



HIGH COURT OF AUSTRALIA

17 August 2017

RAMSAY HEALTH CARE AUSTRALIA PTY LTD v ADRIAN JOHN COMPTON

[2017] HCA 28

Today the High Court published reasons for dismissing an appeal on 4 May 2017 from a decision of the Full Court of the Federal Court of Australia. The appeal concerned the circumstances in which a Bankruptcy Court may “go behind” a judgment in order to be satisfied that the debt relied upon by the petitioning creditor is truly owing. A majority of the High Court held that where a creditor’s petition is based upon a judgment debt resulting from a contested hearing, yet there are substantial reasons for questioning whether behind that judgment there was in truth and reality a debt due to the petitioner, the Bankruptcy Court has a discretion to “go behind” the judgment to investigate whether the debt relied upon is truly owing.

In November 2012, Ramsay Health Care Australia Pty Ltd (“Ramsay”) entered into an agreement with Compton Fellers Pty Ltd (trading as Medichoice), of which Adrian Compton was a director, for the importation and distribution of medical products. The agreement expired on 30 June 2013 and Medichoice subsequently went into liquidation. Ramsay commenced proceedings in the Supreme Court of New South Wales against Mr Compton, claiming that \$9,810,312.33 was owing to it under the agreement. Mr Compton raised a defence disputing liability, but not the quantum of his indebtedness. The defence was unsuccessful, and the Court entered judgment for the amount claimed. Ramsay served a bankruptcy notice on Mr Compton requiring that he pay the judgment debt. He did not comply.

On 4 June 2015, Ramsay presented a creditor’s petition in reliance upon Mr Compton’s failure to comply with the bankruptcy notice. Mr Compton applied for a separate determination of the question of whether the Bankruptcy Court should exercise its discretion to go behind the judgment to investigate the debt. Mr Compton adduced evidence suggesting that it was in fact Ramsay that owed money to Medichoice and not vice versa. The primary judge in the Federal Court declined to go behind the judgment, noting that Mr Compton’s counsel before the Supreme Court had made a forensic decision not to dispute quantum. Mr Compton appealed to the Full Court, which unanimously allowed his appeal, holding that the primary judge had erred by focussing on the way in which Mr Compton had conducted his case in the Supreme Court, rather than on the central issue of whether reason was shown for questioning whether the debt was truly owing to Ramsay, which the Court found there was.

By grant of special leave, Ramsay appealed to the High Court, arguing that the power to go behind a judgment after a contested hearing exists only in the event of “fraud, collusion or miscarriage of justice” and that “miscarriage of justice” here refers only to matters impeaching the judgment such that it should never have been obtained (there being no suggestion of fraud or collusion in this case). A majority of the Court rejected that argument, relying on *Wren v Mahony* (1972) 126 CLR 212 as authority for the propositions that: first, the fact that a judgment was obtained without collusion or fraud after a contested hearing does not preclude the possibility of there being sufficient reason for questioning the underlying debt; and second, that “miscarriage of justice” is not limited to cases where the judgment is so tainted that it may be set aside. The Court emphasised that s 52(1) of the *Bankruptcy Act* 1966 (Cth) imposes an obligation on the Bankruptcy Court to be satisfied that the debt on which the petitioning creditor relies is still owing. The majority held that, in light of the evidence adduced by Mr Compton, the Full Court was correct to conclude that the Bankruptcy Court should proceed to investigate the question of whether the debt relied upon by Ramsay was owing.

- *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.*