FEDERAL CIRCUIT COURT OF AUSTRALIA

WALTER v MACKAY REGIONAL COUNCIL *[2015] FCCA 351*

Catchwords:
BANKRUPTCY – Application for review – Registrar decision affirmed – application dismissed.
COSTS – General rule.

Legislation:
Bankruptcy Act 1966 (Cth), s.43
Federal Circuit Court Rules (Bankruptcy) 2006

Cases cited:
Colgate Palmolive v Cussons Proprietary Limited [1993] FCA 536.
Ledger Acquisitions Australia v Kiefer [2014] FCCA 2216

Applicant:	DAVID JOHN WALTER
Respondent:	MACKAY REGIONAL COUNCIL
File Number:	BRG 880 of 2014
Judgment of:	Judge Vasta
Hearing date:	12 February 2015
Date of Last Submission:	12 February 2015
Delivered at:	Brisbane
Delivered on:	12 February 2015

REPRESENTATION

The Applicant appearing on his own behalf

Counsel for the Respondent: Mr Houghton

Solicitors for the Respondent: King & Company

ORDERS

(1) That the application for review filed on 27 November 2014 be dismissed.

(2) That the decision of Registrar Belcher made on 6 November 2014 be affirmed.

(3) That a transcript of these proceedings be placed upon the Court file.

(4) The Respondent's costs of and incidental to the application, including reserved costs, if any, be taxed under Part 40 of the *Federal Court Rules 2011* and paid by the Applicant.

FEDERAL CIRCUIT COURT
OF AUSTRALIA
AT BRISBANE

BRG 880 of 2014

DAVID JOHN WALTER
Applicant

And

MACKAY REGIONAL COUNCIL
Respondent

REASONS FOR JUDGMENT

1. On 20 September 2010 in Mackay before McMeekin J an application was made by the Respondent in this matter to strike out an action brought by a person by the name of William Alexander Lade. Mr Lade as plaintiff had sued both the Respondent in this matter and the State Minister for Local Government and Aboriginal and Torres Strait Island Partnerships. His Honour, McMeekin J, on 13 October struck out the proceedings and ordered this:

> *"If the respondent* (Mr Lade) *wishes to be heard on the question of costs then submissions are to be filed and served on the applicant on or before 4 pm on 20 October 2010."*

and also ordered:

> *"In the event that no submissions are filed then the respondent* (Mr Lade) *to pay the applicant's costs fixed in the sum of $2764.06 in proceedings numbered S10 and in the sum of $3027.13 in proceedings numbered S12/2010."*

2. On my limited reading of the judgment, the costs order was in favour of the Minister rather than the Mackay Regional Council though this is

not clear. There does not seem, on the evidence before me, that there were any submissions filed by Mr Lade, the plaintiff. It seems to me then that the Respondent in this matter brought proceedings before the Supreme Court in September 2011. Those matters seem to have been chamber matters and there does not seem to have been any appearance for the present Applicant, Mr David John Walter. Notwithstanding that, his Honour, North J, made an order that both Mr Lade and Mr Walter, as a non-party to the matter, be liable for the costs of the Mackay Regional Council. The costs amounted to over $26,000.00and related to the matter S12/2010 notwithstanding the Minister's costs in the same application were a little over $3,000.00.

3. After that order was made a Certificate of Costs Assessor filed 17 July 2012 brought the matter back to the Supreme Court on 31 August 2012. Deputy Registrar C. L. Smart made an order that the plaintiff, Mr Lade, and a non-party, David John Walter, the Applicant here, jointly and severally pay the first defendant's costs pursuant to an order of the Court dated 26 September 2011 and a Certificate of Costs Assessor filed 17 July 2012 assessed at $26,860.98. It would seem then that the matter proceeded by way of a demand upon Mr Walter and a petition. He was served with the material on 23 March 2014 and he was to comply on or before 14 April 2014 with the requirements of that Bankruptcy Notice.

4. To comply with the Notice and dispute it, he had to satisfy the Court that he had a counter claim, set off or cross demand equal to or more than the sum claimed in the Bankruptcy Notice, being the counter claim, set off or cross demand that he could not have set up in the action in which the judgment referred to in the Bankruptcy Notice was obtained. The Applicant, Mr Walter did none of those things. He did not seek to go behind the Order of the Deputy Registrar. On 6 November 2014, Registrar Belcher of this Court presided over this matter and acted according to the *Bankruptcy Act 1966* (Cth). The Applicant Creditor had done all that is necessary under the Act to obtain a sequestration order under s.43 of that Act. The Respondent Debtor had put no material before the Court. Unsurprisingly, the order was made.

5. Mr Walter appealed the making of that order to this Court. In this proceeding Mr Walter did not present any evidence regarding the actual bankruptcy. He has instead filed five separate books of "submissions", as I have termed them. Without wanting to go through them fully, I will describe them in short compass as being applications that cast doubt upon the fact that a Court could allow sequestration or the authority of the Supreme Court or any other entity to take money that has not been money as described under the Constitution namely pounds, shillings and pence. It is a far more complex argument than that. However, as I have stated, my power is confined only to that of the *Bankruptcy Act 1966* (Cth). I must look at this matter as a hearing de novo.

6. When having a look at this matter it would seem to me that the only way in which Mr Walter could in any way be successful in this jurisdiction is to cast doubt upon the judgment or the order made by Deputy Registrar Smart in August 2012. That is a matter that he has not done, though having spoken to him on the phone in the course of these proceedings, it is quite obvious that that was not an option that he had even considered. This is because he was, to use my words, fixated on the other arguments as to the legality of the Court process as a whole rather than focusing on whether the debt was a true debt or whether he had been afforded natural justice in not being heard upon the amount of that debt (especially considering he was a non-party).

7. However, those are not matters for me to consider and nor could I give Mr Walter any form of legal advice as to what he should do. In the end my power only comes from the *Bankruptcy Act 1966* (Cth). What I am satisfied of in looking at the judgment of Senior Deputy Registrar Smart of 31 August 2012, is that Mr Walter does owe the Mackay Regional Council, through its CEO, the amount now of $29,923.26.

8. I am satisfied that the creditor does not hold security over the property of the Debtor. I am satisfied that at the time when the act of bankruptcy was committed the Debtor was personally present in Australia, was ordinarily resident in Australia and had a dwelling house or place of business in Australia. I am satisfied the following act of bankruptcy was committed by the Debtor within six months before the presentation of the petition before the Court and that the respondent

debtor has failed to comply on or before 14 April 2014 with the requirements of Bankruptcy Notice 166665 issued by an authorised officer of the official receiver on 2 December 2013 and served on him on 23 March 2014. I am satisfied that Mr Walter has not satisfied the Court that he has a counter claim, set off or cross demand equal to more than the sum claimed in the Bankruptcy Notice, being a counter claim, set off or cross demand that he could not have set up in the action in which the judgment referred to in the Bankruptcy Notice was obtained. In those circumstances I have no choice but to dismiss the application of Mr Walter and affirm the decision of Registrar Belcher.

9. In this matter the respondent in this proceeding, Mr Franks, CEO of the Mackay Regional Council, has asked for costs on an indemnity basis. I have been referred to the matter of *Colgate Palmolive v Cussons Proprietary Limited* (1993) FCA 536. I have also had regard to the very helpful decision of *Ledger Acquisitions Australia v Kiefer* [2014] FCCA 2216 that I had seen earlier when looking at the matter. It seems to me on the basis of these authorities that orders for indemnity costs should be made only in exceptional circumstances.

10. In the matter of *Kiefer* (Supra) I looked at the reasons of Lucev J. In that matter his Honour gave indemnity costs and he said that they were justified by reasons of some seven factors that justified, in his Honour's view, the making of an indemnity costs order. In this case, however, I don't find the same level of belligerence or humbugging by Mr Walter to justify such a course to be taken. In this case, whilst the costs have been expended by the Respondent in the matter, to my mind, it does not amount to the sort of exceptional circumstances as was spoken of in *Colgate* (Supra).

11. Therefore I make the following orders:

    1. That the application for review filed on 27 November 2014 be dismissed.

    2. That the decision of Registrar Belcher made on 6 November 2014 be affirmed.

    3. That a transcript of these proceedings be placed upon the Court file.

4. The Respondent's costs of and incidental to the application, including reserved costs, if any, be taxed under Part 40 of the *Federal Court Rules 2011* and paid by the Applicant.

I certify that the preceding eleven (11) paragraphs are a true copy of the reasons for judgment of Judge Vasta

Date: 19 February 2015