

SHEREE ANN TAYLOR Judgment Debtor AND W & D MELLIS BUILDERS LTD Judgment Creditor

JUDGMENT OF ASSOCIATE JUDGE ROBINSON High Court New Zealand Napier Registry 11th February 2008

- [1] Mr Ellis counsel for Miss Taylor in a memorandum prepared for today's hearing advises that he has no instructions to take this application further. He seeks leave to withdraw from the proceedings. He confirms that the debtor is aware that he will be withdrawing. Mr Podwin appearing for the creditor W & D Mellis Builders Limited raises no objection to the application by Mr Ellis to withdraw. Consequently that application will now be granted.
- [2] Miss Taylor although aware of today's fixture does not appear. I understand that she has advised the court registrar that she is now in Christchurch. She applies to set aside a bankruptcy notice issued by W & D Mellis Builders Limited. That bankruptcy notice is based on a final judgment against Miss Taylor in favour of W & D Mellis Builders Limited obtained on 27 September 2005 whereby Miss Taylor was ordered to pay W & D Mellis Builders Limited \$157,236.43. That judgment arises out of a determination by an adjudicator in terms of the Construction Contracts Act dated 15 August 2005.
- [3] In the affidavit she swore in support of her application to set aside the bankruptcy notice Miss Taylor claims a counter-claim or set-off because of delays by W & D Mellis Builders Limited in completing its contract and faulty workmanship by that contractor. I observe that in his determination, the adjudicator considered and took into account claims by Miss Taylor arising out of the builders delay and her claim that some of the work was not done in a good and workmanlike manner.
- [4] The proceedings were set down for hearing today following directions made by this court in terms of a consent memorandum submitted by the parties. Miss Taylor has advanced no valid reason for her non-appearance today. She indicated that at one stage she would seek legal aid. No advice has been received of any grant of legal aid. Mr Ellis says that from now on Miss Taylor will represent herself. Consequently it is unlikely that she has received legal aid. In the circumstances having regard to Miss Taylor's failure to appear today, the fact that the bankruptcy notice was issued to enforce an award following a defended adjudication which took into account matters which are now being raised by Miss Taylor in the affidavit she has filed in these proceedings, I am satisfied that her application to set aside the bankruptcy notice must be dismissed for want of prosecution. The application to set aside the bankruptcy notice is therefore dismissed. Counsel for the creditor is entitled to costs which I fix on a schedule 2B basis.

Appearances: B R Ellis for Judgment Debtor

C A Podwin for Judgment Creditor

Solicitors: Kevin Ogles & Associates, PO Box 24-059, Auckland Ellis Law, PO Box 4516, Auckland