

AUSTRALIA / JUDGMENT

Re Hall, E.A. (also known as Sheahan, E.A.) v. Ex parte Hall, E.A. [1987] FCA 659

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JUDGMENT t's. 694./211..

IN THE FEDERAL COURT NOT INTENDED FOR GENERAL DISTRIBUTION

OF AUSTRALIA GENERAL DIVISION BANKRUPTCY DISTRICT OF THE STATE OF WESTERN AUSTRALIA

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NO. 239 OF 1982

RE: EDWIN ALAN HALL Also known as EDWIN ALAN SHFAHAN

Bankrupt

EX PARTE: EDWIN ALAN HALL Also known as EDWIN ALAN SHEAHAN

Applicant JUDGE MAKING ORDER: FRONCH J. DATE OF ORDER: 23 November 1987 WHERE MADE: PERTH THE COURT ORDERS THAT:

1. The bankrupt is discharged.

Note: Settlement and entry of orders is dealt with in

Rule 124 of the Bankruptcy Rules.

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IN THE FEDERAL COURT NOT INTENDED FOR GENERAL DISTRIBUTION

) OF AUSTRALIA) GENERAL DIVISION) RANKRUPTCY DISTRICT) OF THE STATE OF)

)

WESTERN AUSTRALIA NO. 205 OF 19384

RE: EDWIN AJ.AN HALL Also known as EDWIN ALAN SHEAHAN

Bankrupt

EX PARTE: EDWIN ALAN HALL Also known as EDWIN ALAN SHEAHAN

Applicant JUDGE MAKING ORDER: FRENCH J. DATE OF ORDER: 23 November 1987 WHERE
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i. The bankrupt is discharged.

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IN THE FEDERAL COURT NOT INTENDED FOR GENERAL DISTRIBUTION

OF AUSTRALIA GENERAL DIVISION BANKRUPTCY DISTRICT OF THE STATE OF WESTERN
AUSTRALIA

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NO. 239 OF 1982 NO. 205 OF 1984

RE: EDWIN ALAN HALL Also known as EDWIN ALAN SHEAHAN

Bankrupt

EX PARTE: EDWIN ALAN HALL Also known as EDWIN ALAN SHEAHAN

Applicant

CORAM: FRENCH J. 23 November 1987

EX TEMPORE REASONS FOR JUDGMENT

These are two applications for discharge from bankruptcy by Edwin Alan Hall. Mr Hall first
became bankrupt on 25 May 1982 on his own petition. In the ordinary course he would have been
discharged from that bankruptcy by force of 5.149 of the
Bankruptcy Act 1966 on 25 May 1985.

However, he again filed a petition and became bankrupt for a second time on 10 April 1984.

He filed a third petition in Queensland on 24 April 1986 although no application is made in relation to that bankruptcy.

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The effect of sub-s. 149(3) is that he will not be discharged from bankruptcy by effluxion of time as he has, since the date of bankruptcy, again become a bankrupt. So to secure discharge from the 1982 and 1984 bankruptcies, he makes

application to this court under s.150 of the Act.

The circumstances leading up to the bankruptcy of 1982 are outlined in the Official Trustee's report which indicates that at the time he filed his petition Hall's statement of affairs disclosed assets of \$244.00 and liabilities of \$6,921.00. The principal liability arose out of a deficiency on the surrender of a motor vehicle which was subject to hire purchase. Proofs of debt totalling \$2,184.00 were received in the estate. Realisations totalled \$100.00, this sum being by way of contribution from Mr Hall.

Insufficient funds have been received to enable payment of official fees and costs of administration in full and there are

not sufficient funds in the estate to enable payment of a dividend.

Mr Hall is and has been an invalid pensioner for the past 17 years.

At the time he first became bankrupt, he was aged 41 years, was separated from his wife and was living in a de facto

relationship with a Mrs Richards, who is also a bankrupt.

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He and his de facto, who received a wife's allowance, pooled their income to meet living expenses for themselves and the

two children of her former marriage, then aged 4 and 6 years respectively.

In December 1982 they married and they have lived together as man and wife since that time.

Shortly after January 1981, having been released from prison following his conviction for imposition under the Crimes Act which arose from, it appears, the dual receipt of unemployment benefits and an invalid pension, the bankrupt entered into an agreement to purchase a motor vehicle under hire purchase through General Motors Acceptance Corporation and, in addition, commenced

utilizing Bankcard facilities with the Rural & Industries Bank.

He fell behind in his payments with both institutions and they commenced recovery action. According to the Official Trustee, the motor vehicle was repossessed, although Mr Hall says he surrendered it. In any event, it was sold resulting in a deficiency of \$2,140.00.

In relation to the Bankcard debt, there was a total of \$321.00 on which he was summonsed by the bank.

In February 1982 he and Mrs Richards jointly entered into hire purchase agreements to purchase various items of

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household furniture for \$1,917.00 with monthly repayments of \$48.36. According to Hall, some of these commitments were made by his then de facto and he found himself in a position where he had

to sign the papers and became bound also by the agreements.

In any event, he was unable to comply with demands for payment of the outstanding debts and filed his petition.

In the Official Trustee's report in relation to this bankruptcy, it is accepted that its causes were debts arising from Hall's previous marriage and those incurred by his de facto wife. Over-use of credit is seen as a contributing factor and, in my opinion, on the materials, it would appear to have been the

dominant factor.

There is nothing in his conduct prior to the date of bankruptcy, and relevant to the bankruptcy, which was other than satisfactory although, of course, he had, in 1980, been charged

with and convicted of imposition,

There are no matters of the kind specified under sub-s.150(6) which would provide sufficient reason for the refusal

or suspension of an order of discharge.

Creditors have been notified of the fact of the application.

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In relation to the bankruptcy of 1984, the Official Trustee's report indicates that after his initial bankruptcy in May 1982, Hall's pension was reduced by the Department of Social Security in an endeavour to recover the overpayment of some \$4,887.00 that had been made to him arising out of the events

leading to his conviction for imposition.

The Department sought to recoup the loss and he came under pressure to liquidate the liability. However, not being in a position to do so, it is said, he again filed his petition on 10 April 1984 even though the social security debt related to his

first bankruptcy.

His statement of affairs at that time disclosed liabilities totalling \$11,559.00 in respect of the period 1980 to

1984. The principal unsecured creditor was the Department of Social Security for \$10,000.00.

The Official Trustee notes that this debt, which related to an overpayment of unemployment benefits between June 1978 and April 1980, should have been included in the 1982 bankruptcy and

that the claim lodged by the Department in this regard totals \$4,619.00.

The only other proof of debt received in relation to that, it is said, is the deficiency in the bankrupt estate of

1982, being \$2,184.00, making a total in this estate of \$6,803.00.

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Realisations totalled \$20.00. Plainly there are insufficient funds to enable the payment of official fees and costs of administration or payment of any dividend.

The Official Trustee comments that there appears to have been no reason why the bankrupt should have filed the second petition as his total debts not including the social security claim, amounted to \$1,559.00 only and should have been within his means to service.

After the 1984 petition was filed, Hall and his family travelled to Queensland where they were intending to take up permanent residence, but while there he again filed a petition, this time on 24 April 1986 in which he disclosed liabilities of \$1,257.00 with no assets.

He and his family returned to Western Australia to live in August 1986.

Again, there is no suggestion of conduct, prior to the date of bankruptcy, which was unsatisfactory and no suggestion

that any of the matters specified under sub-s. 150(6) have been made out.

Creditors have again been notified of the fact of this application.

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Mr Hall blamed his bankruptcy on his inability to cope on his low income.

It seems to me that to some extent his difficulties arise from his rather cavalier resort to the bankruptcy process and that he would be well advised in future before rushing in with a petition, to seek some advice, whether from the Legal Aid Commission, the Citizens Advice Bureau, or some other suitable

agency, as to whether in fact a petition is necessary.

Quite apart from the disabilities that it imposes upon him, it imposes what may be unnecessary costs and burdens on the

public administration of bankruptcy.

Now, it seems to me that there is, in this case, no real reason in principle why these rather small bankruptcies should be kept on foot. Mr Hall and his family are presently renting a Homeswest house in Kellerberrin and hope to purchase it in due course. They will not be able to purchase it until he has been discharged from the Queensland bankruptcy and his automatic discharge in that regard would not arise until 1989, assuming that

he is, in the meantime, discharged from the prior bankruptcies.

In my opinion, it is appropriate to make orders

discharging him from these bankruptcies.

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Now, I have the power under sub-s. 150(9) to refuse to make an order of discharge, to make an order of discharge or to make an order of discharge but suspend it unconditionally or subject to conditions. Initially, I thought that I ought to discharge him unconditionally in respect of the 1982 bankruptcy, but suspend the discharge in respect of the 1984 bankruptcy and

impose a condition in respect of the obtaining of credit.

However, having regard to the Queensland bankruptcy and the controls that that imposes in any event, the better course I think, is to make an unconditional discharge in regard to the second bankruptcy also. I do not think there is any reason of public interest or commercial morality that militates against it. Indeed, it is a bankruptcy which probably ought never have occurred having regard to the small amount of total debts which he had incurred at the time that he filed that petition. So he will be subject to the constraints on the bankruptcy that subsists arising out of the filing of the petition in the Queensland Registry. If he seeks discharge from that before the expiry of 3 years such application will be dealt with on its merits at the

time.

The order that I will make in respect of each of the

bankruptcies is that he be discharged from them.

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I certify that the preceding eight (8) pages are a true copy of the Reasons for Judgment of His Honour

Justice French.

Associate: Dovel WS saver 93 Norremadvies (187

Mr E.A. Hall appeared on his own behalf.

Mr F. D. O'Driscoll appeared for the Official Trustee.

Date of Hearing: 23 November 1987

Date of Judgment: 23 November 1987

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