

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA485/2018
CA360/2019
[2020] NZCA 291**

BETWEEN	DAVID JOHN HAMPTON Appellant
AND	MINTER ELLISON RUDD WATTS First Respondent
	OFFICIAL ASSIGNEE Second Respondent
	COMMISSIONER OF INLAND REVENUE Third Respondent

Hearing: 25 February 2020

Court: Clifford, Simon France and Lang JJ

Counsel: Appellant in Person
P H Courtney and G E Slevin for Second Respondent
S M Kinsler for Third Respondent

Judgment: 15 July 2020 at 12.30 pm

JUDGMENT OF THE COURT

- A The appeals are dismissed.**
- B There is no order as to costs.**
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REASONS OF THE COURT

(Given by Clifford J)

[1] The appellant, David Hampton, along with his former wife and their associated companies, partnerships and trusts, has since at least the last decade of last century been involved in protracted disputes with the Commissioner of Inland Revenue. In 2008, together with several of those entities, he commenced a proceeding against the Commissioner, the Attorney-General, a solicitor and 20 departmental officers claiming damages for alleged misfeasance in public office (the Misfeasance Claim). That proceeding remains extant, albeit that it was stayed by this Court on 18 March 2013 pending the filing of a statement of claim settled by a lawyer with a current practising certificate who had reviewed the available evidence.¹

[2] Three months later on 5 June 2013 Mr Hampton was adjudicated bankrupt.² The petitioning creditor was the law firm Minter Ellison Rudd Watts (MERW). The judgment debt on which the original bankruptcy notice was based was for legal services provided to Mr Hampton in the course of his disputes with the Commissioner.

[3] Mr Hampton filed a statement of affairs one year after his adjudication on 19 June 2014. Pursuant to s 290 of the Insolvency Act 2006, he therefore fell to be discharged three years later on 19 June 2017. Prior to that date, the Official Assignee lodged an objection to Mr Hampton's discharge. A public examination was therefore required.³

[4] Several applications were subsequently filed. As relevant to this appeal:

(a) The Commissioner applied for leave to object to Mr Hampton's discharge, and sought the imposition of conditions on that discharge in the public interest;⁴ and

(b) Mr Hampton applied to be discharged unconditionally.

¹ *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [116] and [119].

² *Minter Ellison Rudd Watts v Hampton* HC Christchurch CIV-2011-409-2055, 5 June 2013.

³ Insolvency Act 2006, s 295(1).

⁴ Namely, that Mr Hampton be prohibited from being a director of any company, or taking part in the management and control of any business, without the Court's consent.

[5] Those applications and the associated examination of Mr Hampton were heard by Venning J in the High Court at Christchurch.⁵ The Judge recorded that, at the hearing, Mr Hampton sought an unconditional discharge while both the Official Assignee and the Commissioner sought conditions restricting Mr Hampton's ability to control or manage the operation of a company.⁶ In a judgment dated 26 July 2018, Venning J decided that Mr Hampton should be discharged on the conditions sought by the Official Assignee and the Commissioner. Accordingly, he ordered that Mr Hampton be discharged on 30 July 2018 subject to conditions preventing him managing a business without leave of the Court for four years.⁷

[6] On 21 August 2018, Mr Hampton filed an appeal against the judgment of Venning J (CA485/2018, the First Appeal). In the First Appeal, and by way of relief, Mr Hampton sought orders:

- (a) suspending his discharge from bankruptcy pending the redrafting of the Mifeseance Claim;
- (b) rescinding the High Court's restrictions on his discharge from bankruptcy; and
- (c) substituting an order for discharge without restrictions, subject to the order for suspension.

[7] In 2018, before the First Appeal was heard, Mr Hampton used family assets from outside his bankrupt estate to instruct Mr Billington QC to finalise his statement of claim for the Mifeseance Claim. That process was completed on 26 April 2019. Mr Hampton therefore considered that he had done what this Court had required of him in 2013 and was in a position to enliven the Mifeseance Claim once again. Problematically, however, Mr Hampton's adjudication has vested his interest in that

⁵ *Minter Ellison Rudd Watts v Hampton* [2018] NZHC 1866 [Discharge and conditions judgment].

⁶ At [35], [38]–[39] and [42].

⁷ At [71]. These conditions mirrored restrictions Mr Hampton faced as a bankrupt pursuant to s 151 of the Companies Act 1993 and s 149 of the Insolvency Act.

claim in the Official Assignee.⁸ He is therefore unable to apply for the stay to be lifted. Moreover, once Mr Hampton is discharged, the claim will not revert to him, and thus from his perspective it will permanently come to an end.

[8] To address those concerns Mr Hampton applied for further relief pending the determination of the First Appeal. Specifically, Mr Hampton applied to the High Court for interlocutory orders pursuant to r 17.29 of the High Court Rules 2016 for a stay of enforcement of Venning J's judgment and a stay of the original adjudication order made in 2013. In doing so, and unusually, Mr Hampton therefore sought first for his discharge to be stayed under r 17.29, and hence for him to be returned to bankruptcy; and secondly for the adjudication itself to be stayed, and thus for the entire bankruptcy to be, in effect, undone. His interest in the Mifasance Claim would, he suggested, therefore re-vest in him and he would be able to reapply to the Court for the 2013 stay to be lifted. In his view, a stay would lift all the associated restrictions on him personally and the Official Assignee would, thereafter and for the period of the stay, have no interest in his affairs.

[9] Those applications were heard by Osborne J. In his judgment dated 26 July 2019 the Judge concluded:⁹

- (a) there was no jurisdiction to entertain an application for a stay of the original adjudication order; and
- (b) rule 17.29 did not provide a basis for a stay of Venning J's discharge order, pending the hearing of Mr Hampton's appeal.

[10] Rather, the Judge considered that the appropriate procedure for a stay of Venning J's discharge and conditions judgment would have been for Mr Hampton to apply under r 12 of the Court of Appeal (Civil) Rules 2005 pending the hearing of the First Appeal in order to ensure that the appeal right Mr Hampton was exercising would not be rendered nugatory.¹⁰ Allowing Mr Hampton and Ms Sisson some

⁸ Insolvency Act, s 101.

⁹ *Re Hampton* [2019] NZHC 1774 [Stay judgment] at [18] and [20].

¹⁰ At [21]–[24]. Rule 12 provides a general power for either the Court appealed from or this Court to order a stay of a proceeding or execution of a decision pending an appeal.

indulgence as, though legally qualified, they were not practising lawyers, the Judge granted them a stay under r 12 so as not to make the First Appeal nugatory.

[11] On 2 August 2019, Mr Hampton filed an appeal (CA360/2019, the Second Appeal) against the interlocutory judgment of Osborne J. Mr Hampton did not challenge Osborne J's interlocutory stay order by which, as he described it, the Judge had:

Suspended my discharge from bankruptcy to avoid the operation of s 305 [of the] Insolvency Act 2006 that might otherwise extinguish the misfeasance claim against the officials of the Commissioner of Inland Revenue, ("the Commissioner") on discharge. The purpose of the suspension order is [to] preserve the status of the bankruptcy to allow the application for stay/suspension of the bankruptcy itself pending hearing and determination of the misfeasance proceeding.

[12] Rather Mr Hampton challenged the Judge's ruling that there was no jurisdiction to stay the original adjudication order under r 17.29 of the High Court Rules. In other words, having successfully argued before Osborne J that he should be returned to bankruptcy, Mr Hampton appealed on the basis the Judge was wrong not to go further and restore him to the position he had been in before his adjudication.

[13] This judgment concerns both Mr Hampton's appeal against Venning J's discharge and conditions judgment and his appeal against Osborne J's stay judgment. Having said that, Mr Hampton's primary submission is that pursuant to r 17.29 of the High Court Rules, this Court has jurisdiction to, and should, "stay" his bankruptcy. Mr Hampton says unless there is a stay of his adjudication he cannot apply to lift the 2013 stay of the Misfeasance Claim as the relevant cause of action vests in the Official Assignee. Further, if the stay of his bankruptcy is not granted prior to his discharge, the Misfeasance Claim will not revest in him and, consequently, he will have no way to pursue that proceeding against the Commissioner.

[14] Accordingly, the primary relief Mr Hampton seeks on these appeals is the stay under r 17.29, which he sought before Osborne J but not Venning J. As Mr Hampton sees it, if he succeeds, it will not be necessary to address his specific appeal against Venning J's discharge and condition orders. At the same time, and perhaps recognising

the difficulties that aspect of this appeal faces, Mr Hampton maintains his challenge to the conditions Venning J imposed on his discharge: in essence, he says those conditions have been wrongly imposed because the Judge materially mischaracterised certain aspects of his overall dispute with the Commissioner, and his behaviour as a taxpayer more generally.

[15] Ms Courtney and Mr Slevin, appearing for the Official Assignee, contended that Osborne J was correct to find r 17.29 was not apt to stay Mr Hampton's bankruptcy in the manner he desired. The Court lacked jurisdiction to order the primary relief Mr Hampton sought and the Second Appeal should be dismissed accordingly. As for the First Appeal — against the conditions imposed on Mr Hampton's discharge — there was ample evidence before Venning J to justify these and Mr Hampton had pointed to no material error by the Judge in this regard. The First Appeal should also, therefore, be dismissed.

[16] Mr Kinsler appeared for the Commissioner primarily to support Venning J's judgment and to address Mr Hampton's allegations regarding the conduct of departmental officers.

[17] At the hearing of this appeal, and in this judgment, we therefore address the issues in the following order:

- (a) Does jurisdiction exist under r 17.29 to stay Mr Hampton's adjudication?
- (b) If yes, should a stay of Mr Hampton's adjudication be granted?
- (c) If no, did Venning J err in ordering conditions when discharging Mr Hampton from bankruptcy?

Does jurisdiction exist under r 17.29 to stay Mr Hampton's adjudication?

[18] Rule 17.29 of the High Court Rules provides:

17.29 Stay of enforcement

A liable party may apply to the court for a stay of enforcement or other relief against the judgment upon the ground that a substantial miscarriage of justice would be likely to result if the judgment were enforced, and the court may give relief on just terms.

[19] The purpose of the rule is to enable parties who are held liable under a judgment of the Court to apply for a stay of enforcement of the judgment or other relief against it. That is a poor fit for the situation here because Mr Hampton is not a liable party under a judgment: rather, he has been adjudicated bankrupt, and bankruptcy is a status rather than a form of liability. Before us, Mr Hampton maintained that he was a judgment debtor to MERW and thus a “liable party” in terms of r 17.1. However, that confuses the original judgment obtained by MERW in February 2010 with the adjudication order made by Associate Judge Matthews in June 2013.¹¹ Unlike the 2010 judgment, the adjudication order could not be “enforced” by MERW. Once made, it took effect by operation of law: there is nothing further the creditors could do.

[20] Mr Hampton further contended that the word “judgment” could be defined broadly to encompass an adjudication order and pointed to the suggestion a court order could be “enforced in the same way as a judgment” in r 17.2 and the broad definition adopted elsewhere in r 11.1. Again, however, we reject that submission simply because it misdescribes the nature of an adjudication order, which as we have noted, cannot be “enforced” and is not what is contemplated by r 17.2.

[21] The correctness that conclusion can be confirmed by considering the effect of the orders Mr Hampton sought in the context of fundamental principles of insolvency law.

[22] A fundamental aspect of that law is that the adjudication of a bankrupt vests the remaining assets of that person in the Official Assignee. It is the Assignee who thereafter has full control of those assets. They are to be disposed of for the benefit of the bankrupt’s creditors. Subject to the possibility of there being a surplus after realisation and application, the insolvent person can have no interest in the assets of

¹¹ *Minter Ellison Rudd Watts v Hampton* HC Christchurch CIV-2009-409-1700, 11 February 2010; and *Minter Ellison Rudd Watts v Hampton*, above n 2.

their insolvent estate absent (perhaps) disclaimer of onerous property which the insolvent nevertheless values.¹²

[23] The Insolvency Act goes on to provide that bankrupts may apply to the Court to annul their adjudication. Section 309 provides:

309 Court may annul adjudication

- (1) The court may, on the application of the Assignee or any person interested, annul the adjudication if—
 - (a) the court considers that the bankrupt should not have been adjudicated bankrupt; or
 - (b) the court is satisfied that the bankrupt's debts have been fully paid or satisfied and that the Assignee's fees and costs incurred in the bankruptcy have been paid; or
 - (c) the court considers that the liability of the bankrupt to pay his or her debts should be revived because there has been a substantial change in the bankrupt's financial circumstances since the date of adjudication; or
 - (d) the court has approved a composition under subpart 1 of Part 5.
- (2) In the case of an application on one of the grounds specified in subsection (1)(a) to (c) by an applicant who is not the Assignee,—
 - (a) a copy of the application must be served on the Assignee in the manner and within the time that the court directs; and
 - (b) the Assignee may appear on the hearing of the application as if the Assignee were a party to the proceeding.
- (3) The adjudication is annulled—
 - (a) from the date of adjudication, in the case of an application on the ground specified in subsection (1)(a);
 - (b) from the date of the court's order of annulment, in the case of an application on one of the grounds specified in subsection (1)(b) to (d).

...

Mr Hampton applied unsuccessfully for an annulment under this section on two previous occasions.¹³

¹² The High Court may, on a bankrupt's application, order the return of property disclaimed by the Assignee to the bankrupt if it is fair to do so: Insolvency Act, s 119(2).

¹³ *Minter Ellison Rudd Watts v Hampton* [2013] NZHC 2434 [First annulment judgment]; and *Hampton v Official Assignee* [2014] NZHC 1458 [Second annulment judgment]. Mr Hampton unsuccessfully appealed against the second annulment judgment to this Court: *Hampton v Official Assignee* [2015] NZCA 264.

[24] Mr Hampton now seeks, in effect, a temporary annulment, an order not contemplated by the Act and which would cut across the insolvency regime in its entirety. His proposition is that his assets, including those represented by the benefit (such as it may be) of the Misfeasance Claim, would revert to being his property, in which the Official Assignee would have no interest nor any right to determine disposition. There is simply no room, given the fundamental principles of insolvency law and the specific terms of the Act, for such an order. We are satisfied that, howsoever r 17.29 might be interpreted, it cannot have that effect.

[25] We are therefore satisfied that Osborne J's decision there was no jurisdiction to make the order Mr Hampton sought under r 17.29 was correct and the Second Appeal is dismissed accordingly.

[26] We turn to the remaining issue, namely whether in the judgment stayed by Osborne J pending the resolution of the First Appeal, Venning J erred when he imposed conditions on Mr Hampton's discharge. If Venning J did not err, so that Mr Hampton's appeal of that decision is dismissed, Osborne J's stay will come to an end and Mr Hampton will be discharged from bankruptcy.

Did Venning J err in ordering conditions when discharging Mr Hampton?

[27] Venning J considered that several aspects of Mr Hampton's conduct gave cause for concern. Among other things, there was a troubling failure to file tax returns throughout the late 1990s which could not wholly be due to the Commissioner, even if Mr Hampton's complaints are accepted.¹⁴ He had also been convicted of a charge laid under of the Goods and Services Tax Act 1985 of intentionally misleading the Commissioner,¹⁵ and on another occasion was the subject of adverse credibility findings after giving evidence before Judge MacAskill.¹⁶ In his present bankruptcy, Mr Hampton had taken over a year to file a statement of affairs notwithstanding the legislative requirement for that to be done within 10 working days.¹⁷ Moreover, after filing his statement of affairs, he had adopted a generally uncooperative stance and

¹⁴ Discharge and conditions judgment, above n 5, at [56].

¹⁵ *Hampton v Inland Revenue Department* (1994) 16 NZTC 11,243 (HC).

¹⁶ *Hornby Finance Ltd v Hampton* [2012] DCR 229 (DC) at [65]–[70].

¹⁷ Insolvency Act, s 69.

had failed to provide the Assignee with his current address or disclose the whereabouts of a Daihatsu truck.¹⁸

[28] Venning J was particularly critical of “the rather unsatisfactory position” in relation to a property at 67 Augusta Street, Christchurch.¹⁹ The registered owner of that property was, at one point, Ms Sisson. Notwithstanding, following a mortgagee sale in December 2013, the surplus proceeds were paid to the Assignee in the estate in bankruptcy of Mr Hampton, as the Assignee and the Commissioner both considered Mr Hampton was beneficial owner of the property. That payment was directed by Fogarty J in a minute dated 10 December 2013 and was consented to by Mr Hampton.²⁰

[29] Three years later, however, when it appeared the monies held by the Assignee might be distributed to the Commissioner, Ms Sisson sought a declaration from the High Court that the beneficial owner of 67 Augusta had not been not Mr Hampton but rather was the Anolbe Family Trust (the Trust). It followed that the proceeds of the mortgagee sale could not be applied to Mr Hampton’s creditors but needed to be returned to the Trust. In support of that application, Mr Hampton filed a memorandum maintaining that it had always been his understanding and intention that the beneficial owner of the property was the Trust. That proceeding was later abandoned by Ms Sisson on the fourth day of trial, and Mr Hampton consented to a costs order being made against him personally.²¹

[30] Venning J considered that the issue reflected badly on Mr Hampton in a number of ways. First, Mr Hampton claimed to have acted both as settlor and trustee of the Trust, which was not permitted by the Trust deed and suggested a certain carelessness by him. Secondly:²²

... 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 of the property at mortgagee sale that it was his property beneficially and agreed to the funds being paid into his bankrupt estate.

¹⁸ Discharge and conditions judgment, above n 5, at [59]–[60].

¹⁹ At [61]–[66].

²⁰ Mr Hampton confirmed in his written submissions that he had consented to the order.

²¹ *Sisson v Official Assignee* [2017] NZHC 555.

²² Discharge and conditions judgment, above n 5, at [65].

Submissions

[31] Mr Hampton submitted the Judge's analysis mischaracterised his behaviour both before and during his bankruptcy in several ways. In general terms, where there had been delays or miscommunications between him and the Assignee, this could largely be explained by ongoing attempts by Mr Hampton to annul his bankruptcy and limited internet connectivity in his then rural location, amongst other factors. Mr Hampton pointed to several examples of him actively co-operating with the Official Assignee as evidence of his efforts to comply with the obligations bankruptcy placed upon him.

[32] Mr Hampton also refuted Venning J's assessment that his conduct in relation to the Augusta Street property had been unsatisfactory. He had hardly concealed the existence of the property by failing to disclose an interest in his statement of affairs: at that point, the property had already been sold at mortgagee sale with the proceeds paid to the Assignee. Mr Hampton observed that, moreover, the Judge had misstated the proper chronology in the passage quoted above at [30]: Mr Hampton in fact filed his statement of affairs in 2014, the year after the mortgagee sale in 2013. The implication that the mortgagee sale followed the filing of his statement of affairs was therefore incorrect.

[33] Mr Hampton challenged many of the other criticisms made by Venning J, including the reference to other Judges' criticism of Mr Hampton's conduct and the suggestion that Mr Hampton had acted contrary to the Trust deed. For reasons explained immediately below, however, we do not consider it necessary to address every submission advanced by Mr Hampton in order to decide the appeal.

Analysis

[34] Venning J referred to a wide variety of conduct ranging over the past 25 years in his assessment, and Mr Hampton disputed the greater part of that analysis. In our view, however, two matters before the Judge were of principal significance for the assessment of whether the imposition of conditions on Mr Hampton's discharge was justified. The first was Mr Hampton's failure "to properly distinguish between the assets, liabilities and general affairs of the separate Chesterfield entities", as

exemplified in the treatment of the Augusta Street property.²³ The second was Mr Hampton's lack of co-operation with the Official Assignee during his bankruptcy, as demonstrated by the delay in filing the Statement of Affairs and the delay in disclosing the whereabouts of a Daihatsu truck. We consider that the potential concern generated by these criticisms is such that if Venning J's consideration of these points was correct, then he was also correct to impose conditions on Mr Hampton's discharge and there is insufficient substance in the remaining points raised by Mr Hampton for his appeal to succeed.

[35] Turning first to the Augusta Street property, we accept Mr Hampton's submission that the Judge slightly mischaracterised the correct order of events in the quotation above at [30]. However, we do not think that Mr Hampton's criticism ultimately detracts from the Judge's central criticisms in relation to the Augusta Street property.

[36] First, Mr Hampton does not satisfactorily explain why he consented to Fogarty J's order that the proceeds of sale from the mortgagee sale be paid to the Official Assignee. Mr Hampton submitted before us that Fogarty J was acting upon what he termed a "Court imposed trust" in making the necessary order and that he had therefore not changed his stance as to beneficial ownership of the proceeds. If Mr Hampton was suggesting that the Court considered, at that point, that beneficial ownership of the Augusta Street property remained an unsettled issue, then we reject the submission for conflicting with the clear terms of Fogarty J's order. That order directed the mortgagee "to account to the Official Assignee in the estate in bankruptcy of David John Hampton as the beneficiary entitled to the proceeds of the sale of Augusta Street".²⁴ The obvious premise of the order was that Mr Hampton was beneficial owner of the property. Mr Hampton confirmed in his written submissions on this appeal that he had consented to the order. There remains, therefore, no adequate explanation for why in 2016 Mr Hampton adopted the contradictory stance that he was not beneficial owner.

²³ At [61].

²⁴ *Chesterfields Preschools Ltd v Commissioner of Inland Revenue* HC Christchurch CIV-2008-409-722, 10 December 2013 (Minute of Fogarty J) at [3(a)].

[37] Second, Mr Hampton’s suggestion that it was reasonable for him to omit the Augusta Street property from his statement of affairs because the Official Assignee already held the proceeds of sale does not sit easily with the suggestion that the Trust had been beneficial owner. Mr Hampton declared his interest in the Trust in his statement of affairs and listed its assets as shares in Chesterfield Preschools Ltd and Anolbe Enterprises Ltd. But if Mr Hampton was correct that the Trust was beneficial owner of the property, then the proceeds of sale ought to have been listed as an asset, and the suggestion that he had kept the Official Assignee fully apprised of his dealings with the property does not bear scrutiny.

[38] Mr Hampton raised several other factors which, he suggested, refuted the conclusion that he failed to distinguish between assets and liabilities of the Chesterfield entities and which, in his submission, Venning J erroneously failed to consider. These included the fact that although Fogarty J had previously commented on the “incredibly complicated transactions ... swirling around” the taxpayers’ entities,²⁵ this had to be viewed in the context of his assessment that Mr Hampton was “not dishonest” and the absence of any finding of actual unlawfulness.²⁶ Further, the comments were made while Mr Hampton was suffering the disadvantage caused by the Commissioner’s failure (as asserted in the Mifefasance Claim) to properly disclose material that would have assisted his case.

[39] We do not accept that any of the matters raised by Mr Hampton materially alter the context for judging his dealings with the Augusta Street property or detract from Venning J’s criticism in that regard. Fogarty J’s assessment cannot assist Mr Hampton as the Judge quite explicitly qualified his assessment of Mr Hampton’s honesty by noting his ability to enter into “ingenious transactions”,²⁷ and thereby dubiously avoid obligations he had previously entered into.²⁸

... as I have said and reiterate that the plaintiffs in my judgment are not dishonest people, but are nevertheless persons who believe that transactions can be created readily enabling the movement of assets, that they may be of the state of mind that they would not be breaching undertakings, if they did

²⁵ *Chesterfield Preschools Ltd v Hampton* HC Christchurch CIV-2004-409-1596, 13 September 2005 at [16].

²⁶ At [49].

²⁷ At [18].

²⁸ At [49].

something which appeared to be not quite caught by the undertaking or somehow outside. The safer course is to subject their conduct to the supervision of the Court.

[40] Nor do the allegations contained in the Misfeasance Claim assist Mr Hampton here. Mr Hampton's shifting treatment of the Augusta Street property, which is in fact entirely consistent with the criticism of Fogarty J, exemplifies a pattern of behaviour which cannot be attributed to the Commissioner. Other factors raised by Mr Hampton on this point, such as the fact Ms Sisson was not present in Court the day he consented to the proceeds of the sale of the Augusta Street property being paid to the Assignee, are simply not relevant and we do not address them.

[41] We turn next to Venning J's criticism of Mr Hampton's lack of cooperation with the Official Assignee, which we also consider was justified. The most obvious example of this was the delay in filing his statement of affairs, which was filed a year late on 19 June 2014.²⁹ We agree with Venning J that Mr Hampton penalised himself insofar as he postponed his automatic discharge,³⁰ but the broader point is that Mr Hampton disrupted the administration of his bankruptcy and the ability of the Official Assignee to realise assets in the estate. We do not accept Mr Hampton's assertion that the need for "care and precision" in relation to his allegations against IRD officers accounted for the delay, as the statement of affairs only referred to the Misfeasance Claim in passing. Nor does either of Mr Hampton's attempts to annul the bankruptcy explain matters. The first application was dismissed on 17 September 2013, nine months before the statement of affairs was filed.³¹ The second was not filed until the following year, and was in any event ultimately dismissed several days *after* Mr Hampton eventually filed his statement of affairs.³² This conflicts with Mr Hampton's suggestion that the administration of his estate was considered to be "in limbo" at that time (preventing him from finalising his statement of affairs), a comment made by Fogarty J to describe the status of separate proceedings against the Commissioner, but which Mr Hampton endeavoured to relate to the administration of his estate.

²⁹ The statement of affairs was due to be filed 10 working days after receiving the Official Assignee's notice requiring the statement of affairs, which is dated 6 June 2013: Insolvency Act, s 69.

³⁰ Discharge and conditions judgment, above n 5, at [59]; and see Insolvency Act, s 290.

³¹ First annulment judgment, above n 13.

³² Second annulment judgment, above n 13.

[42] Even if a generous allowance is made for both annulment attempts and the interlocutory matters that arose over the course of the bankruptcy, the many months that passed (while no annulment application was pending) without Mr Hampton filing the statement of affairs has not been adequately explained. Mr Hampton pointed to many other examples of his interaction with the Assignee which he said demonstrated his ongoing co-operation during his bankruptcy, but none of these detract from the simple point that for months he apparently disregarded his statutory obligation to promptly file a statement of affairs. This was an important step in the administration of his estate which specifically provided for by ss 67–69 of the Insolvency Act and the failure to comply with this obligation was appropriately treated as a cause of concern.

[43] The other example of poor communication relied upon by Venning J was the treatment of a Daihatsu truck, which was noted twice in his statement of affairs as having a resale value of either \$10,000 or \$30,000 but which could not be recovered by the Official Assignee, despite numerous requests, until three years later when Mr Hampton advised that he had sought a verbal appraisal which had valued the truck at just \$2,000. Mr Hampton submitted that letters sent by the Assignee to a Christchurch address regarding the truck did not reach him as they were addressed to 8 Kahu Road (his adjudication address) rather than 8A Kahu Road (the address given in his statement of affairs), and in any case he was at that point working in a rural Northland location with poor post and email access.

[44] Even treating Mr Hampton’s explanations at face value, we do not agree that his approach to the Daihatsu truck was satisfactory. On Mr Hampton’s evidence he had notice of the Official Assignee’s interest in the truck no later than August 2014,³³ when he replied to an email advising him that a summons would shortly issue due to his failure to reply to at least two months’ worth of letters. Yet even then Mr Hampton ignored the request for details of the truck until, it appears, the following January, and a clear statement on the physical whereabouts of the truck was only provided by him

³³ This followed an earlier email sent on 30 July 2014, which appears not to have been acknowledged by Mr Hampton.

when he was publicly examined before Venning J in 2018.³⁴ Significant delays can also properly be ascribed to Mr Hampton's decision to move to Northland while making no proper arrangements for continued contact with the Official Assignee. In the end, we are quite satisfied that Venning J was right to consider that Mr Hampton had displayed a lack of responsibility towards his obligations as a bankrupt.

[45] We conclude that Venning J was correct to determine that Mr Hampton's conduct sufficient concern such that it was appropriate to impose conditions on his discharge. As Mr Hampton disputed the basis for those conditions rather than their specific terms, that is sufficient to dispose of the First Appeal and we dismiss it accordingly.

Result

[46] The appeals are dismissed.

[47] There is no order as to costs.

Solicitors:
Crown Law Office, Wellington for Second and Third Respondents

³⁴ Mr Hampton told the Assignee in 2015 that he "lived in" the truck but did not want to deal with assets while litigation before this Court was proceeding. We do not think this vague description detracts from Venning J's assessment at [59] that the whereabouts of the truck only became clear until 2018, when Mr Hampton disclosed that it was at 8A Kahu Road.