

AUSTRALIA / JUDGMENT

Re Joseph Hedrlin [1987] FCA 434

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IN THE FEDERAL COURT OF AUSTRALIA

GENERAL DIVISION

° Fy No. W.448 of 1983 |

BANKRUPTCY DISTRICT OF

THE STATE OF NEW SOUTH WALES AND

THE AUSTRALIAN CAPITAL TERRITORY

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RE: JOSEPH HEDRLIN

Bankrupt (Applicant)

CORAM: WILCOX J [I

PLACE: SYDNEY

DATE: 14 JULY 1987

MINUTES OF ORDER 1

THE COURT ORDERS THAT:

1. The application, insofar as it relates to the first three orders sought, be dismissed.
2. The application, insofar as it relates to the fourth .

order sought, be adjourned until 2.15 p.m.

NOTE: Settlement and entry of orders is dea wing Bankruptcy Rule 124. JE"

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RE: JOSEPH HEDRLIN

Bankrupt (Applicant)

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EXTEMPORE REASONS FOR JUDGMENT

There is before the Court an application filed by the bankrupt, Joseph Hedrlin, dated 3 June 1987, in which he seeks four orders: firstly, annulment under s.154(1)(a) of the

Bankruptcy Act 1966 on the basis that the sequestration ought

never to have been made. Secondly, leave to appeal to the Full Court against the making of the sequestration order on 29 June 1983. Thirdly, discharge under s.149(1). Finally,

removal of the trustee, Max Christopher Donnelly.

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The sequestration order has already been the subject of one appeal to a Full Court, which appeal was dismissed. According to Mr Hedrlin, the point that he now seeks to agitate was not then known to him and consequently was not ruled on by the Court. Apparently it was not raised at the time of the making of the sequestration order. No notice of opposition, at least on that ground, was filed. Consequently, any evidence which might have been available to the petitioning creditor in respect of the matter, had the point

been taken, was not filed.

Put shortly, the point is that the creditors petition was not sealed on behalf of the petitioning creditor, namely the proprietors of Strata Plan No.3670, in a manner

conformable with the Strata Titles Act 1973 (NSW), under which

that body corporate was constituted. Section 55 of that Act deals with the keeping and affixing of a common seal of a body corporate. The common seal may be affixed, in the case of a body corporate constituted by more than two proprietors, which is the present case, by such two persons -- being proprietors or members of the council -- as the body corporate determines; or, in the absence of any such determination, the secretary and other member of the council.

Alternatively, under sub-s.(3), a managing agent may, for the purpose of exercising or performing any of his powers, authorities, duties or functions, be entitled to attest the fact and the date of the affixing of the seal by his signature.

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Section 78 provides for delegation to a managing agent of all of the powers, authorities, duties and functions given by the Act to a body corporate except for some presently immaterial exceptions. There is no evidence as to the extent of any delegation in this case to a managing agent. The petition appears to have been signed by the two persons named therein; namely, Patrick Owen Newland and Margaret Edith Pollard. I am told from the bar table by Mr Hedrlin, although there is no evidence on the matter, that neither of these people were proprietors of allotments and consequently would not qualify under s.55(2). He states that they were associated with a real estate firm and this seems to be corroborated by the fact that there is a stamp put across the signatures, V J Ray Pty Limited, which company, Mr Hedrlin

says, was the managing agent.

It seems, therefore, that the common seal was affixed pursuant to s.55(3). As I have said, there is no evidence as to the extent of any delegation, but it would not be at all surprising if there was a delegation of a power to recover moneys owing to the body corporate. In the current case, pursuant to an order made in the Supreme Court of New South Wales by Hunt J in 1981, money was owed by Mr Hedrlin to the body corporate. I see no reason why I should presume that the

relevant delegation was not held, particularly having regard to the nature of the claim and the fact that there was no notice of opposition or other opportunity for the creditor to deal with this matter.

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I am not satisfied that the sequestration ought not to have been made and consequently I refuse the application

for annulment.

In relation to the appeal to the Full Court, I am not satisfied that there is any substance in the matter which is sought to be raised. For a similar reason I, therefore,

refuse that application.

Nothing has been put before the Court in support of the application to discharge; and accordingly I refuse that

order.

The document which was handed to the Court by Mr Hedrlin and entitled "written submissions" sets out in some detail the history of various applications which the trustee has contemplated making in respect of properties said to be jointly owned by Mr Hedrlin and his wife or, alternatively, the subject of settlements under s.120 of the Bankruptcy Act. Further information on these matters is contained in the affidavit of Mr Donnelly, sworn on 20 February 1987 and filed in connection with a previous application for discharge, to

which affidavit various annexures are attached.

It appears that Mr Donnelly has had in mind, for a long time, making appropriate applications. There has been a problem about financing the applications because of the lack of assets in the estate. But, on 24 June 1986, the

Inspector-General in Bankruptcy informed Mr Donnelly that the

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Commonwealth would fund an application in respect of a property at Woollgoolga. Thirteen months later that application has not come before the Court. Although there may be reasons for this, this is a most unsatisfactory situation. I was told by the solicitor for the trustee this morning that the respondents' affidavits were all filed some two months ago and that the matter has been with counsel for settling affidavits in reply for the last two months. This is unsatisfactory and I propose to have that matter mentioned at 2.15 p.m. today for the purpose of fixing both a date for filing affidavits in reply and a hearing date. I think that the sooner there is some finality in this estate, the better for all concerned. Because I have some sympathy with the complaint by Mr Hedrlin about delays, I do not propose finally to deal with the fourth application in the matter currently before me. I will stand that over, in the first instance, > until 2.15 p.m. and then probably until the hearing date of the application in connection with the Woollgoolga matter. I will consider that at 2.15 p.m.

The only orders that I make at this stage is that I dismiss so much of the application dated 3 June 1987, as involves the first three orders sought therein. I further

adjourn the matter until 2.15 p.m. today.

I certify that this and the four (4) preceding pages are a true copy of the Reasons for Judgment of his Honour Mr Justice Wilcox.

Associate (Moavme, flied

Date: 12 August 1987

Appearance for the Applicant Bankrupt:

Counsel for the Respondent Trustee:

Solicitors for the Respondent Trustee:

Date(s) of hearing:

Mr J Hedrlin in person

Mr P J Duggan

M F Callanan & Co

14 July 1987

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Prepared on 29 October 2026 · Esheria