NO QUESTION OF PRINCIPAL

IN THE FEDERAL COURT OF AUSTRALIA

QUEENSLAND DISTRICT REGISTRY **QB 4991 of 1996**

BETWEEN: **ALAN GEORGE SKYRING**
APPLICANT

AND: **PAUL DESMOND SWEENEY**
RESPONDENT

JUDGE(S): **SPENDER J**

DATE OF ORDER: **02/12/98**

WHERE MADE: **BRISBANE**

THE COURT ORDERS THAT:

(1) The application is refused.

(2) The applicant pay the respondent's costs, to be taxed if not agreed.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

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PLACE: **BRISBANE**

REASONS FOR JUDGMENT

By an application which was filed on 18 November 1998 Alan George Skyring has sought, amongst other things, an order from the Court that further proceedings brought against him under the *Bankruptcy Act* 1966 by the Australia and New Zealand Banking Group Limited ('ANZ') through its Creditor's Petition No 598 of 1996, amongst other things, the continuation of the public examination of the applicant adjourned on 25 March 1997 to a date to be fixed and now re-listed to be continued on 3 December 1998, be stayed.

While it is headed *"APPLICATION to the COURT",* the note at the foot of the page indicates it is a notice of motion filed by Mr Skyring. Solicitors on behalf of Paul Desmond Sweeney wrote on 13 November to Mr Skyring, and under the heading *"YOUR BANKRUPTCY"*, the letter commenced:

> *"This is to advise that the public examination which took place on 25 March 1997 and which was adjourned to a date to be fixed, has been relisted for hearing on 3 December 1998 at 10.30am."*

Later, the letter said:

> *"As with the previous hearing, the adjourned hearing on 3 December 1998 will take place at the Federal Court of Australia, Level 6, Commonwealth Law Courts Building, 119 North Quay, Brisbane."*

It continued:

> *"We anticipate that your further examination will probably take about one hour but you should ensure that you are available to give evidence between 10.30am and 1.00pm just in case issues arise which require more detailed examination. Furthermore, although the examination is listed to commence at 10.30am, depending on the course of proceedings, there may be a delay before you are required to go into the witness box."*

I infer that it was subsequent to this letter of 13 November 1998 that Mr Skyring's application to this Court of 18 November 1998 was filed.

In support of the application Mr Skyring has filed an affidavit with a large number of annexures. In the course of his oral submissions before me in amplification and support of the written submissions, essentially the contentions by Mr Skyring come down to these: he asserts, as he has on many occasions since the early 1980s, that sections of the *Currency Act* 1909 indicate that there is a constitutional bar to the issue of paper notes; that the judgment of Deane J in *Re Skyring's Application No 2* (1985) 59 ALJR 561 is wrong; that there was not then a final determination of the arguments or issues that Mr Skyring ventilated before his Honour and that the later decision of the Full Court dismissing an appeal from the judgment of Deane J did not have the effect that there was any finality in respect of the judgment.

The difficulty with this submission is that Mr Skyring fails to appreciate that his view of the judgment of Deane J is wrong. Mr Skyring continues to argue that there was not a final determination of the issue of whether there is a barrier against the issue by the Commonwealth of paper money as legal tender. In my judgment it cannot be plainer that the question before Deane J which Mr Skyring wished to argue, was whether the combined effect of a number of sections of the Constitution is to erect a barrier against the issue by the Commonwealth of paper money as legal tender.

In the course of his Honour's reasons his Honour said:

> *"There are, however, two particular matters which emerged in the course of Mr Skyring's oral submissions to which I should make specific reference. These are:*
>
> *1. A submission that the combined effect of a number of sections of the Constitution is to erect a barrier against the issue by the Commonwealth of paper money as legal tender. The sections of the Constitution upon which particular reliance is placed are ss 51(xii), (xiii) and (xvi) and s 115. Mr Skyring also referred to ss 105 and 105A. Additionally, reference was made to the provisions of the* Currency Act *1965 (Cth) dealing with coins. The argument, if accepted, would result in the invalidity of s 36(1) of the* Reserve Bank Act *1959 (Cth) which provides that '*Australian notes are a legal tender throughout Australia*'.*
>
> *2. The basis upon which Mr Skyring seeks relief against "*the Judge of the Federal Court*" is alleged error by Spender J of the Federal Court of Australia in proceedings in the Federal Court by Mr Skyring against the Commissioner of Patents and Telecom Australia. As I followed Mr Skyring's oral submissions, the error into which Spender J is said to have fallen is a failure to accept the argument referred to in 1 above. It is to be noted that the time for appealing from this judgment has expired. Mr Skyring frankly stated that one of the reasons for seeking to proceed by certiorari was that the time for appeal had expired. He was, however, at pains to stress that the matters which he wished to litigate went beyond the matters which could*

properly be raised on such an appeal."

And then his Honour said (and this really is the answer to Mr Skyring's repeated complaints that there was not a final decision by Deane J):

> *"I have come to a clear conclusion that there is no substance in the argument that there is a constitutional bar against the issue by the Commonwealth of paper money as legal tender. Nor, in my view, would there be any substance in an argument that the provisions of s 36(1) of the* Reserve Bank Act *1959 are invalidated or overruled by the provisions of the* Currency Act *1965. That being so, I am unpersuaded that there is any substance in the proposed proceedings against Spender J, nor am I persuaded that proceedings by certiorari against Spender J would in any event be appropriate."*

In later proceedings in the High Court, reported as *Jones* v *Skyring* [1992] 66 ALJR 814, Toohey J, in dealing with an application by the then Registrar of the High Court that Mr Skyring be declared a vexatious litigant, said, by way of summary at 814:

> *"The overall picture is one of persistent attempts by Mr Skyring to argue questions which the Court has determined against him. Mr Skyring contended that Deane J's judgment of 6 February 1985 contained no reasons and was not a final judgment in that it did not ultimately define the rights of the parties. He claimed that to treat it thereafter as a final judgment was to misuse it and that therefore he was justified in returning to the Court to seek a final determination of those questions. However, the fact is that the Court did determine those questions against him. Once those questions had been determined by Deane J and a Full Court, there was no reasonable ground for employing a variety of mechanisms to get the questions before the Court again. The absence of any reasonable ground for employing these mechanisms and the persistent institution of proceedings for the purpose of re-agitating the questions already determined point unequivocally to a situation in which Mr Skyring has, frequently and without reasonable ground, instituted vexatious legal proceedings in the Court."*

This morning, Mr Skyring has again advanced the argument that there is a constitutional bar to the Commonwealth issuing paper notes. That is the argument and contention which founds his proposition that the sequestration order in his case has no proper basis because, he says, there is a legal impediment, not personal to him, which precludes him from paying the judgment debt. This is a reiteration of his contention that there is a constitutional bar in the Commonwealth to the issue by the Commonwealth of paper money as legal tender.

Unfortunately for Mr Skyring, the position is that that point has been determined adverse to Mr Skyring, and it is sad that Mr Skyring does not accept that position. Absent the acceptance of that submission, it seems to me that there is no basis on which the sequestration order can be successfully challenged in the way that Mr Skyring wishes to do at the moment. It follows then that the basis of the application for the stay of the public examination has not been made out, and that the application for such a stay is refused. Mr Skyring will be obliged

to attend tomorrow and, hopefully, within a short time his public examination will conclude.

It will serve no useful purpose to emphasise the cost and loss to Mr Skyring occasioned by his stubborn refusal to accept that his views on the currency question have been conclusively rejected, and that he has exhausted all his avenues of challenge, so I will not. The application for a stay of the public examination is refused.

There is no reason here why the usual order as to costs ought not to apply. Mr Skyring is to pay the respondent's costs, to be taxed if not agreed.

I certify that this and the preceding three (3) pages are a true copy of the Reasons for Judgment herein of the Honourable Justice Spender.

Associate:

Dated: 02/12/98

Counsel for the Applicant:	The applicant appeared in person
Solicitor for the Respondent:	Mr G Rodgers of Gadens Ridgeway
Date of Hearing:	2 December 1998
Date of Judgment:	2 December 1998