

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

CIV 2010-404-003333

IN THE MATTER OF Section 13 of the Insolvency Act 2006

BETWEEN INDIANA PUBLICATIONS (NZ)
LIMITED
Judgment Creditor

AND RAJENDRA PRASAD
Judgment Debtor

Hearing: 11 November 2010

Counsel: GM Harrison for judgment creditor

Appearance: R Prasad, judgment debtor in person

Judgment: 11 November 2010 at 12:39pm

**(ORAL) JUDGMENT OF ASSOCIATE JUDGE FAIRE
[on application to recall judgment]**

Solicitors: Parshotam & Co, PO Box 27 079, Auckland

And To: R Prasad, 3 Mono Place, Ellerslie

[1] In my judgment of 11 October 2010¹ I set out my reasons as to why an order of adjudication could be made against the judgment debtor.

[2] I recorded the following in [15] of the judgment:

[15] But for one matter, I am satisfied that there are no discretionary matters which would justify refusing to exercise the discretion to adjudicate the judgment debtor in this case. The one matter, however, that I raised in the course of argument with the judgment debtor was whether he was in a position to pay the judgment in favour of the judgment creditor. He assured me that if he was allowed a period of 21 days he could make such payment. The sums due in the judgments attached to the judgment creditor's affidavits in support total \$59,417.00. I announced in open court that I would allow an adjournment to allow payment to be made in cleared funds before the adjourned date of hearing.

[3] As a result I record in [16] the following:

[16] Accordingly, I adjourn this proceeding to 10am on 29 October 2010. If in fact the sum of \$59,417.00 has not been paid to the judgment creditor in clear funds before that time, the judgment debtor can expect that an order of adjudication will be made. If, however, that sum is paid there is still a risk to the judgment debtor that an order of substitution would be made in favour of the Crown which has a judgment against the judgment debtor for \$13,227.07. That arises from the judgment of Justice Cooper of 23 August 2010 and sealed on 9 September 2010. An order for substitution may be made in appropriate circumstances pursuant to the Insolvency Act 2006, s 44.

[4] The judgment debtor appeared before Lang J on 29 October 2010 because of the fact that I was unavailable. His Honour adjourned this proceeding until today for consideration by me because an application to recall my judgment had been filed by the judgment debtor.

[5] The debt has not been paid. Mr Harrison had made appropriate inquiries and assures me that that is the position.

[6] I deal specifically with the application to recall my judgment. The Court of Appeal in *Erwood v Maxted and Glasgow*² gave guidelines for the recall of judgments in civil proceedings:

¹ *Indiana Publications (NZ) Ltd v Prasad* HC Auckland CIV 2010-404-3333.

² *Erwood v Maxted and Glasgow* [2010] NZCA 93 at [23].

[23] This Court is concerned with the proliferation of unjustified applications to recall judgments and has agreed upon the following guidelines to deal with such applications.

(a) **Accidental slips or omissions**

(i) Any accidental slip or omission may be corrected under r 8 of the Court of Appeal (Civil) Rules 2005.

(ii) Where the parties are agreed that an error or omission which falls within r 8 should be remedied, a joint memorandum may be filed for consideration by the Court.

(iii) Where there is no agreement, or where the Court directs, a formal application is required in accordance with the process set out in (c) below.

(b) **Applications to recall judgments not falling within r 8**

(i) Where a party seeks to recall a judgment not falling within r 8, the criteria set out in *Horowhenua County v Nash (No 2)*[1968] NZLR 632 at p 633 (as confirmed by this Court in *Unison Networks Limited v Commerce Commission* [2007] NZCA 49) are to be followed and will be strictly applied.

(ii) Applications which merely seek to relitigate matters already considered, or to challenge substantive findings of fact and law, will not be entertained. Reference may usefully be made to *Ngahua Reihana Whanau Trust v Flight* CA23/02 26 July 2004; and *Faloon v Commissioner of Inland Revenue* (2006) 22 NZTC 19,832.

(c) **Process**

(i) Where a formal application is required in terms of these guidelines:

(a) it must be made on notice to all other parties;

(b) any party served with an application need not respond unless directed to do so by the Court;

(c) the Court will deal with the application on the papers or by oral hearing in terms of r 51(6);

(d) the Court will usually give only brief reasons for its decision on any application;

- (e) any further application seeking to recall a decision refusing an application to recall will usually be dealt with summarily; and
- (f) the Court will consider ordering increased or indemnity costs against parties and/or counsel bringing unmeritorious applications.

[7] I have carefully considered the judgment debtor's application and I have given him a brief opportunity to address. What he seeks to do is to relitigate the matters that have already been ruled upon. There is simply no justification for his application to recall my judgment. That application is accordingly dismissed.

[8] I come now to deal with the application for an order for adjudication.

[9] The judgment debtor has had an opportunity to pay the debt which is referred to in the papers and was referred to in my judgment.³ I have asked him today whether he intends to pay it and he said that he did not think he should be paying it. I am satisfied that he has had the opportunity to pay and it has not been paid. There is no jurisdictional bar and no other reason why an order of adjudication should not be made.

[10] Accordingly, I order that Rajendra Prasad be adjudicated a bankrupt.

[11] This order is made at 12:32pm.

Costs

[12] I gave both counsel and Mr Prasad the opportunity to address on the question of costs. Mr Harrison somewhat modestly, in my view, simply seeks costs on a 2B basis, which clearly are justified in the circumstances of this case. Mr Prasad's response was simply that he would wish to appeal my decision, which I have indicated to him is his right should he wish to do so. There is no reason advanced by him, however, at this stage as to why an order for costs should not be made.

³ *Indiana Publications (NZ) Ltd v Prasad* HC Auckland CIV 2010-404-3333, 11 October 2010.

[13] Accordingly, I order costs in favour of the judgment creditor based on Category 2, Band B together with disbursements as fixed by the Registrar.

JA Faire
Associate Judge