FEDERAL COURT OF AUSTRALIA

Sweeney v Skyring [2000] FCA 1126

BANKRUPTCY – where bankrupt fails to file statement of affairs and all reasonable steps taken by trustee to acquire statement – whether Court should order pursuant to s 146 of the *Bankruptcy Act 1966* (the Act) that distribution of dividends amongst creditors who have proved their debts should proceed in accordance with Part VI Division 5 of the Act – consideration of relevance of bankrupt's contentions regarding s 36(2) of the *Reserve Bank Act 1959* to the making of an order for distribution

Bankruptcy Act 1966, s 146
Reserve Bank Act 1959, s 36(2)

Skyring v Ramsey [2000] FCA 774 cited
Port of Melbourne Authority v Anshun Pty Ltd (1981) 147 CLR 589 referred to
Henderson v Henderson (1843) 67 ER 313 referred to

PAUL DESMOND SWEENEY v ALAN GEORGE SKYRING

QG 7022 OF 1996

SPENDER J
2 AUGUST 2000
BRISBANE

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA

QUEENSLAND DISTRICT REGISTRY **QG 7022 OF 1996**

BETWEEN: **PAUL DESMOND SWEENEY**
APPLICANT

AND: **ALAN GEORGE SKYRING**
RESPONDENT

JUDGE: **SPENDER J**

DATE OF ORDER: **2 AUGUST 2000**

WHERE MADE: **BRISBANE**

THE COURT ORDERS THAT:

1. Distribution of dividends amongst the creditors who have proved their debts in the estate proceed in accordance with Part VI Division 5 of the *Bankruptcy Act 1966* as if the bankrupt had filed a statement of his affairs and those creditors had been stated to be creditors in it.

2. The respondent pay the applicant's costs of and incidental to the motion, to be taxed if not agreed.

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

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA

QUEENSLAND DISTRICT REGISTRY **QG 7022 OF 1996**

BETWEEN: **PAUL DESMOND SWEENEY**
APPLICANT

AND: **ALAN GEORGE SKYRING**
RESPONDENT

JUDGE: **SPENDER J**

DATE: **2 AUGUST 2000**

PLACE: **BRISBANE**

REASONS FOR JUDGMENT

1 This is an application, pursuant to notice of motion filed 15 February 1999, under s 146 of the *Bankruptcy Act 1966*. That section 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."*

2 The contention on behalf of the trustee, Mr Sweeney, is that in the circumstances disclosed by the evidence on the motion, it would be appropriate for the Court to permit him to proceed with distribution of dividends in the absence of a statement of affairs. It is submitted that the trustee has taken all reasonable steps to obtain a statement of the bankrupt, Mr Skyring's, affairs from the bankrupt, but has been unable to do so.

3 Further, it is said that the trustee has taken all reasonable steps to ascertain the financial position of the bankrupt as at the date of bankruptcy, and all other matters which are usually disclosed by the statement of affairs. The material shows that the trustee has on several occasions sent to the bankrupt written requests for a statement of affairs, which included the usual form of a statement of affairs for the bankrupt to complete and return.

4 It is clear beyond argument that the bankrupt has refused to provide a statement of his affairs to the trustee. Mr Skyring refuses, and has persistently refused, to acknowledge the authority of the trustee to administer his estate. That issue has been raised by him and litigated in this Court on a number of occasions since the sequestration order was made on 9 December 1996.

5 I do not think that there can be any argument that the bankrupt has refused to co-operate with the trustee, and has failed to provide a statement of affairs or to supply the trustee with information which would ordinarily enable the trustee to administer the estate. The trustee has carried out his own inquiries into the affairs of the bankrupt, including two examinations before a Registrar under s 81 of the *Bankruptcy Act*. The exchange between Mr Rodgers, for the trustee, and Mr Skyring at one of those examinations is eloquent evidence of the attitude of Mr Skyring to co-operating with the trustee in the administration of the estate.

6 The trustee wishes to distribute dividends to creditors. He has been able to identify the existence of creditors, has published notices calling for proofs of debt, has received proofs of debt from creditors, and has realised assets of the estate sufficient to declare a dividend. He wishes, as I say, to distribute the dividends to creditors, and thereafter to conclude his administration.

7 I am satisfied that the trustee has taken all reasonable steps to obtain a statement of affairs, and that Mr Skyring has failed to supply a statement of his affairs. It seems to me in the interests of the creditors and in the public interest that the distribution of dividends to creditors of the bankrupt estate of Mr Skyring should not be further delayed.

8 The making of the orders sought by the trustee is opposed by Mr Skyring, and he essentially repeats arguments that he has advanced on very many occasions in the past. In particular, however, he seeks to obtain some assistance from observations by the Full Court of the Federal Court [*Skyring v Ramsey* [2000] FCA 774] which dismissed his appeal from orders by Sackville J, having the effect of requiring Mr Skyring to obtain leave before commencing or continuing any proceedings in the Federal Court.

9 The Full Court of the Federal Court said in paragraph 10 of its reasons:

> *"The determination of Sackville J was concerned in part with the question of*

> *whether the proceedings instituted by the appellant were vexatious in that they sought to raise exactly that issue, of whether paper notes are legal tender, which had previously been determined against him. To be satisfied that no appealable error has occurred, it is not necessary for this Court to be persuaded that s 36(2) [of the* Reserve Bank Act 1959 *(Cth)]would not found a separate and distinct cause of action. We should say, however, that we are indeed so persuaded. In this respect we note, in passing, that in* Re Attorney General (Cth); Ex parte Skyring *(1996) 70 ALJR 321 Kirby J at 322 did not allow the current appellant leave to institute proceedings (leave being required in that case) which appeared to have been based, in part, upon an argument similar to that raised in respect of s 36(2)."*

10 The Full Court concluded that to permit Mr Skyring to rely on his arguments based on s 36(2) would offend the *Anshun* principle [*Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589] originally expressed in *Henderson v Henderson* [(1843) 67 ER 313]. Then, importantly, the Full Court continued:

> *"Even if we were persuaded, which we are not, of the merits of the applicant's arguments on the currency issues, to continue to entertain them would be tantamount to our refusing to accept as binding on us a determination of the High Court. In light of the clear determination of the currency issues by the High Court, and notwithstanding that the appellant does not accept that determination as either final or correct, the continued prosecution of proceedings designed to require this Court to revisit an issue central to that final determination can correctly be characterised as vexatious."*

11 In my opinion, nothing in paragraph 10 or the other passages to which I have referred in the Full Court's judgment gives any support to Mr Skyring's contention concerning s 36(2). On the contrary, paragraph 10 expresses the Court's view that s 36(2) would not found a separate and distinct cause of action. Even if it did, the Court went on to say, the *Anshun* principle would preclude Mr Skyring from raising in coquate proceedings arguments which could have been raised but were not raised in litigation that had been finally heard and determined.

12 The truth of the matter, however, is that the submissions by Mr Skyring concerning these issues are not germane to the question of whether the Court should make the orders sought by the trustee in the notice of motion. Rather, they go to the more fundamental question which Mr Skyring has persistently sought to raise over the years. They are not, in my view, material to the question of whether the Court should make the orders sought by the trustee.

13 On a consideration of the facts which I have earlier set out, it seems to me plain that I ought to make the orders sought by the trustee in his notice of motion. I make the following orders:

1. That distribution of dividends amongst the creditors who have proved their debts in the estate proceed in accordance with Part VI Division 5 of the *Bankruptcy Act 1966*, as if the bankrupt had filed a statement of his affairs and those creditors had been stated to be creditors in it.

2. That the respondent pay the applicant's costs of and incidental to the motion, to be taxed if not agreed.

14 It seems to me that there is nothing more that can be done at this stage in relation to the other proceedings which are the subject of the orders made by Sackville J on 6 July 1999. If Mr Skyring wants to make an application to the High Court to bring an application for special leave to appeal, then it is for him to do so, and for the High Court to determine whether to give him leave. Similarly, if Mr Skyring wishes to seek leave to continue any of the proceedings which he had instituted in this Court, then it is a matter for him to institute applications in that respect, and then for the Court to consider whether it should grant leave.

I certify that the preceding fourteen (14) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Spender.

Associate:

Dated: 14 August 2000

The Applicant appeared in person

Solicitor for the Respondent: Mr Rodgers, of Gadens Lawyers

Date of Hearing: 2 August 2000

Date of Judgment: 2 August 2000