

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CIV-2008-009-000343
[2019] NZDC 13748**

BETWEEN

PAUL ANTHONY KING
Applicant

AND

THE COMMISSIONER OF INLAND
REVENUE
Respondent

Hearing: 16 July 2019

Appearances: Mr King in Person
Assisted by McKenzie Friend Mr Kipping
Ms White for the Plaintiff

Judgment: 19 July 2019

**RESERVED JUDGMENT OF JUDGE A S MENZIES
[In relation to notice issued under Rule 19.66(2) District Court Rules 2014]**

[1] At the request of the applicant Mr Paul Anthony King, the registrar issued a notice as to consequences of disobedience of order of Court under Rule 19.66(2) of the District Court Rules 2014. The notice was addressed to Naomi Ferguson, the Commissioner of Inland Revenue. The notice was issued on 10 April 2019 and subsequently served on the respondent.

[2] The respondent filed submissions dated 5 July 2019 which incorporated an application to set aside the notice on the basis that there was no jurisdiction for the registrar to issue the notice, which was therefore issued improperly.

[3] The proceedings were listed for hearing in Court on 16 July. Mr King attended assisted by a McKenzie person and Ms White attended for the Commissioner. The

matter was first called as part of the general list and then stood down to the end of the list to determine if there was sufficient time available to hear argument on the respondent's application which was opposed by Mr King.

[4] The matter was then called at the end of the list and I heard argument from both Ms White and Mr King. Prior to that hearing, Mr King had filed a significant volume of additional material by way of affidavits and memoranda. I had reviewed that material prior to the matter being called. I record that Mr King indicated that he had yet further material he wished to present but having reviewed the initial material filed by Mr King, heard his submissions and his description of the intended material, I was satisfied that further material was not germane to the issues for determination.

[5] The decision on the Commissioner's application was then reserved and now follows.

Background

[6] The genesis of the notice was a judgment of the District Court dated 14 May 2010 (by His Honour Judge D J R Holderness). That judgment set aside a default judgment that had been entered against Mr King following an assessment by the respondent as to tax liability. It was common ground that the judgment was regularly obtained and that Mr King had not taken steps within the required time to defend the Commissioner's claim before the Court.

[7] Mr King then applied successfully to set aside the judgment on the three grounds typically arising in respect of such applications:

- (a) There was a substantial issue to be argued by way of defence;
- (b) The delay in filing a statement of defence was reasonably explained;
- (c) The Commissioner would not suffer irreparable injury if the judgment were set aside.

[8] It is with reference back to that judgment that has prompted Mr King to seek the notice the subject of the current proceeding.

The notice

[9] The notice itself is initially intituled “Notice as to consequences of disobedience of Court order – Rule 19.66(2)”.

[10] The body of the notice provides:

This document notifies you that unless you obey the directions contained in this order you will be guilty of contempt of Court and will be liable to be committed to prison.

[11] When filing that notice, Mr King filed an affidavit that he had sworn which indicates that the notice is directed at three specific issues which he argued arose from that judgment:

- (a) No costs were paid although costs were sought;
- (b) The IRD continues to make statements in public and to other government departments that the judgment debt is still owing;
- (c) A charging order over Mr King’s home remained over his property.

[12] It is in the context of those three matters that Mr King argues that the Commissioner is in breach of the provisions of the judgment, leading to the issue of the notice.

[13] Mr King’s arguments and material filed are all directed towards those issues. Mr King argues that the Commissioner is in contempt of Court in relation to failure to comply with obligations Mr King argues arose under the judgment. He also argues that there are various (unspecified) consequential losses arising from the charging order and ongoing claims by the Commissioner that a tax liability remains.

[14] The Commissioner argues that rule 19.66 under which the notice was issued relates to judgments or orders that are enforceable by committal. The process contemplates the issue of a notice under rule 19.66, followed by the jurisdiction for a judge to issue a Warrant of Committal, if satisfied there has been failure to obey the judgment or order and copies of both the judgment and the notice have been served on the respondent.

[15] The Commissioner argues that the committal process relates to specific forms of judgments or orders which do not include judgments setting aside a default judgment. The Commissioner therefore argues that the notice was issued improperly and should be set aside.

[16] Further, the Commissioner argues in respect of the three matters raised by Mr King firstly that there is no basis for complaint in respect of the costs issue. Although costs were sought, the Court directed costs should lie where they fall and there was accordingly no costs order. There is therefore no order as to costs with which the Commissioner is obliged to comply.

[17] As to the charging order, the Commissioner points to the specific comments in the 2010 judgment relating to the charging order. Paragraph [49] in the judgment provides:

In all the circumstances, I am not prepared to direct that this order be on terms that the charging order should remain against the [property].

[18] The Commissioner argues that the judgment did no more than refuse to make the setting aside of the judgment conditional upon the charging order remaining. It did not direct the Commissioner to remove the charging order. Even if the judgment could be interpreted that way (which the Commissioner disputes) the charging order was removed in 2011. Accordingly, there is nothing in the judgment for the Commissioner to comply with in the context of the charging order. The removal of the charging order in 2011 was of course 8 years before the issue of the notice.

[19] In summary, the Commissioner's argument is that Rule 19.66 did not provide jurisdiction for the registrar to issue the notice, which was therefore issued improperly.

In any event, all aspects of the judgment have been complied with and the notice should therefore be set aside.

Discussion

[20] The Commissioner's arguments are clearly correct.

[21] The 2010 judgment set aside the earlier default judgment. The effect of setting aside the judgment put the parties back in their respective positions prior to judgment being entered. In other words, the Commissioner was free to claim the tax and the defendant was entitled to raise whatever defences were available to the Commissioner's claim. Mr King appears to have interpreted the 2010 judgment as being determinative of tax liability. That is clearly not so. The 2010 judgment went no further than accepting on a prima facie basis that there were substantive issues to be argued in the context of the Commissioner's claim. That did not determine the merits of either the Commissioner's claim or any defence to the claim. Those issues fell for determination at a later date.

[22] There was no order for costs so it cannot be argued that the Commissioner was in default of any costs order. Whatever the reasons for delay in discharging the charging order, it was discharged by 2011 and accordingly there is no outstanding obligation imposed on the Commissioner under the judgment in the context of the charging order.

[23] As to the issue of outstanding tax liability, the 2010 judgment did not alter or determine on a substantive basis, the Commissioner's claim for tax and it did not alter Mr King's right to defend the Commissioner's claim. Mr King has misinterpreted the effect of the 2010 judgment in this context and the process he has set about with the issue of the notice is entirely misconceived.

[24] I am satisfied that there was no jurisdiction to issue the notice, which was improperly issued as a consequence.

[25] The Court has the inherent power to regulate its own procedure and can set aside a notice that has been improperly issued.¹

[26] The notice issued by the registrar on 10 April 2019 is accordingly set aside.

[27] I do not regard this as an appropriate case to award costs.

A S Menzies
District Court Judge

¹ *Eden Group Limited v Jackson* [27] NZDC 7701.