

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

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

**CIV-2022-409-000218
[2022] NZHC 1690**

UNDER the Insolvency Act 2006
IN THE MATTER of the Bankruptcy of Carolyn Ruth Dare
BETWEEN HEARTLAND BANK LIMITED
Judgment Creditor
AND CAROLYN RUTH DARE WILFRED
Judgment Debtor

Hearing: On the papers
Counsel: C R Vinnell and C Jolliffe for Judgment Creditor
Judgment: 15 July 2022

JUDGMENT OF ASSOCIATE JUDGE PAULSEN

This judgment was delivered by me on 15 July 2022 at 11.00 am
pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

[1] Heartland Bank Ltd (Heartland) has obtained the issue of a bankruptcy notice against Carolyn Ruth Dare Wilfred (Ms Wilfred) in respect of a judgment of this Court of 22 July 2021 in an amount of \$1,164,125.56.¹

[2] On 7 June 2022, I made an order under r 6.30 of the High Court Rules 2016 authorising service of the bankruptcy notice and any creditors' application in this proceeding upon Ms Wilfred outside of New Zealand. I also dispensed with personal service of the bankruptcy notice and directed substituted service upon Ms Wilfred under r 6.8 of the High Court Rules in the following manner:²

[18] I dispense with personal service of the bankruptcy notice upon Ms Wilfred and direct substituted service of the bankruptcy notice upon her in the following manner:

- (a) by emailing a copy of the bankruptcy notice (and the order dispensing with personal service) to Ms Wilfred's solicitor Jesslyn G Maurier of Bennett Jones at the email address in para 1.3 (a) of the notice of application;
- (b) by emailing a copy of the bankruptcy notice (and the order dispensing with personal service) to Ms Wilfred at her last known email address being the email address in para 1.3 (b) of the notice of application;
- (c) by delivering the bankruptcy notice (and the order dispensing with personal service) personally to the judgment debtor's husband, Harmon Wilfred;
- (d) in respect of (a) and (c) above, the bankruptcy notice is to be accompanied by a letter from Heartland's solicitors' requesting that the bankruptcy notice be drawn to Ms Wilfred's attention forthwith;
- (e) service upon Ms Wilfred must be effected within six months of the date of this order;
- (f) service upon Ms Wilfred will be deemed to have been effected upon completion of (a), (b), (c), (d) and (e) above.

[3] Since the making of the orders under r 6.8, Heartland has proceeded with service of the bankruptcy notice by:

¹ *Heartland Bank Ltd v Kiwi Flavour Infusions Ltd* HC Christchurch, CIV-2021-409-7, 22 July 2021.

² *Heartland Bank Ltd v Wilfred* [2022] NZHC 1328.

- (a) emailing a copy of the bankruptcy notice (and the order dispensing with personal service) to Ms Wilfred's solicitor Jesslyn G Maurier of Bennett Jones; and
- (b) by emailing a copy of the bankruptcy notice (and the order dispensing with personal service) to Ms Wilfred at her last known email address.

[4] However, Heartland has not been able to deliver a copy of the bankruptcy notice personally to Ms Wilfred's husband, Harmon Wilfred. Mr Wilfred has vacated the property at which he previously resided. The cellphone number formerly held by Mr Wilfred is now invalid. Mr Wilfred has not responded to emails.

[5] Heartland seeks a variation of the orders of 7 June 2022 directing that the bankruptcy notice be sent by email to Mr Wilfred's email address. While Mr Wilfred has not responded to emails sent to that email address, there is nothing to suggest that it is no longer active.

[6] Heartland submits there is no prejudice to Ms Wilfred in varying the orders of 7 June 2022, as the most effective means of service of the bankruptcy notice is by emailing them directly to Ms Wilfred and to her solicitor. It submits it is likely the bankruptcy notice has already been received by Ms Wilfred or been brought to her attention. I agree with that assessment.

[7] Rule 7.50(2) of the High Court Rules provides that if there has been a change in circumstances affecting a party or the party's solicitor or counsel since the making of an order or direction that relates to the management of a proceeding, the Court may on application vary the order or direction. Here, there has been a change of circumstances which affects Heartland's ability to serve the bankruptcy notice in accordance with the Court's order. That is a matter that relates to the management of the proceeding. It is appropriate to make the order sought.

Result

[8] The orders of 7 June 2022 are varied. In substitution for the order made at para [18](c) of my judgment of 7 June 2022, the bankruptcy notice is to be emailed to

Mr Wilfred at the email address set out in para [4] of counsel's memorandum of 13 July 2022.

[9] The sealed order made on this application is to be served on Ms Wilfred by emailing it to her and to her solicitor, Jesslyn G Maurier of Bennett Jones, at the email addresses set out in paras [2(a)] and [2(b)] of counsel's memorandum of 13 July 2022.

[10] In all other respects the orders made on 7 June 2022 shall remain unchanged.

[11] Costs are reserved.

O G Paulsen
Associate Judge

Solicitors:
Anthony Harper, Christchurch