

AUSTRALIA / JUDGMENT

Re Joseph Hedrlin [1987] FCA 182

COURT

IN THE FEDERAL COURT OF AUSTRALIA

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IN THE FEDERAL COURT OF AUSTRALIA

GENERAL DIVISION BANKRUPTCY DISTRICT

OF THE STATE OF NEW SOUTH WALES

AND THE AUSTRALIAN CAPITAL

TERRITORY

No. 448 of 1983

JOSEPH HEDRLIN

Bankrupt

RE:

ORDER

Judge Making Order: Gummow, J.

Where Made: Sydney

Date of Order: 19 March 1987

THE COURT ORDERS
THAT:

(1) The application for annulment is refused.

(2) The application for discharge is refused.

(3) The bankrupt is to pay the costs of the Trustee.

Note: Settlement and entry of

Bankruptcy Rule 124.

orders is dealt with in

in

RUCFIVEN

23 APR 1987

FEDERAL COURT OF

AUSTRALIA

PRINCIPAL

IN THE FEDERAL COURT OF AUSTRALIA

GENERAL DIVISION BANKRUPTCY DISTRICT

OF THE STATE OF NEW SOUTH WALES No. 448 of 1983

AND THE AUSTRALIAN CAPITAL

we see

TERRITORY

RE: JOSEPH HEDRLIN

Bankrupt

CORAM: Gummow, J.

DATED: 19 March 1987

REASONS FOR JUDGMENT

By his amended application filed 2 February 1987 Mr Hedrlin ("the Applicant") seeks, in substance, an order for discharge from his bankruptcy, pursuant to s.150 of the Bankruptcy Act 1966 ("the Act"). When the application came on for hearing the Applicant indicated that reliance was to some extent also placed upon the provisions as to annulment (s. 154 of the Act). Despite the procedural inadequacies of such an

approach, I decided to proceed as if both issues were before the Court and the hearing was conducted accordingly.

On 3 March 1987 the Trustee sent a notice to creditors of the hearing of the application for discharge. There were

five creditors in question, particulars being:

Ww .

Name & Address of Creditor Amount of

Proof Lodged \$

ANZ Bankcard Sth Floor, 68 Pitt Street SYDNEY 2000 618.09

Australia & New Zealand Banking Group Limited FPoveaux & Commonwealth Street SYDNEY 2000 2,107.60 Commonwealth Bankcard 4th Floor, 5 Hunter Street SYDNEY 2000 4,043.16 E.J. Walsh & Company

Level 5, 17 Castlereagh Street SYDNEY 2000 720.00

The Proprietors of Strata Plan

No. 3670

7-9 Loftus Street

ASHFIELD 2131 6,734.04

No creditors appeared at the hearing.

A sequestration order was made in respect of the applicant's estate on 18th May 1983. An appeal against that order was dismissed by the Full Court on 29 June 1983. Since that date there have been numerous applications to the Court by the Applicant. A ten page summary 15 included as annexure "C" to the affidavit of the Trustee sworn 20 February 1987 in the present application. On 6 March 1986 the Trustee filed a notice of objection to what otherwise would have been the "automatic" discharge of the Applicant by force of s.149 of the Act upon

the expiration of three years from the date of the bankruptcy.

Mr Hedrlin represented himself on the present application. He emphasised with some vehemence his belief that he should never have been made bankrupt and that he should no longer remain so. The Trustee (by his solicitor) opposed the application for discharge and offered submissions to assist the

Court on the application for annulment.

I turn first to the question of annulment. On 30 April 1986 Lockhart J. dismissed what was then the most recent

application for annulment. In doing so his Honour said of Mr

Hedrlin -

"Although some of the matters which he has mentioned are expressed differently or with different degrees of emphasis, they do ain substance, in my view cover the same ground that has been covered in previous applications for annulment.

The same, in my view, remains true of the latest application. Plainly the unsecured debts of the Applicant which have been proved in the bankruptcy have not been paid in full, nor has he obtained a legal acquittance of them (s.154(1) (b)). That leaves the point whether the sequestration order ought not to have been made (s. 154 (1) (a)). The Applicant asseverates that he ought not to have been made bankrupt. The judgment debt of the petitioning creditor was founded upon an order for costs in proceedings in the Supreme Court of New South Wales. The history of the matter and the legal

principles and statutory provisions (including the New South

Wales Strata Titles legislation' which are involved are dealt

with in the judgment of the Full Court delivered on 29 June

1983. The matters which were there agitated by the Applicant

were reagitated again before me and reference in particular was

made to the Strata Titles legislation of New South Wales.

On 18 February 1986, Burchett J. delivered a detailed judgment on an application by Mr Hedrlin for annulment of his bankruptcy. There had been a number of previous such applications. That application was said to be on a fresh ground, viz the sequestration order ought not to have been made because the Applicant had in fact been able to pay his debts. Burchett J. dismissed that application. His Honour said that he was unable to accept the applicant's evidence concerning his property affairs or income except where it was corroborated. Further, his Honour said he was unable to accept any explanation of the Applicant's statement of affairs consistent with the case

he was then seeking to make out on the application for annulment.

There is nothing that has been put to me upon the present application which takes the Applicant's case upon annulment any further. In my view no case for annulment has been made out.

I turn now to the application for discharge. As I have said, the Trustee opposes the application. He does not

rely upon ss.(5) and (6) of c.150, but points to the width of

the terms of ss.(9) and to decisions such as *Re Harding* (1981) 57 FLR 320, and *Re Shepherd* (1985) 4 FCR 258. I should refer

also to the following passage in the judgment of Woodward J. in

Re Maher (1985) 7 FCR 240 at 246:

"An application for discharge from bankruptcy is never treated lightly by the court. As with the granting of a sequestration order, an application for discharge involves looking beyond the interests of the applicant and his or her creditors to considering both the interests of the public and commercial morality, (see *Re Mallan*

(1975) 25 FLR 20, *Re Harding* (1981) 57 FLR 320 and *Re Reilly*, (1979) 36 FLR 268 at 278). The trustee reports to the court on an application and may appear at the hearing of the application to represent the public interest. In making a decision under s 150(9), the court has a wide, unfettered discretion (see *Re Harding*, and *Re*

Gianacas; *Ex parte Official Receiver* (1983) 48 ALR 537)...

In exercising its discretion under subs (9) the court is not restricted to consideration of matters of the type listed in subs (6), although these of course will be relevant."

The Applicant, as I have said, emphasised his belief that he should not have been made bankrupt and should not remain so. He gave his account of how his bankruptcy came about and made critical remarks as to the conduct of the Trustee and his solicitor. That criticism is unsupported by the evidence. The Applicant also referred to the social stigma

and embarrassment suffered by his family and to the long period

that has elapsed since the commencement of the bankruptcy.

The Trustee pointed, in particular, to the following matters:

{a)

(b)

The only realization in the Estate has been \$2.08 credit in a bank account. There is presently before the Court an application by the Trustee concerning a property at Woolgoolga. The respondents to the application are three members of Mr Hedrlin's family. On 2 November 1983 the Trustee became registered as tenant-in-common in an half share, in the place of Mr Hedrlin. Mrs Hedrlin is the other tenant in common. Mr Hedrliin contended before me on this present application that at all natural times he held the

legal and equitable title purely as trustee for

members of his family. A son of Mr Hedrlin was in Court during the hearing. The Trustee by his pending application seeks orders and declarations which would operate to deny the creation of any such trust, or alternatively, to establish that by dint of s.120 of the Act any settlement is void against the Trustee.

An application by the Trustee under s.305 of the Act

to fund this proceeding has been successful.

The administration of the Estate has been extended and rendered more difficult and expensive by the conduct of the Applicant, as instanced both by the large number of unsuccessful applications to the Court by

the Applicant, and by the conclusions reached by

Burchett J. in the judgment to which I have referred.

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(c) There are passages in the evidence of the Applicant before Burchett J. on 18 February 1986 in which he admitted earning income since his bankruptcy and not notifying the Trustee of this. On 25 February 1986 the Trustee wrote to the Applicant requiring the provision to him of particulars of that income. In response to a question from me, Mr Hedrlin said that he had not replied to that letter, and it is plain that he has not provided any of the particulars sought in it. Mr Hedrlin showed no willingness even at this

stage to supply that information.

(d) The Applicant still refuses to acknowledge the existence of the proved debt of the petitioning creditor and indicated strongly to me that he will continue in that refusal. The proved debt of Messrs E.D. Walsh and Company is also still repudiated by the Applicant. He indicated in his submissions to me some willingness to deal with the other proved creditors'

debts but it would be appropriate first to see whether
this comes to pass.

Each application for discharge must of course be viewed in the light of its own circumstances. In
the present case, whilst taking into account the complex history of this
bankruptcy (including the comparatively small sum of the proved
a
8.

debts and the lapse of time since 1983} and the submissions by the Applicant, I give great weight
to the matters stressed by the Trustee. Having regard to all the circumstances I have reached the
view that the application for discharge should be
refused.

Accordingly, the applications for annulment and discharge are refused and the applicant should
pay the cost of

the Trustee. The exhibits may be returned.

I certify that this and the seven (7}

preceding pages are a true copy of the Reasons for Judgment of his Honour Mr Justice
Gummow.

Associate: paste fwhs

Date: 19 March 1987

The Applicant in person: Mr Joseph Hedrlin Solicitor for the Respondent: Mr P.J. Duggan Date of
Hearing: 16 March 1987

Date of Judgment: 19 March 1987

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