

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

**CIV-2013-470-820
[2013] NZHC 336**

UNDER The Insolvency Act

BETWEEN MICHELLE KAYE HUTCHINS
Judgment Creditor

AND GARRY DONALD EDWARDS
Judgment Debtor

Hearing: 22 February 2013

Appearances: Mr Kommu for Judgment Debtor
Mr Eagleson for Judgement Creditor

Judgment: 22 February 2013

**ORAL JUDGMENT OF ASSOCIATE JUDGE DOOGUE
DECLINING ADJOURNMENT**

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[1] This proceeding had its first call today, 22 February 2013. Mr Kommu for the judgment debtor sought an adjournment. He says that his client has attempted to negotiate with the judgment creditor but has not been able to come to an arrangement and he needs further time to liquidate property from which he would be able to pay the debt. I gave an earlier indication that it would be unlikely that an adjournment would be granted in such circumstances. Nonetheless I have listened further to counsel's submissions and have been addressed briefly by Mr Edwards since the matter was recalled.

[2] The brief history of the matter is this. The judgment in this proceeding arises out of relationship property proceedings which were heard in the High Court with an initial judgment I understand in June 2012. The significant next step though was a judgment issued by Justice Heath on 27 September 2012, paragraph (a) of which read:

This Court orders:

- (a) Immediate payment by the respondent to the appellant of the sum of \$375,000.

[3] What that makes clear is that the Court intended immediate payment of \$375,000 together with interest and other costs. It was not paid. A bankruptcy notice was issued on 10 October 2012 and it was served on Mr Edwards 12 October 2012. The bankruptcy notice required the debtor within ten working days to pay to Ms Hutchins the sum of \$375,770.54 and other amounts.

[4] It also in the usual way warned that if the debtor did not comply with the notice then the consequences would be that he would have committed an act of bankruptcy.

[5] Apparently no payment was received. On 28 November 2012 bankruptcy proceedings were served on Mr Edwards which told him that an application to adjudicate him bankrupt was to be heard today and advising that the amount of \$375,000 was owed together with additional amounts which totalled up to \$404,195.50. It recited that an act of bankruptcy had been committed on 13 October

2012.

[6] No steps were taken to file a defence to that proceeding. Today Mr Kommu for the debtor has appeared and sought an adjournment to April or May of this year. This it is said is justified because:

- a) The creditor had declined to enter into an agreement to accept a transfer of shares in lieu of her cash entitlement;
- b) She had done that by sending a text message. Further Mr Edwards told me when he addressed me that he had offered her many 'deals' but they kept getting refused.

[7] Mr Kommu submitted to me that it was only fair that the debtor now be given time (an additional one or two months to liquidate some property) although Mr Kommu did not use that term exactly that is the purport of what he told me. Mr Eagleson opposed an adjournment. He essentially set out the history that I have mentioned in the foregoing portions of this judgment.

[8] This proceeding is an insolvency proceeding. Mr Edwards has demonstrated that he is insolvent. There are many people who are adjudicated bankrupt who have assets. The fact that they have assets (indeed a substantial excess of assets over liabilities) will not provide a proper answer to the question of whether they are insolvent. Insolvency is concerned with whether they can pay their debts when they fall due. Mr Edwards has been in jeopardy of an order of adjudication based on his insolvency at least since the bankruptcy notice was served on him 12 October 2012. The terms of the notice could hardly be clearer and yet for some reason the assumption has been made that notwithstanding what the bankruptcy notice said and the creditor's application for adjudication said, it would be reasonable to come to the Court today to say time is required to realise assets so that the debt can finally be paid. The creditor herself was blamed for not accepting some deal other than a cash payment. I am afraid I do not agree with any of this Mr Edwards has had since the original judgment of Heath J ordering an "immediate payment" of the \$375,000 something like five months to do just that. He has not done so. In my view given

that he is presumptively insolvent, he has not filed a defence, he has got no immediate arrangement in view for paying the debts (after a short adjournment possibly) all the indications are that the proceeding should go ahead today and I intend to order accordingly and I decline to adjourn the proceedings.

J.P. Doogue
Associate Judge