FEDERAL MAGISTRATES COURT OF AUSTRALIA

CONDON v WILSON (No.2) *[2012] FMCA 1070*

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

Bankruptcy Act 1966 (Cth), ss.30, 54, 146
Federal Magistrates Court Act 1999 (Cth)

Condon v Wilson [2012] FMCA 1069
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) The distribution of dividends to those creditors who have proved their debts in the bankrupt estate of John Wilson proceed in accordance with Division 5 of Part IV of the *Bankruptcy Act, 1966*, as if the bankrupt had filed a Statement of Affairs and that creditors had been stated to be those creditors in it pursuant to Section 146 of the *Bankruptcy Act, 1966*, as amended.

(2) The costs of this application be costs in the estate.

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. This is an application filed by the trustee in bankruptcy of the bankrupt estate of John Wilson on 28 September 2012. The Trustee seeks an order pursuant to s.146 of the *Bankruptcy Act 1966* (Cth) that the distribution of dividends to those creditors who have proved debts in the bankrupt estate proceed in accordance with Division 5 of Part IV of the Bankruptcy Act as if the bankrupt had filed a statement of affairs and the creditors had been stated to be those creditors in it.

2. The application was filed on the basis that there was no other necessary party. Consistent with the approach taken in this Court and the Federal Court I ordered that Dr Wilson be joined as the respondent to these proceedings (see *Condon v Wilson* [2012] FMCA 1069). He has had the opportunity to make submissions in relation to this matter and has filed three affidavits.

3. Section 146 of the Bankruptcy Act provides:

> *Where a bankrupt has failed to file a statement of his or her affairs as required by this Act, the Court may, on the application of the trustee, upon such terms as it thinks fit, order that distribution of dividends amongst the creditors who have proved their debts shall proceed in accordance with this Division as if the bankrupt had filed a statement of his or her affairs and those creditors had been stated to be creditors in it.*

4. Before proceeding to deal with the substantive application, I note that in submissions and also in his affidavit of 29 October 2012 (which, while not in admissible form, I had regard to as submissions) Dr Wilson appears to assert that this Court has no jurisdiction. It appears that on this basis he does not recognise that a sequestration order was made against him in this Court on 3 April 2007 or the jurisdiction of this Court to make orders under s.146 of the Bankruptcy Act.

5. In support of that proposition, Dr Wilson refers not to the provisions in the Bankruptcy Act which give this Court jurisdiction, but rather appears to take issue with the appointments of all judges, including the judges of the Federal Court as well as this Court, on the basis that none of the judges are legitimate judges and their appointments are frauds. He also appears to contend that he has an automatic right to trial by jury. I note that s.30(3) of the Bankruptcy Act does not refer to this Court. Nor is there any provision in the *Federal Magistrates Court Act 1999* (Cth) such as to support a claim in relation to trial by jury.

6. Beyond this, Dr Wilson's general contentions are contentions that he apparently seeks to maintain in relation to all courts and all proceedings. It has not been established that this Court does not have jurisdiction to hear the matter.

7. In relation to the substantive application, I have had regard to *Rees v Stubberfield* [2001] FMCA 72, notwithstanding Dr Wilson's assertion that this decision of the Federal Court was a "*supposed ruling*" by a "*supposed judge*" of "*no weight*". It is a decision of the Federal Court on a matter directly in point (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).

8. In *Rees v Stubberfield* Spender J considered the principles applicable under s.146 of the Bankruptcy Act in circumstances not dissimilar to those in this case, insofar as it was clear that the bankrupt sought to raise issues that went well beyond the scope of a s.146 application. As Spender J pointed out (at [4]), in relation to such concerns (in particular a concern as to the validity of any sequestration order), the proceedings before him were not an application to annul the bankruptcy or a dispute as to the admission as proved debts of debts upon which the Trustee was prepared to act. The same may be said in this case, insofar as Dr Wilson raises issues about matters such as his solvency and ownership of property.

9. The only proceeding before the Court is the application under s.146 of the Bankruptcy Act. As in *Rees v Stubberfield*, the issue is whether, given the bankrupt's failure to file a statement of affairs, the Court should make the orders for which s.146 of the Bankruptcy Act provides.

10. Hence the first question is whether there has been a failure to file a statement of affairs. It was not disputed by Dr Wilson that as attested to in the affidavit of Mr Condon sworn on 26 September 2012 he had failed to file a statement of affairs (perhaps not surprisingly in circumstances where he refuses to recognise that he is bankrupt, as he continued to interject at various stages in the proceedings).

11. There is evidence before the Court that the Official Trustee, who was Dr Wilson's original trustee in bankruptcy, wrote to Dr Wilson on 11 April 2007 seeking a statement of affairs. The Official Trustee wrote again on 23 April 2007. In May 2007 Dr Wilson was again required to file a statement of affairs. Further correspondence was sent on 24 April 2008 seeking a statement of affairs. In other words, Dr Wilson has been notified on a number of occasions of his obligation to complete and file a statement of affairs with the official receiver and to give a copy to the trustee of his bankrupt estate. Dr Wilson did not file a statement of affairs.

12. In April 2008 the Official Trustee wrote to the ITSA Fraud Investigation Section referring an alleged breach by Dr Wilson of s.54 of the Bankruptcy Act for prosecution. The evidence in relation to that issue is not direct evidence. For present purposes it suffices to say that

a prosecution did not proceed. Nonetheless it is clear that no statement of affairs was filed and Dr Wilson did not indicate today that he had filed a statement of affairs or that he intended to do so. Indeed, there is evidence from Mr Condon that at a meeting of 26 June 2012 Dr Wilson stated that he did not accept that he was a bankrupt and accordingly was of the view that he was not bound by the Bankruptcy Act.

13. I am satisfied that no statement of affairs has been filed. I am also satisfied that there has been a deliberate decision by Dr Wilson not to file a statement of affairs. I have had regard to the attempts by the Trustee to obtain a statement of affairs and the response, insofar as there was a response, by the bankrupt to the Trustee's requests.

14. There is also evidence before me from Mr Condon that the bankruptcy administration is all but complete, but for the distribution of a dividend to creditors. In this case the Trustee gives evidence, and there is nothing to the contrary before me, that all reasonable attempts have been made to identify the creditors of the bankrupt estate and to identify the known assets of the bankrupt estate in the absence of a statement of affairs. Details of such creditors are set out in Mr Condon's affidavit. Shortly before filing these proceedings, a search was conducted of the National Personal Insolvency Index which indicated that no statement of affairs had been filed.

15. In these circumstances the Trustee wishes to proceed under s.146 of the Bankruptcy Act to make a distribution to creditors. I am satisfied that the delay in filing a statement of affairs is causing prejudice to creditors because the Trustee cannot distribute the moneys received and the administration of the estate cannot be completed (see *Rees v Stubberfield*).

16. In all the circumstances I am satisfied that it is appropriate to make the order sought by the Trustee in these proceedings. It is appropriate that the costs of the application be paid from the estate.

I certify that the preceding sixteen (16) paragraphs are a true copy of the reasons for judgment of Barnes FM.

Date: 16 November 2012