RAMSAY HEALTH CARE AUSTRALIA PTY LTD v COMPTON (S53/2017)

Court appealed from: Full Court of the Federal Court of Australia
[2016] FCAFC 106

Date of judgment: 17 August 2016

Special leave granted: 10 March 2017

On 4 June 2015 Ramsay Health Care Australia Pty Ltd ("Ramsay Health Care") filed a creditor's petition in the Federal Court, seeking a sequestration order against the estate of Mr Adrian John Compton. The act of bankruptcy relied upon was Mr Compton's failure to pay Ramsay Health Care $9,810,312.00 pursuant to a judgment debt of the Supreme Court of New South Wales ("the Supreme Court judgment").

The Supreme Court judgment arose when Ramsay Health Care sued Mr Compton for $9,810,312.00 on a guarantee of the obligations of Compton Fellers Pty Ltd (in liquidation), trading as MediChoice. In that proceeding Mr Compton contended that the documents he signed did not pertain to the guarantee in question, but were "stand-alone" documents intended to signify his assent to a completely different proposed guarantee. (Mr Compton submitted that he thought he was signing a guarantee which would not expose him to any personal liability for amounts which might otherwise become due by MediChoice to Ramsay Health Care.) The Supreme Court however rejected that argument.

In the bankruptcy proceedings in the Federal Court, Mr Compton asked Justice Flick to separately determine whether he should "go behind" the Supreme Court judgment and inquire into the alleged debt. While a hearing of that separate question took place, Justice Flick answered that question in the negative.

On 17 August 2016 the Full Federal Court (Sipois, Katzmann & Moshinsky JJ) allowed Mr Compton's appeal. Their Honours found that the evidence before Justice Flick established, and Ramsay Health Care conceded, that there was an "open question" as to whether MediChoice in fact owed any money to Ramsay Health Care (and thus whether Mr Compton owed a debt to Ramsay Health Care pursuant to the guarantee). There were therefore substantial reasons for questioning whether there was "in truth and reality" a debt owing to Ramsay Health Care. The question of whether the Court should "go behind" the Supreme Court judgment should therefore have been answered in the affirmative. In reaching this conclusion their Honours noted that it is well established that a court exercising bankruptcy jurisdiction has the discretion to "go behind" a disputed judgment. In the circumstances of this case, the Full Court found that Justice Flick had focussed too much on Mr Compton's behaviour in the Supreme Court proceedings and too little on whether there was "in truth and reality" a debt due to Ramsay Health Care.

On 23 March 2017 Gageler J expedited the hearing of the appeal.

The grounds of appeal are:

- Whether the Full Court of the Federal Court of Australia, on the application by a debtor to "go behind" a judgment regularly obtained, erred in exercising its jurisdiction under section 52 of the *Bankruptcy Act* 1966 (Cth) by:

    a) failing to apply the test described in *Corney v Brien* (1951) 84 CLR 343 for going behind a judgment given after a fully contested hearing;

    b) finding that the Court may go behind a judgment 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, regardless of whether the debtor had the opportunity of taking that point at the earlier contested hearing; and

    c) failing to give any or sufficient weight to the principle of finality in litigation.