official Assignee's costs in this application; my preliminary view is that Assignee must bear these costs. However, the Assignee also has leave to file memoranda within 15 working days if the matter is to be pursued further.

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Associate Judge Sargisson