

CATCHWORDS

BANKRUPTCY - contempt - warrant issued - no point of principle.

Bankruptcy Act 1966 (Cth) - s 30,

Bankruptcy Rules - r 176,

RE ALAN GEORGE SKYRING; EX PARTE PAUL DESMOND SWEENEY
QG 7203 OF 1997

DRUMMOND J
BRISBANE
12 MAY 1997

IN THE FEDERAL COURT OF AUSTRALIA No QG 7203 of 1997
GENERAL DIVISION
BANKRUPTCY DISTRICT OF THE
STATE OF QUEENSLAND

RE: ALAN GEORGE SKYRING

Debtor

EX PARTE: PAUL DESMOND SWEENEY

MINUTES OF ORDERS

CORAM: Drummond J

DATE: 12 May 1997

PLACE: Brisbane

THE COURT ORDERS THAT:

1. Mr Skyring be committed to prison for contempt of court constituted by his failure to comply with the Deputy District Registrar's requirement contained in the Deputy District Registrar's summons of 20 February 1997 to produce the bank statements sought by paragraph 1 of the summons, namely, Mr Skyring's Commonwealth Bank passbooks, the documents sought by paragraph 5 of the summons and the documents sought by paragraph 9 of the summons, namely, the full set of invoices issued by Mr Skyring for moneys due to him in respect of income earned by him in the five years prior to 20 February 1997.
2. The warrant for committal lie in the office of the District Registrar of this Court for a period of 21 days from today and not be executed if Mr Skyring produces to the District Registrar of this Court by that time the documents required to be produced.
3. The Trustee have all the costs of and incidental to his application for contempt, to be taxed on a solicitor and client basis.

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

IN THE FEDERAL COURT OF AUSTRALIA No QG 7203 of 1997
GENERAL DIVISION
BANKRUPTCY DISTRICT OF THE
STATE OF QUEENSLAND

RE: ALAN GEORGE SKYRING

Debtor

EX PARTE: PAUL DESMOND SWEENEY

Trustee in Bankruptcy

CORAM: Drummond J

DATE: 12 May 1997

PLACE: Brisbane

REASONS FOR JUDGMENT

Mr Skyring's Trustee in bankruptcy seeks an order that he be committed for contempt on a number of grounds pursuant to s 30(5)(a) the *Bankruptcy Act 1966 (Cth)*. The Trustee presses the application only on grounds (a) and (b) in the application.

As to ground (a), by paragraph 1 of a summons issued on 20 February 1997 on application by the Trustee, the Deputy District Registrar of this Court called on Mr Skyring to produce all bank statements, deposit books, cheque books, passbooks, correspondence and any other paperwritings relating to any bank, credit union, building society or finance company accounts conducted by him or in his name in the last five years; the documents were required to be produced at a hearing which Mr Skyring was required to attend for the purpose of being examined in relation to his bankruptcy and which was held on 25 March 1997.

On that day the following exchange took place between Mr Skyring, the solicitor for the Trustee and the Deputy District Registrar:

“Okay, can you look at the summons please?Yes.

Do you have documents which fall within category number 1?Bank statements; there are some.”

And then Mr Skyring's answer was in part indistinct and he continued:

“...books, actually pass books. Yes, there is some correspondence with the Commonwealth Bank which is my home bank. Indeed, I raised this matter with them in respect of the form of payment to do with these matters. I am not - I have no Credit Union - I am not a member of a Credit Union and I have no dealings with any building society or finance company.

So I take it the only bank you have any accounts with is the Commonwealth Bank?Yes.”

There were some further questions about that account.

Paragraph 5 of the same summons the Deputy District Registrar required Mr Skyring to produce at the hearing all documents of whatsoever nature relating to his income and capital receipts during the last five years, including but not limited to all receipts, invoices, wage or salary receipts and any other documents concerning moneys paid to him by any employer, customer or client (including but not limited to Russell & Sons, Edmondbrook Pty Ltd and Austral Mining Pty Ltd).

In relation to that paragraph of the summons, this exchange took place at the hearing before the Deputy District Registrar on 25 March:

“Now category number 5, you were asked to produce documents relating to your income and capital receipts during the last five years including but not limited to receipts, invoices, wage and salary receipts and so on concerning moneys paid to you by any employer, customer or client including but not limited to Russell and Sons, Edmond Brook Pty Limited and Austral Mining Pty Limited. Do you have any such documents?I do keep invoices. I've got a fairly complete record to all the work I've done but again its okay, there are numbers on them but again the same question arises in respect while there's numbers on them there's a scale factor about five is involved here in respect to what we are talking in terms of official payments.

So you have the documents falling in the category?I've got a full set of invoices on all my income.

And where are they kept?At the moment I keep them at home.

At 9 Alkina Street?Yes.”

By paragraph 9 of the summons, Mr Skyring was required by the Deputy District Registrar to produce at the hearing I have referred to all documents and correspondence relating to any debts which were owing to him by any entity or have been owing to him during the last three years.

At the hearing this exchange took place in relation to documents in that category:

“Category number 9 - you were asked to produce documents relating to any debts which are owing to you by any entity or have been owing to you during the last three years. Do you have any documents relating to such debts?Well, I'd say the only - the only debts I've got, there's a couple of invoices that are still outstanding that haven't been paid, but that's - there's no other ---

Okay. What are the details of those invoices? It's - there's a sizeable effort still on the Edmondbrook effort.

Who owes the money? That was from my design services on that - on that project that was mentioned up in item 5.

So who owes you the money? Well, I guess it'd be Russells - well, it'd - it'd be - well, Russell and Sons as the proprietors. I send my accounts to them.

Russells - and how much is that, can you recall? Oh, there's a fair - there's a fair whack. I haven't - I haven't - I must say I haven't - I haven't looked at it lately. I - I've got the documents here. I can't tell you just off the cuff.

Well, just as a rough idea, what is 'a fair whack'? Oh, I suppose it'd be 10 grand - might be a bit more. That is in paper money, that is."

As Mr Skyring observed in the course of these answers relating to the document sought by paragraph 9 of the summons, they overlap with the documents sought by paragraph 5 of the summons to which I have also referred.

It is apparent from Mr Skyring's answers to the questions put at the hearing before the Deputy District Registrar that he had documents in each of these three classes, either at court or in his possession. But it is also apparent from what took place a little later at the hearing that, on the basis of what Mr Skyring regards as a point of principle, he declined to produce those documents in response to the Deputy District Registrar's requisition in the summons. This exchange took place:

"Mr Skyring, just let me finish on this issue first. You have documents falling within these categories in the summons? Some of them. As I've said, yes, some.

And I take it that you refuse to produce any of those to the Court? The question - until such time as we can get agreement in terms of what's the basis of values we're talking, it seems to me improper that I produce them; not that I won't. It's improper.

So, do I take it that, until such time as you get some determination that you want, you refuse to produce the documents? It's not that I - as a thing on my own. I mean, this is a general thing affecting society, although people don't seem to realise what's involved here. It's not that I - it's not - it's a thing to me, like, I'm something bloody peculiar which is what you lot are trying to make out.

Do I take it then that until this issue that you have is determined, you refuse to produce the documents to the Court? It is - I maintain the stance: it is improper for me to do so, because there's - I make my point, as I said in that submission. This is the crucial point that is required for bankruptcy proceedings to even start: determination of the final judgment determining the critical issue. The critical issue is this legal tender question, and that has never been decided."

As to ground (b) of the application for contempt, it is alleged that Mr Skyring is in contempt because, at the examination to which I have referred, he refused to answer a question which

he was directed to answer by the Deputy District Registrar relating to the location of the certificate of title for the property situated at 10 Lincoln Street, Wilston in the State of Queensland. This occurred in relation to that matter:

“Now, the property at 10 Lincoln Street, Wilston, in the summons in category number 8 you are asked to produce documents relating to that property. Do you have any of those documents? I have in fact forwarded - forwarded copies of the relevant items to your outfit -”

I interpolate that he is speaking to the solicitor for the Trustee -

“in respect of a complementary action, but this is in fact a - a freehold title which I'd - which I'd inherited from my mother unencumbered.

Do you have the title document? Yes.

Where is that? Never mind.

Where is that? Never you mind where it is.”

By the solicitor:

“Mr Registrar, could I please ask you to direct the witness to answer the question.”

By the Deputy District Registrar:

“Yes, you have to answer that question, Mr Skyring? I've got it.”

Mr Skyring, in response to the Deputy District Registrar's direction to answer the question as to the whereabouts of the certificate of title, refused to disclose that information: all he did in response to the direction was repeat what he had earlier said about his having it. I do not regard what Mr Skyring said in this respect as amounting to an answer to the question he was directed to answer. It is clear from what followed that Mr Skyring had no intention of providing the information that he was directed to provide as to the whereabouts of the title deed or of producing that deed at the hearing: by paragraph 8 of the summons of 20 February, he was required to produce at the hearing, among other things, “all documents ... relating to the property situated at 10 Lincoln Street ...”.

By the solicitor:

“And where do you keep it? Planted.

Pardon? Planted in a place known to me.

And where is that? Well, it's a place known to me.”

And then towards the end of the examination this occurred:

“Now, Mr Skyring, the title deed for Wilston? Yes.

Do you want to tell me where you have got it planted? I'm not prepared to do that until such time as a view is given on the overall legality of these proceedings which I say are quite

improper. You say they're estopped. My point is that the crucial effort in respect to this form of payment has not been answered. It wasn't in 1987 and it still hasn't been now. And I say it is improper for these matters to go further.”

The Trustee, on 27 March, a couple of days after the examination, wrote to Mr Skyring in these terms:

“I note that the summons served on you in respect of your public examination on 25 March 1997 required you to produce to the court certain documents as detailed in the summons. I further note that you failed to produce those documents despite acknowledging that you had in your possession documents to which the summons related. If those documents and other information requested by this letter are not delivered to me on or before 4.00 pm on Monday 7 April 1997, I will apply to the Federal Court of Australia for an order holding you in contempt of that court and request the court to impose such penalty as that court considers appropriate.”

The Trustee says, and it is not disputed, that despite this, Mr Skyring has failed to produce to him the documents demanded and, in particular, the documents in the various categories to which I have just referred.

Mr Skyring made it clear in his submissions to me what is clear enough from what he said to the Deputy District Registrar on 25 March 1997. He says that there is no valid bankruptcy because there was no valid judgment debt owing by him. At the heart of this submission is the contention that it is beyond the power of the Commonwealth Parliament to pass a law making anything other than gold or silver legal tender, and the further contention by Mr Skyring that, apart from Deane J's judgment, reported in (1985) 59 ALJR 561, there has been no determination on this point against him.

Mr Skyring says that Deane J's judgment is not effective to determine what he on occasion has referred to as “the currency point” because of the failure of his Honour to give any reasons for his conclusion that there is no substance in the argument advanced by Mr Skyring that there is a constitutional bar against the issue by the Commonwealth of paper money as legal tender.

Mr Skyring says that he has brought proceedings in the High Court to challenge the sequestration order made against him in December last by Spender J. But when I heard and dismissed an application brought by Mr Skyring earlier this year on 2 April, an application in which Mr Skyring attacked the sequestration order, counsel for the Trustee referred me to an affidavit by the solicitor for the Trustee in which the solicitor deposed to being advised by the Deputy Registrar of the High Court on 12 March last that Mr Skyring has been declared a vexatious litigant in the High Court; that he has not been granted leave to commence any matters in the High Court since having been declared vexatious; that documents were delivered by Mr Skyring to the Registry in December 1996, ie, after the sequestration order was made by Spender J, and after Mr Skyring was declared vexatious, but the High Court Registry sent them back to him, and that there were no matters presently before the High Court involving Mr Skyring or awaiting determination and no applications that had been accepted by the High Court Registry for filing.

Contrary to Mr Skyring's submission that it remains open to him to seek a determination of the currency question and thus open to him to challenge the sequestration order in this case,

it is plain beyond all doubt that it is no longer open to Mr Skyring to seek the determination of a court upon that point.

When Spender J made the sequestration order on 9 December 1996, his Honour reviewed at length the many occasions on which Mr Skyring has raised this matter before courts, including this Court, the Supreme Court of Queensland and the High Court of Australia, and on which occasions the courts have rejected the contention at the heart of Mr Skyring's argument today as to why he should not be adjudicated in contempt.

I am satisfied that the rules relating to service of the contempt application have been complied with and that Mr Skyring is beyond reasonable doubt in contempt of court in respect of the matters referred to in paragraphs (a) and (b) of the application for contempt. So far as the matters in paragraph (a) are concerned, they comprise Mr Skyring's failure to produce at the hearing on 25 March 1997 the documents which I have dealt with specifically in the course of these reasons, ie, the bank statements and the invoices relating to his income and they also include the certificate of title to the Lincoln Street property. As to paragraph (a), in so far as it related to this title deed, and as to paragraph (b), the Trustee points out that Mr Skyring's refusal to produce the certificate of title to the Lincoln Street address has not, in fact, impeded the administration of his estate because the Trustee has been able to arrange for the sale and the completion of the sale of that property, but nevertheless presses for a finding that Mr Skyring is in contempt in respect of his refusal to produce the certificate of title and to answer with respect to the whereabouts of that title deed, findings which I have indicated I am prepared to make.

So far as Mr Skyring's refusal to produce the other documents that I have referred to, including information concerning his Commonwealth Bank account and his income receipts, that is a matter which the Trustee submits is impeding the administration of the estate.

Now, under r 176 the *Bankruptcy Rules 1966* continued in force by O 77 the *Federal Court Rules*, the Court is empowered to order the committal of a person to prison for contempt of court and is also empowered to direct that the warrant for committal of the person to prison should lie in the office of the District Registrar for a period specified in the order and not be executed, if the person complies with a condition specified in the direction.

So far as the contempts constituted by Mr Skyring's refusal to produce the certificate of title to the Lincoln Street property and to disclose its whereabouts are concerned, there does not seem to me to be any justification for using the coercive powers of the Court in contempt to imprison Mr Skyring in order to compel him to produce the certificate of title, given that that failure no longer has any impact on the administration of the estate. I would not therefore commit Mr Skyring to prison for that particular contempt. However, his refusal to produce the other documents, for the reason given by him and to which I have referred, is in a different category and it is appropriate that the coercive power of the Court should be exercised by committing Mr Skyring to prison for contempt and by, in effect, leaving it to Mr Skyring to purchase his freedom which he can easily do by complying with the Deputy District Registrar's direction in the summons that he produce the documents in the categories I have referred to.

In view of Mr Skyring's firm determination to maintain the proposition that only gold and silver can be made legal tender in the Commonwealth, it is unlikely that Mr Skyring will accept the fact that he must produce these documents. And it may be that nothing will be served by not making an order which would require Mr Skyring's committal to prison immediately. However, I think it appropriate to give Mr Skyring an opportunity to consider his position, now that he is, for what I believe to be the first time, facing the prospect of imprisonment if he does not comply with the directions of the Deputy District Registrar.

I think it appropriate to give him some time to consider his position and I will therefore order that Mr Skyring be committed to prison for contempt of court constituted by his failure to comply with the Deputy District Registrar's requirement contained in the Deputy District Registrar's summons of 20 February 1997 to produce the bank statements to which I have referred, sought by paragraph 1 of the summons, the documents relating to his income to which I have referred, being documents sought by paragraph 5 of the summons, and the documents relating to debts owed to him to which I have also referred, being documents sought by paragraph 9 of the summons.

I will, as I have indicated, direct that the warrant for committal lie in the office of the District Registrar of this Court for a period of 21 days from today and not be executed if Mr Skyring produces to the District Registrar of this Court by that time the documents I have listed.

I have not made any specific order in relation to the various findings of contempt I had made in respect of the certificate of title. It is appropriate, however, to say that, if they were the only contempts shown, it would be proper to give the Trustee his costs of and incidental to an application to have Mr Skyring dealt with for those particular contempts, with the costs to be taxed on a solicitor and client basis. I am going to order that the Trustee, in any event, have all the costs of and incidental to his application for contempt and I am going to direct that those costs be taxed on a solicitor and client basis.

I certify that this and the preceding 11 pages are a true copy of the reasons for judgment herein of the Honourable Justice Drummond.

Associate:

Date: 12 May 1997

Solicitor for the Trustee in Bankruptcy: Gadens Ridgeway

Mr A G Skyring appeared in person.

Date of hearing: 12 May 1997