

FEDERAL CIRCUIT COURT OF AUSTRALIA

*DEPUTY COMMISSIONER OF TAXATION v
CUTTS (No.4)*

[2019] FCCA 2866

Catchwords:

BANKRUPTCY – Application for review of sequestration order issued by a Registrar.

Legislation:

Bankruptcy Act 1966 (Cth), ss.5, 27, 35, 40, 41, 43, 44, 47, 52

Civil Judgments Enforcement Act 2004 (WA), s.8

Constitution, Ch.III, ss.51, 54, 71, 72

Evidence Act 1995 (Cth), s.157

Federal Circuit Court of Australia Act 1999 (Cth), ss.5, 10, 45, 75, 81, 102, 103, 104

Federal Circuit Court (Bankruptcy) Rules 2016 (Cth) Pt.4, rr.1.03, 2.02, 4.06, Sch.1, Pt.1, It.9

Federal Circuit Court Rules 2001 (Cth), rr.6.01, 14.02, 29.04, 29.12

Federal Court of Australia Act 1976 (Cth), s.35A

Public Service Act 1999 (Cth), s.7

Taxation Administration Act 1953 (Cth), ss.4A, 7, 15, Sch.15, Its.255-1, 255-5

Cases cited:

Baker & Ors v Commonwealth [2012] FCAFC 121; (2012) 206 FCR 229; (2012) 293 ALR 635

Boglari v Coadys (A Firm) [2009] FCA 1398; (2009) 7 ABC(NS) 553

Cassimatis v Australian Securities Investment Commission [2016] FCA 131; (2016) 334 ALR 350

Cheesman v Waters & Attorney-General (Cth) (1997) 77 FCR 221; (1997) 148 ALR 21

Coal & Allied Operations Pty Ltd v Australian Industrial Relations

Commission [2000] HCA 47; (2000) 203 CLR 194; (2000) 74 ALJR 1348; (2000) 99 IR 309; (2000) 174 ALR 585

Corney v Brien (1951) 84 CLR 343; (1951) 15 ABC 154; [1951] ALR 525; (1951) 25 ALJ 133

Deputy Commissioner of Taxation v Casley [2017] WASC 161

Deputy Commissioner of Taxation v Cutts [2017] FCCA 1760

Deputy Commissioner of Taxation v Cutts (No 2) [2017] FCCA 2480

Deputy Commissioner of Taxation v Cutts (No 3) [2017] FCCA 2762

Deputy Commissioner of Taxation v Webb [2017] FCCA 1137; (2017) 320 FLR 371

Federated Engine-Drivers & Firemen's Association of Australasia v Broken Hill Proprietary Company Limited (1911) 12 CLR 398; (1911) 17 ALR 285

Fortron Automotive Treatments Pty Ltd v Jones & Ors (No 4) [2011] FMCA 854; (2011) 254 FLR 303
In re Hawkins; Ex parte Troup [1895] 1 QB 404
Jones (Bankrupt), in the matter of Jones v Porter (Trustee) [2015] FCA 644
Lavan Legal v Kenyon [2017] FCCA 2529; (2017) 326 FLR 20
Ledger Acquisitions Australia MB Pty Ltd v Kiefer [2014] FCCA 2216
Ling v Enrobook Pty Ltd (1997) 74 FCR 19; (1997) 143 ALR 396
Meads v Meads (2012) ABQB 571
Pattison v Hadjimouratis [2006] FCAFC 153; (2006) 155 FCR 226; (2006) 236 ALR 1; (2006) 4 ABC(NS) 367
Penhallow v Doane's Administrators (1795) 3 U.S. 54; (1795)1 L. Ed. 507; (1795) 3 Dall. 54
R v Barger (1908) 6 CLR 41; (1908) 14 ALR 374
R v Davidson (1954) 90 CLR 353; (1954) 17 ABC 90; [1954] ALR 877
Ramsay Health Care Australia Pty Ltd v Compton [2017] HCA 28; (2017) 261 CLR 132; (2017) 91 ALJR 803; (2017) 345 ALR 534; (2017) 15 ABC(NS) 222; (2017) 122 ACSR 115
Ramsay Health Care Australia Pty Ltd v Compton (No 2) [2017] FCA 629
Re Bolton; Ex parte Construction, Forestry, Mining & Energy Union (1998) 73 ALJR 129; (1998) 85 IR 468
Re Bryant; Ex parte Guarino [2001] HCA 5; (2001) 75 ALJR 478; (2001) 178 ALR 57
Re Magistrate M M Flynn; ex parte McJannett [2013] WASC 372
Sanders v Snell (No 2) (2000) 174 ALR 53
Smadu v Stone [2016] WASC 80
Totev v Sfar & Anor [2008] FCAFC 35; (2008) 167 FCR 193; (2008) 247 ALR 180; (2008) 5 ABC(NS) 691
United States v Heijnen, 375 F. Supp. 2d 1229, 1231 n.1 (D.N.M. 2005)
United States v Mooney, 2017 WL 2352002; 119 A.F.T.R.2d 2017-2052
Webb v Deputy Commissioner of Taxation [2017] FCA 1520
Williamson v Johnson [2016] WASC 232
Wren v Mahony (1972) 126 CLR 212; (1972) 46 ALJR 163; [1972] ALR 307
Zdrilic & Anor v Hickie & Anor [2016] FCAFC 101; (2016) 246 FCR 532; (2016) 14 ABC(NS) 232

Applicant:	DEPUTY COMMISSIONER OF TAXATION
Respondent:	MAURICE JAMES CUTTS
File Number:	PEG 47 of 2016
Judgment of:	Judge Antoni Lucev
Hearing dates:	13 and 16 November 2017 and 25 January

2018

Date of Last Submission: 25 January 2018

Delivered at: Sydney (via video-link to Perth)

Delivered on: 10 October 2019 (and delivered by video-link by Judge Street pursuant to s.75 of the *Federal Circuit Court of Australia Act 1999* (Cth))

REPRESENTATION

Counsel for the Applicant: Mr T de Bes

Solicitors for the Applicant: Australian Government Solicitor

For the Respondent: In person

ORDERS

- (1) The application filed 4 October 2016 by the Respondent for a review of a Registrar's decision dated 13 September 2016 to issue a sequestration order against the estate of the Respondent be dismissed, and the Registrar's Order of that date be confirmed.
- (2) The applicant's costs of the respondent's application for review of the Registrar's decision of 13 September 2016 to issue a sequestration order be paid from the respondent's bankrupt estate in accordance with the provisions of the *Bankruptcy Act 1966* (Cth), such costs, if not agreed, to be taxed by a Registrar of the Court in accordance with Part 40 of the *Federal Court Rules 2011* (Cth).

**FEDERAL CIRCUIT COURT OF
AUSTRALIA
AT PERTH**

PEG 47 of 2016

DEPUTY COMMISSIONER OF TAXATION
Applicant

And

MAURICE JAMES CUTTS
Respondent

REASONS FOR JUDGMENT

Introduction

1. The respondent, Maurice James Cutts (“Mr Cutts”), seeks to have the Court review (“Review Application”) pursuant to s.104(2) and (3) of the *Federal Circuit Court of Australia Act 1999* (Cth) (“*FCCA Act*”) a sequestration order and ancillary orders made by a Registrar of the Court on 13 September 2016 (“Sequestration Order”) made under the *Bankruptcy Act 1966* (Cth) (“*Bankruptcy Act*”). The Sequestration Order was made on the application of the applicant, the Deputy Commissioner of Taxation (“Deputy Commissioner”).
2. The somewhat lengthy litigation history to date of the Review Application is set out in the following interlocutory judgments:
 - a) *Deputy Commissioner of Taxation v Cutts* [2017] FCCA 1760 (“*Cutts (No 1)*”);
 - b) *Deputy Commissioner of Taxation v Cutts (No 2)* [2017] FCCA 2480 (“*Cutts (No 2)*”); and
 - c) *Deputy Commissioner of Taxation v Cutts (No 3)* [2017] FCCA 2762 (“*Cutts (No 3)*”).

History related to issuance of the Sequestration Order

3. A summary of the background and procedural history related to the issuance of the Sequestration Order is as follows:
 - a) Mr Cutts was a Director of a company, Costanoza Pty Ltd (“Costanoza”) until Costanoza went into liquidation in 2012;
 - b) commencing April 2008, and allegedly due to a gas pipeline explosion on Varanus Island affecting Costanoza’s business and causing Costanoza to fall into debt, Costanoza failed to pay withheld amounts in accordance with the *Taxation Administration Act 1953* (Cth) (“1953 TA Act”), through to 21 September 2011. Mr Cutts asserts “the deficit sum owing was a direct result of the inactions of the Administrative Director of Costanoza, Tracey Lee Cutts, who was subsequently bankrupted for her ‘culpability and debt’ in this matter”: Affidavit of Maurice James Cutts filed on 9 September 2016 (“Cutts September 2016 Affidavit”);
 - c) on 14 February 2012 Costanoza was put into liquidation, and RSM Bird Cameron were appointed as its liquidators (“Liquidator”);
 - d) on 22 March 2012 the Liquidator attended Costanoza’s Port Hedland yard and seized all equipment therein;
 - e) on 17 May 2012 a warrant was issued for search and seizure of Costanoza’s books, and the warrant was executed on the evening of 31 May 2012;
 - f) on 31 October 2013 a Writ of Summons was issued in the District Court of Western Australia (“District Court”) by the Deputy Commissioner seeking to recover the unpaid withheld amounts;
 - g) on 12 March 2014, judgment in default of a defence being filed was entered in the District Court in matter No. 3518 of 2013, in favour of the Deputy Commissioner against Mr Cutts (“District Court Judgment”) in the amount of \$674,418.49 and \$1,127.40 for costs;

- h) on 18 March 2015, the Deputy Commissioner caused a bankruptcy notice to issue in respect of the Judgment Debt (“Bankruptcy Notice”);
- i) on 29 August 2015, the Bankruptcy Notice was personally served on Mr Cutts;
- j) on 1 October 2015, Mr Cutts made an application to set aside the District Court Judgment;
- k) on 6 November 2015, District Court Registrar Kingsley dismissed the application: Affidavit of Andrew John Giorgi filed on 12 April 2016 (“Giorgi April 2016 Affidavit”);
- l) on 2 February 2016, the Deputy Commissioner filed a Creditor’s Petition in this Court (“Creditor’s Petition”) and on 16 February 2016 the Creditor’s Petition was served on Mr Cutts: Affidavit of Lindsey Keith Caddy filed on 22 February 2016 (“Caddy February 2016 Affidavit”);
- m) on 23 March 2016, Mr Cutts filed a Form 5 being a “Notice stating grounds of opposition to application, interim application or petition” (“Notice of Opposition”) and a supporting affidavit of Maurice James Cutts filed on 23 March 2016 (“Cutts March 2016 Affidavit”);
- n) on 12 April 2016, the Deputy Commissioner filed submissions and the Giorgi April 2016 Affidavit in response to the Notice of Objection;
- o) on 27 April 2016, Mr Cutts filed a Notice of Appearance in which he stated “I offer to withdraw all documents. I will be attending to address the court on 2nd May 2016 at 11am”;
- p) on 2 May 2016 Mr Cutts attended a hearing before a Registrar of this Court which resulted in an order adjourning the hearing of the Creditor’s Petition to 13 September 2016, and an order for Mr Cutts to file an affidavit of solvency on or before 12 September 2016;

- q) on 2 May 2016 Mr Cutts swore and filed an affidavit attaching a “Special Affidavit”, purportedly sworn in relation to Mr Cutts’ legal capacity (“Cutts May 2016 Special Affidavit”);
- r) on 1 August 2016 Mr Cutts swore and filed an affidavit (“Cutts August 2016 Affidavit”) in support of an adjournment of a hearing listed on 2 August 2016, which hearing was adjourned to 13 September 2016 by reason of the Registrar’s order of 2 August 2016;
- s) on 9 September 2016, Mr Cutts swore and filed a further affidavit containing further grounds of objection to the Creditor’s Petition (“Further Objections”): Affidavit of Maurice James Cutts filed on 9 September 2016 (“Cutts September 2016 Affidavit”);
- t) on various dates up to and including 13 September 2016 various affidavits as to service of the Bankruptcy Notice, verifying the Creditor’s Petition, as to service of the Creditor’s Petition, as to search of bankruptcy records, and as to continuing debt and final search were filed by the Deputy Commissioner, and are set out in more detail below under the heading “Relevant Court documents”; and
- u) on 13 September 2016, the Creditor’s Petition was heard and a Registrar of this Court made the Sequestration Order, noting the date of the act of bankruptcy as 21 September 2015.

The Review Application

- 4. Mr Cutts filed the Review Application on 4 October 2016.
- 5. In the Review Application Mr Cutts seeks that “*all the ORDERS be set aside, until the applicant [Mr Cutts] has sought all available, lawful rights*”.

Relevant Court documents

- 6. For the Deputy Commissioner the following Court documents are relevant:
 - a) Creditor’s Petition dated 2 February 2016;

- b) outline of submissions dated 12 April 2016 in reply to the Notice of Opposition (“Deputy Commissioner’s April 2016 Submissions”);
 - c) outline of submissions dated 1 September 2017 (“Deputy Commissioner’s September 2017 Submissions”); and
 - d) outline of submissions dated 17 January 2018 (“Deputy Commissioner’s January 2018 Submissions”).
7. For the Deputy Commissioner the following affidavits are relevant:
- a) Allen G Mitchell sworn 31 August 2015 as to service of the Bankruptcy Notice (“Mitchell Affidavit”);
 - b) Jacqueline Daly affirmed 2 February 2016 verifying the Creditor’s Petition (“Daly Affidavit”);
 - c) Lindsey Keith Caddy sworn 18 February 2016 as to service of the Creditor’s Petition (“Caddy Affidavit”);
 - d) Benjamin Michael Pisano sworn 8 March 2016 as to search of bankruptcy records (“Pisano Affidavit”);
 - e) Giorgi April 2016 Affidavit;
 - f) Brien Wilson sworn 13 September 2016 as to continuing debt (“Wilson September 2016 Affidavit”);
 - g) Melinda Jean Castle (“Ms Castle”) affirmed 13 September 2016 as to final search;
 - h) Ms Castle affirmed 3 November 2016 as to final search;
 - i) Leonard Jamble (“Mr Jamble”) affirmed 3 November 2016 as to continuing debt;
 - j) Geneva Louise Griffin affirmed 4 November 2016 as to the Deputy Commissioner’s notification of these proceedings to the Official Trustee in Bankruptcy;
 - k) Georgia Kyros (“Ms Kyros”) affirmed 30 June 2017 as to service of a letter on Mr Cutts advising of an intention to apply for

dismissal of the Review Application on the basis of non-compliance with Court orders;

- l) Ms Kyros affirmed 30 June 2017 as to service of a letter on Mr Cutts concerning his request for an adjournment of the proceedings, notification of an intention by the Deputy Commissioner to have the matter re-listed and the Review Application dismissed for non-compliance;
- m) Tegan Waller (“Ms Waller”) affirmed 30 June 2017 as to service of a letter on Mr Cutts with respect to conferral as to compliance with the Court’s orders;
- n) Ms Waller affirmed 30 June 2017 as to service on Mr Cutts of a letter concerning whether he intended to amend his application or file any supporting affidavits in accordance with a Court order;
- o) Ms Waller affirmed 30 June 2017 as to service of a sealed copy of Court orders made on 3 March 2017;
- p) Ms Castle affirmed 3 October 2017 as to service of the Court’s orders of 3 August 2017;
- q) Ms Castle affirmed 3 October 2017 as to service of a copy of the Deputy Commissioner’s September 2017 Submissions;
- r) Douglas Patrick Bowen (“Mr Bowen”) sworn 13 October 2017 as to final search;
- s) Mr Bowen sworn 13 October 2017 as to service of a letter enclosing the Court’s orders of 11 October 2017;
- t) Mr Jamble affirmed 13 October 2017 as to continuing debt;
- u) Sathyavishnu Sinnathamby affirmed 15 November 2017 as to continuing debt; and
- v) Ms Castle affirmed 16 November 2017 as to final search.

8. For Mr Cutts the following Court documents are relevant:

- a) the Notice of Opposition;

- b) Notice of Appearance dated 27 April 2016;
 - c) Review Application dated 4 October 2016; and
 - d) a further “Notice stating grounds of opposition to application, interim application and petition” filed 9 December 2017 (“Further Notice of Opposition”).
9. For Mr Cutts the following affidavits are relevant:
- a) Cutts March 2016 Affidavit;
 - b) Cutts May 2016 Affidavit Special Affidavit;
 - c) Cutts August 2016 Affidavit;
 - d) Cutts September 2016 Affidavit (in which the Further Objections appear);
 - e) Mr Cutts’ affidavit of 21 December 2017 (“Cutts December 2017 Affidavit”), which is a series of submissions and assertions by Mr Cutts rather than statements of fact or alleged fact; and
 - f) Mr Cutts’ affidavit affirmed 24 January 2018 (“Cutts January 2018 Affidavit”), which is once again a series of assertions and submissions, together with extracts from what is said to be “Williams on Bankruptcy”.

Relevant legislative provisions

10. In the *Bankruptcy Act*:
- a) section 5 defines “Registrar” to include a Registrar of the Court and “the Court” to mean “a Court having jurisdiction in bankruptcy under ... the [*Bankruptcy Act*]”;
 - b) section 27 provides that the Federal Circuit Court has concurrent jurisdiction in bankruptcy with the Federal Court, which is exclusive of all other courts other than the High Court and the Family Court;
 - c) section 40(g) provides that a debtor will, amongst other methods, commit an act of bankruptcy if the debtor is the subject of a

judgment, is served with a bankruptcy notice and does not comply with the notice or satisfy the court of a claim that could not have been raised in the proceedings in which the judgment was obtained;

- d) section 43 confers power on the Court to make a sequestration order against the estate of a debtor where an act of bankruptcy has been committed, and where certain specified conditions are met, and where the creditor presents a creditors petition;
- e) section 44 provides that certain conditions are required to be met before a creditor may petition, including that there is a debt of \$5,000 or more owing by the debtor to the petitioning creditor;
- f) section 47 provides that a creditor's petition must be verified by an affidavit of a person who knows the relevant facts, and that certain matters of form set out in the rules of court for a creditor's petition are required to be observed;
- g) section 52(1) requires certain matters to be proved at the hearing of a creditor's petition to the satisfaction of the Court before it may make a sequestration order; and
- h) section 52(2) provides that a creditor's petition may be dismissed if the Court is not satisfied that the requirements of s52(1) have been met or the Court is satisfied by the debtor that:
 - i) the debtor is able to pay his debts; or
 - ii) for other sufficient cause a sequestration order ought not be made.

11. In the *FCCA Act* under:

- a) section 10 the Court has original jurisdiction as is vested in it by Parliament;
- b) section 102(2) certain powers of the Federal Circuit Court may be exercised by a Registrar, including a power prescribed by the "Rules of Court", the "Rules of Court" being the "Rules of Court made under ... [the *FCCA Act*]": *FCCA Act*, s.5, the Rules of

Court being made pursuant to the power in s.81(1) of the *FCCA Act*;

- c) section 103 the Rules of Court may delegate to the Registrars any of the powers of the Court; and
 - d) section 104(2) a party may apply for a review by the Court of an exercise by a Registrar of a delegated power, and under s.104(3), the Court may make any order or orders it thinks fit in relation to the matter in respect of which the Registrar exercised power.
12. Under the *FCC Rules* a party may apply to the Court for a judgment or order to be stayed, or for a stay of execution of a judgment or order: *FCC Rules*, rr.29.04 and 29.12.
13. In the *FCC Bankruptcy Rules*:
- a) rule 1.03 acknowledges that the *FCC Bankruptcy Rules* are made under the *FCCA Act*;
 - b) under r.2.02(1)-(3) of the *FCC Bankruptcy Rules* the powers under the *Bankruptcy Act* are prescribed for the purposes of s.102(2)(i) of the *FCCA Act* and the format of an appeal prescribed. By sch.1 item 9 of the *FCC Bankruptcy Rules* the power to make a sequestration order against the estate of a debtor is a power that may be exercised by a Registrar; and
 - c) under Pt.4 of the *FCC Bankruptcy Rules* creditors petitions are required to observe certain matters of form.

Jurisdiction of the Court

14. During the course of these proceedings Mr Cutts sought “confirmation” that the Federal Circuit Court of Australia conforms to Chapter III of the *Constitution*. While Mr Cutts did not formally press this ground in the Review Application, a number of assertions made in his affidavits and during the hearing necessitate that the Court deal with what appears to be a challenge to the Court’s status as a Chapter III court under the *Constitution* and its jurisdiction to hear cases in bankruptcy. It is the first duty of every court to determine whether or not it has jurisdiction: *Federated Engine-Drivers & Firemen’s Association of*

Australasia v Broken Hill Proprietary Company Limited (1911) 12 CLR 398; (1911) 17 ALR 285; CLR at 415 per Griffiths CJ, 428 per Barton J and 454 per Isaacs J; *Re Bolton; Ex parte Construction, Forestry, Mining & Energy Union* (1998) 73 ALJR 129; (1998) 85 IR 468, ALJR at 133 per Kirby J.

15. This Court considered the same issue in *Ledger Acquisitions Australia MB Pty Ltd v Kiefer* [2014] FCCA 2216 (“*Ledger Acquisitions*”) at [42]-[45] per Judge Lucev and *Fortron Automotive Treatments Pty Ltd v Jones & Ors (No 4)* [2011] FMCA 854; (2011) 254 FLR 303 at [10]-[16] per Lucev FM. In both matters the Court concluded that the Court was a Chapter III Court under the *Constitution*, and furthermore it appears the High Court, the Full Court of the Federal Court, the Federal Court, the Supreme Court of Western Australia and this Court have all concluded that this Court is a Chapter III Court under the *Constitution* or that the Judges (formerly Federal Magistrates) of this Court are Justices for the purposes of s.72 of the *Constitution*, as follows:

- a) the High Court observed in *Re Bryant; Ex parte Guarino* [2001] HCA 5; (2001) 75 ALJR 478; (2001) 178 ALR 57 (“*Bryant*”) at [13] per Hayne J that:

Finally, as for the last of the matters mentioned by the applicant in his affidavit, s 72 of the Constitution does, subject to some qualifications which need not now be noticed, permit the Parliament to fix an age as the maximum age for Justices of a court created by the Parliament. There is no reason to consider it arguable that the constitutional expression “Justice of a court created by the Parliament” does not extend to Federal Magistrates. There is, therefore, no reason to consider that the provisions made in s 9 and Sch 1 of the Act about the term of office and conditions for resignation or removal from office of Federal Magistrates are invalid.

- b) in *Totev v Sfar & Anor* [2008] FCAFC 35; (2008) 167 FCR 193; (2008) 247 ALR 180; (2008) 5 ABC(NS) 691 (“*Sfar*”) at [9] per Emmett J it was observed that “... judges of the Federal Magistrates Court are justices appointed under Ch III”.

- c) in *Baker & Ors v Commonwealth* [2012] FCAFC 121; (2012) 206 FCR 229 (“*Baker*”) the Full Court of the Federal Court accepted that the Federal Magistrates Court was a Chapter III court under the Constitution, and its judicial officers were “Justices” appointed under s.72 of the *Constitution: Baker* FCR at [44] per Keane CJ and Lander J and [79] per Perram J;
- d) in *Williamson v Johnson* [2016] WASC 232 (“*Williamson*”) at [32] per Corboy J the Supreme Court of Western Australia said:

The statutory scheme does not deprive the Federal Circuit Court of its essential character as a federal court comprised by its judges. Accordingly, the conferral and exercise of some of the Court's powers and functions in bankruptcy to its registrars remains subject to the supervision of the Court. The statutory scheme satisfies the requirements for constitutional validity identified in Harris v Caladine.

- e) in *Deputy Commissioner of Taxation v Webb* [2017] FCCA 1137; (2017) 320 FLR 371 (“*Webb FCCA*”) at [46] per Judge Wilson this Court said:

...it is beyond doubt since the High Court’s decision in Re Bryant; Ex parte Guarino (“Re Bryant”) that this court is a court properly established under the Constitution as a Chapter III court.

16. It follows that the Court is a federal court established under s.71 of the *Constitution*, invested with federal jurisdiction, and, in particular, federal jurisdiction in bankruptcy, and that the Court’s judges are “Justices” appointed under s.72 of the *Constitution*.

Relevant principles

Nature of the review of the Registrar’s decision

17. A hearing under s.104 (2) of the *FCCA Act* is a hearing de novo and the matter is considered afresh: *Pattison v Hadjimouratis* [2006] FCAFC 153; (2006) 155 FCR 226; (2006) 236 ALR 1; (2006) 4 ABC(NS) 367 at [3]-[20] per Nicholson J and at [39] per Jacobson J; *Coal & Allied Operations Pty Ltd v Australian Industrial Relations Commission* [2000] HCA 47; (2000) 203 CLR 194; (2000) 74 ALJR 1348; (2000) 99 IR 309; (2000) 174 ALR 585 at [13] per Gleeson CJ, Gaudron and

Hayne JJ; *Cassimatis v Australian Securities Investment Commission* [2016] FCA 131; (2016) 334 ALR 350 (“*Cassimatis*”) at [12] per Edelman J; *Lavan Legal v Kenyon* [2017] FCCA 2529; (2017) 326 FLR 20 (“*Lavan Legal*”) at [57] per Judge Lucev.

18. The party seeking the sequestration order must still satisfy the Court that the necessary conditions required to be proved by s.52(1) of the *Bankruptcy Act* for a sequestration order have been met: *Sfar* at [27]-[29] per Emmett J; *Zdrilic & Anor v Hickie & Anor* [2016] FCAFC 101; (2016) 246 FCR 532; (2016) 14 ABC(NS) 232 at [66] and [72] per Katzmann, Farrell and Markovic JJ; *Lavan Legal* at [58] per Judge Lucev.
19. A review under s.104(2) of the *FCCA Act* does not require the reviewing judge to exclude from consideration at the fresh hearing the relevant record of the proceedings including the conclusion reached by the Registrar. In *Cassimatis* at [16] per Edelman J the Federal Court observed that Kirby J in *Sanders v Snell (No 2)* (2000) 174 ALR 53 at 56 suggested that by not using the label “de novo” (that description is not used in s.104(2) of the *FCCA Act*) there is an inference that the review may take into account, and place weight upon, the discretion of the Registrar, particularly where the discretion is exercised with some frequency and skill.

Formal requirements for a sequestration order

20. The formal requirements for the issuance of a sequestration order under the of *Bankruptcy Act* are as follows:
 - a) section 41 requires the Bankruptcy Notice to refer to a final judgment or order for an amount “of at least \$5,000”;
 - b) section 43 requires presence of the debtor or his estate within Australia;
 - c) section 44(1)(a) requires that “there is owing by the debtor to the petitioning creditor a debt that amounts to \$5,000”; and
 - d) section 52(1) requires proof of:

- i) the matters stated in the petition (for which purpose the Court may accept the affidavit verifying the petition as sufficient);
 - ii) service of the petition; and
 - iii) the fact that the debt or debts on which the petitioning creditor relies is or are still owing.
- 21. Part 4 of the *FCC Bankruptcy Rules* requires that the Deputy Commissioner file affidavits:
 - a) verifying the Creditor’s Petition;
 - b) of search of court records;
 - c) of service of the Bankruptcy Notice;
 - d) of search of the NPI Index; and
 - e) of debt still owed,those affidavits going to the fulfilment of the requirements of s.52(1) of the *Bankruptcy Act*.
- 22. On proof of the matters in s.52(1) “the Court will generally proceed to make an order for sequestration”: *Sfar* at [37] per Emmett J.

Onus on respondent to establish a sufficient cause

Consideration - formal requirements for a sequestration order

- 23. The formal requirements in s.52(1) of the *Bankruptcy Act* are met in this case by reason of the following matters:
 - a) on 12 March 2014, the District Court Judgment in an amount of \$675,545.89, was obtained against Mr Cutts (“Judgment Debt”);
 - b) on 18 March 2015, a Bankruptcy Notice was issued by the Deputy Commissioner against Mr Cutts based on the unsatisfied Judgment Debt;
 - c) the Bankruptcy Notice claimed the sum of \$716,522.83, being the Judgment Debt amount plus \$40,976.94 in interest claimed

pursuant to s.8 of the *Civil Judgments Enforcement Act 2004* (WA) (“Debt”);

- d) the Bankruptcy Notice was served on Mr Cutts on 29 August 2015: Mitchell Affidavit;
- e) Mr Cutts failed to comply with the Bankruptcy Notice within 21 days and on 21 September 2015 committed an act of bankruptcy: *Bankruptcy Act*, s.40(1)(g);
- f) on 8 March 2016, being within 6 months of the date of the act of bankruptcy the Deputy Commissioner filed the Creditor’s Petition verified by an affidavit: Daly Affidavit;
- g) pursuant to r.4.06(3) of the *FCC Bankruptcy Rules*, the Deputy Commissioner undertook a search of the National Personal Insolvency Index (“NPI Index”) which did not reveal any relevant debt agreement on the day the Creditor’s Petition was filed or on the day when the search of the NPI Index was made: Pisano Affidavit;
- h) the Creditor’s Petition and affidavits verifying the Creditor’s Petition were served on Mr Cutts on 16 February 2016: Caddy Affidavit;
- i) the Deputy Commissioner confirmed the Debt remained owing and the other matters required by r.4.06(4) of the *FCC Bankruptcy Rules* on 12 September 2016, the day before the Registrar made the Sequestration Order: Wilson September 2016 Affidavit;
- j) prior to the hearing scheduled in this Court for 16 October 2017, the Deputy Commissioner confirmed the Debt remained owing and the other matters required by r.4.06(4) of the *FCC Bankruptcy Rules*: Jamble October 2017 Affidavit;
- k) the Deputy Commissioner, prior to the hearing in this Court on 16 November 2017, again confirmed the Debt remains owing and the other matters required by r.4.06(4) of the *FCC Bankruptcy Rules*: Castle November 2017 Affidavit; and

- 1) the Court made orders at the hearing on 16 November 2017 that the Deputy Commissioner be relieved from filing and serving any further affidavits in satisfaction of the formal requirements for bankruptcy under Part 4 of the *FCC Bankruptcy Rules*.

Whether Mr Cutts can pay his debts – s.52(2)(a) of the *Bankruptcy Act*

24. The sum of \$714,252.26 being the amount claimed in the Creditor’s Petition less a credit for a payment totalling \$2,270.57 remains unpaid and the Deputy Commissioner claims that amount.
25. Mr Cutts’ evidence which purports to show that he could pay his debts within the meaning of s.52(2) of the *Bankruptcy Act*, should be disregarded for the reasons addressed below. Mr Cutts has not filed any evidence to suggest he is capable of paying his debts.

Other sufficient causes to dismiss the creditor’s petition – s.52(2)(b) of the *Bankruptcy Act*

26. It appears that s.52(2)(b) of the *Bankruptcy Act* is relied upon by Mr Cutts in seeking to set aside the Sequestration Order, which imposes on him the obligation of satisfying the Court that he is able to pay his debts or that a sequestration order ought not be made for “other sufficient cause”: *Ling v Enrobook Pty Ltd* (1997) 74 FCR 19; (1997) 143 ALR 396 (“*Enrobook*”), FCR at 24 per Davies, Wilcox and Branson JJ.
27. For a matter to constitute “other sufficient cause” to decline to make a sequestration order, the matter must be one of significant weight to displace the interest of the community in avoiding insolvent trading: *Ramsay Health Care Australia Pty Ltd v Compton (No 2)* [2017] FCA 629 at [26]-[37] per Flick J. Thus, while the formal requirements of a sequestration order have been met, the Court may still dismiss the Creditor’s Petition and set aside the Sequestration Order if Mr Cutts establishes an “other sufficient cause” pursuant to s.52(2)(b) of the *Bankruptcy Act*.

Notice of Opposition

28. In the first instance proceedings Mr Cutts filed the Notice of Opposition stating 15 grounds of objection which was supported by the Cutts March 2016 Affidavit. Each of the 15 grounds of objections is addressed hereunder.

Ground 1

29. Mr Cutts opposes the Creditor's Petition on the ground that the District Court Judgment be set aside.
30. An application to set aside the District Court Judgment must be made in the District Court of Western Australia ("District Court"). This Court has no jurisdiction to set aside the District Court Judgment, although, for the purposes of determining an application for a sequestration order, the Court may go behind a judgment of another court which gives rise to a debt.
31. On 1 October 2015, Mr Cutts made an application to set aside the District Court Judgment. On 6 November 2015, a Registrar of the District Court dismissed the application.
32. It follows that ground 1 must, in its terms, fail.

Ground 2

33. Mr Cutts contends that the District Court Judgment was obtained by an abuse of process, that he was denied his constitutional right to be heard and that the hearing was a basic denial of natural justice.
34. This Court is able to go behind the District Court Judgment, however it will not be done as a matter of course: *Wren v Mahony* (1972) 126 CLR 212; (1972) 46 ALJR 163; [1972] ALR 307 ("*Wren*"), CLR at 224 per Barwick CJ. This Court needs to consider whether it has sufficient reason not to exercise its discretion to treat the District Court Judgment as satisfactory proof of the Judgment Debt. It should only exercise its discretion to go behind the District Court Judgment where there are substantial reasons for doubting there really is a debt due to the creditor: *Corney v Brien* (1951) 84 CLR 343; (1951) 15 ABC 154; [1951] ALR 525; (1951) 25 ALJ 133 ("*Corney*").

35. The Deputy Commissioner submits that the Court has no reason to treat the District Court Judgment as not being satisfactory proof of the Judgment Debt because:
- a) Mr Cutts does not contend that he does not owe the amount claimed in the Creditor's Petition, which is based on the District Court Judgment; and
 - b) Mr Cutts has unsuccessfully sought to have the District Court Judgment set aside.

Ground 3

36. Mr Cutts opposes the Creditor's Petition on the ground that the Deputy Commissioner serve "all papers, documents and court transcripts that the plaintiff relied upon to get the judgment 12th March 2014".
37. Mr Cutts' request for discovery of material related to the District Court Judgment is not a proper basis upon which to oppose the Creditor's Petition. Mr Cutts has exercised his right to seek to set aside the District Court Judgment and that application was unsuccessful.
38. Ground 3 must therefore fail.

Ground 4

39. Mr Cutts opposes the Creditor's Petition on the ground that the Deputy Commissioner "produce any notice of service it tended to the court as evidence that the above documents were served upon me. Prior to the hearing of this matter".
40. If this be a request for the affidavit of service in the District Court proceedings, then the request must be refused as the request for material produced in the District Court proceedings is not relevant to the hearing of the Creditor's Petition and is not a proper basis on which to oppose the Creditor's Petition.
41. Ground 4 must therefore fail

Ground 5

42. Mr Cutts opposes the Creditor's Petition on the ground that the District Court Judgment should be stayed until the hearing of these proceedings.
43. The Court does not have jurisdiction to stay a judgment of the District Court of Western Australia. Ground 5 therefore fails.

Ground 6

44. Mr Cutts seeks supply of "certified copies of evidence that establish the Australian Taxation Office giving the Australian Taxation Office the right to lawfully exist".
45. The Court notes that:
- a) the Creditor's Petition is made by the Deputy Commissioner of Taxation, Robert Ravello;
 - b) the Deputy Commissioner of Taxation's position exists by virtue of s.7 of the *1953 TA Act*;
 - c) the Commissioner of Taxation and the staff necessary to assist the Commissioner of Taxation constitute a Statutory Agency and the Commissioner of Taxation is the head of the agency: *1953 TA Act*, s.4A; and
 - d) the statutory agency is otherwise known as the Australian Taxation Office.
46. The *1953 TA Act* at s.4A states

4A Statutory Agency etc. for purposes of Public Service Act

.....

(2) For the purposes of the Public Service Act 1999:

- (a) the Commissioner and the APS employees assisting the Commissioner together constitute a Statutory Agency; and*
- (b) the Commissioner is the Head of that Statutory Agency.*

47. When consulting the *Public Service Act* (Cth) s.7, a:

Statutory Agency means a body or group of persons declared by an Act to be a Statutory Agency for the purposes of this Act.

48. The power of the Federal Parliament to make laws imposing taxation is expressed in very wide terms, and once engaged both the matters in content and the procedures envisaged know very limited limits: *Constitution s.51(ii)*; *R v Barger* (1908) 6 CLR 41; (1908) 14 ALR 374 (“*Barger*”), CLR at 94-95 per Isaacs J and 114 per Higgins J.
49. The ATO is, therefore, a lawfully established and legally recognised statutory agency. For the avoidance of doubt, the Court is satisfied the creation of a statutory body, like the ATO, is within the powers of parliament pursuant to s.51(ii) of the *Constitution*. Furthermore, under the executive powers of the *Constitution* ss.61 and 64, the creation of the ATO as a non-corporate entity within the Treasury Portfolio whom serves four ministers is evidence the ATO lawfully exists.
50. The Court considers this ground is without merit and it fails accordingly.

Ground 7

51. Mr Cutts opposes the Petition on the ground that the "Deputy Commissioner of Taxation, Robert John Ravello must by law provide his own affidavits verifying every aspect of this matter." In response it was submitted the Deputy Commissioner is not required to personally depose to all affidavits filed in relation to an action of which he is a party. Furthermore, the affidavits relied upon in these proceedings have been deposed by duly authorised parties with knowledge of the relevant facts.
52. The following provisions of the *Tax Administration Act 1953* (Cth) are applicable:

8ZM Evidence of authority to institute proceedings

(1) Where a prosecution for a prescribed taxation offence is instituted by a person in the official name of the Commissioner, the prosecution shall be presumed, unless the contrary is proved, to have been instituted with the authority of the Commissioner.

(2) In a prosecution for a prescribed taxation offence, the mere production of an instrument, telegram or copy of a telex

message purporting to have been issued or sent by the Commissioner, a Second Commissioner or a Deputy Commissioner and purporting to notify a person that the person is authorized by the Commissioner to institute the prosecution, to institute prosecutions for a class of prescribed taxation offences in which the prescribed taxation offence is included or to institute prosecutions for any prescribed taxation offence is conclusive evidence of the authority of the person to institute the prosecution on behalf of, and in the official name of, the Commissioner.

15 Appearance by Commissioner etc.

(1) In any action, prosecution or other proceeding under, or arising out of, a taxation law instituted by or on behalf of the Commissioner, a Second Commissioner or a Deputy Commissioner, to which the Commissioner, a Second Commissioner or a Deputy Commissioner is a party or in which the Commissioner, a Second Commissioner or a Deputy Commissioner intervenes or seeks to intervene, the Commissioner, Second Commissioner or Deputy Commissioner, as the case may be, may appear personally or may be represented by:

(a) a person enrolled as a barrister, solicitor, barrister and solicitor or legal practitioner of a federal court or of the Supreme Court of a State or Territory; or

(b) a person authorized by the Commissioner, a Second Commissioner or a Deputy Commissioner, by instrument in writing, to appear.

(2) The appearance of a person, and the statement of the person that the person appears by authority of the Commissioner, a Second Commissioner or a Deputy Commissioner, is prima facie evidence of that authority.

53. The onus is upon Mr Cutts to provide evidence the proceedings have not been instituted by the Commissioner. He has failed to provide such evidence in support of this ground, and the mere fact an affidavit is not personally deposed by the Deputy Commissioner of Taxation is not evidence. The appearance of Counsel on behalf of the Deputy Commissioner is prima facie evidence Counsel has authority to appear so: s.15(2) of the 1953 TA Act. Failure of Mr Cutts to provide evidence to the contrary damages his ability to succeed on this ground.

54. The *1953 TA Act* at s.15 validly allows the Deputy Commissioner to be represented by a person, as opposed to personally attending to proceedings and actions. One can easily see the policy reasons, and common sense of allowing such representative appears on their behalf. It follows ground 7 must also be dismissed.

Ground 8

55. Mr Cutts opposes the Creditor's Petition on the ground that the Deputy Commissioner of Taxation should supply proof that an act of bankruptcy has been committed by Mr Cutts within the 6 months before the presentation of the Creditor's Petition;

56. The Court notes that:

- a) the affidavit of Allen G Mitchell sworn 31 August 2015 ("Mitchell August 2015 Affidavit") verifies that a bankruptcy notice was served on Mr Cutts on 29 August 2015; and
- b) the Daly February 2016 Affidavit verifies that Mr Cutts committed an act of bankruptcy in accordance with s.40(1)(g) of the *Bankruptcy Act* on 21 September 2015.

57. Section 40(1) of the *Bankruptcy Act* details when a debtor commits an act of bankruptcy. Its terms have been met in this case and ground 8 fails.

Ground 9

58. Mr Cutts opposes the Creditor's Petition on the ground that at no time has the matter between the ATO and Costanoza been proven in a court of law.

59. The Court notes that:

- a) the Creditor's Petition is a personal insolvency action against Mr Cutts in his own name; and
- b) the Debt which forms the basis of the Creditor's Petition was proven in the District Court proceedings and was claimed on the basis of taxation liabilities of Mr Cutts as set out in the Statement of Claim.

60. It follows that ground 9 fails.

Ground 10

61. Mr Cutts seeks confirmation that the Federal Circuit Court of Australia conforms with Chapter III of the Constitution, and if so he contended that according to s.54(24) of the Constitution, “no man can be bound to the decision of the court if he is not present”.

62. The Deputy Commissioner says it is not appropriate for the Deputy Commissioner to address this ground. The Court does not understand why a Commonwealth model litigant does not seek to meet a challenge to the bankruptcy jurisdiction of a Court in which that Commonwealth litigant litigates daily, and which if successful would not doubt be productive of significant inconvenience and disruption to the Commonwealth.

63. The challenge to the Court jurisdiction is dealt with at [14]-[16] above. The challenge has no legal basis. As indicated above the Court is a federal court established under s.71 of the *Constitution*, and invested with federal jurisdiction, and, in particular, federal jurisdiction in bankruptcy.

64. The provision of the “Constitution” purportedly cited by Mr Cutts is not a provision of the *Constitution* (of the Commonwealth of Australia), there being no cl.54(24), cl.54 therein being a two line provision relating to appropriation Bills.

65. Ground 10 therefore fails.

Ground 11

66. Mr Cutts opposes the Petition on the ground that the judgment obtained against him is unlawful on the basis that:

- a) he has been advised by District Court Transcripts that there are no hearings listed in the District Court proceedings; and
- b) this Court is purporting to make orders without a hearing or transcript of the District Court proceedings.

67. Whether or not there is a transcript of the District Court proceedings is irrelevant for present purposes, and as the history of the litigation referred to at [2]-[3] above demonstrates Mr Cutts has had multiple hearings in this Court, both before a Registrar and a Judge.

68. Ground 11 must fail.

Grounds 12-15

69. Grounds 12 to 15 are not grounds of opposition, but relief sought by Mr Cutts. It is unnecessary to address them further for present purposes.

Further Objections

70. Further to the Notice of Objection, Mr Cutts raised further objections to the Petition in the affidavit of Maurice James Cutts sworn 9 September 2016. The following deals with those further grounds.

Further Ground 1

71. Mr Cutts says that a third party, a Mr Williams, offered funds from a private arrangement to address the debt.

72. Mr Cutts bears the onus of satisfying the Court that he has the ability to pay the debt. Mr Cutts has not produced any evidence to show that the alleged funds or private arrangement exists and, if so, when the alleged funds will be realised. Almost the full amount claimed by the Deputy Commissioner in the Petition remains unpaid.

73. Further ground 1 fails.

Further Ground 2

74. The Deputy Commissioner misled the District Court in obtaining the District Court Judgment and the Deputy Commissioner's bankruptcy action is in fact void.

75. There is no evidence that the deputy commissioner misled the District Court, and this ground fails.

Further Ground 3

76. The Deputy Commissioner agreed to withdraw all documents from the Petition except for the Notice of Opposition.
77. The Deputy Commissioner denies that at any stage it agreed or represented to Mr Cutts that it would withdraw or agree to orders withdrawing all the documents filed in the Petition. In any event, the Deputy Commissioner did not so, and the Petition was granted. There is no, or no sufficient evidence, of the alleged agreement, and this ground fails.

Further Ground 4

78. The Deputy Commissioner did not cross-examine Mr Cutts on his affidavit sworn 2 May 2016 or question any of the issues he did not understand and therefore has accepted all of the terms contained in the affidavit.
79. The affidavit sworn 2 May 2016 was filed without leave. It contains no material on which to support an argument that the Petition should be dismissed for other sufficient cause, or otherwise, and this ground must fail.

Further Ground 5

80. Unfiled tax returns, that the Deputy Commissioner was aware of, produced a tax credit that when applied to the debt claimed by the Bankruptcy Notice reduced the said debt to an amount less than the prescribed quantum of debt required to issue a bankruptcy notice, thereby voiding the current bankruptcy proceeding.
81. Mr Cutts did not challenge or comply with the Bankruptcy Notice within the time for compliance and, therefore, committed an act of bankruptcy.
82. The Bankruptcy Notice claimed a debt owing of \$716,522.83. On the day before the Registrar made the sequestration order, an affidavit of outstanding debt was affirmed by Brien Wilson who was authorised to make the affidavit on the Deputy Commissioner's behalf evidencing an amount outstanding of \$714,252.26.

83. At the date the Bankruptcy Notice was issued and throughout the life of the Petition in the first instance proceedings, the debt relied upon remained in excess of statutory requirement of \$5,000. Relevant affidavits of continuing debt have been filed in these proceedings, and the Court is satisfied that a debt of at least \$5,000 remains owing by Mr Cutts to the Deputy Commissioner
84. This ground fails.

Further Ground 6

85. Mr Cutts alleges a counterclaim and/or set-off against the Deputy Commissioner for the alleged acts of the liquidator appointed to Costanoza Pty Ltd.
86. Mr Cutts' counterclaim and/or set-off claim is misconceived as the liquidator of Costanoza in its capacity as the liquidator is an agent of the Court. The liquidator is not an agent of the Deputy Commissioner and the Court will not defer the hearing of the petition simply to allow the debtor to pursue claims against a third party: *Enrobook*.
87. Mr Cutts has also failed to adduce any evidence to show that he has a real claim which is likely to succeed, and this ground fails.

Review proceedings – grounds of objection

88. In the review proceedings it was not until 9 December 2017 that Mr Cutts filed a Notice of Opposition stating eight grounds of opposition, with a supporting affidavit sworn by Mr Cutts on 21 December 2017 (“Cutts 2017 Affidavit”). The grounds of opposition are as follows:

That the Australian Taxation Office is NOT a Legal and Lawful Entity

At no time has the matter between The Australian Taxation office and Costanoza Pty Ltd, Trading as M&T Cutts Haulage, been proven in a court of Law

Mr Neil Cribb, the liquidator, the ATO's agent, and his agents, ceased millions of dollars worth of equipment, some belonging to Costanoza Pty ltd, the majority being to Twin Star Resources and

All-Round Resources-Companies belonging to Mr Carl Bell and one item belonging to Graham ""Tiny"" Gangell

Magistrates no longer hold the Commission of Chief Executives and no longer sign court orders.

In most cases this documents are sealed to the court under the Australian or relevant State Seals- which have no law-making power over the people of the Commonwealth- and are signed by Court Registrars.

A Registrar has no lawful ability to sign such documents wherein Judicial Power is exercise over a man or a woman.

Kitto,J: "A Registrar is not a court officer ... He is an officer of the executive government, that being so it is constitutionally impossible to invest him with any form of Judicial power."

Accordingly the applicant shall rely on all correspondence and notices in this matter, and seeks from The Court likewise to evaluate the facts present, and assist a layman.

[Copied verbatim].

89. The Cutts 2017 Affidavit contained 13 paragraphs which are essentially submissions in furtherance of Mr Cutts' grounds of opposition, save for the following which has been treated as a further ground of opposition:

That I am not the artificial person/entity printed in your legal documents, despite my name sounding the same as the Capitis Diminutio Maxima (Name in ALL-CAPITALS) printed name. You are attempting to enslave me against my will and consent to accept liability for the artificial person/entity printed on your documents.

Without my consent, any Judicial decision is null and void and of no legal consequence.

Any Judgement only applies to your artificial person/entity "strawman" legal fiction.

90. The day prior to the hearing on 25 January 2018, Mr Cutts filed a further supplementary affidavit sworn 24 January 2018 ("Cutts 2018 Affidavit"), and an outline of submissions. The outline of submissions filed by Mr Cutts largely provided a recollection of the events leading to the bankruptcy of Mr Cutts, and a number of accusations regarding

the conduct of various individuals throughout the history of the matter from 2012. The Court will, as stated to the parties at hearing, derive from these submissions what it perceives may be points of contention Mr Cutt's wishes to pursue in seeking to set aside the Sequestration Order.

91. Before the Registrar Mr Cutts filed a Notice of Objection stating 15 grounds of objection which was supported by the Cutts March 2016 Affidavit. The grounds of the Review Application presently contain some of the same grounds as the Notice of Objection considered by the Registrar before issuing the sequestration order. The Court has addressed each of these grounds of review below.

Ground 1 - the Australian Tax Office is not a Legal Entity

92. Mr Cutts asserts that as the Australian Taxation Office ("ATO") is not a legal and lawful entity, it has no legal rights. This ground is similar to ground 6 of the Notice of Objection before the Registrar which sought supply of "certified copies of evidence that establish the Australian Taxation Office giving the Australian Taxation Office the right to lawfully exist", and is dealt with at [44]-[50] above.
93. Mr Cutts also asserts: Cutts 2017 Affidavit at [2], that the Commonwealth of Australia is listed on the United States Securities and Exchange Commission as a "for-profit" organisation and likewise all government departments and agencies are "for profit". It is not apparent what the point of this assertion is, and it suffices to observe that even if it is correct, it does not affect the statutory regime in Australia in relation to bankruptcy or the task of this Court on this application.
94. Mr Cutts asserts that, if he owes tax, he must have entered into a contract to pay the ATO tax, but that he is not aware of his doing so, and if so he wished to stop. As is otherwise evident liability for tax is ultimately imposed pursuant statute not contract, and this assertion does not affect this Court's role on this application.
95. In *Webb v Deputy Commissioner of Taxation* [2017] FCA 1520 ("*Webb Appeal*") the Federal Court dismissed an appeal against the judgment of this Court in *Webb FCCA* whereby the applicant had raised the same

grounds as Mr Cutts. In dispensing with the ground this Court stated as follows in *Webb FCCA* at [59]-[64] per Judge Wilson:

59. This argument I accept. But the argument is irrelevant to this case because the petitioning creditor was the Deputy Commissioner of Taxation and not the ATO.

60. The status of the ATO as a legal entity has been the subject of a number of authoritative pronouncements. In Levick, Hill J said that the ATO does not exist for legal purposes.

61. In the High Court, Callinan J held in Dooney that the ATO is not a legal personality.

62. In the Supreme Court of South Australia, David J in Daniels held that the ATO was not a legal entity. ..

64. To my mind, this ground missed the point because the current party with statutory authority to sue in fact brought the proceeding in the County Court. That party also petitioned this court for the sequestration order of Mr Webb's estate. The status of the ATO as a separate legal entity had nothing to do with this case.

96. The second case referred to by Mr Cutts was a judgment in the Supreme Court of the United States: *Penhallow v Doane's Administrators* (1795) 3 U.S. 54; (1795)1 L. Ed. 507; (1795) 3 Dall. 54 (“*Penhallow*”), to which judgment was attributed the following specific quote:

Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, a government can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them.

The specific quote attributed to *Penhallow* does not appear in the text of the judgment in *Penhallow* at any point: a fact confirmed in *United States v. Heijnen*, 375 F. Supp. 2d 1229, 1231 n.1 (D.N.M. 2005) and *United States v. Mooney*, 2017 WL 2352002; 119 A.F.T.R.2d 2017-2052, and the Court notes positive treatment of this judgment in the United States is based upon principles derived in respect of foreign

admiralty law, and any use of the case as Mr Cutts has sought to do in the present proceeding has been denied. Insofar as Mr Cutts refers to this as evidence, the Court does not consider it as such.

97. Before concluding on this ground, it is to be observed in Cutts Second Affidavit at [4] the Deputy Commissioner is said to be sitting ‘unlawfully and fraudulently,’ and as stated at ground 7 of the Notice of Objection before the Registrar that the Deputy Commissioner must personally provide evidence verifying “every aspect of the matter”. The Court refers to s.15 of the *1953 TA Act* validly allows the Deputy Commissioner to be represented by a person, as opposed to personally attending to proceedings and actions. One can easily see the policy reasons, and common sense of allowing representatives to appear on their behalf.
98. The Court considers this ground is without merit and it fails accordingly.

Ground 2- The matter had never been proven in a Court of Law

99. The second ground of Mr Cutts’ Review Application before this Court was also before the Registrar as ground 9 in the Notice of Objection. Mr Cutts opposes the Creditor’s Petition on the ground that at no time has the matter between the ATO and Costanoza been proven in a court of law. In Cutts 2017 Affidavit at [6]-[7] it is stated the order that Costanoza, trading as M & T Cutts Haulage, to be wound up is a fraud and void judgment.
100. The Deputy Commissioner says that:
- a) the Creditor’s Petition is a personal insolvency action against Mr Cutts in his own name; and
 - b) the Debt which forms the basis of the Creditor’s Petition was proven in the District Court proceedings and was claimed on the basis of taxation liabilities of Mr Cutts as set out in the Statement of Claim.
101. Mr Cutts was at all relevant times the director of Costanoza. The proceedings in the District Court concerned Mr Cutts withholding amounts from the ATO between 2008 and 2011 which became a debt

due and payable under the *TAA 1953* sch.1 ss.255-1 and 255-5. Mr Cutts sought to set aside the District Court Judgment on the grounds it was obtained by an abuse of process, that he was denied his constitutional right to be heard and that the hearing was a basic denial of natural justice. On 6 November 2015, a Registrar of the District Court dismissed the application.

102. The relevance of this ground in the present proceedings is unclear. These proceedings have been brought against Mr Cutts in his personal capacity, not against Costanoza. The District Court Judgment was awarded against Mr Cutts in his personal capacity. There is neither relevance, nor need to consider the submission that no matter between the ATO and Costanoza has been proven in a court of law as insofar as these proceedings are concerned the company is not a party.
103. To the extent Mr Cutts may be asking the Court to consider setting aside the District Court Judgment, as was claimed in grounds 1 and 2 of the Notice of Objection before the Registrar, the Court observes as follows:
 - a) an application to set aside the District Court Judgment must be made in the District Court;
 - b) this Court has no jurisdiction to set aside the District Court Judgment, although, for the purposes of determining an application for a sequestration order, the Court may go behind a judgment of another court which gives rise to a debt: *Ramsay Health Care Australia Pty Ltd v Compton* [2017] HCA 28; (2017) 261 CLR 132; (2017) 91 ALJR 803; (2017) 345 ALR 534; (2017) 15 ABC(NS) 222; (2017) 122 ACSR 115 (“*Ramsay*”), however it will not be done as a matter of course: *Wren*, CLR at 224 per Barwick CJ;
 - c) it should only exercise its discretion to go behind the District Court Judgment where there are substantial reasons for doubting there really is a debt due to the creditor, specifically where there is evidence which has been left unanswered and could support the conclusion the debtor was not indebted at all or where there are implications of fraud, collusion or a miscarriage of justice,

although the discretion to go behind a judgment is not constrained to any categories: *Corney*; *Ramsay* at [110] per Edelman J;

- d) in determining if there are ‘substantial reasons’ to go behind the judgment the Court must consider if there is ‘a prima facie case impeaching the judgment,’ such that a court of equity would intervene in the particular circumstances: *Ramsay* at [110] per Edelman J citing *In re Hawkins*; *Ex parte Troup* [1895] 1 QB 404 at 411; and
- e) where Mr Cutts appealed the District Court Judgment on the grounds he stated in ground 2 of the Notice of Objection before the Registrar, Mr Cutts attended on a Chamber Summons to present his case and the appeal was dismissed, the Court finds no prima facie reason to go behind the judgment, as where adversarial litigation has taken place testing the merits of a judgment debt, unless prima facie fraud, collusion, or a miscarriage of justice is somehow evident the Court would be mistaken to consider it has ‘substantial reasons’ to investigate whether the debt was truly owed: *Ramsay* at [111] per Edelman J.

104. The Notice of Objection before the Registrar contained, in grounds 3 and 4, a request that the Deputy Commissioner produce all documents and transcripts related to the District Court Judgment and verify those documents were served upon him. For the following reasons the Court would also dismiss these grounds:

- a) a request for documents is not a valid ground to oppose the Creditor’s Petition;
- b) insofar as Mr Cutts is seeking discovery, pursuant to s.45(1) of the *FCCA Act* discovery is not allowed in this Court unless it is declared appropriate and in the interests of justice, such that it contributes to the fair and expeditious conduct of the proceedings: *FCCA Act* s.45(2). The Court does not feel it is in the interests of justice to on its own motion order discovery of the documents requested, and Mr Cutts has not made an application for the Court to hear: *Federal Circuit Court Rules* r.14.02; and

- c) the onus is upon Mr Cutts to provide such documents he requires to the Court in support of his grounds of review, not the Deputy Commissioner.
105. Finally at hearing Mr Cutts suggested that the one page District Court Judgment was handwritten and nobody had signed it: Cutts Outline of Submissions, p.6. Mr Cutts further stated he did not receive a creditors petition summons to attend, rather he received the one page document and was ‘supposedly, bankrupt.’ Mr Cutts has misunderstood the nature of the District Court Proceedings, and as stated at the hearing Mr Cutts was not made bankrupt until the Sequestration Order was issued by a Registrar of this Court on 13 September 2016. The document from the District Court was a summary judgment for an amount plus costs ordered against Mr Cutts. That the date of the judgment was handwritten and there being no ‘signature’ does not invalidate the judgment, the seal of the District Court is visible on the judgment and such is sufficient to demonstrate the order has been issued from the District Court.
106. The Court considers this ground 2, and any corollary arguments’ relating to such, without merit and it fails accordingly.

Ground 3- Set-off/Counterclaim against Liquidators

107. In support of ground 3, Cutts 2017 Affidavit stated equipment was unlawfully sold, or rather ‘given away,’ by the Liquidators for less than 30% of the fair market value, and furthermore the Liquidators had no lawful right to have such equipment in his control or possession. Once again there is no evidence before the Court on this point other than the statements in the Cutts 2017 Affidavit. In Mr Cutts’ outline of submissions he claimed he had been told some of his personal items, ‘stolen’ in the ‘seizure’, were on display in the china cabinet of an agent of the Liquidators, and also sought to itemise and appraise the equipment seized by the Liquidators, which he claims should have satisfied the ATO debt.
108. Cutts 2018 Affidavit can be inferred as largely being directed at the claims against the Liquidators conduct and he affirms that both the ATO and Liquidators are aware there is possible legal action pending for their conduct and actions throughout the matter: Cutts 2018

Affidavit, p.1. Annexed to Cutts 2018 Affidavit are extracts from a legal text referring to the English bankruptcy legislation, the notions of ‘extortion,’ ‘malicious presentation of a petitions’ and ‘stay of proceedings where appeal from judgment’ and that a court is not bound to make a receiving order where proceedings are inequitable. No legal action has been commenced, though Mr Cutts confirmed his plans were to pursue the Liquidators. It should again be noted that on 6 November 2015 Mr Cutts’ application to set aside the District Court Judgment was dismissed.

109. The Deputy Commissioner stated the following in response to this ground:
- a) Mr Cutts alleges a counterclaim and/or set-off against the Deputy Commissioner for the alleged acts of the Liquidators appointed to Costanoza;
 - b) Mr Cutts’s counterclaim and/or set-off claim is misconceived as the Liquidators of Costanoza in its capacity as the liquidator is an agent of the Court. The Liquidators are not an agent of the Deputy Commissioner and the Court will not defer the hearing of the petition simply to allow the debtor to pursue claims against a third party: *Enrobook*; and
 - c) in any event, Mr Cutts has failed to adduce any evidence to show that he has a real claim which is likely to succeed and so the Court should disregard this further ground.
110. Mr Cutts has persistently claimed the Liquidators acted against their duties, and more particularly acted in an unfair and unreasonable manner when carrying out their duties. Mr Cutts clearly felt aggrieved with the manner in which the Liquidators handled his proceedings, and was personally pained by the actions toward his elderly mother and father while investigations were being carried out. That Mr Cutts has clearly suffered immense stress and hardship throughout the proceedings is evident, however none of the allegations he has made, including those of theft, were based on any evidence, and the Court considers such allegations to be unfounded.

111. Mr Cutts claimed there to be no recorded transcript of the District Court hearing, and he was not notified of the hearing thus the piece of paper with the judgment is “rubbish as it never occurred”. That there was no transcript of the summary judgment application and hearing is not conclusive of any of these claims: indeed it would not be uncommon for a summary judgment application and hearing not to be transcribed. Mr Cutts having received an email that no hearing between the two parties was on that day is also not accepted as such is hearsay, and provides no substantial reason for the Court to doubt such.
112. Finally, there were some claims raised in the Cutts 2017 Affidavit, and his outline of submissions whereby he claimed he was served documents illegally, including having court documents served or ‘thrown at him’ within the Supreme Court. Once again there is no evidence before the Court of such, and the Court is also of the view that such is not relevant to these proceedings. The applicant in this matter is not an agent or affiliate of the Liquidators, and the application is brought against Mr Cutts in his personal capacity not as Costanoza. The application itself is an appeal to set aside a Sequestration Order of a Registrar, and such is not an invitation for this Court to embark upon an investigation of misleading and deceptive practices and a breach of duty by the Liquidators.
113. In the absence of any evidence of a valid cross-claim and the institution any legal proceedings against the Liquidators, the Court does not believe this is a sufficient cause to not issue a Sequestration Order.

Grounds 4-7: power of a Registrar

114. Grounds 4-7 of the Review Application before the Court can be dealt with collectively as each relates to Mr Cutts claiming a Registrar, or a Magistrate does not have the power to issue a Sequestration Order or exercise judicial authority over a man or a woman. Mr Cutts does not expand upon these submissions the Cutts 2017 Affidavit. The Deputy Commissioner again felt it unnecessary to address this ground, though noted the comments made by this Court in an interlocutory matter for these proceedings whereby it was noted the application for review before the Court is a hearing heard afresh: *Cutts (No.3)* at [17]-[21] per Judge Lucev.

115. Grounds 4 and 5 are irrelevant. At no time has Mr Cutts appeared before a Magistrate in the District Court or in this Court, on all occasions the presiding officer was a Judge or a Registrar. The Court need not address this ground it being sufficient to refer to s.157 of the *Evidence Act 1995 (Cth)*:

“Evidence of a public document that is a judgment, act or other process of an Australian court or a foreign court, or that is a document lodged with an Australian court or a foreign court, may be adduced by producing a document that purports to be a copy of the public document and that:

- (a) is proved to be an examined copy; or*
- (b) purports to be sealed with the seal of that court; or*
- (c) purports to be signed by a judge, magistrate, registrar or other proper officer of that court.”*

The Deputy Commissioner has produced a copy of the Judgment Debt carrying the seal of the District Court, and that is sufficient for the purposes of these proceedings as proof of the debt owed by Mr Cutts.

116. Mr Cutts appears to claim in grounds 6 and 7 that the Sequestration Order issued by the Registrar is an invalid exercise of power, and in doing so refers to the remarks of Kitto J in *R v Davidson* (1954) 90 CLR 353; (1954) 17 ABC 90; [1954] ALR 877 at 380:

A Registrar is not a court officer ... He is an officer of the executive government, that being so it is constitutionally impossible to invest him with any form of Judicial power.

117. A Registrar of this Court does have the power to issue a Sequestration Order, and adopts the observations in *Webb* at [26] per Judge Wilson as follows:

26. The reasoning that best expresses the legal determination of this ground may be stated in the following manner –

- a) the Act is the source of the power of the Federal Circuit Court of Australia (“FCCA”) to make a sequestration order;*
- b) the Federal Circuit Court of Australia Act permits certain powers conferred upon judges of the FCCA to be exercised*

by a registrar of the FCCA, including powers prescribed by the rules; and

c) item 9 of schedule 1 of the rules provides that the power to make a sequestration order against the estate of the debtor is a power of the FCCA that may be exercised by a registrar.

118. To expand upon these, as His Honour did in *Webb*, the Court notes:

- a) a Registrar of this Court may be delegated certain powers vested to this Court, and the exercise of those delegated powers is taken to be, for all purposes, the exercise of power as if it were a Judge of this Court: *FCCA Act* ss.102(2) and 103;
- b) the power to issue a sequestration order is expressly granted to a Registrar of this Court pursuant to *FCCA Act* s.102(1), *FCC Bankruptcy Rules* r.2.02(1)(a) and Sch.1 Pt.1 It.9, specifically the power to make a sequestration order against the estate of a debtor as provided under s.52(1) of the *Bankruptcy Act*;
- c) the analogous provision of the *Federal Court of Australia Act 1976* (Cth), s.35A was considered in *Cheesman v Waters & Attorney-General (Cth)* (1997) 77 FCR 221; (1997) 148 ALR 21 (“*Cheesman*”), FCR at 229 per Hill, Heerey, Sundberg JJ held the making of a sequestration order was a routine function that simply involved the assessment of non-compliance with a bankruptcy notice, issue and service of the Creditor’s Petition and lastly that the satisfaction of requirements of the *Bankruptcy Act* for issuing a sequestration order, and such was not a judicial function of a kind that is inherently incapable of valid delegation to a non-judicial officer; and
- d) in *Williamson* at [32] per Corboy J:

...The scheme created by the 1966 Bankruptcy Act and the FCC Act by which a registrar of the Federal Circuit Court is empowered to make orders in bankruptcy proceedings, including a sequestration order, is based on the reasoning of the High Court in Harris v Caladine. The exercise of powers by registrars is at the direction of the Federal Circuit Court and its judges (through rules made by the Court and at the

direction of the Chief Judge) and is subject to review by way of a hearing de novo.

119. To the extent Mr Cutts asserted that a Registrar is not a judicial officer of the Court he is correct, however that is not of itself a ground for setting aside the Sequestration Order as the Registrar is clearly granted the power to issue such by both the Parliament and this Court. The Court notes it was reasoned in *Cheesman* that a Registrar's Sequestration Order was subject to a complete right of rehearing *de novo* before a judge, as it is at present, and as such there was no invalid exercise of judicial power.
120. The Court again finds these grounds are insufficient to set aside the Sequestration Order.

Ground 8- Assistance to a layman

121. Mr Cutts final ground of review asks the Court to 'evaluate the facts present, and assist a layman.' It is unnecessary to discuss at length the leeway this Court has extended to Mr Cutts throughout these proceedings: see *Cutts (No 1)*; *Cutts (No 2)* and *(Cutts No 3)*, particularly where circumstances have arisen whereby other judges have, correctly so, regarded many of the claims and submissions made by Mr Cutts in his affidavits and at hearings as 'pseudo legal gibberish,' 'nonsense,' and 'gobbledygook': *Smadu v Stone* [2016] WASC 80 ("*Smadu*") at [10], [11] and [13] per Le Miere J; *Deputy Commissioner Of Taxation v Casley* [2017] WASC 161 ("*Casley*") at [15] per Le Miere J. In the present circumstances, a contextual response must be taken when assessing the extent to which the Court may assist the unrepresented Mr Cutts, particularly where he in some respects intentionally asserts meritless arguments and legal constructs.
122. In *Jones (Bankrupt), in the matter of Jones v Porter (Trustee)* [2015] FCA 644 at [21], [33] to [34] per Katzmann J:

21... But the applicant is unrepresented. It may be expected that he might not know how to express his grievances in a way that conforms to the Court's requirements ...

33. The FCCR are designed to assist the just, efficient and economical resolution of proceedings: r 1.03(1). But the right balance needs to be struck. It is no accident that the Rules give

pre-eminent position to the adjective 'just'. The just resolution of proceedings includes adherence to due process. Sometimes applications appear to be baseless but, upon close examination, there is a good point. The good point might easily be overlooked when efficiency becomes the overriding consideration...

34. *It is salutary to recall what was said in Wentworth v Rogers (No 5) (1996) 6 NSWLR 534 at 536:*

[T]he appellant being a litigant now appearing in person, care must be taken to ensure that this significant disadvantage does not deprive her of the opportunity to have her claim, if any, determined according to law. Persons unfamiliar with the rules of pleading and the technicalities which surround the drafting of a statement of claim in adequate and permissible legal form are inevitably, if unrepresented, at a disadvantage. Courts should approach the peremptory termination of the litigation with special care to ensure that, within the possibly ill expressed and unstructured statement of the legal claim sought to be ventilated, there is no viable cause of Action which, with appropriate amendment of the pleading and a little assistance from the Court, could be put into proper form ...

123. The Court approached these proceedings with a clear mind to ensure Mr Cutts was afforded a fair and just opportunity to present his case. When addressing the counterclaim of Mr Cutts as stated in ground 3, the Court expressed to Mr Cutts it required him to explain how the actions of the Liquidator were relevant to the claim before this Court, furthermore ensuring that even where claims are so ‘incompetently drafted,’ the Court should not justify treating this ground as if it had no merit and simply strike it out: *Boglari v Coadys (A Firm)* [2009] FCA 1398; (2009) 7 ABC(NS) 553 at [16] per Gray J.
124. At the commencement of the hearing on 25 January 2018 the Court flagged to the Deputy Commissioner there appeared to be some confusion from the material before the Court such as to indicate a possibility of Mr Cutts having accrued ‘tax credits’ in excess of the amount owed, or at the least as a set-off against some of the amount owed. The Court adjourned to allow the Deputy Commissioner to make inquiries and seek instructions on this question, and when the Court resumed the Deputy Commissioner explained the confusion. While it

emerged there were no tax credits, the Court was astute to the possibility of error and raised any issues it saw fit.

125. While this does not resemble what is considered a ground of review, it was necessary to give consideration to this point as it was raised in the Review Application.

The ‘strawman’ theory

126. Throughout the proceedings Mr Cutts appeared to adopt a form of legal argument referred to as ‘strawman theory’ or ‘Organised Pseudo-legal Commercial Argument.’ A comprehensive and exhaustive description of this concept can be found in *Meads v Meads* (2012) ABQB 571 (“*Meads*”), a 188 page judgment of Rooke ACJ, whereby the many types of arguments of pseudo-legal litigants was traversed. In *Casley* at [15] per Le Miere J the strawman theory was succinctly described as follows:

The theory holds that an individual has two personas, one of himself as a real flesh and blood human being and the other, a separate legal personality who is the straw man. The idea is that an individual's debts, liabilities, taxes and legal responsibilities belong to the straw man rather than the physical individual who incurred those obligations, conveniently allowing one to escape their debts and responsibilities.

127. The Court observes each of Mr Cutts’ affidavits filed in these proceedings, and his conduct at the hearings of this matter, carries notable characteristics of the “strawman theory” arguments. To demonstrate such the following portion of the transcript of hearing from 25 January 2018 is reproduced:

HIS HONOUR: Yes, thank you, Mr de Bes. And Mr Cutts, you appear on your own behalf?

MR M.J. CUTTS: Yes. But my name is Maurice, sir.

HIS HONOUR: Yes, all right.

MR CUTTS: I’m not a mister.

HIS HONOUR: As I observed on the last occasion, Mr Cutts, in the absence of any formal documentation indicating to the

contrary, the court will continue to call you Mr Cutts. Take a seat, please.

...

HIS HONOUR: Yes. All right. Mr Cutts, was there something else that you wish to say which might be relevant at this stage?

MR CUTTS: Yes, sir. Before I grant my conditional consent with these proceedings, how does the court perceive me as an entity?

HIS HONOUR: Mr Cutts, the court perceives you as a party to this litigation. If you're going to enter into the debate about whether or not you are – or there's two separate entities, I can indicate to you that I think there's authority binding this court which indicates that that's not a good argument. But for present purposes you are simply a party to litigation before this court as an individual person.

MR CUTTS: As an individual person?

HIS HONOUR: Yes.

MR CUTTS: Meaning I'm a flesh and blood man?

HIS HONOUR: Well, Mr Cutts, if you want to make some submissions ultimately that the court ought to perceive you in a particular way you can do that, but it's not your role or your entitlement to interrogate – which is putting it highly – the court. You're perfectly entitled to put before the court such submissions in relation to such matters as are relevant or which might be relevant to your case, and the court will consider those, but it's not appropriate that you stand and – as I say, seek to interrogate the court. So what the court now proposes to do is to adjourn until such time as Mr de Bes has got instructions with respect to the tax credits issue. I will adjourn.

128. Another such example, explained in *Meads* at [379]-[381] and [388]-[410] is in *Cutts 2017 Affidavit*, :

So If the Tax office wants me to pay tax, then presumably there is a contract somewhere which I have signed, in full knowledge of what I was doing, that is without having been subjected to fraud and misrepresentation, under which I have agreed to pay the tax office said tax. Can the tax office please produce that contract, and can the tax office please produce the terms and conditions, in particular those related to terminating the contract. To the best of

my knowledge, I have never sign any such contract, and never been shown the terms and conditions, and in particular, have never been alerted to any terms and conditions which may have stopped me from signing the contract. I do not wish to pay the tax office anymore.

129. To the extent Mr Cutts is seeking to use the pseudo-legal ‘strawman’ argument it is sufficient to refer to the remarks in *Re Magistrate M M Flynn; ex parte McJannett* [2013] WASC 372 at [15] per McKechnie J:

[15] Finally, judges administer justice according to law. They are not required to expend judicial time, a scarce public resource, on applications that have no legal foundation and involve a deluded understanding of the law,

and echoed by Le Miere J at [5] in *Smadu*:

The appeal is grounded primarily on the notion that the appellant has separate legal personalities... The appellant says that the wrong legal person was charged and raises various arguments which appear to be based on the separate legal personality fiction. This is all nonsense. It would be a waste of judicial resources and an affront to the dignity of this court to answer the pseudolegal arguments raised by the appeal in anything but a summary way.

130. In summary, the ‘strawman’ argument purported to be advanced by Mr Cutts is unfounded.

Cutts 2017 Affidavit Grounds 10-13

131. In Cutts 2017 Affidavit the following four ‘grounds’ were stated:

10. Motion to Dismiss

11. Order to Dismiss

12. Application for Damages

13. Civil Tort

132. The Deputy Commissioner did not address these grounds 12 to 15 of the Review Application, or Cutts 2017 Affidavit, on the basis that as these are not ‘grounds’ of opposition, but relief sought by Mr Cutts. The application before the Court in this proceeding is an appeal of a decision of a Registrar, the Court can only affirm the Sequestration Order of the Registrar, or set it aside.

133. These are not grounds of opposition as stated by the Deputy Commissioner, and Mr Cutts seeking an ‘Application for Damages’ and ‘Civil Tort’ are not within the jurisdiction of this Court under the application as it stands. Insofar as Mr Cutts may be suggesting he be awarded damages, and the Liquidators or Deputy Commissioner be found liable for a civil tort, the Court was not required to consider this in. Furthermore, for the reasons expressed above, no evidence before the Court was sufficient to demonstrate the Deputy Commissioner had acted deceitfully or breached a duty of care to Mr Cutts.
134. Accordingly, these grounds are irrelevant and, having found no other reasonable ground to set aside the Sequestration Order the ‘motion’ and ‘application’ to dismiss fail, and ‘damages’ and ‘civil wrong,’ are extraneous to the matter at present before this Court.

Conclusion and orders

135. The Court has concluded that the application to review the exercise of the power to sequester the estate of Mr Cutts should be dismissed and the orders of the Registrar should be confirmed. There will be the usual order as to costs in such circumstances.

I certify that the preceding one hundred and thirty-five (135) paragraphs are a true copy of the reasons for judgment of Judge Antoni Lucev

Associate:

Date: 10 October 2019