

Dear Sir/Madam,

Malcolm Leslie North (Bankrupt)
882658

Enclosed please the annulment report of the Official Assignee.

Yours faithfully

A handwritten signature in black ink, appearing to read 'S Macpherson', written in a cursive style.

Simon Macpherson

for Official Assignee

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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2016-485-000766

IN THE MATTER of The Insolvency Act 2006
AND
IN THE MATTER of The bankruptcy of Malcolm Leslie North

REPORT OF THE OFFICIAL ASSIGNEE
Section 309 Insolvency Act 2006

Presented for filing by:

Official Assignee
Insolvency and Trustee Service
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REPORT OF THE OFFICIAL ASSIGNEE

Section 309 Insolvency Act 2006

1. Malcolm Leslie North was adjudicated bankrupt on 7 March 2017 at the Wellington High Court on the creditor's application of Jozsef Szekely.
2. The Official Assignee has advertised the bankruptcy in the New Zealand Gazette: Wellington – Issue No. 29 – published Thursday 16 March 2017.
3. The Official Assignee has received a completed Statement of Affairs from the Bankrupt. The Official Assignee accepted the Statement of Affairs on 29 March 2017.
4. The Statement of Affairs disclosed the following information:

- a. The Bankrupt currently resides at 147 Ironside Road, Johnsonville, Wellington and he is employed as an Employment Support Representative at the Ministry of Social Development.

- b. The Bankrupt declared the following personal assets:

<u>Asset</u>	<u>Value</u>
Joint ASB Bank account	No value stated
2003 Nissan Maxima	\$1,500.00
Asteron Life Insurance	No value stated
ANZ KiwiSaver account	\$28,000.00

- c. The Bankrupt ticked “no” to having any real estate interests, however attached to his Statement of Affairs was a piece of paper with details of his property ownerships and their corresponding values. This information is below:

<u>Asset</u>	<u>Value</u>
30c & 30d Arawhata Street, Porirua	\$370,000.00
10 Palm Grove, Lower Hutt	\$560,000.00
1/10 Makora Road, Paraparaumu	\$430,000.00

- d. The only creditor listed was Court fines of \$3,100.00 which is a non-provable debt.
 - e. The Bankrupt stated on his Statement of Affairs that he has been in business as a director or manager of a limited liability company registered with the Companies Office in New Zealand in the past three years. No further information was provided by the Bankrupt as to the Company details that he was manager/director of. The Official Assignee requested further information from the Bankrupt. The Bankrupt advised it was an error and that he had not been in a business as a director or manager in the past 3 years.
5. The Official Assignee has carried out searches into publicly available databases and no further assets have been identified that were not listed on the Statement of Affairs.
 6. A search of the Personal Property Securities Register found that there is a security registered to Consumer Finance Limited for all present and after acquired property purchased with the Bankrupt's Q Card. Consumer Finance Limited have not lodged a claim in the bankruptcy to date and have not provided any advice as to what action will be taken with its security.
 7. A Companies Office search showed that the Bankrupt was the Director of Catering Limited (5860509) at the time of his bankruptcy. No action was taken by the Official Assignee to have him removed as Director given the pending annulment application. However, the Official Assignee has since received correspondence from the Companies Office which advised the Companies Office had received several complaints regarding the Bankrupt still being a Director of Catering Limited. He has since been removed as Director and Samuel Raymond North is now the sole Director of the company.
 8. The Official Assignee has recovered a total of \$9,005.77 from the sale of 36 Allens Lane, Clive, Hastings. An Agreement for Sale and Purchase had already been signed prior to the bankruptcy and had gone unconditional. The Official Assignee referred the matter to her Solicitor and after careful consideration she provided her consent for the sale to go ahead. Given the mortgage held by the ASB Bank covered two other properties, a good outcome was achieved.
 9. The Official Assignee is currently retaining \$8,590.26 in the bankruptcy estate.

10. Two letters have been sent to creditors requesting that they file a claim in the bankruptcy. No creditors have lodged a claim in the bankruptcy to date.

11. The estimated level of debt is listed below:

<u>Preferential Creditor</u>	<u>Amount of debt</u>
Jozsef Szekely – Petitioning Creditor's Costs	\$4,022.00
<u>Unsecured Creditors</u>	<u>Amount of debt</u>
Jozsef Szekely	\$6,244.00
Consumer Finance Limited	\$2,000.00
<u>Total</u>	<u>\$12,266.00</u>

12. Throughout the administration, the Bankrupt has failed to co-operate with the Official Assignee on a number of occasions. He has consistently raised issues with the costs of his personal lawyer as well as the costs of The Official Assignee's lawyers. This has resulted in the Official Assignee spending significant time corresponding with the Bankrupt regarding matters that are not necessary for the administration of the bankruptcy and have added unnecessary costs to the estate.

13. The Bankrupt has been involved in separate legal proceedings with the applicant creditor, Jozsef Szekely since 2013. These proceedings surround the Muse on Allen Restaurant and the transfer of Jozsef Szekely's shares from this company. Pursuant to a judgement dated 11 April 2017, CIV 2013-485-9825, Jozsef Szekely's application was dismissed by Mallon J and the Court ruled that the Bankrupt and the other defendants may be entitled to costs.

14. The Bankrupt has been advised that his rights and liabilities under the judgement now belong to the Official Assignee. The Bankrupt has advised the Official Assignee that the other defendants have submitted an application for costs to the High Court, however no documentation has been provided by the Bankrupt when requested to prove this to the Official Assignee. The Bankrupt has told the Official Assignee that the amount being claimed on the application for costs is \$43,000.00 for Solicitor fees and \$8,000.00 for the forensic accountant fees.

15. The Official Assignee has since received a copy of the Memorandum for Costs from the Ministry of Justice. This document was filed by the Bankrupt's son and the Second Defendant, Samuel Raymond North on the 19 April 2017. The total amount being claimed in costs is \$45,854.96. This Memorandum was filed without consultation with the Official Assignee and there is no mention of Malcolm North's bankruptcy.
16. At this stage, it is uncertain whether the Memorandum for Costs will be successful and whether or not there would need to be a set off against the debt owed to Jozsef Szekely in the bankruptcy, pursuant to Section 254 Insolvency Act 2006.
17. The Bankrupt has failed to provide information on how he intends to obtain the required funds for the annulment.
18. The Official Assignee requires an additional \$14,031.58 to settle all unsecured claims, costs and disbursements applicable to the Bankruptcy estate. Creditors are entitled to be paid interest on their claims when settled in full. Interest has been calculated up to 9 May 2017.
19. From the Official Assignee's investigations to date, it is clear that the Bankrupt has significant assets of value and has the ability to repay his debts as they fall due.
20. The Official Assignee had no objection to an annulment of the bankruptcy being granted provided that:
 - a. Sufficient funds are paid to the Official Assignee to meet the debts of, or arrangements made with all known creditors; and
 - b. The Applicant Creditor's costs and disbursements of \$4,022.00 are paid; and
 - c. The Official Assignee's costs and disbursements of \$10,453.80 are paid (annexed and marked 'A' is a schedule of costs and disbursements) and
 - d. No creditor objects to the annulment.
21. The Official Assignee was to request that this honourable Court not grant any annulment until the sufficient funds as outlined above are received into the Official Assignee's trust account.
22. However, since the writing of this report, the Official Assignee has received opposition from the petition creditor in relation to a proof of debt for the sum of \$94,500 and allegations of a new ground of appeal of Mallon J Judgement.

Accordingly and because of this, the Official Assignee now opposes the annulment and seeks an adjournment of 1 month so that matters can be fully investigated.

23. The Official Assignee has instructed her counsel to appear on 9 May 2017 at the hearing.

Dated at Wellington this 5th day of May 2017



A handwritten signature in blue ink, reading "Fagaso-Mead".

Florestina Fagasoia-Mead
Deputy Assignee

TO: The Registrar, Wellington High Court

And to: Malcolm Leslie North c/o Simon Meikle Barrister

And to: Jozsef Szekely c/o Quentin Haines of QH Law

SCHEDULE 'A'
SCHEDULE OF OFFICIAL ASSIGNEE'S
COSTS AND DISBURSEMENTS

Costs		\$
Insolvency Officer	\$184.00 per hour	\$6053.60
Deputy Assignee	\$264.50 per hour	\$793.50
Legal	\$380.00 plus GST per hour	\$3,000.00
Accounting	\$184.00 per hour	\$184.00
Total costs (GST incl.)		\$10,031.10

Disbursements	\$
Advertising	\$52.94
Register searching	\$35.78
Postage	\$18.83
Photocopying	\$15.78
Stationery	\$15.71
Tolls and faxes	\$10.22
Storage and destruction fees	\$10.22
Meeting room hire	\$0.00
Legal attendance	\$0.00
Other	\$263.22
Total disbursements (GST incl.)	\$422.70

Total costs and disbursements (GST incl.)	\$10,453.80
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