



## HIGH COURT OF AUSTRALIA

Public Information Officer

4 April 2006

### COLIN ADAMS v MATTHEW LAMBERT

A bankruptcy notice was not invalidated by a minor error in identifying the particular provision that was the basis for a liability to pay interest on a judgment debt, the High Court of Australia held today.

Mr Adams obtained judgment for \$54,000 against Mr Lambert in the New South Wales District Court on 22 March 2004. The amount was an agreed sum, being the balance of a loan plus interest and legal costs up to the date of judgment. On 1 April 2004, Mr Adams served on Mr Lambert a bankruptcy notice claiming as a debt \$54,066.58. The \$66.58 represented interest of nine per cent from 22 to 26 March inclusive. The notice gave these dates and the amount was correctly calculated, however the notice mistakenly cited section 83A of the *District Court Act* which deals with interest prior to judgment, instead of section 85 which deals with post-judgment interest. The official receiver issued the notice on 26 March. Mr Lambert failed to comply with the bankruptcy notice. On 27 May 2004, Mr Adams filed a creditor's petition alleging that such failure was an act of bankruptcy and seeking a sequestration order against Mr Lambert's estate (an order to have his property placed in the hands of a trustee for division among creditors).

In the Federal Court of Australia, Justice Roger Gyles found that the bankruptcy notice was invalid and dismissed the petition. He was bound by an earlier 3-2 decision of the Full Court of the Federal Court, *The Australian Steel Company (Operation) Pty Ltd v Lewis* in 2000, in which he was in the minority. An appeal by Mr Adams to the Full Court was dismissed.

In an appeal to the High Court, Mr Adams argued *Lewis* had been wrongly decided. The Court agreed that *Lewis* should be overruled and unanimously allowed the appeal. Section 306 of the *Bankruptcy Act* provides that a bankruptcy notice is not invalidated by a formal defect or an irregularity, unless substantial injustice has been caused. The Court held that section 306 saved the notice from invalidity. The Court remitted the proceedings to the Federal Court for further hearing.

- *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.*