

H 146

Registry.

ROBERT FRANK EASTICK

v.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

JUDGMENT

(Oral)

GIBBS C.J.

ROBERT FRANK EASTICK

v.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

This is an appeal from a judgment of the Full Court of the Federal Court affirming a decision of Mr Justice Lockhart who declared that the Court was not satisfied that the debtor, the present appellant, has a counter-claim, set-off or cross-demand, within the meaning of s.41(7) and s.40(1)(g) of the Bankruptcy Act 1966.

The case was one in which the respondent Bank obtained in the Supreme Court of New South Wales judgment against the appellant in the sum of \$38,712.67 together with interest. The judgment was upon a guarantee given in respect of the indebtedness to the Bank of a company, of which the appellant was a director, and to which, for ease of reference, I shall refer as Daltons. The judgment was obtained upon a motion for summary judgment before a Master. An appeal was brought to a judge of the Supreme Court and thereafter to the Court of Appeal of the Supreme Court and those appeals were dismissed. The appellant appeared in person before the Master but on both appeals he was represented by counsel.

The present proceedings arise out of a bankruptcy notice which was directed to the appellant and was founded on the judgment debt. The question that arose under s.40(1)(g) was whether the appellant had satisfied the Court that he had a counter-claim, set-off, or cross-demand equal to or exceeding the amount of the judgment debt. The question also arose whether any reason had been shown to go behind the judgment of the Supreme Court which, as I have mentioned, was not a default judgment and had twice been affirmed on appeal. In those circumstances, of course, a Court of Bankruptcy would only be justified in going behind the judgment if substantial reasons existed for doubting whether the judgment was founded on a real debt.

However, the crux of the case lay in the omission of the appellant to give any evidence to show that Daltons was not indebted to the Bank in the amount certified by an officer of the Bank for the purposes of the guarantee. The certificate formed the basis of the judgment given by the Master. The appellant has contended that it was given fraudulently or negligently, and that he accordingly has a cross-demand against the Bank. There is no evidence to support either of those assertions but even if there were, the appellant could not succeed either in persuading the Court to go behind the judgment, or in satisfying the Court of the existence of a cross-demand under s.40(1)(g), unless

he could show that Daltons was not indebted to the Bank in any amount, or at least in the amount of \$1,000 which is necessary to sustain a petition. There is not a scintilla of evidence to that effect and the appellant has not shown that he has any reasonable possibility of success in any action that he may bring against the Bank. No reason has been shown to doubt the correctness of anything said in the judgment of the Full Court of the Federal Court and nothing has been said to cast the least doubt on the correctness of the decision reached by that Court. I would accordingly dismiss the appeal.

This and the preceding two pages comprise
my reasons for judgment in Robert Frank
Eastick v. Australia and New Zealand
Banking Group Limited.

EASTICK

v.

A.N.Z. BANKING GROUP

JUDGMENT

(ORAL)

STEPHEN J.

EASTIC

v.

A.N.Z. BANKING GROUP

I agree.

ROBERT FRANK EASTICK

v.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

JUDGMENT

(Oral)

AICKIN J.

ROBERT FRANK EASTICK

v.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

I also agree that the appeal should be dismissed.

ROBERT FRANK EASTICK

v.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

JUDGMENT

(Oral)

WILSON J.

ROBERT FRANK EASTICK

v.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

I also agree.

This page constitutes my reasons for judgment in
Robert Frank Eastick v. Australia and New Zealand
Banking Group Limited.

ROBERT FRANK EASTICK

v.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

JUDGMENT

BRENNAN J.

ROBERT FRANK EASTICK

v.

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

I also agree that the appeal should be
dismissed.