



HIGH COURT OF AUSTRALIA

Manager, Public Information

29 July 2009

MALCOLM GEOFFREY VALE v RODERICK MACKAY SUTHERLAND
[2009] HCA 26

Today the High Court handed down a decision about notices which the Official Receiver may issue under the Bankruptcy Act to recover money or property received by a third party through a void transaction with a bankrupt. Significantly, the Court held that in general any dispute between parties about the value of property that is the subject of such a notice should be determined in proceedings to recover the debt rather than in a proceeding to set the notice aside.

On 23 April 1999 Mr Vale became the sole proprietor of seven parcels of land (“the property”) after his wife transferred her half share in the property to him for \$2.00. Mr and Mrs Vale obtained two separate valuations of the property prior to the transfer. The first valuation dated 28 September 1998 valued the property in a range between \$520,000 and \$540,000 and contained a disclaimer that it was “an opinion of a reasonable asking price only and not to be taken as a sworn valuation”. The second valuation dated 31 March 1999 was undertaken by a registered valuer. It valued the property at \$416,700 and contained no disclaimer.

Mrs Vale committed an act of bankruptcy on 26 February 2001. A sequestration order was made against Mrs Vale in April 2001 and a Trustee was appointed to manage her estate on behalf of her creditors. In May 2002, relying on the fact that the transfer of the property to Mr Vale was void against the Trustee because it had occurred within 5 years of the commencement of Mrs Vale’s bankruptcy and Mr Vale had paid less than market value for the property, the Official Receiver, on application by the Trustee, issued a notice to Mr Vale, pursuant to section 139ZQ of the Bankruptcy Act. The notice required him to pay \$270,000 to the Trustee, being one half of the highest assessed value of the property.

Eventually the Trustee sought to recover judgment against Mr Vale for \$270,000 in the Federal Magistrates Court. Mr Vale disputed the validity of the notice, arguing that it did not comply with section 139ZQ. The Federal Magistrate agreed, set aside the notice and refused the Trustee’s claim. By majority, the Full Court of the Federal Court allowed the Trustee’s appeal. The High Court granted special leave to appeal the Full Court’s decision.

At hearing both parties agreed that the transfer of Mrs Vale’s share of the property to Mr Vale was void as against the Trustee. However the parties disagreed on the value of Mrs Vale’s share and thus the amount Mr Vale had to pay to the Trustee in respect of that share.

All members of the High Court accepted the Trustee’s submissions that the section 139ZQ notice was not invalid for having arguably misstated the value of the property and the amount Mr Vale owed to the Trustee. Any disagreement between the parties about the value of the property referred to in the notice should be determined in proceedings to recover the debt, rather than in an argument about the validity of the notice. The Court referred the parties to the definition of “value” in section 139K of the Bankruptcy Act to establish that the relevant “value of the property received” in respect of a notice issued under section 139ZQ was the value of the property at the date the notice was given. The parties themselves eventually agreed before the

High Court that the best evidence about the value of the property at the date the notice was given was the valuation of the registered valuer dated 31 March 1999, of \$416,700.

The High Court ordered that judgment be entered for the Trustee in the amount of \$208,350 (one half of \$416,700) and that all question concerning the award of interest on that sum be remitted to the Federal Magistrates Court for determination. The Trustee agreed to pay Mr Vale's costs of the appeal to the High Court.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*