

IN THE HIGH COURT OF AUSTRALIA

PEDLER

v.

THE HUNTERS HILL MUNICIPAL COUNCIL

REASONS FOR JUDGMENT

Judgment delivered at..... SYDNEY

on..... MONDAY, 1 NOVEMBER 1976

PEDLER

v.

THE COUNCIL OF THE MUNICIPALITY OF HUNTER'S HILL

O R D E R

Appeal dismissed with costs.

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JUDGMENT

STEPHEN J.
JACOBS J.
MURPHY J.

PEDLER

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The arguments for the appellant and the respondent have been presented in the form of written cases. The appeal is brought against the making of a Sequestration Order against the estate of the appellant on 2nd December 1975. The act of bankruptcy was that the appellant failed to comply on or before 8th September 1975 with the requirements of a Bankruptcy Notice duly served on him on Saturday, 23rd August 1975. It was found that he had failed to satisfy the Bankruptcy Court that he had a counterclaim, set-off or cross demand equal to or exceeding the sum specified in the Bankruptcy Notice, namely, \$722.12. The grounds stated by the appellant in his notice of appeal are as follows:

"S. 52(2)(a) of the Bankruptcy Act, and

(1) That by New South Wales State Statute in all actions taken by the respondent as a statutory corporation against this appellant, the actions were Void 'ab initio' on the grounds that the respondent never had the statutory power or capacity to proceed against this appellant and his mother, and all litigation by the respondent is 'ultra vires'.

(2) By the Supreme Court Act, 1970 and its rules the respondent had no capacity to obtain a sequestration order without that Court's permission.

(3) The appellant had shown sufficient set-off and counter claim to frustrate the action. (If the respondent had the legal capacity.)

(4) The Judge misdirected himself in refraining from a 'Stated Case'."

The Court has carefully considered the written submissions prepared by the appellant and has satisfied itself that no ground exists for interfering with the decision of the court below.

There is no substance in the first numbered ground which seeks to go behind the judgment of the Supreme Court of New South Wales. The judgment was for the taxed costs of a motion for a Writ of Attachment of the appellant. The first numbered ground of appeal would appear to relate to the correctness of the order in respect of which the Writ of Attachment issued, presumably for disobedience thereto. Apart from any other considerations, there is nothing of substance to support the submission that the respondent, a municipal council, had no power to institute the proceedings against the appellant in the Supreme Court of New South Wales.

The second numbered ground of appeal misconceives the relationship between the Supreme Court and the Federal Court of Bankruptcy and cannot succeed.

The third numbered ground claims that the appellant proved a set-off or counterclaim. The appellant at the hearing before Riley J. made two such claims. First, he relied on a claim for a sum in excess of \$87,000 against the respondent. Secondly, he claimed that the respondent had taken possession of a motor car which belonged to him. Riley J. was not satisfied that the appellant had a counterclaim, set-off or cross demand in respect of these matters and his conclusion upon this point was clearly correct.

The fourth numbered ground has no substance. Riley J. heard the evidence and heard submissions by the appellant and on behalf of the respondent. He then made the sequestration order.

The unnumbered ground of appeal states simply "S. 52(2)(a) of the Bankruptcy Act". This paragraph of s. 52(2) provides that if the Court is satisfied by the debtor that he is able to pay his debts, the Court may dismiss the petition. Though an affidavit has been filed in this Court to support a claim that the appellant was at all times able to pay his debts, there was nothing before Riley J. so to indicate except the appellant's statement "I could pay my debts but I choose not to". Clearly this was insufficient to rebut the case for sequestration which the respondent made out.

The appeal therefore fails and is dismissed with costs.