

The Insider

When is a judgment not worth the paper it's written on?

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There is a general principle adopted by the Courts and judiciary that there should be finality in any litigation, this means that there comes a point when the Courts will not allow parties to re-ventilate the issues. It normally follows a contested final hearing or any appeal of that decision.

However, section 52 of the *Bankruptcy Act 1966* (Cth) (**the Act**), enables a Bankruptcy Court to go behind a judgment in order to satisfy itself that the debt relied upon by a petitioning creditor is in 'truth and reality' a debt properly owing.

Polczynski Lawyers looks at a recent case, *Ramsay Health Care Australia Pty Ltd v Compton* [2017] HCA 28 where the High Court was asked to consider the circumstances which enliven the Bankruptcy Court's discretion to go behind a judgment under section 52 of the Act.

Background

In 2015, Ramsay Health Care Australia Pty Limited (**Ramsay**) sought and following a fully contested hearing obtained a judgment against Mr Compton for a sum of almost \$10 million pursuant to a guarantee provided by Mr Compton relating to the debts alleged to be owed by Compton Fellers Pty Limited (**CFPL**) to Ramsay. At first instance Mr Compton did not dispute the quantum of the claim.

The bankruptcy proceedings

Ramsay issued a bankruptcy notice against Mr Compton relying on the judgment. Mr Compton failed to pay and Ramsay filed bankruptcy proceedings in the Federal Court.

Within the bankruptcy proceedings Mr Compton disputed the debt that formed the basis of the judgment and asserted that if a reconciliation was undertaken between Ramsay and CFPL, Ramsey would owe CFPL money and consequently there was no debt the subject of his guarantee. Mr Compton submitted evidence to support this contention, which had not been adduced at the earlier hearing. Mr Compton asked the Federal Court to separately determine whether it should 'go behind' the judgment and consider whether there was a debt owing at all.

At first instance the Federal Court dismissed Mr Compton's application and declined to go behind the judgment.

Mr Compton appealed to the Full Court which found in favour of Mr Compton. The Full Court held that the affidavit evidence supporting the 'reconciliation' of the indebtedness between Ramsay and Mr Compton, coupled with a concession made by counsel for Ramsay that there was an 'open question' as to the quantum of the claim raised substantial reasons for questioning whether Mr Compton owed any amount to Ramsay.

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The High Court decision

Ramsay appealed to the High Court, which upheld the decision of the Full Court, determining that:

1. A Bankruptcy Court is not bound to accept as conclusive evidence a court judgment;
2. There are circumstances which will enliven a Bankruptcy Court's discretion to go behind court judgments;
3. The circumstances which enliven the discretion are not limited to any specific categories, they are dependent upon the facts and circumstances of each matter;
4. There does however have to be 'substantial reasons' to go behind a judgment;
5. The test will be satisfied if 'there are *prima facie* grounds upon which a court of equity would choose to intervene'.

The Insider comment

The High Court's decision has not created new law, but has reinforced the earlier decisions on this point that because bankruptcy involves a complete change of status for one party and has quasi-penal consequences, the court must be satisfied that a debt is due and if there is any genuine dispute as to the existence of the debt it should be investigated.

Often a fully contested hearing will satisfy this test, but in the case of Mr Compton there had been no such contest in relation to quantum.

Mr Compton's case was undoubtedly supported by the concession made by counsel for Ramsey who accepted that there was an 'open question' as to whether there was a debt outstanding at all. Whether Mr Compton would have been successful without the concession is debatable, but once the concession was made it was almost inevitable that the Court would need to look behind the judgment.

Whilst the decision has reaffirmed the position in relation to section 52 of the Act, it also highlights the risks for litigants, which flow from adopting specific strategies and tactics in litigation. In hindsight not disputing quantum before the original Court is perhaps a decision that Mr Compton would choose to revisit.

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