

AUSTRALIA / JUDGMENT

Offical Receiver v. Parker, E.A. [1987] FCA 134

COURT
IN THE FEDERAL COURT OF AUSTRALIA

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CATCHWORDS

BANKRUPTCY - application by trustee for greater contribution of bankrupt's income - excess of income over expenditure — whether sufficient provision for future income tax is being made - whether order sought would create further difficulties for bankrupt.

Bankruptcy Act 1966 ss.149, 131(2).

Re Saunders, Ex parte Saunders [1895] 2 Q.B. 424.

Re Ward, Ex parte Ward [1897] 1 Q.B. 266.

Re ELIZABETH ANN PARKER, EX PARTE: OFFICIAL RECEIVER
NO. W185 OF 1986

Jackson J.

27th March 1987

Sydney

LIMITED DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA

GENERAL DIVISION

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BANKRUPTCY DISTRICT OF THE STATE OF) No. W185 of 1986

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NEW SOUTH WALES AND)

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THE AUSTRALIAN CAPITAL TERRITORY

RE: ELIZABETH ANN PARKER

Debtor

EX PARTE: OFFICIAL TRUSTEE IN
BANKRUPTCY

CORAM : JACKSON J.

DATE: 27th March 1987

PLACE: Sydney

MINUTES OF ORDER

THE COURT ORDERS

THAT:

-
1. Pursuant to s.131(2) of the Bankruptcy Act 1966 until further order the sum of \$350.00 per month be paid from the income of the bankrupt to the trustee of her estate and that the first such payment be made on 30th April with later such payments being made on or before the last day of each month.
NOTE: Settlement and entry of orders is dealt with in Bankruptcy Rule 124.
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NEW SOUTH WALES AND
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THE AUSTRALIAN CAPITAL TERRITORY
RE: ELIZABETH ANN PARKER
Debtor
EX PARTE: OFFICIAL TRUSTEF IN
BANKRUPTCY
CORAM : JACKSON J.
DATE: 27th March 1987
PLACE: Sydney

REASONS FOR JUDGMENT

The applicant seeks an order under s.131(2) of the Bankruptcy Act 1966 that the bankrupt pay to the trustee \$700.00 per month out of her income.

This is the bankrupt's second bankruptcy, the first having commenced on 12th October 1978, when a sequestration

order was made on the petition of the Deputy Commissioner of

2.

Taxation. In that bankruptcy a dividend of approximately 12 cents in the dollar was paid to unsecured creditors and the bankrupt was discharged from the bankruptcy on 13th October 1983 pursuant to s.149 of the Bankruptcy Act. On 4th March 1986 the second sequestration order was made against the bankrupt, again upon the petition of the Deputy Commissioner of Taxation. The petitioning creditor, who was also the only creditor claiming against the estate, based the petition on a debt of \$60,428.01, representing income tax not paid for the financial years 1980 to 1985 inclusive.

In May 1986 the bankrupt agreed to make contributions to the estate of \$100.00 a month and has in fact done so up to the present.

In support of the application the applicant relies primarily on paragraph 8 of the affidavit of the Official Receiver Mr Bluett which sets out the bankrupt's income and expenditure for the period April 1986 to January 1987. On the face of it paragraph 8 discloses a monthly average excess of \$750.00 of income over expenses. The bankrupt, in her affidavit of 20th March 1987, admits that the details of income and expenditure set out in paragraph 8 are true and

that these details were prepared from records maintained by her.

In this regard the income of the bankrupt comes from one source namely the receipts from a medical practice and her expenses consist of a salary paid to her husband, surgery expenses, contributions to the bankrupt's estate, drawings and a provision for income tax. As has been stated previously, the net result of subtracting those expenses from income produces an excess of around \$750.00 per month on average. It seems clear enough, however, that the provision being made for income tax in these amounts is insufficient. Thus if one looks at paragraph 8 it can be seen that from the period April 1986 to January 1987 the income which would be assessable income would be \$76,173.00. The allowable deductions would presumably be represented by the "salary to husband" and "surgery expenses" totalling \$50,526.00. See Exhibit 1. If these figures are increased proportionately to represent a twelve month period and if it is assumed that they would equate with the figures for the financial year, then rough

estimations of taxable income and of tax payable can be made.

On this basis the taxable income for a full year would be about \$30,776.00, on which at current rates the tax and medicine levy payable would be \$9,361.00. The provision for tax contained in the accounts in paragraph 8 for ten

months of that period is only \$4,460.00, and is insufficient.

4.

Section 131(2) of the Bankruptcy Act is in the

following terms:-

"(2) The Court may, upon the application of the trustee, order that all, or such part as the Court thinks fit, of the income of the bankrupt shall be paid to the trustee for the benefit of the bankrupt's

creditors."

and it is clear that the discretion which it confers is wide,

and to be exercised on the facts of the particular case. Re

Saunders, Ex parte Saunders [1895] 2 O.B. 424 at 427, Re Ward,

Ex parte Ward [1897] 1 O.B. 266 at 271.

In the light of the evidence to which I have already referred I would not be inclined to order payment of a sum as high as \$700.00 per month. I think that to do so would be to create difficulties once again for the bankrupt in her dealings with the Deputy Commissioner. I also think that the bankrupt would be left with inadequate funds for contingencies. I am conscious, in saying this, that substantial sums per month are being paid by the bankrupt to her husband for his work as a driver in the practice, as

deposed to in the bankrupt's affidavit.

On the other hand, I do not accept the bankrupt's assertion in her affidavit that she is unable to afford to pay more than \$100.00 per month to the Official Receiver. \$100.00 per month, in my view, is an understatement

of the amount which she could realistically contribute.

5.

In light of what I have said I will exercise my discretion under s.131(2) in favour of the applicant but for

an amount which is less than the amount claimed.

I order that until further order the total sum of \$350.00 per month be paid from the income of the bankrupt to the trustee of her estate and that the first such payment be made on 30th April 1987 with later such payments being made on

or before the last day of each month.

I certify that this and the 4 preceding pages are a true copy of the Reasons for Judgment herein of his Honour Mr Justice Jackson.

Associate: Barris

Date: 27th March 1987.

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