

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

**CIV 2014-404-3223
[2015] NZHC 908**

BETWEEN

WILLIAM ANTONY BATTY, AS
TRUSTEE IN BANKRUPTCY OF
CHRISTINE NITA REEVES
Plaintiff

AND

CHRISTINE NITA REEVES
Defendant

Hearing: 4 May 2015

Counsel: L J McNeely for Mr Batty
No appearance by or on behalf of Ms Reeves

Judgment: 4 May 2014

(ORAL) JUDGMENT OF HEATH J

Solicitors:
Bell Gully, Auckland

Introduction

[1] On 21 May 2013, Ms Blake filed a creditor's petition in bankruptcy against Ms Reeves in the High Court of Justice of England and Wales (the English Court). The debt claimed, £84,078.68 (including interest), arose out of orders for costs made on 15 October 2010, in civil proceedings brought against Ms Reeves in the Wandsworth County Court. A statutory demand had been made for payment of the debt but no response had been received. Ms Reeves was adjudged bankrupt on 14 August 2013 by the English Court.

[2] Mr Batty is a licensed insolvency practitioner in London. On 21 August 2013, he was appointed as Trustee in Bankruptcy of Ms Reeves' bankrupt estate. While he has been unable to locate Ms Reeves, he has established that she sold her residence in Lower Richmond Road, London, on or about 24 September 2010. Neither the proceeds of sale of that property nor any other assets have been located within the United Kingdom that can be realised for the benefit of her creditors.

[3] Mr Batty's inquiries have uncovered a bank account in New Zealand, at ANZ Bank (the Bank) in Howick. It is reliably believed that the proceeds of sale of the London property were transferred into that bank account. The net amount of the proceeds of sale of that property is believed to be £467,932.78. However, the current balance of that account is only \$397.14.

The application

[4] Mr Batty applies to this Court for an order recognising the bankruptcy commenced in England and an order enabling him to gain access to the transaction history of the bank account, on payment of the Bank's reasonable costs. As there is compelling evidence that Ms Reeves cannot be located, the application has proceeded without notice to her. The other affected party, the Bank, has been served and abides the decision of the Court.

Jurisdiction

[5] Initially, Mr Batty sought the issue of a Letter of Request for assistance from the English Court. An order to that effect was made by Chief Bankruptcy Registrar Baister, on 8 July 2014. The order stated:¹

This Court hereby requests the High Court of New Zealand to assist this Court by ordering that:

- (1) The Bankruptcy Order and appointment and office of the Trustee in Bankruptcy be recognised by the High Court of New Zealand.
- (2) The National Bank of New Zealand be required to provide the transaction history of the Account to the Trustee in Bankruptcy on payment of its reasonable costs.
- (3) There be such further or other relief as the Court thinks fit.

[6] Application has now been made to this Court to give effect to that request. There are two sources of jurisdiction under which such a request may be actioned. The first is under Schedule 1 to the Insolvency (Cross-border) Act 2006 (the Act). That adopts, as part of the domestic law of New Zealand, with minor modifications, the UNCITRAL Model Law on Cross-Border Insolvency. The other is through the residual powers conferred by s 8 of the Act.

[7] There are jurisdictional problems with relief being granted under Schedule 1 to the Act. In order to be recognised under that Schedule, the proceeding in England must be regarded as a “foreign proceeding” as defined.² To come within that definition the proceeding must be either a “foreign main proceeding” or “a foreign non-main proceeding”.³ The former is dependent upon it taking place in the State where the debtor has its “centre of its main interests”,⁴ while the latter applies only if “the debtor has an establishment”⁵ in the foreign State.

¹ The National Bank of New Zealand has been subsumed within the business of the company now known as ANZ Bank New Zealand Ltd.

² Insolvency (Cross-border) Act 2006, Sch 1, art 2(a).

³ Ibid, art 2(b) and (c) respectively.

⁴ Insolvency (Cross-border) Act 2006, Schedule 1 art 2, definition of “foreign main proceeding”

⁵ Ibid, art 2(f), definition of “establishment”.

[8] For similar reasons to those that applied in this Court’s decision in *Williams v Simpson*,⁶ it cannot be contended either that Ms Reeves has her “centre of main interests”, or an “establishment” in England.⁷ That being so it is necessary to consider whether the alternative source of relief under s 8 of the Act is available.

Analysis

[9] Section 8 of the Act provides:

8 High Court to act in aid of overseas courts

(1) This section applies to a person referred to in article 1(1) of Schedule 1.

(2) If a court of a country other than New Zealand has jurisdiction in an insolvency proceeding and makes an order requesting the aid of the High Court in relation to the insolvency proceeding of a person to whom this section applies, the High Court may, if it thinks fit, act in aid of and be auxiliary to that court in relation to that insolvency proceeding.

(3) In acting in aid of and being auxiliary to a court in accordance with subsection (2), the High Court may exercise the powers that it could exercise in respect of the matter if it had arisen within its own jurisdiction.

[10] In *Williams v Simpson*, I held that s 8 could be used in a case where recognition could not be granted as either a foreign main proceeding or a foreign non-main proceeding under Schedule 1 to the Act.⁸ I favoured a “universalist”⁹ approach to international insolvency, of the type described by the Privy Council in *Cambridge Gas Transport Corporation v Official Committee of Unsecured Creditors of Navigator Holdings Ltd*.¹⁰ I held that assistance should ordinarily be given unless there were some compelling reason to the contrary.¹¹ The question is whether this Court should exercise its discretion under s 8 to assist the English Court in the manner sought.

[11] Since *Williams v Simpson* was decided, a good deal of what was said in *Cambridge Gas* about development of the common law on “universalist” grounds

⁶ *Williams v Simpson* [2011] 2 NZLR 380 (HC).

⁷ *Ibid*, at paras [41]–[66].

⁸ *Williams v Simpson* [2011] 2 NZLR 380 (HC), at para [68].

⁹ See fn 17 below.

¹⁰ *Cambridge Gas Transport Corporation v Official Committee of Unsecured Creditors of Navigator Holdings Ltd* [2006] UKPC 26 [2006] 3 All ER 829.

¹¹ *Williams v Simpson* [2011] 2 NZLR 380 (HC), at para [74].

has been discredited by both the Supreme Court of the United Kingdom¹² and the Privy Council.¹³ I have considered whether there is anything in the most recent judgment of the Privy Council, *Singularis Holdings Ltd v PricewaterhouseCoopers*,¹⁴ that might militate against the grant of relief in favour of Mr Batty. I am satisfied that there is not.

[12] Section 8(3) authorises this Court to make an order that it could exercise if the issue had arisen in New Zealand.¹⁵ That distinguishes this case from the type of situation with which the Privy Council dealt in *Singularis*. It declined to develop the common law of Bermuda to permit aid of a similar type to be granted.¹⁶

[13] While overruling *Cambridge Gas*, so far as the particular jurisdiction was exercised in that case, the Privy Council specifically acknowledged that such assistance could be given “within the limits of [the receiving court’s] own statutory” powers.¹⁷ I am satisfied that the grant of assistance on “universalist” principles¹⁸ can be exercised when a statute expressly permits that course. In *Singularis* the criticism of *Cambridge Gas* (and the decision of the Supreme Court of Bermuda from which the appeal was brought) was based on a view that those Courts had engaged in illegitimate judicial legislation by purporting to extend the boundaries of the common law to achieve that goal.

[14] There is no doubt that an Official Assignee of a bankruptcy in New Zealand could call on a bank, in similar circumstances, to provide the transaction record. Such is clear from the terms of s 171 of the Insolvency Act 2006 which provides:

¹² *Rubin v Eurofinance SA* [2012] UKSC 46, [2013] 1 AC 236.

¹³ *PricewaterhouseCoopers v Saad Investments Ltd* [2014] UKPC 35 and *Singularis Holdings Ltd v PricewaterhouseCoopers* [2014] UKPC 36.

¹⁴ *Singularis Holdings Ltd v PricewaterhouseCoopers* [2014] UKPC 36.

¹⁵ Section 8(3) is set out at para [9] above.

¹⁶ *Singularis Holdings Ltd v PricewaterhouseCoopers* [2014] UKPC 36, at paras [19] (Lord Sumption), [38] (Lord Collins), [112] (Lord Clarke).

¹⁷ *Ibid*, at para [19].

¹⁸ Members of the Privy Council in *Singularis* referred to the principle of “modified universalism”. I use “universalist” as a shorthand expression to capture the same principle. For example, see Lord Sumption’s judgment, at para [19]. My use of the term should not be regarded as broader than that contemplated in the *Singularis* judgment.

171 Assignee may obtain documents

In addition to the power contained in section 165(1)(b), the Assignee may, by notice in writing, require the bankrupt, the bankrupt's spouse, or any other person to deliver to the Assignee any document relating to the bankrupt's property, conduct, or dealings in that person's possession or under that person's control.

[15] In a New Zealand bankruptcy, the Official Assignee would stand in the shoes of the bankrupt and call for information pertaining to his or her affairs on that basis. I see no reason why this Court should not authorise Mr Batty to exercise that power in the circumstances disclosed to me. This Court can compel production of documents required under s 171.

Result

[16] For those reasons, I order:¹⁹

- (a) That the High Court of New Zealand shall act in aid of and be auxillary to the request for assistance made by the English Court on 8 July 2014 and, for that purpose, the appointment of Mr Batty as Trustee in Bankruptcy of the property of Christine Nita Reeves shall be recognised in New Zealand.
- (b) Mr Batty may exercise the powers conferred on the Official Assignee under s 171 of the Insolvency Act 2006 to obtain from the Bank the transaction history of the account in the name of Ms Reeves; namely, account no. 017815400, Sort Code 06-01-69. Those documents shall be obtained on payment by Mr Batty of the Bank's reasonable costs.
- (c) Leave is reserved for Mr Batty to apply to this Court for further relief under s 8, if assets in New Zealand are located that he requires this Court's assistance to realise, or if examination powers are required to obtain further information to identify any asset for realisation.

¹⁹ For the purposes of sealing these orders the full name of "the Bank" is ANZ Bank New Zealand Ltd.

[17] I reserve all questions of costs. Costs were sought on a 2B basis. However, it seems to me that the actual costs incurred by Mr Batty are likely to be payable as expenses of the English bankruptcy. The reservation of costs will allow Mr Batty to renew his application for costs if a different position in fact pertains. I have no expert evidence on that issue before me.

[18] I thank counsel for his assistance.

P R Heath J