

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

**I TE KŌTI MATUA O AOTEAROA  
ŌTAUTAHI ROHE**

**CIV-2011-409-002055  
[2018] NZHC 1866**

UNDER the Insolvency Act 2006  
BETWEEN MINTER ELLISON RUDD WATTS  
Judgment Creditor  
AND DAVID JOHN HAMPTON (A  
BANKRUPT)  
Judgment Debtor

Hearing: 23, 24 July 2018

Appearances: G E Slevin for Official Assignee  
P Shamy and S Kinsler for Commissioner of Inland Revenue  
Judgment Debtor in Person

Judgment: 26 July 2018

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**JUDGMENT OF VENNING J**

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**This judgment was delivered by me on 26 July 2018 at 2.15 pm, pursuant to Rule 11.5 of the High Court Rules.**

**Registrar/Deputy Registrar**

**Date.....**

Solicitors: Insolvency and Trustee Service, Christchurch  
Crown Law, Wellington  
Meredith Connell, Wellington  
Counsel: G E Slevin, Christchurch  
Copy to: Judgment Debtor

## **Introduction**

[1] David John Hampton was adjudicated bankrupt on the application of Minter Ellison Rudd Watts on 5 June 2013. The Commissioner of Inland Revenue was a supporting creditor.

[2] Mr Hampton filed a Statement of Affairs on 19 June 2014 and was due to be automatically discharged from bankruptcy on 19 June 2017. On 16 June 2017 the Official Assignee lodged an objection under s 292 of the Insolvency Act 2006 (the Act) to Mr Hampton's discharge.

## **Examination**

[3] The examination procedure under s 295 and ss 173 to 181 of the Act was engaged. The Commissioner of Inland Revenue later sought leave under s 292 to also object to Mr Hampton's automatic discharge.

[4] Mr Hampton initially sought to have his examination deferred pending the outcome of an appeal to the Supreme Court by Chesterfields Preschool Ltd concerning its liquidation. The decision was delivered on 23 November 2017.<sup>1</sup>

[5] In the meantime, on 8 November 2017, Mr Hampton had himself applied for a discharge from bankruptcy under s 294 of the Act.

[6] The Commissioner gave notice on 25 May 2018 opposing Mr Hampton's application for discharge and also gave a notice under s 297 of the Act of the further grounds she intended to oppose his discharge on.

[7] Mr Hampton's public examination under s 295 was held on 23 July 2018.

[8] The Official Assignee filed a report for the purposes of the examination as required by s 296 of the Act.

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<sup>1</sup> *Chesterfields Preschools Ltd (in liq) v Commissioner of Inland Revenue* [2017] NZSC 176.

## **Procedural issues**

[9] At the outset of the examination Mr Hampton sought leave to withdraw his application for discharge “pending completion of a redrafted misfeasance statement of claim”. It is not possible to withdraw the application for discharge conditionally in that way. But nothing turns on the point. Given the objection by the Official Assignee the Court was required to hold an examination in any event. The issues that would arise on Mr Hampton’s application for discharge arise to be considered in the course of the examination triggered by the Official Assignee’s objection.

[10] Mr Shamy accepted the Commissioner no longer needed to pursue her application for leave to object to Mr Hampton’s automatic discharge. The Commissioner instead supported the Official Assignee’s opposition to Mr Hampton’s discharge and also relied on the additional grounds in her s 297 notice.

[11] Mr Hampton confirmed he was aware he was entitled to legal advice and that he was ready for the examination. He confirmed he would represent himself.

[12] The procedure in s 177 of the Act as to the conduct of the examination was followed. The examination was recorded in writing. Mr Hampton was given the option of having the transcript of the examination read over to him but preferred to read through the transcript himself.

[13] At the conclusion of Mr Slevin’s examination Mr Hampton, counsel and I took the opportunity to review and correct the transcript of his examination. A similar process was followed after Mr Shamy’s examination on behalf of the Commissioner. The evidence was concluded by the end of the first day. Counsel and Mr Hampton then addressed the Court on the second day of the hearing.

## **Brief factual background**

[14] Mr Hampton and his former wife Ms Sisson, and various entities associated with them, particularly Chesterfield Preschools Ltd (CPL), Chesterfields Partnership, Chesterfields Preschools Partnership, and Anolbe Enterprises Ltd (the Chesterfield

entities) have been before this Court, the Court of Appeal and Supreme Court on one issue or another on a number of occasions over a number of years.

[15] The litigation has its genesis in Mr Hampton and the Chesterfield entities' ongoing dispute with the Commissioner about their tax liability. Although the disputes go back almost to the start of the Chesterfields' Partnership in 1990 they have continued to the present.

[16] From Mr Hampton's point of view the reason for his issues with the Inland Revenue goes back to his dealings with Mr Aronsen, the debt and return management officer of the Inland Revenue in 1994 and 1995. Mr Hampton says that pursuant to an informal arrangement Mr Aronsen agreed to suspend liability of tax pending finalisation of various GST refunds but that in 1998 the Commissioner's approach changed and the arrangements were no longer followed. Further, the Commissioner denied any arrangement had been made and, on Mr Hampton's submission, withheld disclosure of the corroborating evidence of the Aronsen file notes. Mr Hampton complains that it was only much later and during the course of later judicial review proceedings that the file notes were ultimately discovered. He submitted that if the Aronsen file notes had been discovered earlier and the arrangement kept he and the Chesterfield entities would have been able to pay the core tax liability and would have avoided liability for penalties.

[17] In a rather extreme submission Mr Hampton submitted that the decision not to disclose the Aronsen file notes "was like a cancer to the tax payers' business and financial affairs, which inevitably became mortal when, in 2004 ... , the Commissioner [took enforcement proceedings]".

[18] In a judgment delivered on 31 August 2010, the Court of Appeal helpfully summarised at [11] to [118], the background to the various issues and judicial decisions involving Mr Hampton, the Chesterfield entities and the Commissioner.<sup>2</sup> I gratefully adopt that summary. It is unnecessary for me to repeat that summary for the purposes of this judgment.

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<sup>2</sup> *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2010] NZCA 400.

[19] In a later judgment in 2017 the Court of Appeal noted that Mr Hampton (and other Chesterfield entities) had a number of further proceedings on foot, but that they were stayed.<sup>3</sup> First, proceedings alleging misfeasance in public office against Attorney-General and various Inland Revenue Department officers. The proceedings are stayed until repleaded by a lawyer and until leave is granted by a Judge to pursue them. Mr Hampton advised the Court that he has engaged the services of a Queen's Counsel to review the possibility of redrafting and pursuing the misfeasance proceedings. He expects a decision will be made shortly.

[20] Mr Hampton (and other entities) have also filed proceedings alleging malicious pursuit of civil proceedings. That proceeding is stayed pending representation by a solicitor with a practising certificate. Finally, there is a NOPA proceeding in this Court commenced in October 2009.

[21] To complete the brief general background summary, in its recent decision the Supreme Court allowed CPL's appeal against its liquidation for tax debts.<sup>4</sup> The Supreme Court set aside the order placing it into liquidation, and remitted the proceeding to the High Court for more detailed consideration of its financial position. Subsequently, on the application of the Commissioner, CPL has been placed into interim liquidation pending a full hearing in this Court.

### **The Assignee's report**

[22] The Assignee's report addresses the following issues:

#### *Bankrupt's affairs (s 276(2))*

[23] Mr Hampton disclosed limited assets in his Statement of Affairs. He disclosed:

- A bank account with Kiwibank which by the date of bankruptcy only held \$700.
- A Daihatsu house truck stated to have a value of \$30,000.

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<sup>3</sup> *Sisson v Commissioner of Inland Revenue* [2017] NZCA 326 at [31]–[34].

<sup>4</sup> *Chesterfields Preschools Ltd (in liq) v Commissioner of Inland Revenue*, above n 1.

- A BMW with a value of \$2,500.

In addition, Mr Hampton disclosed he was a trustee of the Anolbe Family Trust and that the Trust held shares in CPL. Ultimately the Official Assignee has not sought to challenge that or to claim an interest in the shares. They would appear to have no value given the large sum CPL owes Inland Revenue.

[24] Currently \$101,131.95 is held by the Official Assignee which represents the proceeds of sale of a property at 67 Augusta Street (plus interest accrued).

[25] Mr Hampton did not disclose 67 Augusta Street, Christchurch either as a personal asset or an asset of the Anolbe Family Trust in his Statement of Affairs. The property was originally held in Mr Hampton's sole name. Then in 2007, in the exercise of the mortgagee's power of sale, the property was transferred to Ms Sisson. Some 18 months later Gold Band Finance Ltd lodged a caveat. In related proceedings Mr Hampton said the borrowing was to complete "aggregation works" at the property. I discuss the background to the sale of that property in more detail later.

[26] The following creditors have filed claims in the bankruptcy:

Minter Ellison Rudd Watts – judgment and costs	\$105,199.92
Commissioner of Inland Revenue – GST, PAYE, income tax, interest and penalties and court costs totalling	\$1,322,915.17
Clement Collections Ltd – debt collection on behalf of Binns Barber and Keenan Ltd	\$2,823.76

[27] The Official Assignee's costs to date are \$95,570.61. A substantial portion of them have been incurred in responding to Mr Hampton's litigation.

*The causes of bankruptcy (s 296(2)(b))*

[28] Mr Hampton attributed the causes of bankruptcy to "dishonest Inland Revenue officers" (which I take to be a reference to the subject matter of his malfeasance proceedings) and the refusal of an insurance company to meet obligations under an insurance contract. However, it appears the insured property was owned by CPL rather than Mr Hampton personally.

*Performance of duties under the Act (s 296(2)(c))*

[29] Mr Hampton did not comply with the requirement to file his Statement of Affairs within 10 working days as required by s 68(1) of the Act. He only filed the Statement of Affairs on 18 June 2014, over a year after his adjudication.

[30] The Official Assignee considers that Mr Hampton's failure to file his Statement of Affairs earlier has prejudiced the administration of the bankruptcy. For example, it meant the Official Assignee did not know the extent of Mr Hampton's assets and nor did Mr Hampton provide registration details and the location of the Daihatsu vehicle to enable its surrender to the Official Assignee for valuation and possible sale.

*Compliance with orders of the Court (s 296(2)(d))*

[31] Mr Hampton has not paid the (post-bankruptcy) costs awarded against him in recent Court proceedings in favour of the Official Assignee.

*Mr Hampton's conduct before and after discharge (s 296(2)(e))*

[32] The Official Assignee's report records the litigation that Mr Hampton has been involved in both before and after his adjudication in bankruptcy. The Official Assignee says Mr Hampton is exceptionally litigious. Mr Hampton's litigation has caused the Official Assignee to incur unnecessary legal costs as noted above.

[33] The report also criticises the lack of information provided by Mr Hampton concerning his employment during the course of his bankruptcy and his failure to update his address or to provide a means to contact him.

[34] In summary, the report highlights that Mr Hampton has unreasonably delayed and frustrated the administration of his bankruptcy, firstly by failing to file his Statement of Affairs as required, then failing to co-operate in disclosing the location of or delivering to the Assignee assets of value. The Official Assignee says he also failed to respond to communications from his insolvency officer, and did not initially disclose his interest in the Augusta Street property.

### **The Official Assignee's submissions**

[35] Mr Slevin accepted that, given five years has passed since Mr Hampton's adjudication, Mr Hampton should be discharged, but submitted the discharge should be on conditions that Mr Hampton is prohibited from entering into, carrying on or taking part in the management or control of any business and is also banned from being a company director without leave of the Court for a period to be determined by the Court.

[36] Mr Slevin submitted that a banning order would put members of the public dealing with Mr Hampton on notice and would prevent Mr Hampton from incorporating any new companies that might incur debts for which he would not be personally responsible. The requirement for the Court's leave would ensure that any business he might go into would be an appropriate one.

[37] Mr Slevin submitted that a discharge subject to conditions would also be conducive to commercial morality and would represent, to some extent, a consequence for Mr Hampton's misconduct during his bankruptcy which might serve as a deterrent to him and others. It would provide judicial recognition of the fact that such deliberate misconduct should not be without consequence.

### **The Commissioner's submissions**

[38] The Commissioner does not oppose Mr Hampton's discharge but again submits that it is in the public interest, and necessary to protect the commercial community, that Mr Hampton be discharged subject to conditions.

[39] The Commissioner seeks conditions prohibiting Mr Hampton from being a director of any company or taking part in the management or control, (including the preparation of financial accounts) of any business without the Court's permission.

[40] The Commissioner refers to Mr Hampton's commercial conduct before bankruptcy and in particular his active management and directorship of CPL, Anolbe Enterprises Ltd (now in liquidation and removed from the register), the Chesterfields Partnership and the Chesterfields Preschool Partnership. Those entities and Mr

Hampton personally incurred significant tax debts which remain unpaid. The Commissioner considers that Mr Hampton's conduct during his bankruptcy suggests his attitudes towards his tax liability have not changed. He still does not accept the findings of the Courts which have confirmed his personal tax liability.

[41] The Commissioner submits that if Mr Hampton was permitted to act as a director of a company or principal of a business again he would act without regard for sound accounting practice and tax laws which would pose a significant risk to both the commercial community and to the integrity of the tax system.

### **Mr Hampton's submissions**

[42] Mr Hampton submits that he should be discharged without conditions. In his written submissions he rehearsed the background to his dispute with the Commissioner and emphasised that, apart from the debt to his solicitors, (which was incurred in taking action against the Commissioner of Inland Revenue) and the debt owing to the Commissioner, he had no other creditors.

[43] Next Mr Hampton submitted that it was unfair to categorise him as unduly litigious. He submitted he and the Chesterfield entities were forced into taking judicial review proceedings and the other proceedings because of the non-disclosure of Aronsen notes. He noted the strike out applications the Commissioner had brought in relation to the misfeasance in public office and malicious proceedings had not succeeded.

[44] As to his cooperation with the Official Assignee, Mr Hampton accepted that he had not provided full cooperation during his bankruptcy. He submitted it was not until he received the report that he was aware of the issue in relation to his stated employment with Ryan Consulting Ltd, which he submitted was a misunderstanding, and in relation to the communications with the Official Assignee's office. He explained that on the basis that he had no intention of being uncooperative but there were communication difficulties due to the remote location where he went to take up work driving forestry logging trucks.

[45] Mr Hampton accepted that the tax system operates on voluntary compliance and that he had been prosecuted for failure to comply with such obligations. But he argued that the personal effect of the distress of the non-disclosure on him had affected his ability to cope and meet the obligations of voluntary compliance.

## Principles

[46] The principles to apply following an examination and when considering whether to grant a discharge and if so, on what terms, have been confirmed by the Court of Appeal in *ASB Bank v Hogg*:<sup>5</sup>

In conferring a discretion expressed in the broadest terms, the legislation recognises that each case will be different, that the relevant factors may vary from case to case and that the exercise of the discretion must be governed by the circumstances of the particular case having regard to the guidance provided by a consideration of the scheme and purpose of the legislation. In providing for automatic discharge after three years, the legislation recognises that it is not in the public interest that the bankruptcy should endure indefinitely. In providing for earlier discharge, s 108 recognises that continuing the bankruptcy to the end of the three years may not be in the public interest. Whether or not it is will be a matter for decision on the particular facts. In that regard, guidance is provided by s 109(2) which lists matters on which the assignee is to report to the High Court in such a case. The Court is to consider the assignee's report as to the affairs of the bankrupt, the causes of the bankruptcy, the manner in which the bankrupt has performed the duties imposed on him or her under the Act and his or her conduct both before and after the bankruptcy, and also as to any other fact, matter or circumstance that would assist the Court in making its decision. Clearly the Court apprised of the matter will consider the legitimate interests of the bankrupt, the creditors and wider public concerns, but it is neither required nor entitled to impose threshold requirements in the exercise of the discretion so as to derogate from the breadth of the powers conferred under s 110. The applicant has the onus, in the sense of adducing evidence, to show good cause for ordering an early discharge, but his obligation goes no further than that.

[47] Although the *Hogg* case was an application for early discharge, the Court has applied those principles to cases such as the present.

[48] Mr Hampton submitted, public interest, not punishment is the determinative consideration. As Asher J noted in *Kelly v Structured Finance Ltd*:<sup>6</sup>

The public interest is best approached from the perspective of protecting the public from the insolvent debtor. The issue is not the punishment of the debtor,

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<sup>5</sup> *ASB Bank v Hogg* [1993] 3 NZLR 156 (CA) at 157–158.

<sup>6</sup> *Kelly v Structured Finance Ltd* [2009] 2 NZLR 785 at [63].

but avoiding the risk of further conduct to the detriment of the community, in particular in this case the commercial community.

[49] On the issue of the interests to be considered, White J in *Re Whitelaw* noted the relevant matters included:<sup>7</sup>

... the interests of the bankrupt; the interests of the creditors; the public interest; commercial morality and the conduct of the bankrupt.

### **Decision**

[50] It is apparent from the background referred to in the numerous judgments on the file, and Mr Hampton's submissions to the Court, that he has a deep-seated mistrust of and dissatisfaction with, a number of the officers of the Inland Revenue Department, so much so that the mistrust has been the focus of Mr Hampton's life for a number of years now. It has also, in my assessment, affected his judgment in relation to the litigation he has involved himself in and the way he has conducted it and his affairs.

[51] On the occasions that Mr Hampton was able to consider matters objectively he did make appropriate concessions, such as for instance, acknowledging that he had failed in his obligation to disclose information to the Official Assignee concerning the Daihatsu.

[52] There is no doubt Mr Hampton feels aggrieved at what he perceives were wrongful actions of Inland Revenue Department officers but that does not excuse Mr Hampton's (and the Chesterfield entities) failure to meet the taxation obligations they had.

[53] The liquidation proceedings involving CPL are before the Court so I shall say no more about those, other than to note that the matter which Mr Hampton is particularly exercised by, namely the alleged non-disclosure of the Aronsen notes, was raised directly in front of the Court of Appeal in support of the application to set aside the liquidation of CPL. The Court of Appeal dealt with it in the following way:<sup>8</sup>

[106] Finally we note that, while not explicit on the point, the notice of appeal appears to convey the implication that in CPL's solvency analysis the

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<sup>7</sup> *Re Whitelaw* HC Hamilton CIV-2004-419-1647, 10 September 2010 at [20].

<sup>8</sup> *Sisson v Commissioner of Inland Revenue*, above n 3, at [106] (footnotes omitted).

Court should be required to include potential damages claims associated with the alleged failure of the Commissioner to disclose information. In that connection we note the phrasing of the second of the contentions set out at [62] above, which may have been included with an eye to the extant (albeit stayed) misfeasance and malicious civil proceedings claims.

[54] The Court then went on to record they did not accept that CPL could rely on such potential claims as an off-set or counterclaim against such amount as it owes the Commissioner for core tax and penalties.<sup>9</sup> That approach was confirmed and approved by the Supreme Court in granting leave.<sup>10</sup> It is clear that any such claims are not relevant to the issues that this Court has to deal with at this time.

[55] There are a number of other issues in relation to Mr Hampton's dealings and approach to his obligations which are of more direct concern.

[56] Mr Hampton cannot blame all his issues with the Revenue on the Aronsen disclosure issue. He has a history of default in relation to tax obligations. Mr Hampton was convicted and fined for failing to file personal income tax returns for the years ended 31 March 1995, 1996, 1997, and 1998. Further, CPL, which he was a director of, was convicted for failing to file income tax returns for the year ended March 1996, March 1997, and for failing to file GST returns on eight occasions between July 1997 and September 1998. CPL also failed to file PAYE returns in 1997, 1998 and ACC reconciliations in 1997 and 1998.

[57] Mr Hampton also has a historical conviction under the Goods and Services Tax Act 1985. He was convicted of, on or about 13 August 1990, intentionally misleading the Commissioner in relation to the value of a property being a matter under the Goods and Services Tax Act. That conviction was upheld on appeal by Tipping J.<sup>11</sup> While historical it does reflect a concerning lack of integrity when dealing with the Inland Revenue. Mr Hampton's failings in relation to his obligations and his conviction for misleading the Revenue do not support a conclusion that Mr Hampton will comply openly and fully with his obligations under the tax legislation. The recent adverse

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<sup>9</sup> At [107].

<sup>10</sup> *Chesterfields Preschools Ltd (in liq) v Commissioner of Inland Revenue* [2017] NZSC 168 at [11].

<sup>11</sup> *Hampton v Inland Revenue Department* (1994) 16 NZTC 11,243.

findings made by Judge MacAskill in *Hornby Finance Ltd v Hampton* about Mr Hampton's evidence are also of concern.<sup>12</sup>

[58] There is also Mr Slevin's point that shortly before the bankruptcy there were sufficient funds for Mr Hampton to have paid the balance owing to Minter Ellison but that Mr Hampton apparently chose not to do so. By the time of his bankruptcy the bank account only had \$700 in it. There was no apparent need to buy a house truck given that he was able to live rent free at his mother's address.

[59] As noted Mr Hampton also failed to comply with the requirement under the Insolvency Act 2006 to complete a Statement of Affairs within the prescribed time of 10 working days of receipt. While his failure to file it for over a year effectively postponed his automatic discharge, and to that extent Mr Hampton penalised himself, I accept Mr Slevin's point that it is important that bankrupts generally comply with the requirement to complete a Statement of Affairs to ensure that a bankrupt's estate can be properly administered and also to ensure that if there are assets available to creditors they are identified early and are able to be realised properly. The house truck is an example of the failure in the present case. Mr Hampton only disclosed the whereabouts of the Daihatsu truck in the course of the examination but advised it was now worth only a couple of thousand dollars, as opposed to the \$30,000 stated in his Statement of Affairs.

[60] While Mr Hampton suggested he had not received correspondence from the Official Assignee's office it was apparent that he had received emails and other correspondence. Further, it was his responsibility to advise the Official Assignee of any change in addresses. The address he gave was of 8A Kahu Road. He did not update or change that address during the course of the bankruptcy. He should have kept in regular contact with the family member at that address to ascertain what, if any, correspondence had been sent to him at that address. That he failed to do so also displays a lack of responsibility towards his obligations as a bankrupt.

[61] There is then the rather unsatisfactory position in relation to the 67 Augusta Street property. The property at 67 Augusta Street is an example of how Mr Hampton

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<sup>12</sup> *Hornby Finance Ltd v Hampton* [2012] DCR 229.

and Ms Sisson have failed to properly distinguish between the assets, liabilities and general affairs of the separate Chesterfield entities involved in the partnerships, companies, and trusts, a point the Court has commented on in the past. In its 2017 decision the Court of Appeal noted Fogarty J's observations that Mr Hampton was:<sup>13</sup>

“to put it mildly, an extremely difficult ‘taxpayer’ to deal with”, who expected to be able to move credits from one taxpaying entity to another on the strength of handwritten letters filed from time to time.

Fogarty J had also said, in an earlier judgment in relation to the Commissioner's application for freezing orders:<sup>14</sup>

[16] ... I am satisfied generally, mainly due to the incredibly complicated transactions going on within the family, swirling around the Chesterfield Preschools business, that the Commissioner has reason to believe that the family is transferring and shuffling assets and with an intent to avoid, where possible, tax liability and ultimately enforcement of any liability sustained by them as a result of legal process.

[17] So, in short, I am satisfied for the purposes of a Mareva injunction that there is a sufficient history to justify a real risk or apprehension that the Hampton persons and vehicles may or will dissipate or dispose of assets so as to render themselves, as far as possible, judgment free. They may not have the ability to render themselves completely judgment free but given the amount at stake, \$3 million, there is an incentive to remove assets to the extent that they can do.

[62] In December 2013 the Augusta Street property was sold at mortgagee sale. Despite the title record disclosing the property was held in Ms Sisson's name, when the property was sold at mortgagee sale, Mr Hampton asserted he was beneficially entitled to the funds. The mortgagee was directed by the Court, with Mr Hampton's consent and in his presence, to pay the surplus proceeds of sale to the Official Assignee in the estate in bankruptcy of Mr Hampton as the beneficiary entitled to the proceeds of sale. The net proceeds of \$89,944.84 were then paid to the Official Assignee but subject to the freezing orders which had earlier been obtained to prevent Mr Hampton and the Chesterfield entities from dissipating assets.

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<sup>13</sup> *Sisson v Commissioner of Inland Revenue*, above n 3 at [15], citing *Chesterfields Preschools Ltd v Commissioner of Inland Revenue* (2007) 23 NZTC 21,125 (HC).

<sup>14</sup> *Chesterfield Preschools Ltd v Commissioner of Inland Revenue* HC Christchurch CIV-2004-409-1596, 13 September 2005.

[63] Mr Hampton later changed his position and supported Ms Sisson in a proceeding where she argued the funds were held on behalf of the Anolbe Trust. That prevented the Official Assignee from paying a dividend to creditors at that time. Gendall J dismissed Ms Sisson's claim. In a subsequent costs decision the Judge said:<sup>15</sup>

[5] By way of background to this proceeding generally, Ms Sisson as plaintiff had sought declarations that a property at 67 Augusta Street, Christchurch (the property) of which she was shown as the registered proprietor was in fact settled at some point on a family trust known as the Anolbe Family Trust. Hence she said, the proceeds from a 2013 mortgagee sale of the property (held by the Official Assignee) belonged to the Trust and did not form part of the estate of Mr Hampton in bankruptcy. Mr Hampton ... was and still is an undischarged bankrupt. At the time of this sale, Mr Hampton had informed the Official Assignee and the Commissioner that the mortgagee sale funds for 67 Augusta Street belonged to him as beneficial owner and should be made available for payment of his debts. Ms Sisson had concurred in this.

And then later the Judge held:<sup>16</sup>

[24] ... there can be no doubt in my mind that in bringing and pursuing this proceeding, Ms Sisson (and Mr Hampton too as a prime mover in this litigation) acted unreasonably, and should be subject to an award of increased costs here. Her entire claim lacked any merit. ... The fact too that Ms Sisson (assisted no doubt by Mr Hampton) took and pursued a claim in this proceeding that entirely lacked merit was obvious and incontrovertible from the outset, and as I understand it, they were warned of this throughout.

[64] The Augusta Street property issue reflects badly on Mr Hampton in a number of ways. First, in terms of his understanding of the terms of the trust deed of the Trust which he now says owned the property. Mr Hampton says he was a trustee of the Anolbe Family Trust. But he was also a settlor of the Trust (with Ms Sisson). The Trust Deed contains a provision that the settlor may not be appointed a trustee. At the least that discloses a failure to acquaint himself with the terms of the trust deed he purported to act under.

[65] Next, Mr Hampton effectively used the Trust as another financial vehicle when it suited him. He failed to disclose any interest in the property (even as trustee) when filing a Statement of Affairs but then subsequently initially claimed, following the sale

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<sup>15</sup> *Sisson v Official Assignee* [2017] NZHC 555 at [5].

<sup>16</sup> At [24].

of the property at mortgagee sale that it was his property beneficially and agreed to the funds being paid into his bankrupt estate. Then, subsequently, Mr Hampton changed his position yet again when the Official Assignee sought to apply the surplus funds to creditors. At that stage Mr Hampton reversed his position and opposed the Assignee's application to lift the freezing order arguing that the funds were on trust for the Anolbe Trust. The consequent litigation led to further wasted costs and a consequent reduction in the moneys available for any creditors.

[66] I record that Mr Hampton noted that the substantive decision was under appeal by Ms Sisson. He still did not accept the funds held by the Official Assignee in his bankrupt estate are funds which should be available to the administration of his estate or creditors. Despite that, his change in approach to the ownership of the property is a matter of concern to the Court.

[67] Considering Mr Hampton's actions over a lengthy period of time, both before and during his adjudication, his response to his obligations as a bankrupt and his failure to meet obligations as a tax payer, director of a private company and trustee, the Court is left with a real concern as to Mr Hampton's ability to comply with the commercial obligations (particularly taxation obligations) that rest with a self-employed person or with a person who may hold a directorship or management role in a private company or who might otherwise be dealing with members of the commercial community.

[68] While Mr Hampton said he has no plans to go back into business, at the moment he is effectively unemployed. He will have to do something.

[69] Having regard to the above matters, I am satisfied that, while it is appropriate that Mr Hampton be discharged given that it has been five years since his adjudication in bankruptcy the discharge should be on conditions restricting, for a time, his ability to engage in business other than as an employee of an unrelated third party unless the Court approves it.

[70] As to the term, I would have made it for five years, but given that Mr Hampton has already been subject to bankruptcy for just over five years, (only one of which is

attributed to his failure to file the Statement of Affairs) I make the term of supervision four years.

**Result/orders**

[71] There will be the following orders:

- (a) The public examination is concluded. Mr Hampton is to be discharged from bankruptcy on Monday, 30 July 2018 at 10.00 am.
- (b) Mr Hampton is prohibited until 29 July 2022 from doing any or all of the following things without the Court's permission:
  - (i) entering into, carrying on or taking part in the management or control of any business or class of business;
  - (ii) being a director of any company;
  - (iii) directly or indirectly being concerned or taking part in the management of any company;
  - (iv) being employed by a relative of his;
  - (v) being employed by a company, trust, trustee, or incorporated society that is managed or controlled by a relative of his.

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Venning J