

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

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

**CIV-2020-441-76
[2021] NZHC 627**

IN THE MATTER of the Insolvency Act 2006

AND

IN THE MATTER of the bankruptcy of
MARK WHITTINGTON

BETWEEN UDC FINANCE LIMITED
Judgment Creditor

AND MARK WHITTINGTON
Judgment Debtor

Hearing: 25 March 2021

Appearances: T G Rabone on agency instructions for the Judgment Creditor
Mr M Whittington, self-represented Judgment Debtor

Reasons for Judgment: 26 March 2021

REASONS FOR JUDGMENT OF ASSOCIATE JUDGE LESTER

This judgment was delivered by me on 26 March 2021 at 11.00 am
pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar
26 March 2021

[1] On Thursday 25 March 2021, I made an order at 3.05pm adjudicating Mr Mark Whittington bankrupt on the application of UDC Finance Limited (UDC). This is my Reasons for Judgment. The adjudication order was made after hearing from Mr Whittington for approximately half an hour.

[2] Mr Whittington had filed a document called “Notice of Opposition” to UDC’s application and I requested him to talk me through the points raised in that document as I confessed to having difficulty in appreciating the points that he wished to make.

[3] At the conclusion of the hearing, I advised that I did not accept any of the points he raised were a defence to the application. I asked Mr Whittington if he had the ability to pay the debt and he said he declined to answer the question. It was clear that Mr Whittington had no intention of satisfying the debt.

[4] When I said that, in the absence of Mr Whittington being prepared to pay the debt and having concluded he had no defence, there would be an order for adjudication, Mr Whittington said he intended to appeal my decision and that he considered the process unfair. Given Mr Whittington indicated he wished to appeal, I said I would issue a brief Reasons for Judgment.

[5] I now turn to the matters raised in Mr Whittington’s Notice of Opposition.

[6] At para [4] of the Notice of Opposition, Mr Whittington referred to the bankruptcy papers being non-compliant. He explained that was because on the cover sheet of the documents there is a Napier District Court stamp. I explained to Mr Whittington that on the Court file the documents had both a Napier District Court and a High Court stamp. It appeared that the documents may have been stamped on receipt at the Napier District Court before being forwarded to the Wellington High Court. This was the only ground raised to say that the documents did not comply with the High Court Rules 2016. I advised Mr Whittington that in my view the presence of the District Court stamp on the cover sheet of the papers served on him did not invalidate the documents and I did not see the point as having substance.

[7] Mr Whittington referred to having raised the issue of leave to appeal the costs judgment upon which the bankruptcy notice is based. It was not clear to me whether leave had in fact been granted but, in any event, no appeal was filed. Mr Whittington was under the incorrect impression he had six months from the date of the costs judgment (7 July 2020), but even that time has expired. In the absence of an appeal, the costs judgment stands.

[8] The paragraph references in Mr Whittington's Notice of Opposition that refer to the plaintiff's claim are to the creditor's application for adjudication order.

[9] Mr Whittington denied that he owes UDC the amount of the costs awarded. I concluded that claim could not be maintained. The sealed costs award, as I have said, has not been challenged and Mr Whittington does not claim that he has paid it. I am satisfied that the judgment debtor owed the judgment creditor the amount of the costs award.

[10] Paragraphs [8] to [14] of the Notice of Opposition refer to UDC having repossessed a Suzuki Swift vehicle that belonged to Mr Whittington's late mother.

[11] Mr Whittington said that he had made payments towards that vehicle.

[12] Mr Whittington's mother died in 2019. Mr Whittington is not an executor of his mother's estate and it seems that there is no executor or administrator of that Estate.

[13] If there were issues relating to the repossession of the late Mrs Whittington's vehicle, then any rights arising from what Mr Whittington characterised as the unlawful repossession belong to the late Mrs Whittington's estate.

[14] As I have said, Mr Whittington said he made payments towards his mother's vehicle and he claimed that gave him a security interest in the vehicle. To the extent that Mr Whittington may have assisted his late mother with vehicle repayments, such will either have been a gift to his mother or an advance, which would give him the ability to seek to claim in his late mother's estate. Merely making payments towards

his mother's vehicle does not create a security interest in the vehicle in favour of Mr Whittington.

[15] Items 15 and 16 of the Notice of Opposition also relate to the vehicle.

[16] Given the modest amount of the judgment, had Mr Whittington advised he was prepared to pay the debt, an adjournment to allow that to occur may well have been appropriate. However, it was quite clear that Mr Whittington had no intention of paying the debt even after having heard that I did not consider he had any basis for not meeting the UDC debt.

[17] Accordingly, an order for adjudication was made at 3.05pm on Thursday 25 March 2021.

Associate Judge Lester

Solicitors:
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Copy to:
Mr M Whittington – self-represented Judgment Debtor