

AUSTRALIA / JUDGMENT

Re John, R. Hassard [1987] FCA 355

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IN THE FEDERAL COURT OF AUSTRALIA

)) EXERCISING FEDERAL JURISDICTION) No. 125 of 1987))

IN BANKRUPTCY

BANKRUPTCY DISTRICT OF THE STATE OF VICTORIA

RE: JOHN _R. HASSARD A Bankrupt

COURT: NORTHROP J.

DATE: 29 APRIL 1987 PLACE: MELBOURNE

EX TEMPORE REASONS FOR JUDGMENT

I propose to grant the application for an order annulling the bankruptcy but, in so doing, make the comment that the matter has been presented in a most unsatisfactory manner by the solicitor acting for the bankrupt. In the first place, there was no affidavit in support of the application under paragraph 154(1)(b) of the Bankruptcy Act 1966 as is required by rule 103 of the Bankruptcy Rules and there was no evidence at all that the debts of the bankrupt have been paid in "full. Under normal circumstances an application like this, on coming before the Court, would be dismissed. I make no comment on whether the bankrupt would.

Vb be \ — have any cause of action based on negligence of his soliéitor ~

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for any damages resulting from the dismissal of "such. an —

application. In the circumstances, I am prepared to aaccept ,

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the report of the Official Trustee as disclosing the material upon which the application is based but even here the report draws attention to two particular matters; one, that a debt owing as at the date of bankruptcy was not disclosed by the bankrupt being a debt in the sum of \$2,567 owing to A.C.I.

Australia Limited trading as Stegbar. The report goes on and

Says:-

"I understand that evidence that the debt has been settled will be produced at the hearing."

Further, the report contains a paragraph as follows:-

"The conduct of the bankrupt since date of bankruptcy has not been entirely satisfactory. He should explain to the Court why he omitted to disclose in his Statement of Affairs a provable debt of \$2,567."

Despite those two very clear references to matters contained in the report of the Official Trustee, the solicitor for the bankrupt did not ensure that his client be present in Court to give evidence on those two matters. The solicitor himself gave evidence that acting on advice given to him, Mr. Hassard paid that debt to the solicitors for the creditor and produced a letter dated 21 April 1987 from a firm of solicitors addressed to the solicitor for the debtor

reading as follows:-

"Stegbar v. J.R. Hassard

We have been requested by Mr. Hassard to forward the receipt to you."

There was enclosed a receipt which appears to be a receipt initially drawn in the name of Wisewoulds, presumably a firm of solicitors well known in the city of Melbourne. [In one spot that name appears to have been partially blacked out with the name of the solicitor for the creditor written over it, but in the other place the blacking out does not affect

the Wisewoulds' name whatsoever. The receipt is in the form: -

"Received by cheque from J.R. Hassard re Stegbar the sum of \$2,567 and subject to clearance,"

The receipt is dated 16 April 1987.

There is also before the Court, an affidavit sworn on 2 April 1987 by the solicitor for the bankrupt containing material to the effect that the bankrupt has entered into a contract of sale for the purchase of a property at

Strathmore. The matter cannot go ahead while the bankruptcy

is in existence because of the need of the bankrupt to borrow

money and that interest at a higher rate is liable to be paid as is also the possibility of the deposit being forfeited. The affidavit was filed in support of an application to have the return date of the application brought forward from 12

May 1987, which was the initial date for the hearing of the

application.

I mention all these matters to illustrate the

completely unsatisfactory standard of the presentation of this case, but in the circumstances I am prepared to grant the application and having regard to the report of the

Official Trustee, which I am entitled to look at under rule

57(3) of the Bankruptcy Rules, I will make the order sought.

The order is that the bankruptcy be annulled.

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Prepared on 28 October 2026 · Esheria