



## HIGH COURT OF AUSTRALIA

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### THE TRUSTEES OF THE PROPERTY OF JOHN DANIEL CUMMINS A BANKRUPT v MARY ELIZABETH CUMMINS AND AYMCOPIC PTY LTD

Property and shares transferred to a spouse before barrister John Cummins was made bankrupt were available to trustees acting for his creditors, the High Court of Australia held today.

Mr Cummins became bankrupt in December 2000. At 30 January 2001, his assets totalled \$259,614 and his liabilities \$1.04 million. His largest creditor is the Australian Taxation Office which instituted proceedings to recover \$955,672.92, following the lodging of income tax returns in February 2000 for the years 1991-92 to 1998-99. Mr Cummins had not lodged any returns since 1955. He was admitted as a solicitor in 1957, then practised at the NSW Bar from 1961, becoming a Queen's Counsel in 1980. He married Mary Elizabeth Power in 1964 but they separated in February 2002. Aymcopic is the trustee of the Cummins family trust, of which Mrs Cummins and their four children are the beneficiaries. In August 1987, Mr Cummins transferred to his wife his interest in the family home in Hunters Hill in Sydney and transferred to Aymcopic his shares in Wentworth Chambers in Phillip Street, Sydney. The trustees in bankruptcy sought declarations that the transfers were void, pursuant to section 121 of the Commonwealth *Bankruptcy Act*.

In the Federal Court, Justice Ronald Sackville made the declarations and ordered consequential relief. He held that the main purpose of the transfers was to prevent property becoming divisible among Mr Cummins's creditors or to hinder or delay the process of making property available for division among creditors. Mrs Cummins and Aymcopic appealed to the Full Court which, by majority, allowed the appeal. The trustees appealed to the High Court.

The High Court unanimously allowed the appeal by the trustees and ordered that Justice Sackville's orders be reinstated.

- *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.*