FEDERAL MAGISTRATES COURT OF AUSTRALIA

CONDON v WILSON *[2012] FMCA 1069*

BANKRUPTCY – Joinder of bankrupt to application by trustee in bankruptcy to distribute dividends to creditors under s.146 of the *Bankruptcy Act 1966* (Cth).

Bankruptcy Act 1966 (Cth), s.146
Federal Magistrates Court Act 1999 (Cth), s.55
Federal Magistrates Court Rules 2001 (Cth), r.11.01, 11.03

Harrison v Tsamasis [2008] FCA 1313
Official Receiver v Whent [2010] FMCA 896
Official Trustee in Bankruptcy v Thor [2006] FMCA 1637
Owners Corporation PS334337A v Hoiles [2012] FMCA 218
Rees v Stubberfield [2001] FMCA 72

Applicant:	SCHON GREGORY CONDON
Respondent:	JOHN WILSON
File Number:	SYG 2130 of 2012
Judgment of:	Barnes FM
Hearing date:	2 November 2012
Delivered at:	Sydney
Delivered on:	2 November 2012

REPRESENTATION

Solicitors for the Applicant:	Sally Nash & Co
Respondent:	In person

ORDERS

(1) John Wilson be joined as a respondent to these proceedings.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT SYDNEY

SYG 2130 of 2012

SCHON GREGORY CONDON
Applicant

And

JOHN WILSON
Respondent

REASONS FOR JUDGMENT

(Revised from transcript)

1. Dr Wilson has made an oral application to be joined as a respondent in proceedings commenced by Mr Condon as trustee of Dr Wilson's bankrupt estate. Rule 11.01(1) of the *Federal Magistrates Court Rules 2001* (Cth) provides that:

> *Subject to any order of the Court, a person whose participation is necessary for the Court to completely and finally determine all matters in dispute in a proceeding must be included as a party to the proceedings.*

2. Under r.11.03(1) a person may apply to the Court to be included as a party to the proceeding.

3. This is an application by Dr Wilson's trustee in bankruptcy for an order under s.146 of the *Bankruptcy Act 1966* (Cth). The Trustee seeks an order under s.146 to enable him to distribute dividends to creditors despite the fact that Dr Wilson has failed to file a statement of affairs. Originally no respondent was named in the application. When the matter was first before the Court, I indicated to the solicitor for the

Trustee that, in my view, the proceedings should be brought to the attention of Dr Wilson. Dr Wilson was served with notice of the proceedings. He has appeared today. He has indicated orally that he seeks to be included as a party, notwithstanding that at the same time he tells the Court that this Court has no jurisdiction and that he does not recognise the jurisdiction of this Court. It appears that he takes issue not with the specifics of the application under s.146, but rather claims more generally that he does not recognise his bankruptcy. He appears to be of the view that it is necessary that there be a trial by jury.

4. Dr Wilson has filed and relies on three affidavits. Under the r.11.03 of the Federal Magistrates Court Rules any such affidavit should state his interest in the proceeding or any matter in dispute and the orders, if any, that he will seek. While such issues are not clearly addressed, it is apparent in this case that the interest that Dr Wilson has in the proceedings (notwithstanding that he does not see it in those terms) is that he is the bankrupt whose estate the trustee in bankruptcy (the applicant in these proceedings) is administering.

5. The solicitor for the Trustee opposes the joining of Dr Wilson to the proceedings on the basis that he is not a necessary party. It is of concern that, as the applicant contends, Dr Wilson appears to see these proceedings as an opportunity to canvass matters that are well beyond the bounds of the proceedings, which are strictly limited to the application under s.146 of the Bankruptcy Act. This is not the opportunity for ventilation of such broader issues.

6. Nonetheless, I have borne in mind that in all of the reported cases that were brought to my attention in relation to applications under s.146 of the Bankruptcy Act when this matter was first before the Court, the bankrupt has been named as a party to the proceedings. In *Rees v Stubberfield* [2001] FMCA 72 the bankrupt was a party and, it appears from the judgment, participated in the hearing (also see *Harrison v Tsamasis* [2008] FCA 1313; *Official Trustee in Bankruptcy v Thor* [2006] FMCA 1637; *Owners Corporation PS334337A v Hoiles* [2012] FMCA 218; and *Official Receiver v Whent* [2010] FMCA 896). I note the approach taken by Lucev FM in *Official Receiver v Whent* in which his Honour declined to dispense with service of the application on the bankrupt.

7. I am not persuaded that the approach of Lucev FM in requiring the involvement of the bankrupt in proceedings of this nature was clearly wrong. In my view, as a matter of comity I should follow the approach taken by Lucev FM (also see in particular *Harrison v Tsamasis* at [7]-[13]).

8. In relation to the conduct of these proceedings, I have borne in mind the provisions of s.55 of the *Federal Magistrates Court Act 1999* (Cth) which entitles this Court to give directions about limiting the time for oral argument for proceedings before this Court. Notwithstanding that Dr Wilson (who continues to interrupt the delivery of my judgment by interjecting "*no jurors, no jurors*") may see this as an opportunity to pursue issues outside the bounds of s.146 of the Bankruptcy Act, I am of the view that it is proper that Dr Wilson be joined as a party to these proceedings. I recognise that, as the applicant submitted, this may lead to Dr Wilson having rights as a party. So be it.

I certify that the preceding eight (8) paragraphs are a true copy of the reasons for judgment of Barnes FM.

Date: 16 November 2012