IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2017-404-1097
[2017] NZHC 2701

UNDER	the Insolvency Act 2006
IN THE MATTER OF	the bankruptcy of PETER RICHARD PRESCOTT
BETWEEN	PETER RICHARD PRESCOTT Applicant
AND	NEW ZEALAND POLICE Respondent

Hearing: 25 October 2017

Appearances: Applicant in person
K H Morrison and G Montgomery for the Respondent

Judgment: 25 October 2017

ORAL JUDGMENT OF ASSOCIATE JUDGE R M BELL

Solicitors:
Meredith Connell (K Morrison/G Montgomery), Auckland, for the Respondent

Copy for:
Peter R Prescott, Applicant

[1] Mr Prescott applies to set aside a bankruptcy notice dated 2 June 2017. The creditor is the New Zealand Police. The bankruptcy notice is based on an order for costs of $5,819.01 made in this court in April 2017. Mr Prescott was served on 14 June 2017. He filed his application to set aside the notice on 21 June 2017. That was in time. Under r 24.10(1) of the High Court Rules the time for complying with the notice has been extended until the decision on his setting-aside application.

Adjournment application

[2] At the start of the hearing, Mr Prescott asked for an adjournment. I declined to adjourn. Mr Prescott gave as his reason for seeking an adjournment the fact that he had received substantial documents from the Police, and also from lawyers acting for the Auckland Council.

[2] I need to explain some background. Mr Prescott has three applications to set aside bankruptcy notices: one against a bankruptcy notice issued by the New Zealand Police and two against bankruptcy notices issued by the Auckland Council. The three applications have been case-managed together. All applications were set down for hearing for today. I issued a minute directing that the applications against the Auckland Council would be heard at 2:15pm instead of 10:00am. That was to allow for the matters to be heard separately. In case management directions on 14 July 2017 for all the applications Judge Doogue directed that Mr Prescott was to file his submissions 15 working days before the hearing, and the respondents were to file their submissions 10 working days before the hearing. That was to give Mr Prescott the opportunity to prepare for the hearing in the light of submissions made by the respondents. Mr Prescott was a few days late in filing his submissions. The respondents asked for an extension of time. I directed that they were to file their submissions by 13 October 2017. The Police did so. That gave Mr Prescott 12 days (including weekends and Labour Day) to consider the Police submissions and prepare for the hearing. That is a longer period than is normally given to applicants on the hearing of applications. The standard direction is to provide that an applicant supply submissions 10 working days before the hearing, and the respondent to file submissions 5 working days before the hearing. Mr Prescott has had just under two weeks. I bear in mind that the applications have been on foot since June 2017, and

Mr Prescott has had ample time in which to consider his application and the grounds that might be raised in opposition, and to prepare arguments. I declined the adjournment on the basis that he had not suffered any prejudice, given the filing and service of submissions on 13 October 2017.

[3] In the event, Mr Prescott gave lengthy submissions in support of his application. They were surely the result of extensive preparation. He addressed a number of legal authorities, decisions of New Zealand courts, and also decisions of Commonwealth courts. It was clear to me that he was under no prejudice from the matter going to a hearing today. I am doubtful whether he would have obtained any greater advantage by the matter being adjourned.

Self-represented

[4] Mr Prescott is not legally represented, but that is not a new experience for him. The order for costs, the subject of the bankruptcy notice, arose from just one phase of litigation which Mr Prescott has been running against the Police over a number of years. In all copies of decisions I have been provided with, he has appeared for himself and has not had legal representation. It seems clear that Mr Prescott has a standard approach to litigation – he will not seek legal advice and will conduct proceedings in his own name alone without representation. That, of course, is a matter open to him. He cannot be required to instruct a lawyer. But I do point out to him that he can be at a disadvantage if he does not take legal advice and does not have legal representation. Bankruptcy law, and bankruptcy notices in particular, do require specialist knowledge. In his submissions, he made many broad and sweeping allegations. For a setting aside application, many of his submissions were irrelevant and misdirected. I ask Mr Prescott to reflect on his policy of taking cases in court without legal representation or advice. The proceedings that he has taken show that in many matters he has taken steps and tried matters that have not succeeded. That has resulted in the courts making orders for costs against him. I ask Mr Prescott to understand that one of the consequences of taking a civil proceeding is that the court will order costs against a losing party in favour of a successful party who has legal representation. On the other hand, an unrepresented party will not obtain costs if successful, although they may obtain an order for disbursements. By

trying to represent himself rather than use a lawyer in matters requiring specialist knowledge, Mr Prescott is increasing the risk of costs being ordered against him. He stands a lower chance of success so long as he is unrepresented.

[5] Mr Prescott should understand that a lawyer may be able to advise when it is appropriate to take a step and when it is not. A lawyer can reduce the risk of costs orders by limiting his litigation. In short, I encourage Mr Prescott to obtain and follow legal advice.

Appeal rights

[6] A preliminary matter I discussed at the outset of the hearing was the appeal pathways from decisions on applications to set aside bankruptcy notices. That is because the law has changed under the Senior Courts Act 2016. The relevant parts of that Act came into force on 1 March 2017. The Act applies to this proceeding as the proceeding was started after the Act came into force. Before the Senior Courts Act, it was the practice for an associate judge hearing an application to set aside a bankruptcy notice to rule whether the application was being heard in court or in chambers. Case law established that applications to set aside bankruptcy notices could be heard either in chambers or in court.[1] That affected appeal rights. Under s 26P(2) of the Judicature Act 1908 there was a right of appeal to the Court of Appeal against a decision from an Associate Judge given in court. For an Associate Judge's decision in chambers, there was a right of review under r 2.3 of the High Court Rules and s 26P(1) of the Judicature Act 1908. The review was by a Justice in this court.

[7] Under the Senior Courts Act 2016, s 20(2)(d), an Associate Judge has the jurisdiction and powers of a High Court Judge under the Insolvency Act 2006 (apart from four sections which are not relevant here). An Associate Judge can hear an application to set aside a bankruptcy notice, just as was the case under the Judicature Act. The difference is in appeal rights. Section 27 of the Senior Courts Act says:

> **27 Appeals against decisions of Associate Judges**

[1] *Balzat v Zhang* HC Auckland CIV-2008-404-6062, 22 September 2009.

(1) A party to any proceedings may appeal to the Court of Appeal against any order or decision of an Associate Judge in those proceedings.

(2) Section 56 applies to an appeal under subsection (1).

That allows an appeal to the Court of Appeal, whether the decision is made in chambers or in open court. But that is subject to s 56 of the Senior Courts Act:

56 Jurisdiction

(1) The Court of Appeal may hear and determine appeals—

(a) From a judgment, decree, or order of the High Court:

(b) under the Criminal Procedure Act 2011:

(c) from any court or tribunal under any other Act that confers on the Court of Appeal jurisdiction and power to hear and determine an appeal.

(2) Subsection (1) is subject to subsections (3) and (5) and to rules made under section 148.

(3) No appeal, except an appeal under subsection (4), lies from any order or decision of the High Court made on an interlocutory application in respect of any civil proceeding unless leave to appeal to the Court of Appeal is given by the High Court on application made within 20 working days after the date of that order or decision or within any further time that the High Court may allow.

(4) Any party to any proceedings may appeal without leave to the Court of Appeal against any order or decision of the High Court—

(a) striking out or dismissing the whole or part of a proceeding, claim, or defence; or

(b) granting summary judgment.

(5) If the High Court refuses leave to appeal under subsection (3), the Court of Appeal may grant that leave on application made to the Court of Appeal within 20 working days after the date of the refusal of leave by the High Court.

(6) If leave to appeal under subsection (3) or (5) is refused in respect of an order or a decision of the High Court made on an interlocutory application, nothing in this section prevents any point raised in the application for leave to appeal from being raised in an appeal against the substantive High Court decision.

[8] Under s 56(3), leave is required if the appeal is from a decision made on an interlocutory application in a civil proceeding. "Interlocutory proceeding" is defined in s 4:

> **interlocutory application**
>
> (a) means any application to the High Court in any civil proceedings or criminal proceedings, or intended civil proceedings or intended criminal proceedings, for—
>
> (i) an order or a direction relating to a matter of procedure; or
>
> (ii) in the case of civil proceedings, for some relief ancillary to that claimed in a pleading; and
>
> (b) includes an application to review an order made, or a direction given, on any application to which paragraph (a) applies

[9] In my judgment, an application to set aside a bankruptcy notice is not an interlocutory application under this definition. An application to set aside a bankruptcy notice is a stand-alone proceeding. A bankruptcy notice can be used to establish an act of bankruptcy under the Insolvency Act 2006. Failure to comply with the bankruptcy notice is only one of a number of acts of bankruptcy which, on being proved, give grounds under ss 13 and 16 of the Insolvency Act to apply for a debtor's adjudication in bankruptcy. While the bankruptcy notice is issued by the court, it is executive in nature. It does not by itself start a proceeding for the court's determination in its civil jurisdiction.[2] Instead, it requires a debtor to take steps, in the absence of which the debtor will be treated as having committed an act of bankruptcy. A decision that disposes of a bankruptcy notice goes to substance not to procedure, and does not deal with mere interlocutory relief. Because the application to set aside the notice is not interlocutory under the definition of s 4 of the Senior Courts Act, leave to appeal is not required. Because of this new appeal pathway it is not necessary for me to say whether I am sitting in court for chambers, but for good order I record that I am sitting in court.

[10] For completeness, I note that s 414 of the Insolvency Act allows this Court to review, rescind or vary any decision of a Judge under the Act. In *Balzat v Zhan*g,

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2 *Westpac New Zealand Ltd v Boulton* [2014] NZHC 693, (2014) 22 PRNZ 183 at [30]-[31].

Heath J indicated that that power is discretionary and may not be used widely.[3] He gave no assurance that it could be used invariably to challenge a decision made on an application to set aside a bankruptcy notice. The short point here is that whereas there is a right of appeal to the Court of Appeal without requiring leave, seeking a review under s 414 is less certain.

Mr Prescott's other proceedings

[11] Now for the litigation which led up to the decision in March 2017 to order costs against Mr Prescott. Mr Prescott sued the Police in the District Court over his arrest in May 2011. He said that he should not have been arrested, that he was detained too long at the police station, and was not given the opportunity to consult and instruct a lawyer. His claim in the District Court failed[4] and the Judge awarded the Police costs of $27,111.02.[5]

[12] Before the District Court costs decision, Mr Prescott began a judicial review proceeding in this court challenging the District Court decision dismissing his claim. Before the District Court costs order he also filed an appeal in this court against the decision dismissing his claim. After the District Court made the costs order, Mr Prescott did not take any steps to challenge that order specifically. I understand from Mr Prescott that if his appeal against the substantive decision is successful, then the order for costs will fall by the wayside.

[13] In this court there have been a number of decisions and directions on his judicial review application and appeal. In August 2016, Woodhouse J dismissed Mr Prescott's application to waive security for costs on the appeal. As Mr Prescott's appeal is still on foot I take it that he has paid the security.

[14] In October 2016, Woodhouse J directed that the appeal and judicial review application be heard together, and also directed that a transcript of the hearing in the District Court be provided.

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3 *Balzat v Zhang* HC Auckland CIV-2008-404-6062, 22 September 2009.
4 *Prescott v New Zealand Police* [2016] NZDC 14357.
5 *Prescott v New Zealand Police* [2016] NZDC 20562.

[15] Mr Prescott applied for an order that an audio recording of the hearing in the District Court be released. Peters J dismissed that application, but she did however direct that Mr Prescott could listen to an audio recording in a courtroom.

[16] Mr Prescott also applied in this court for an order staying execution of the costs order made in the District Court. Moore J heard that application on 9 March 2017 and gave a decision on 3 April 2017.[6] He dismissed Mr Prescott's application and awarded scale costs to the Police, rather than solicitor and client costs. Those costs, including disbursements, were calculated at $5,819.01. The bankruptcy notice in this case is based on that costs order.

[17] Mr Prescott was dissatisfied with Peters J's ruling that the audio recording of the hearing in the District Court be made available to him for inspection (as opposed to being able to hear the recording in this courthouse). He has appealed to the Court of Appeal against the decision of Peters J. While that appeal is pending, his appeal against the District Court decision and his judicial review proceeding have been put on hold.

[18] Mr Prescott has also appealed to the Court of Appeal against the decision of Moore J (CA282/2017). There have been some procedural difficulties with that appeal. Mr Prescott initially filed his appeal in this court within time. Later he filed in the Court of Appeal but out of time. I am advised that he has obtained leave to appeal out of time. He says that he has lodged his appeal. He applied for a waiver of security for costs. The Registrar of the Court of Appeal declined his application on 19 October 2017. He has until 17 November 2017 in which to pay security. I treat his appeal as on foot and still able to go to a hearing.

[19] I note these matters about Mr Prescott's litigation against the Police. He has been generally unsuccessful. So far, two orders for costs have been made against him – the District Court's order following the dismissal of his claim against the Police, and Moore J's order in May 2017. In this case I am concerned only with the second order, not with the first. These proceedings are continuing: his appeal from the District Court, his judicial review application and his appeals in the Court of

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6 *Prescott v Police* [2017] NZHC 620.

Appeal. If he is unsuccessful in any of those steps, he stands to have more orders for costs made against him. Those are only contingent liabilities. They do not immediately affect this decision.

Not a bankruptcy application

[20] Parts of Mr Prescott's submissions were directed against his being adjudicated bankrupt. He referred to the requirements of ss 13 and 16 and the court's discretion under ss 36 and 37 of the Insolvency Act. Those provisions come into play when there is an application to adjudicate a debtor bankrupt. Under ss 13 and 16 a creditor cannot apply to the court for a debtor's adjudication in bankruptcy unless the debtor has committed an act of bankruptcy. The Act specifies a number of acts of bankruptcy. Failure to comply with a bankruptcy notice under s 17 of the Act is only one act of bankruptcy. Here, the court is concerned with whether a bankruptcy notice may be used to establish an act of bankruptcy if Mr Prescott does not comply with it. That question is much narrower than the questions that arise when the court is required to exercise its discretionary powers under s 36 and 37.

[21] To a certain extent, Mr Prescott's submissions asking me to consider matters under ss 36 and 37 were misdirected. He was, in effect, asking me to pre-judge how any application might be determined. There is no application for his adjudication before the court at present. I am only concerned with whether the bankruptcy notice can be used under s 17 as a basis for establishing an act of bankruptcy.

The bankruptcy notice

[22] Section 17 provides:

> **17 Failure to comply with bankruptcy notice**
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> (1) A debtor commits an act of bankruptcy if—
>
> (a) a creditor has obtained a final judgment or a final order against the debtor for any amount; and
>
> (b) execution of the judgment or order has not been halted by a court; and
>
> (c) the debtor has been served with a bankruptcy notice; and

(d) the debtor has not, within the time limit specified in subsection (4), —

(i) complied with the requirements of the notice; or

(ii) satisfied the court that he or she has a cross claim against the creditor.

(2) The form that the bankruptcy notice must take is set out in section 29.

(3) The debtor must have been served with the bankruptcy notice in New Zealand, unless the court gave permission for the service of the notice on the debtor outside New Zealand.

(4) The time limit referred to in subsection (1)(d) is, —

(a) if the debtor is served with the bankruptcy notice in New Zealand, 10 working days after service; or

(b) if the debtor is served outside New Zealand, the time specified in the order of the court permitting service outside New Zealand.

(5) In this section, a creditor who has obtained a final judgment or a final order includes a person who is for the time being entitled to enforce a final judgment or final order.

(6) In this section, if a court has given permission for enforcing an arbitration award that the debtor pay money to the creditor, —

(a) final order includes the arbitration award; and

(b) proceedings includes the arbitration proceedings in which the award was made.

(7) In subsection (1)(d)(ii), cross claim means a counterclaim, set-off, or cross demand that—

(a) is equal to, or greater than, the judgment debt or the amount that the debtor has been ordered to pay; and

(b) the debtor could not use as a defence in the action or proceedings in which the judgment or the order, as the case may be, was obtained.

[23] A bankruptcy notice has to comply with the requirements of s 29 of the Insolvency Act. The prescribed form is Form B2 of Schedule 1 of the High Court Rules. A debtor served with a bankruptcy notice can take these steps to comply with it:

a) the debtor can pay the creditor the amount of the judgment;

b) the debtor can secure or enter into a new form of agreement with the creditor or obtain the court's approval to terms of payment; or

c) the debtor can satisfy the court that the debtor has a counterclaim, set-off or cross-demand that equals or exceeds the amount claimed by the creditor and which could not be put forward in the actual proceeding in which the judgment or order was obtained.

It is common ground that so far Mr Prescott has not taken any of those steps to comply with the bankruptcy notice.

[24] Now for the decision of Moore J. In paragraph [59] of his decision he said:

> The Police being the successful party there is an order for costs on a 2B basis.

The sealed judgment shows that costs were calculated on a 2B basis. The costs came to $5,686.50 and disbursements came to $132.51, a total of $5,819.01. The effect of the order is that Mr Prescott owes the New Zealand Police the amount ordered. There is therefore a creditor/debtor relationship between the New Zealand Police and Mr Prescott.

[25] The bankruptcy notice in this case meets the formal requirements of a bankruptcy notice under the Insolvency Act 2006. It is based on a final order of this court. The order was made on an interlocutory application – Mr Prescott's application for stay of execution of the District Court costs order, but it is no less final for all that. Costs orders on interlocutory applications are regarded as final for bankruptcy notices.[7] No order has been made staying execution of Moore J's costs order. Mr Prescott has appealed against Moore J's decision – which I take as including an appeal against the order for costs as well as the order dismissing his stay application. But an appeal does not by itself mean that enforcement of the judgment is stayed.[8] In short, the fact that an appeal has been lodged against Moore J's decision does not, by itself, invalidate the bankruptcy notice. There is a related

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7 *Sigglekow v Turner* [2012] NZHC 434, and *Far North District Council v Pollock* [2014] NZHC 2473.

8 Court of Appeal Civil Rules 2005, r 12(1).

question whether the court in its discretion should use the fact of the appeal as a ground for the setting aside of the bankruptcy notice. But I shall come to that later. That is a separate question.

[26] There is a creditor/debtor relationship between the New Zealand Police and Mr Prescott. The New Zealand Police are an unsecured creditor of Mr Prescott. They have the same rights as other unsecured creditors for costs orders. They are entitled to enforce costs orders in the same way as other unsecured creditors are. They have no greater rights than other unsecured creditors, nor do they have fewer rights. The use of a bankruptcy notice to enforce an order for costs is a common way of enforcing court orders. There is nothing untoward over the Police using a bankruptcy notice as a way of requiring Mr Prescott to pay the costs ordered by Moore J.

The "person" argument

[27] Mr Prescott has raised an argument which he says is a jurisdiction argument. His argument is based on the question whether there is a "person" that can be the subject of this court's jurisdiction under the Insolvency Act 2006. The argument is strange but it is not the first time that Mr Prescott has presented it. He has used it in a criminal appeal.[9] Allan J said:

> **Is Mr Prescott a "person"?**
>
> [12] As initially advanced, I understood Mr Prescott's argument to be that there was some form of distinction between his natural and legal manifestations. An argument to that effect was considered and rightly rejected by this Court in *Manukau v Police*. But as the argument developed, it appears that Mr Prescott was mounting a more conventional argument based on his understanding of the definition of the term "person" in s 29 of the Interpretation Act 1999, and in s 29 of the New Zealand Bill of Rights Act 1990 (NZBORA):
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> [13] The former section defines the expression "person" as meaning:
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> > **Person** includes a corporation sole, a body corporate, and an unincorporated body:
>
> [14] There is a similar provision in s 29 of the NZBORA:

[9] *Prescott v Police* [2012] NZHC 834 at [12]-[15].

> **29 Application to legal persons**
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> Except where the provisions of this Bill of Rights otherwise provide, the provisions of this Bill of Rights apply, so far as practicable, for the benefit of all legal persons as well as for the benefit of all natural persons.

> [15] Mr Prescott argues that the express reference in s 29 of each statute to legal persons does not catch natural persons or human beings because there is no express reference to them. However, as he was inclined to accept during the course of argument, he has misread the definition sections, which are non-exhaustive. In other words, their purpose is to extend the term "person" beyond its ordinary meaning of natural persons, to legal entities which are deemed to constitute persons for the purposes of the relevant legislation. Neither statute operates to exclude natural persons at all.

[28] For this hearing, Mr Prescott presented similar arguments, referring to the definitions of "person" under s 29 of the Interpretation Act 1999 and s 29 of the New Zealand Bill of Rights Act 1990. Mr Prescott extended the argument by contending that the respondent had some obligation to prove by evidence that he was a "person" subject to the Insolvency Act 2006. On that, there is no particular evidential obligation on the New Zealand Police. Self-evidently, Mr Prescott is a "natural person". He has proved that by his appearance in this court today. The question of any extended meaning of "person" as applying to a corporation sole, body corporate or other incorporated body does not arise in this case. Because Mr Prescott is clearly a natural person there is no need to consider the extended meaning of "person".

[29] Section s 6 of the Insolvency Act makes it clear that that Act does not extend to corporations or bodies corporate established and registered under legislation. The Insolvency Act is intended to apply to "natural persons" with insolvency of corporations and incorporated bodies to be dealt with by way of liquidation legislation. Quite clearly, this court has jurisdiction over Mr Prescott personally. As to subject matter jurisdiction – the Insolvency Act 2006 defines a court as the High Court. Under s 411 a judge may exercise all the powers and jurisdiction given to the High Court under the act. That applies to an Associate Judge as well. In short, I rule against Mr Prescott on his jurisdiction submission.

The solvency submission

[30] Mr Prescott contends that he is solvent. He has not offered any evidence as to his solvency. The fact that he has met orders for security for costs on his appeals may suggest that he has some means. But solvency or otherwise is not relevant on an application to set aside a bankruptcy notice. It may be relevant at a later stage if there is an application for his adjudication in bankruptcy. But assertions of solvency at this stage do not count.

Inherent jurisdiction to set aside to prevent an abuse of process

[31] The court has an inherent jurisdiction to set aside a bankruptcy notice to prevent an abuse of process. The typical situation where that power is exercised is where a creditor has obtained a judgment by default or has obtained judgment irregularly, and a debtor shows that there would be grounds to have the judgment set aside. In such cases, the courts may consider that the use of a bankruptcy notice may be an abuse of process, given that the judgment on which the bankruptcy notice is founded may be unsound. Typically the application to set aside a bankruptcy notice is adjourned to await the outcome of an application to the court where the original judgment was given for a judgment to be set aside. If the application to set aside the judgment is successful the bankruptcy notice will fall. Conversely, if the application to set aside the judgment is unsuccessful, the application to set aside the bankruptcy notice would also fail. A leading authority in this area is the decision of Master Kennedy-Grant in *Re Wise*.[10]

[32] The inherent jurisdiction is not necessarily limited to the typical case that I have just described. But it is important to recognise that the court will look behind a judgment only in relatively rare circumstances. On the whole, in its bankruptcy jurisdiction, the court recognises and upholds the finality of judgments made in other courts. Sometimes the courts look behind a judgment. But if a case has been heard in open court, with both parties heard, then it is very rare for the court to look behind a judgment. It will usually only be done in cases of miscarriage of justice, fraud or collusion. I am concerned only with the order for costs made by Moore J. That

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[10] *Re Wise* HC Auckland, B227/95, 21 June 1996.

decision was given after a hearing on an application brought by Mr Prescott. He appeared in court and addressed argument to the court in support of his application. Moore J gave a reserved decision with reasons. Those circumstances show that there is no good reason for this court to look behind the judgment.

[33] Mr Prescott criticised the decision of Moore J. His arguments criticising that judgment may be raised on appeal. But when a court considers an application to set aside a bankruptcy notice, it does not act as a court of appeal to re-assess the merits of the decision on which the original judgment or order was based.

[34] Mr Prescott also criticised the judgment of the District Court in which his claim against the Police was dismissed. That aspect is also irrelevant for the application today. The bankruptcy notice is based on Moore J's costs order, not on other judgments. The fact that Mr Prescott has not succeeded in other proceedings and that he may have grounds to complain about the merits of other decisions has no relevance to the finality of the order for costs made by Moore J. Other decisions provide no grounds for sitting aside the bankruptcy notice.

[35] Mr Prescott included in his submissions allegations of breach of the New Zealand Bill of Rights Act. He did not address any particular aspect of the Bill of Rights other than s 29 – and that I have already addressed. I see nothing in the circumstances of the costs order made by Moore J as raising any arguable question under the New Zealand Bill of Rights Act.

[36] Mr Prescott alleged improper purpose by the New Zealand Police. As I have already indicated, the Police are simply applying for enforcing a debt under an order for costs obtained regularly. There is nothing improper in the Police seeking enforcement of an order for costs. Mr Prescott speculated that the purpose of the Police was to stifle his appeals so that the District Court judgment could be saved. That is a common allegation made against creditors enforcing their rights. Courts invariably find no substance in those complaints. There is an added feature in this case. It is doubtful that any order for adjudication would stand in the way of Mr Prescott continuing his appeals. That is because the causes of action on which he sued in the District Court affect him personally rather than in a property sense.

They are not causes of action which would vest in the Official Assignee on bankruptcy.[11]

Discretion to halt

[37] I come back to the point I left before – the pending appeal to the Court of Appeal against the decision of Moore J. I indicated that does not provide a ground, by itself, for setting aside the bankruptcy notice. There may be a related question whether the court, in its discretion, may set aside the bankruptcy notice in that event. An authority that does emphasise that discretion is the case of *Heron* referred to by Ms Morrison, where Doogue J declined to exercise that power when there was an appeal against a costs order made by the Human Rights Tribunal.[12] In the absence of any order staying execution of the judgment of Moore J pending appeal, I see no reason why the court should exercise any power in its inherent jurisdiction to bar enforcement of the order for costs pending the appeal in the Court of Appeal. In particular, Mr Prescott will remain free to prosecute his appeal even if he is required to pay the order for costs. Conversely, if he should succeed in his appeal, and the Court of Appeal sets aside the judgment of Moore J, the Police will be good for any refund of the order for costs. There is no issue as to the solvency of the New Zealand Government.

Outcome

[38] In short, I am satisfied that there are no good grounds for setting aside the bankruptcy notice in this case. Accordingly, I dismiss Mr Prescott's application. That means that under r 24.10 of the High Court Rules the time for complying with the bankruptcy notice has now expired.

[39] The Police seek costs. I make an order for costs in favour of the Police, under category 2 of the High Court Rules. I direct counsel for the Police to write to Mr Prescott setting out the costs the Police claim. Mr Prescott will have a week after

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11 *Beckham v Drake* (1849) 2 HLC 579, 9 ER 1213 (HL) at 604 *Wilson v United Counties Bank Ltd* [1920] AC 102 (HL); *Heath v Tang* [1993] 1 WLR 1421 (CA); *Robinson v Whangarei Heads Enterprises Ltd* [2015] NZHC 2945.

12 *Re Herron ex parte Speirs Group Ltd* HC Auckland CIV-2007-404-4645, 19 February 2008.

receiving that letter in which to agree or disagree to those costs. If he does not reply within the week, the Police are to file a memorandum with the court setting out the costs. Mr Prescott will then have a week after that in which to file any response to that memorandum. If he does not reply, I will fix costs after reading the Police memorandum.

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Associate Judge R M Bell