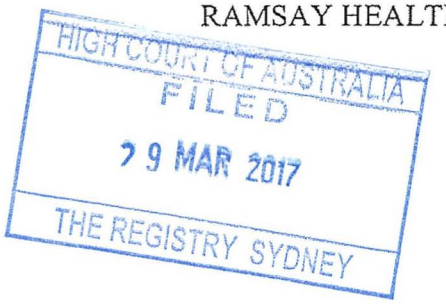
IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S53 of 2017

BETWEEN:

RAMSAY HEALTH CARE AUSTRALIA PTY LTD
ACN 003 184 889
Appellant



and

ADRIAN JOHN COMPTON
Respondent

APPELLANT'S SUBMISSIONS

Part I: Certification for publication

1. The appellant certifies that the appellant's submissions are in a form suitable for publication on the internet.

Part II: Issue on appeal

2. The issue presented by this appeal is whether a court in bankruptcy exercising its jurisdiction under s 52 of the *Bankruptcy Act* 1966 (Cth) can or should go behind a judgment given after a fully contested hearing:

   a. only in the limited circumstances identified by the High Court in *Corney v Brien* (1951) 84 CLR 343, namely where "fraud or collusion is alleged" (at 347) or "a *prima facie* case of fraud, collusion or miscarriage of justice is made out" (at 356-7); or, alternatively

   b. as the Full Court found below, in any circumstance in which the judgment debtor adduces evidence which shows that there is "substantial reason to believe" that

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SUBMISSIONS

Date of document: 29 March 2017
Filed on behalf of the Appellant

Form 27A

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he or she does not owe the debt, regardless of whether the debtor had the opportunity of taking that point at the earlier contested hearing.

Part III: Certification re s 78B of the Judiciary Act 1903

3. The appellant certifies that it has considered whether any notice should be given in compliance with s 78B of the *Judiciary Act 1903* (Cth) and concluded that a notice is not required.

Part IV: Judgments below

4. The judgment at first instance was: *Ramsay Health Care Australia Pty Ltd v Compton* [2015] FCA 1207.

5. The judgment of the Full Court was: *Compton v Ramsay Health Care Australia Pty Ltd* [2016] FCAFC 106. In these submissions references to paragraph numbers in square brackets that are otherwise unidentified are to paragraphs in this judgment.

Part V: Narrative statement of the relevant facts

6. The appellant (**Ramsay**) and corporate entities associated with it operate hospitals in Australia and other countries. In November 2012, Ramsay entered into a distribution agreement with Compton Fellers Pty Ltd, trading as Medichoice (**Medichoice**) in relation to the distribution of certain medical products for use in Ramsay's hospitals.

7. Medichoice had two directors at the relevant time, namely the respondent (**Mr Compton**) and Ms Anna Stevis. On 8 November 2012 Mr Compton entered into a guarantee and indemnity with Ramsay, pursuant to which Mr Compton gave a personal guarantee of any liability Medichoice might have to Ramsay in relation to or arising from the distribution agreement (**Guarantee**). Pursuant to clause 12 of the Guarantee the parties expressly agreed that: "A certificate from Ramsay stating that an amount is owing or an event has occurred is taken to be correct unless the contrary is proved".

8. On 30 June 2013 the distribution agreement expired and was not renewed. On 2 June 2014 Ramsay commenced proceedings 2014/164906 in the Supreme Court of New South Wales against both Medichoice and Mr Compton (**Supreme Court proceedings**), claiming money owing to it by Medichoice under or arising from the

distribution agreement and, by Mr Compton, under the Guarantee. Subsequent to the commencement of the Supreme Court proceedings Medichoice went into administration, then liquidation, and took no further active part in the proceedings.

9. Ramsay's commercial list statement filed in the Supreme Court proceedings contemplated that quantum would be in issue.[1] Mr Compton's commercial list response advanced a *non est factum* defence. In due course, both parties filed and served evidence, including in relation to quantum. Mr Compton's evidence on quantum comprised an affidavit by Ms Stevis, who deposed that the amount owing by Medichoice was less than the amount that Ramsay claimed.

10. The final hearing of the Supreme Court proceedings took place on 18, 19 and 20 February 2015, before Hammerschlag J. Both sides had retained solicitors and briefed counsel. At that final hearing Mr Compton did not read his evidence in respect of quantum. He took no issue with quantum at all. He relied solely on his *non est factum* defence.

11. In particular, conformably with the parties' agreement at clause 12 of the Guarantee, at the final hearing Ramsay tendered a certificate of debt certifying that "as at 18 February 2015 the amount payable to Ramsay in connection with the Guarantee totals $9,810,312.33, calculated as set out in the attached Schedule" (**Dobbs certificate**). Mr Compton called no evidence in response to the Dobbs certificate, nor did he cross-examine its maker.

12. Mr Compton has never proffered an explanation to the Court as to why he elected not to contest quantum at trial (see at [78]). However it may be inferred that he made his decision after advice from counsel and in what he regarded as his forensic interests.

13. On 6 March 2015 Hammerschlag J gave judgment in favour of Ramsay in the sum of $9,810,312.33 (**Judgment**). In his reasons for decision Hammerschlag J noted that quantum was not in dispute.[2]

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[1] See for example Part B of Ramsay's commercial list statement.

[2] [2015] NSWSC 163 at [6] per Hammerschlag J.

14. Mr Compton did not appeal from the Judgment. On 29 April 2015 Ramsay served a bankruptcy notice on Mr Compton requiring that he pay the amount of the Judgment or make arrangements for settlement of the debt by 20 May 2015 (**Bankruptcy Notice**). Mr Compton failed to comply with the Bankruptcy Notice, thereby committing an act of bankruptcy.

15. On 5 June 2015 Ramsay presented a creditor's petition based upon the said act of bankruptcy by Mr Compton by lodging the petition in the Federal Court of Australia (**Creditor's Petition**).

16. On 7 July 2015 Mr Compton filed a notice stating grounds of opposition to the Creditor's Petition. The next day, 8 July 2015, Mr Compton filed and served an interim application. Mr Compton sought by these interlocutory processes to take for the first time a point about quantum.

17. As is not unusual in this situation, the interim application contemplated a two stage procedure pursuant to which the Court would decide first, and separately, whether the Court should go behind the Judgment and then, subsequently, and only in the event that the first question was answered in the affirmative, whether the debt was in fact owing. [3]

18. At this first stage of the process before the primary judge Ramsay did not cross-examine Mr Compton's witnesses, nor call evidence in reply, these steps being deferred to the second stage of the proceeding, if any. The fact that Mr Compton's evidence was not challenged at this first stage led to the "concession" or "acknowledgment" by Ramsay's counsel that it was an open question whether the calculations as to off-sets, rebates and the like contained in the evidence adduced on behalf of Mr Compton were factually correct.[4] In due course, as discussed at paragraphs 48 and 49 below, this concession or acknowledgment by counsel was erroneously treated by the Full Court as one of the bases for going behind the Judgment.

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[3] See for example *Wolff v Donovan* (1991) 29 FCR 480; *Makhoul v Barnes* (1995) 60 FCR 572 at 584; *Commonwealth Bank of Australia v Jeans* [2005] FCA 569; (2005) 219 ALR 22 at [9] – [10]; *Yarranova Pty Ltd v Shaw (No 2)* [2014] FCA 616 at [69]; approved on appeal at *Shaw v Yarranova Pty* Ltd [2014] FCAFC 171 at [27].

[4] See the decision of the primary judge, *Ramsay Health Care Australia Pty Ltd v Compton* [2015] FCA 1207 at [11].

19. The interim application was heard at first instance before Flick J on 24 September 2015. Mr Compton read a number of affidavits, including from Ms Stevis and from the liquidators of Medichoice. The evidence of Ms Stevis differed from that contained in her affidavit in the Supreme Court proceeding. The Full Court found that the factual materials underpinning Ms Stevis' analysis and reconciliation in her evidence before the primary judge had been available at the time of the trial of the Supreme Court proceedings, such that her analysis and reconciliation could have been conducted at that earlier time (at [70]).

20. On 11 November 2015 the primary judge dismissed Mr Compton's interim application. On 17 August 2016 the Full Court allowed Mr Compton's application for leave to appeal and appeal. The Full Court exercised the discretion under s 52 of the *Bankruptcy Act* afresh, deciding to resolve the preliminary question raised in or by the first stage of the process in the affirmative.

21. On 13 September 2016 McDougall J delivered judgment in *Compton v Ramsay Health Care Australia Pty Ltd* [2016] NSWSC 1331, in which McDougall J rejected an application by Mr Compton to set aside, but granted a temporary stay of, the Judgment.

22. In the said judgment, McDougall J referred at [87] to the "prospective nightmare" enveloping the parties: on the one hand, a judgment of Hammerschlag J in the Supreme Court proceedings following a fully contested hearing, which fixed Mr Compton's liability at $9.8 million and, on the other, a possible judgment of the Federal Court which goes behind and is completely inconsistent with the judgment of Hammerschlag J.

23. At present the Judgment is still stayed pending the outcome of Ramsay's appeal to this Court or further order. The Creditor's Petition will lapse on 5 June 2017, having been extended on appeal by order of the Full Court on 26 August 2016.

Part VI: Argument

Section 52 of the Bankruptcy Act

24. The starting point is the applicable legislation, namely s 52 of the *Bankruptcy Act*. Section 52(1) stipulates that at the hearing of a creditor's petition the court "shall" require proof of: (a) the matters stated in the petition; (b) service of the petition; and, most relevantly for present purposes, (c) the fact that the debt or debts on which the

petitioning creditor relies is or are still owing. If the Court is satisfied with the proof of these three matters it "may" then make a sequestration order against the estate of the debtor.

25. It follows that a court's discretion in exercising its jurisdiction under s 52 of the *Bankruptcy Act* is not at large. Rather, the court's only discretion under s 52(1)(c) is whether to accept the judgment as satisfactory proof of the debt.[5]

26. As discussed below, *Corney v Brien* (1951) 84 CLR 343 establishes that a court may reject a judgment given after a contested hearing as proof of the debt if fraud, collusion or a miscarriage of justice is made out. However this discretion is only enlivened in the event of some fraud, collusion or miscarriage of justice which impeaches the obtaining of that judgment; the words do not capture conduct extraneous to the forensic process. Even the apparently broad expression "miscarriage of justice" denotes in this context circumstances occurring at the time of the hearing which precluded any fair trial taking place, such that the judgment should never have been obtained.[6] This point was made in *Dawodu v American Express Bank* [2001] BPIR 983 in which Etherton J observed (at 990) that the cases establish that what is required before the court is prepared to investigate a judgment debt is "some fraud, collusion or miscarriage of justice", then went on:

> The latter phrase [*i.e., miscarriage of justice*] is of course capable of wide application according to the particular circumstances of the case. What in my judgment is required is that the court be shown something from which it can conclude that had there been a properly conducted judicial process it would have been found, or very likely would have been found, that nothing was in fact due to the claimant.

27. The reason for this narrow approach is clear enough. By the time a creditor's petition is presented on the basis of a judgment any cause of action arising from the original underlying factual contest has now merged with that judgment and the "debt" referred to in s 52(1)(c) is the debt comprised in the judgment itself. It follows that the discretion only arises if the judgment ought never to have been given.

28. Indeed, describing the exercise of the discretion as "going behind a judgment" may camouflage, rather than illuminate, the discretion prescribed by s 52, because it may

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[5] *Wren v Mahony* (1972) 126 CLR 212 at 224 per Barwick CJ.

[6] See also *Re Van Laun; Ex parte Chatterton* [1907] 2 KB 23 at 31 per Buckley LJ.

suggest that a court in bankruptcy has a broad and unfettered discretion to review a judgment whenever a debtor makes a *prima facie* case for doing so. As explained above, that broad approach is not consistent with the language of the statute.

29. An example of the orthodox and, it is respectfully submitted, correct, approach on somewhat similar facts is contained in the judgment of Hely J in *Commonwealth Bank of Australia v Jeans* [2005] FCA 978. In *Jeans* a guarantor asserted in cross-examination that his signature on the guarantee had been forged, despite having conducted the proceedings until that point on the basis that his signature was genuine. The trial judge refused to allow him to take this point at such a late stage and gave judgment against him, which judgment was confirmed on appeal.

30. At the hearing in due course of the creditor's petition the guarantor sought that the Federal Court go behind the judgment, seeking to adduce further evidence, including expert evidence, to the effect that the signature on the guarantee was not his. Hely J rejected this application, holding at [18]:

> There was a fully contested hearing before Sackville J on the issue of the debtor's liability under the guarantee, after the debtor had a reasonable opportunity to raise whatever grounds he wished to rely upon to resist the Bank's case based upon the guarantee. As is always the case, the scope of the contest was determined by the respective cases put forward by the parties, who are ordinarily bound by the way in which they have chosen to conduct the proceedings.

31. The same considerations apply here. Mr Compton is also bound by the way he conducted the Supreme Court proceedings. Indeed, in some ways the unsuccessful judgment debtor in *Jeans* had a stronger case than the present respondent. In *Jeans* the judgment debtor at least took the point at trial, if belatedly. He then prosecuted the point on appeal to the Full Court[7] and by an unsuccessful claim for special leave to the High Court.[8] Here Mr Compton never took any point about quantum at all, nor did he appeal the Judgment.

32. More generally, in considering whether the Full Court correctly rejected the Judgment as satisfactory proof of the debt, it is worth noting that the Judgment had been given by a superior court after a contested hearing. There was not then pending, nor had there

[7] *Jeans v Commonwealth Bank of Australia* [2003] FCAFC 309.

[8] *Jeans v Commonwealth Bank of Australia* [2004] HCA Trans 548.

ever been, an appeal from the Judgment. The Judgment had plainly not been obtained through fraud or collusion. Nor had it been obtained in circumstances giving rise to a miscarriage of justice: the judicial process had been properly conducted – Mr Compton simply elected, no doubt after advice from his lawyers, not to challenge quantum, including by taking no steps to challenge the Dobbs certificate, a method of provisionally assessing any debt due under the Guarantee to which he himself had expressly agreed. The Judgment had not been paid, so the judgment debt was "still owing" for the purposes of s 52(1)(c). It is difficult to see why in these circumstances the Judgment should not have been accepted as satisfactory proof of the debt.

Appeal ground (a) – the Full Court should have applied Corney

33. The Full Court nevertheless came to a contrary conclusion. The Full Court's first error was failing to apply the decision of this Court in *Corney v Brien* (1951) 84 CLR 343. After discussing the judgments in *Corney*, the Full Court quoted a passage from the judgment of Fullagar J which included the following[9]:

> If the judgment in question followed a full investigation at a trial on which both parties appeared, the court will not reopen the matter unless a prima-facie case of fraud or collusion or miscarriage of justice is made out.

34. The Full Court held that Fullagar J's proposition was not an exhaustive statement of the circumstances in which a court of bankruptcy may or should go behind a judgment given after a contested hearing (at [60]). This determination reflects an earlier passage in the Full Court's judgment to the effect that Fullagar J's proposition should not be construed as "artificially confining" the Federal Court's discretion to go behind a judgment (at [39]).

35. However if this Court has held that the discretion under s 52 of the *Bankruptcy Act* is only to be exercised in limited and defined circumstances, that decision is binding on the Federal Court. There is no reason to assume that the judges in *Corney* were anything other than careful and precise in deploying the expression "fraud, collusion or miscarriage of justice". After all, as appears from the authorities cited in the judgment of the majority (at 347-8) and of Fullagar J (at 354 – 358) the approach taken in *Corney* was consistent with long-standing and high authority in which exactly the same

[9] At [59]; and see *Corney* at 356-7.

formulation had been used. That high authority including a further unanimous decision of this Court in *Petrie v Redmond* [1943] St R Qd 71 where Latham CJ (with whom Rich and McTiernan JJ agreed) enunciated the relevant proposition in terms consistent with Fullagar J, namely (at 75-6):

> The court is entitled to go behind the judgment and inquire into the validity of the debt where there has been fraud, collusion or miscarriage of justice, as stated in *Ex parte Lennox, Re Lennox* ([1885] 16 QBD 315), *Re Flatau, Ex parte Scotch Whisky Distillers Ltd* ([1888] 22 QBD 83); *Re a Debtor, Debtor v Petitioning Creditor* ([1929] 1 Ch 125) and other cases.

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36. Had either the majority in *Corney*, or Fullagar J, intended that the discretion to go behind a judgment given after a contested hearing would be enlivened in circumstances other than those captured by the expression "fraud, collusion or miscarriage of justice" they could, and would, have said so. They chose not to. Their decision was binding on the Full Court.

37. Further, in declining to apply *Corney* the Full Court did not sufficiently consider the distinction between going behind a default judgment and going behind a judgment obtained after a contested hearing. *Corney* concerned a default judgment. Indeed the decision of the majority turned on this very issue. The trial judge had declined to go
20 behind the judgment because he was not satisfied that there had been demonstrated any or sufficient fraud, collusion or miscarriage of justice (at 350). The majority held that in taking this approach the trial judge had not referred to "the freedom with which a Court of Bankruptcy goes behind a judgment obtained by default" (at 352). The corollary of this statement must be that there is no such freedom when the judgment is obtained after a contested hearing. Indeed this passage from *Corney* strongly supports the proposition that where there has been a contested final hearing a court in bankruptcy is confined, and confined strictly, to a circumstance in which the judgment debtor has demonstrated that there was some fraud, collusion or a miscarriage of justice such that the judgment should not have been obtained.

30 *Appeal ground (b) – Applying too broad a test*

38. The Full Court's next error was to approach the case on the basis that a court in bankruptcy can or should go behind a judgment given after a contested hearing in any circumstance in which the judgment debtor adduces evidence which shows that there is

"substantial reason to believe" that he or she does not owe the debt. This test is broader than, and inconsistent with, the approach taken in *Corney*.

39. The Full Court regarded the reasoning and decision of Barwick CJ in *Wren* as authority for this broad test. It is certainly the case that taken in isolation some of the passages in Barwick CJ's judgment may seem *prima facie* to reflect the language of the broad test deployed by the Full Court (see at 224 – 5). But these passages cannot be extracted and read in isolation – they need to be understood in context. That context involves at least two important matters.

40. First, *Wren* involved a default judgment (see at 220). More precisely, the judgment debtor had covenanted by deed to indemnify the judgment creditor against any liability for income tax. In due course the judgment creditor commenced proceedings claiming an indemnity under the deed. The judgment debtor's defence was struck out and the judgment creditor given leave to enter judgment. Judgment was thereby given without any substantive hearing. This was one of the two "substantial reasons" on which Barwick CJ relied in going behind the judgment; the Chief Justice observed: "There had been no more in the Supreme Court than a contest at the pleading stage of the action" (at 225). In other words, the Court in *Wren* had the same "freedom" to go behind the judgment as the court in *Corney*.

41. Secondly, *Wren* turned on its idiosyncratic facts. The other substantial reason on which Barwick CJ relied was that the creditor's petition "alleged the debt to be due 'for breach of the covenant of indemnity'" (at 220; see also at 221, 225). In other words, the proof of debt propounded by the judgment creditor relied on the debt owing under the deed of indemnity, not on the judgment which had subsequently been obtained. One can readily imagine in such circumstances that a court in bankruptcy might be entitled to examine the facts underlying the judgment in order to determine whether the debt was still owing – indeed, given the particular evidence put before it at the hearing of the creditor's petition, the court might have had little option. That was not the case here, where the creditor's petition expressly adverted to and relied on the Judgment,[10] as the Full Court found (at [8]).

[10] See Creditor's Petition, Part 1, paragraph 1.

42. Barwick CJ's judgment in *Wren* was not intended to, and did not, effect some significant shift in the law. On the contrary, Barwick CJ referred to *Corney* in approving terms, and in a way which made clear he regarded *Corney* (unsurprisingly) as one of the leading authorities (at 224). Had Barwick CJ been intending to overturn or even to alter materially a unanimous decision of this Court, a decision which in turn reflected a long standing and unbroken line of authority, his Honour would have adverted to that fact. The explanation is that *Wren* was intended to be, and should be understood as, limited to its own facts, including in particular that the relevant judgment was a default judgment.

10 43. The appellant draws to the Court's attention that in *Ahern v Deputy Commissioner of Taxation (QLD)* (1987) 76 ALR 137 the Full Court drew from *Wren* a broad approach in terms substantially similar to that of the Full Court below. In *Ahern* the Full Court held (at 147.50 – 148.5):

> Even where the judgment was obtained following a hearing on the merits where both parties appeared, if there are substantial reasons for questioning whether behind the judgment there is in truth and reality a debt due to the petitioning creditor, the court will go behind the judgment and inquire into the consideration for it: *Wren v Mahony* (1972) 126 CLR 212 per Barwick CJ, with whose reasons Windeyer and Owen JJ agreed; Menzies and Walsh JJ dissenting.

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44. Two matters should be emphasised concerning *Ahern*. First, like *Corney* and *Wren*, *Ahern* involved a default judgment. Secondly, in *Ahern* the Court was not concerned with whether there had been a proper exercise of the discretion to go behind the default judgment; rather, the question was whether the hearing of the creditor's petition should have been adjourned. It follows that the proposition set out above was not necessary for the decision in *Ahern* and seems to have been made without the benefit of argument (at least, no competing argument is referred to).

Further, and in any event, with the greatest respect to Full Court in *Ahern* this proposition is not an accurate statement of the law. *Wren* did not articulate a general
30 proposition regulating the exercise of the discretion to go behind a judgment given after a contested hearing; as discussed above, *Wren* needs to be understood in the context of its own facts.

Appeal Ground (c) – Finality in litigation

45. The Full Court further erred in failing to give any or sufficient weight to principle of finality in litigation. As this Court[11] and courts overseas[12] have emphasised, the principle of finality in litigation is a central and pervading tenet of the legal system.

46. The rationale of the principle in the present context is clear. A commercial plaintiff seeking to recover a debt already has to navigate the time, cost and uncertainty of prosecuting a matter to final hearing. Often that plaintiff must then defend an appeal. Having carried out this litigious enterprise successfully, a plaintiff should have the benefit of its judgment. It should not be put in the position in which the debtor has an opportunity for a re-trial. Any other approach will introduce a whole new layer of uncertainty, delay and cost, thereby bringing the administration of justice into disrepute.

Conclusion

47. The Full Court concluded that the primary judge had erred [78]. It then considered afresh the question whether the Court should go behind the Judgment, concluding that it should (at [78-79]). The Full Court advanced two reasons for this conclusion. First, it said there had been "no trial on the question of quantum" (at [78]). Secondly, it said that on the evidence, there was an "open question" as to whether any debt was in fact owed by Medichoice to Ramsay, a matter which, according to it, Ramsay's counsel had acknowledged, as discussed above (at [78]).

48. Neither of these reasons supported the exercise of the Court's discretion under s 52. As to the first, there had been a trial on the question of quantum, but Mr Compton had elected not to engage with that aspect of the proceedings. As to the second, the acknowledgement by Ramsay's counsel amounted to no more than acceptance of the obvious proposition that if the Federal Court were in due course to go behind the Judgment there would be a factual contest, on new evidence, the outcome of which was unknown and unknowable. In other words, in the event that the process advanced to the second stage Mr Compton might, or might not, have succeeded in showing he did not

[11] *D'Orta-Ekenaike v Victorian Legal Aid* (2005) 223 CLR 1 at 21 [45]; *Burrell v The Queen* (2008) 238 CLR 218 at 223 [15]; *Achurch v The Queen* (2014) 253 CLR 141 at 152 – 153 [14] – [16]; *Attwells v Jackson Lalic Lawyers* [2016] HCA 16; (2016) 90 ALJR 572 at [34], [100].

[12] *The Ampthill Peerage* [1977] AC 547 at 576 per Lord Simon.

owe the debt in whole or in part. But this is the very factual contest Mr Compton could have had, but elected not to have, before Hammerschlag J.

49. More importantly, the Full Court did not find, and could not have found, that either of the two reasons it relied on amounted to a fraud, collusion or miscarriage of justice. As discussed above, the Full Court applied a different, and erroneous, test. Absent proof of fraud, collusion or miscarriage of justice the appeal should be allowed.

Part VII: Applicable statutes

50. See Annexure A to these submissions which contains section 52 from Compilation No. 75, registered 5 July 2016 with Register ID C2016C00732. Subsequent registered compilations 76[13], 77[14], and 78[15] make no change to section 52. It follows that section 52 of the *Bankruptcy Act* is still in force, in the form set out in Annexure A, at the date of making these submissions. Section 52 was in force in identical form when the primary judge and the Full Court made their respective decisions.

Part VIII: Orders sought

51. The appeal be allowed, with costs.

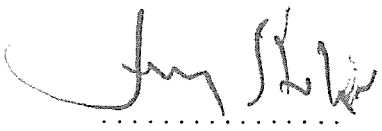
52. The orders of the Full Court of the Federal Court of Australia of 17 August 2016 in proceedings NSD 1578 of 2015 be set aside and in lieu thereof order that the appeal and the application for leave to appeal to that Court each be dismissed with costs

53. Remit the matter to the Federal Court for determination.

[13] Compilation No. 76, registered 25 October 2016 with Register ID C2016C00978.
[14] Compilation No. 77, registered 17 November 2016 with Register ID C2016C01107.
[15] Compilation No. 78, registered 3 March 2017 with Register ID C2017C00061.

Part IX: Estimate of time

54. The appellant estimates that it will require one hour to present its oral argument.



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29 March 2017

ANNEXURE A - APPLICABLE STATUTORY PROVISIONS

See next page

Bankruptcy Act 1966

No. 33, 1966

Compilation No. 75

Compilation date:	1 July 2016
Includes amendments up to:	Act No. 33, 2016
Registered:	5 July 2016

Prepared by the Office of Parliamentary Counsel, Canberra

(a) a sequestration order had been made against the debtor when the Court gave the direction under subsection (1) of this section;
(b) the examination were being held under section 81; and
(c) a reference in those subsections to a creditor were a reference to a person who has a debt that would be provable in the debtor's bankruptcy if a sequestration order had been made as mentioned in paragraph (a) of this subsection.

51 Costs of prosecuting creditor's petition

Subject to section 109, the prosecution of a creditor's petition to and including the making of a sequestration order on the petition shall be at the expense of the creditor.

52 Proceedings and order on creditor's petition

(1) At the hearing of a creditor's petition, the Court shall require proof of:
(a) the matters stated in the petition (for which purpose the Court may accept the affidavit verifying the petition as sufficient);
(b) service of the petition; and
(c) the fact that the debt or debts on which the petitioning creditor relies is or are still owing;
and, if it is satisfied with the proof of those matters, may make a sequestration order against the estate of the debtor.

(1A) If the Court makes a sequestration order, the creditor who obtained the order must give a copy of it to the Official Receiver before the end of the period of 2 days beginning on the day the order was made.

Penalty: 5 penalty units.

Note: See also section 277B (about infringement notices).

(1B) Subsection (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) If the Court is not satisfied with the proof of any of those matters, or is satisfied by the debtor:

(a) that he or she is able to pay his or her debts; or

(b) that for other sufficient cause a sequestration order ought not to be made;

it may dismiss the petition.

(3) The Court may, if it thinks fit, upon such terms and conditions as it thinks proper, stay all proceedings under a sequestration order for a period not exceeding 21 days.

(4) A creditor's petition lapses at the expiration of:

(a) subject to paragraph (b), the period of 12 months commencing on the date of presentation of the petition; or

(b) if the Court makes an order under subsection (5) in relation to the petition—the period fixed by the order;

unless, before the expiration of whichever of those periods is applicable, a sequestration order is made on the petition or the petition is dismissed or withdrawn.

(5) The Court may, at any time before the expiration of the period of 12 months commencing on the date of presentation of a creditor's petition, if it considers it just and equitable to do so, upon such terms and conditions as it thinks fit, order that the period at the expiration of which the petition will lapse be such period, being a period exceeding 12 months and not exceeding 24 months, commencing on the date of presentation of the petition as is specified in the order.

53 Consolidation of proceedings

(1) Where 2 or more members of a partnership or 2 or more joint debtors have become bankrupts, the Court may consolidate the proceedings upon such terms as it thinks fit.

(2) Where the Court makes an order under subsection (1), section 110 applies in the administration under this Act of all of the estates to which the order relates.