

AUSTRALIA / JUDGMENT

Re Masotto, E.A. [1987] FCA 583

COURT
IN THE FEDERAL COURT

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Source record

JUDGMENT No. \$82/.6.L.

BANKRUPTCY - application for discharge - guarantee of borrowings arranged by former husband - no other direct involvement in financial aspects of former husband's business ~- no intention of carrying on business on own account - desire to remarry - possibility of intended husband's standing being affected by continuing bankruptcy - no unsatisfactory conduct - no reason of public interest or commercial morality to refuse discharge - discharge granted.

Bankruptcy Act 1966

RE: ELSIE ANNETTE MASOTTO

NO. 512 OF 1985

FRENCH J.

PERTH

26 OCTOBER 1987

IN THE FEDERAL COURT

OF AUSTRALIA

GENERAL DIVISION

BANKRUPTCY DISTRICT

OF THE STATE OF

WESTERN AUSTRALIA

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No. 512 of 1985

RE: ELSIE ANNETTE MASOTTO

Applicant

MINUTE OF ORDER

JUDGE MAKING ORDER: FRENCH J.

DATE OF ORDER: 26 OCTOBER 1987

WHERE MADE: PERTH

THE COURT ORDERS
THAT:

1. Upon the applicant's undertaking not to act as an officer of any company or to engage in or carry on business on her own account directly or indirectly prior to 11 November 1988, the bankruptcy is discharged.

Note: Settlement and entry of orders is dealt with in Rule 124 of the Bankruptcy Rules.

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CORAM: FRENCH J.

26 OCTOBER 1987

REASONS FOR JUDGMENT On 18 September 1984 the Westpac Banking Corporation obtained a judgment in the Supreme Court of Western Australia

against Elsie Annette Masotto in the sum of \$81,033.14 and

\$4,798.36 interest.

By a bankruptcy notice issued on 1 March 1985, Westpac demanded payment within 14 days of the total sum of \$85,831.50 due

under the judgment.

The notice not having been complied with, a creditor's petition issued and on 11 November 1985 Toohey J. made a

sequestration order against Mrs Masotto's estate.

Mrs Masotto, who would, in the ordinary course, be automatically discharged from bankruptcy after 3 years from the

making of the order, seeks an earlier discharge pursuant to s.150

of the Bankruptcy Act 1966.

2.

At the date of the sequestration order she was a divorced woman with no dependents. She earned \$215.00 net per

week as a shop assistant.

The Gebt which led to the bankruptcy arose from a personal guarantee executed by her in 1979 as a co-director with

her former husband of Batavia Motor Inne Pty Ltd.

The company operated the Batavia Motor Inne at Geraldton and the borrowing was used to pay part of the cost of adding a fourth wing to the building.

Mrs Masotto supervised staff and ordered food for the business. Her former husband handled the financial. side,

including signing cheques and paying trade creditors.

In 1979 when the guarantee was signed, Mrs Masotto and her husband had separated. She agreed to sign the guarantee in the hope of a reconciliation that would reunite the family. A brief reunion followed but their subsequent separation has been permanent and they have since divorced.

Batavia Motor Inne Pty Ltd was placed in the hands of receivers on 2 June 1983. The same receivers, Messrs. Lyford and Evans, subsequently became joint trustees of a Part X composition for Augenio Ross Masotto, Mrs Masotto's former husband.

3.

An initial composition accepted by Mr Masotto's creditors provided for him to pay \$100,000.00 over 5 years. This was terminated on 14 October 1986 as he was unable to meet Payments due under it. On 10 November a lesser composition involving payment of \$25,000.00 was accepted. According to correspondence between the joint trustees and Mrs Masotto's trustee in bankruptcy, the terms of the composition were satisfied

and the estate finalised.

In the meantime the hotel had been sold under a mortgagee's sale. Mrs Masotto was called upon to honour the

guarantee. Her inability to do so led to her bankruptcy.

The trustee in bankruptcy has realised \$3,505.00 from the estate, being the proceeds of sale of a 1979 Toyota station wagon. Her other assets comprised cash of \$72.00, household furniture protected under s.116(2)(b) of the Act, and one \$1.00 share in a company called Eldorado Holdings Pty Ltd. That company is trustee for the Elsie Masotto Family Trust, which is a discretionary trust. The primary beneficiaries are the Masottos' 3 adult sons. Mrs Masotto is named as a general beneficiary. She

says however that she is not a director of the company.

So far as appears from the evidence, the only asset of the trust is a house in which Mrs Masotto resides and which is

situated at 51 Blackbutt Road, Woodlands.

4.

In maintenance and property proceedings between Mr and Mrs Masotto in the Family Court of Western Australia, a consent order was made on 21 December 1983 in terms including the following:-

1. Mr Masotto was to discharge an existing mortgage and in lieu thereof arrange for a mortgage securing a principal of \$50,000.00 over a term of 3 years at 14% per annum to be registered over a City Beach unit, then owned by Eldorado Holdings Pty Ltd, and occupied by his wife.
2. He was to pay to her the sum of \$112,000.00 by way of a property settlement by instalments:-
 - (i) \$1,000.00 on or before 23 December 1983; (i2) \$4,500.00 on or before 15 January 1984; (i11) \$4,500.00 on or before 31 January 1984;

{1v) \$52,000.00 by weekly payments of \$200.00 each, the first on 22 December 1983;

(v) \$50,000.00 on or before 22 December 1988.

3. Mr Masotto was to pay interest at the rate of 13%

per annum on monies which fell due but were not paid in accordance with the instalment arrangement.

According to Mrs Masotto, she received the first \$10,000.00 a month after settlement and some of the instalment payments for a short time, but nothing else. However at some point, it appears it may have been 1n 1981, Mr Masotto had made a

gift of \$50,000.00 to Eldorado Holdings Pty Ltd to enable it to purchase the City Beach unit.

The trustee company sold that unit in September 1985 and acquired the property at Woodlands presently occupied by Mrs

Masotto.

5.

The funds for the purchase of the Woodlands property were evidently derived from the sale of the City Beach unit and

mortgage finance provided by the National Australia Bank.

Mrs Masotto's trustee in bankruptcy, Mr Totterdell, corresponded with Messrs. Lyford and Evans on the question of the \$50,000.00 gift to Fidorado Holdings. He suggested to them that Masotto's composition might be terminated under s.242 of the Act

and the two estates consolidated pursuant to s.53.

In the event, no further action has been taken in that regard and it is not a matter that Mr Totterdell feels he can

pursue as trustee of Mrs Masotto's estate.

He did express some concern that Mrs Masotto was paying a "rental" to the trustee company to enable her to occupy the

premises when she could have been making some contribution to the bankrupt estate.

The "rental", according to her oral evidence, comprises the small mortgage repayments made to the National Australia Bank.

They are said to come to \$128.00 per month.

In the circumstances I do not consider that the making of these payments reflects adversely upon Mrs Masotto for the

purpose of the exercise of my discretion to discharge.

The trustee's report otherwise discloses no unsatisfactory conduct on her part.

She seeks discharge so that she may marry her present fiancé. He is the Western Australian State Sales Manager of a significant distributor of manufactured goods. He is concerned that if he and Mrs Masotto should marry while her bankruptcy subsists it may affect his standing in the local business community and even his credit worthiness. It would also, he says, affect his relations with his employers and major retailers with

whom he has to deal from time to time.

I am unconvinced by this rather timorous reasoning. Nevertheless, Mrs Masotto's desire to rid herself of a stigma arising out of her entanglement with her former husband's

financial dealings is understandable.

There is, in the case, no reason of public interest or commercial morality which requires that the bankruptcy run its

full term.

Subject to Mrs Masotto undertaking, as she has offered to do, not to become an officer of any company until after 11 November 1988, nor to engage or carry on business on her own account prior to that date, I am prepared to make the order

sought.

7.

I certify that the preceding S\$1x (6) pages are a true copy of the Reasons for Judgment of His Honour Justice French.

Associate: Doetyoval. Uses pate: 2b COckeloas 198).

Counsel for the Applicant: Mr B.F. Stokes

Solicitors for the Applicant: Messrs. B.F. Stokes & Associates Mr G. Totterdell appeared for the Official Trustee. Date of Hearing: 19 August 1987

Date of Judgment: 26 October 1987

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