

PALMER HAMILTON, J

BACKGROUND

[1] At the outset, let me apologize for the lengthy delay in the delivery of this judgment as this matter fell through the cracks due to clashes with other court fixtures. I must commend the parties for their understanding regarding same. When the matter came before me on the 18th day of September 18, 2023, I indicated that my reasons would be reduced in writing and I now fulfil that promise.

INTRODUCTION

[2] By way of a Fixed Date Claim Form filed on the 19th day of November, 2021, the Applicant from the Government Trustee, Nicola-Ann Brown Pinnock, sought the following Orders:

*(a) That the automatic discharge of the first-time bankrupt, **ANA YANSY MARTINEZ WATSON**, of Toll Gate, Frome in the parish of Westmoreland be refused.*

(b) Any such further or other relief as deemed fit by this Honourable Court.

[3] The Fixed Date Claim Form was supported by the Affidavit of Gleninsha Drummond-Campbell filed on the 19th day of November, 2021. Mrs. Drummond-Campbell deposed that pursuant to Section 83(5) of the Insolvency Act, the Supervisor of Insolvency by Certificate of Assignment issued on the 18th day of July, 2019 appointed the Government Trustee to act as trustee of the estate of Ana Yansy Martinez Watson (hereinafter referred to as 'the Bankrupt'). The date for the automatic discharge of the bankrupt was on the 18th day of July, 2021 and if there was no opposition then the Notice and Automatic Discharge Report of the estate of the Bankrupt should be filed on or before the 18th day of June, 2021. The said report was filed with the Supervisor of Insolvency on the said 18th day of June, 2021. Investigations have revealed no assets belonging to the Bankrupt that can be used to satisfy her liabilities and the Government Trustee is relying on monthly payments being made by the bankrupt to settle the liabilities to her proven

creditors. It was further deposed that the Bankrupt has paid (\$110,500.00) to the Government Trustee towards the settlement of her liabilities which amounts to **TWO MILLION NINE HUNDRED AND EIGHTY-FOUR THOUSAND THREE HUNDRED AND FIFTY-ONE DOLLARS AND FIFTEEN CENTS (\$2,984,351.15)**. Pursuant to Regulation 59 of the Insolvency Regulations, 2015, the Bankrupt has completed her two stages of counselling and financial management and has received her Counselling Certificates.

[4] The Government Trustee opposes the discharge of the Bankrupt on the following grounds:

- (i) That the value of the Bankrupt's assets, being amount held on account by the Trustee by virtue of her surplus income, does not meet the minimum requirement of thirty-three and one-third cents (\$33.33) on the Bankrupt's unsecured liabilities as provided for by Section 146 of the Act;*
- (ii) That the Bankrupt has not performed the duties imposed on her by the Government Trustee in that she has failed to comply with the requirement for monthly payments to her estate;*
- (iii) To date there has been no dividend payment to the Creditors of the Estate and their liabilities remain wholly unsatisfied; and*
- (iv) The discharge of the Bankrupt in the above-mentioned circumstances would prejudice the interest of the Creditors of Estate, defeat the objective of the Act and undermine the integrity of the process of insolvency administration.*

[5] The Bankrupt also filed an Affidavit on the 18th day of February, 2022 and asked that this Honourable Court grant her the relief afforded under Section 137 of the Insolvency Act. She deposed that she is a first-time bankrupt who has fallen on hard times and who before her application for bankruptcy was faithful in the payment of her personal debts and liabilities to her creditors. She further deposed that it was due to unforeseen circumstances, outside of her control, and a series of misfortunes, that she was unable to meet her financial requirements to the Government Trustee and have been struggling to do so for several years. The Bankrupt also deposed that this Honourable Court refusing automatic discharge of her personal liabilities will exacerbate the extent of her financial despondency and

she is presently unable to settle these debts. The Bankrupt has no assets to satisfy her liabilities. She listed her only source of funds, save for irregular goodwill contributions from family members and friends, is her monthly salary. As at the date of this Affidavit, the Bankrupt was making monthly payments to the Government Trustee in the sum of \$20,000.00, which was being paid in two equal instalments fortnightly. She exhibited evidence of payment from the period April 2021 to January, 2022. The Bankrupt faced challenges as her son is autistic with a hereditary disability to his feet and she even suffered from a stroke and was hospitalised which affected her employment.

- [6] The Bankrupt deposed that refusing her automatic discharge will worsen her circumstances as she has done all that she can considering her circumstances. However, she continues to face many challenges despite her efforts. The Bankrupt fears that without any changes to her personal circumstances which remain unpredictable and unfavourable, she may have further penalties levied against her by the Government Trustee. She further stated that the severity of her financial situation is now being used against her to justify why she should be denied an automatic discharge as she has been unable to make monthly payments of greater value, which is the reason why the value of the monies paid by her are below the minimum requirement of her unsecured liabilities.

SUBMISSIONS ON BHEALF OF THE APPLICANT

- [7] Ms. Campbell submitted that the Government Trustee has a duty to both bankrupt and creditors and that it is a balancing exercise. It was further submitted that the Bankrupt has a far way to go with respect to her liabilities as the Government Trustee is unable to make a dividend payment to her creditors. Ms. Campbell contended that the duty imposed on the Bankrupt is the requirement to make monthly payments to the Government Trustee to settle her liabilities and that it would be reasonable and just for the refusal of the automatic discharge to allow for the continuation of the administration of the estate by the Government Trustee so that that liabilities can be satisfied. Ms. Campbell further contended that the

Government Trustee wants to give the Bankrupt a chance to “*play catch up*” to pay at least thirty-three and one-third cents (\$33.33) as prescribed by the legislation.

- [8] It was submitted that to release the Bankrupt from bankruptcy would not be beneficial to the insolvency regime and to the creditors, that the Government Trustee has a right to protect as well. In order to reach the thirty-three and one-third cents (\$33.33), with a monthly payment of \$20,000.00 per month, the Bankrupt would be in bankruptcy for another two (2) years.

SUBMISSIONS ON BEHALF OF THE SUPERVISOR OF INSOLVENCY

- [9] Mr. King stated that the Supervisor of Insolvency has no position in this matter.

LAW & ANALYSIS

- [10] Section 137 of the Insolvency Act, 2014 deals with the automatic discharge procedure of a first-time individual bankrupt. Section 137 (1) states that:

Where an individual has never before been bankrupt under the laws of Jamaica or any other jurisdiction, then, subject to procedure of the provisions of this section, there shall be an automatic discharge of the bankrupt twelve months after-

(a) an assignment or a receiving order is made; or

(b) where an extension is granted at the end of the period and there is no opposition to the automatic discharge.

- [11] Section 138 of the Insolvency Act allows for the opposition to automatic discharge of first-time bankrupt. It is under this section that the Government Trustee is opposing the automatic discharge of the Bankrupt. Section 144 of the Insolvency Act deals with the powers of the Court in relation to discharge of bankrupts. Section 145 of the Insolvency Act is also relevant, as it lists the facts relevant to discharges. I am of the view that only Section 145 (a) is relevant to the Bankrupt, as such the other subsections will not be outlined. Sections 144 and 145 state that:

144.-- (1) *On the hearing of an application of a bankrupt for a discharge, the Court may, put, such questions to such persons and receive such evidence as it thinks fits.*

(2) *On the hearing of an application of a bankrupt for a discharge, the Court may either –*

(a) grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time; or

(b) grant an order of discharge subject to any terms or conditions with respect to any earnings or income that may afterwards become due to the bankrupt or with respect to his after-acquired property.

(3) *Notwithstanding subsection (2), at the hearing of the application for discharge, the Court shall on proof of any of the facts mentioned in section 145*

(a) refuse the discharge of a bankrupt;

(b) suspend the discharge for such period as the Court thinks proper; or

(c) require the bankrupt, as a condition of his discharge, to perform such acts, pay such monies, consent to such judgments, or comply with such other terms, as the Court may direct.

(4) *Where at any time after the expiration of one year after the date of any order made under this section the bankrupt satisfies the Court that there is no reasonable probability of the bankrupt being in a position to comply with the terms of the order, the Court may modify the terms of the order or of any substituted order, in such manner and on such conditions as it may think fit.*

(5) *The Court's powers of suspending and of attaching conditions to the discharge of a bankrupt may be exercised concurrently.*

145.-- *The facts referred to in section 144(3) are that*

(a) the assets of the bankrupt are not of a value equal to thirty-three and one-third cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the Court that the fact that the assets are not of that value has arisen from circumstances for which the bankrupt cannot justly be held responsible...

[12] I have thoroughly considered the submissions of Ms. Campbell and the Affidavits of the Applicant and the Bankrupt and I find favour with the Applicant in this matter.

I agree that a balancing exercise must be done in considering the automatic discharge of a bankrupt. The Applicant has supplied this Court with proof that the Bankrupt has no assets that are of a value equal to thirty-three and one-third cents on the dollar on the amount of her unsecured liabilities. The Bankrupt has a debt of \$2,984,351.15 and in April of 2022 she had only paid a little over \$100,000.00. While I understand the position of the Bankrupt and I am sympathetic to the many challenges that she faces, she has not satisfied this Court that the fact that the assets are not of that value has arisen from circumstances for which she cannot justly be held responsible. The Government Trustee has stated that it is willing to give the Bankrupt a chance and as such the administration of the estate is to continue.

[13] At the date of submissions, the Bankrupt had been making the monthly payments and I hope this is still the position at the date of delivery of the judgment. I am unable to, at this time, discharge the Bankrupt from bankruptcy as submitted by Ms. Campbell, this would not be beneficial to the insolvency regime and to the creditors. As such, I am exercising my power pursuant to Section 144 to refuse the automatic discharge of the Bankrupt.

[14] Ms. Campbell submitted that Section 267 of the Insolvency Act would have taken place at the end of 2022, as the estate of the Bankrupt would not have been fully administered within three years and the Government Trustee would have had the option to apply to the Court for directions and the Court shall make such order as it considers fit to expedite the administration of the estate. I do not know whether or not that was done, given the delay in the delivery of this judgment. However, that option is still open to the Government Trustee.

[15] As it relates to the issue of costs, the Applicant did not seek a costs order, nor were submissions made. However, given the circumstances of the matter that is before me, I am not minded to award costs.

ORDERS & DISPOSITION

[16] Having regard to the forgoing, these are my Orders:

- (1) The automatic discharge of the first-time bankrupt, **ANA YANSY MARTINEZ WATSON** of Toll Gate, Frome in the parish of Westmoreland is refused.
- (2) No order as to costs.
- (3) Applicant's Attorneys-at-Law to prepare, file and serve Orders made herein.