

Sheridans' View



Ordinarily resident in Australia (a further twist in bankruptcy proceedings)

In Issue 40 (October 2017) of *Sheridans' View* we noted the High Court of Australia's reported decision in the matter of *Ramsay Health Care Australia Pty Ltd v Compton [2017] HCA 28* that the Court still needs to be satisfied that a debt is truly owed by the debtor before making them bankrupt (Bankruptcy: Reliance on a judgment debt?).

That was on 17 August 2017 but on 21 December 2017 came a further twist. Things had been happening in the meantime.

While the High Court's reasons for judgment were not published until August 2017, following an expedited hearing, the High Court had in fact dismissed the appeal by Ramsay on 4 May 2017.

Ramsay wasted no time, getting the matter of its creditor's petition relisted before the primary judge as a matter of some urgency. The urgency arose by reason of the fact that Ramsay's petition was due to expire on 5 June 2017.

On 1 June 2017 the hearing of the creditor's petition took place. At the outset of the hearing Counsel appeared for a Mr Weston, a registered trustee, who had accepted appointment as controlling trustee under the personal insolvency provisions of the Bankruptcy Act 1966 (Cth). The issue raised by Counsel for Mr Weston was whether Mr Compton had signed an effective authority under S188, and therefore whether the proceeding was stayed by force of S189AAA.

Ramsay argued, successfully, that the jurisdictional connections referred to in S188 had not been satisfied in circumstances where Mr Compton had moved from Australia to Virginia, USA.

The primary judge indicated that he was not satisfied that a stay was in place and the hearing proceeded to deal with the question whether the discretion to make a sequestration order should be exercised (i.e. "going behind" the judgment).

On 2 June 2017 the primary judge held that no conclusion could be reached that Mr Compton was "ordinarily resident in Australia", gave judgment on the creditor's petition and made an order that Mr Compton's estate be sequestrated.

On 4 June 2017 Mr Compton filed a notice of appeal. The appeal was based on a single issue, namely whether the primary judge had erred in concluding that the proceedings relating to the creditor's petition were not stayed pursuant to S189AAA.

Subsequently, the Court was informed that the newly appointed bankruptcy trustee would not be taking any further steps in relation to Mr Compton's bankrupt estate until the resolution of the appeal. Mr Compton had his appeal hearing in the Federal Court.

On 21 December 2017, the Federal Court held that the 'jurisdictional nexus requirements' were met in relation to Mr Compton's S188 authority because Mr Compton was ordinarily resident in Australia at the time he signed the authority. The appeal was allowed and the Court declared that the proceedings relating to Ramsay's creditor's petition were stayed, for the period of time set out in that section. The Reasons for Judgment are worth reading for the Court's consideration of the jurisdictional nexus requirements.

In this case, while Mr Compton had moved to the USA, the reasons for the debtor's move were considered by the Court to be "of a temporary nature" and "the position that... [the debtor] was ordinarily resident in Australia was not displaced."

So it appears that Mr Compton will have a chance to propose a Personal Insolvency Agreement (PIA). Will it be accepted?



FOREWORD

"Life can only be understood backwards; but it must be lived forwards."
Søren Kierkegaard

"The future is now. It's time to grow up and be strong. Tomorrow may well be too late."
Niel LaBute

"Every time you are tempted to react in the same old way, ask if you want to be a prisoner of the past or a pioneer of the future."
Deepak Chopra

"In three words I can sum up everything I've learned about life: it goes on."
Robert Frost

SHERIDANS

Level 9, 40 St. George's Terrace,
Perth WA 6000
PO Box Z5209
Perth WA 6831

T: (08) 9221 9339
F: (08) 9221 9340
E: general@sheridansac.com.au

Sheridans' View

What's ahead for 2018?

What exciting things can we look forward to in the world of insolvency in 2018?

- Insolvent trading 'safe harbour' reforms (day after Royal Assent).
- Ipso facto reforms (later of 1 July 2018 or six months after Royal Assent).
- One year bankruptcies (Bill introduced to Parliament in October 2017; likely to come into effect some time in 2018).
- Government action to combat illegal phoenixing activity, including the introduction of Director Identification Numbers.
- The ATO starting to report to registered Credit Reporting Bureaus (transparency of tax debt measure).
- Speedier payments from Federal Government agencies (invoices for contracts less than \$1 million to be paid within 20 calendar days).
- Introduction by ASIC of the Industry Funding Model, the new industry funding arrangements for the corporate insolvency profession.

Some of the things that we would like to happen, but probably won't:

- Sorting out the current 'kerfuffle' regarding the insolvency of trusts and corporate trustees (awaiting the WA Killarney decision).
- Changing S58 of the Bankruptcy Act such that after-acquired property (except perhaps lotto winnings and inheritances) does not vest in the bankruptcy trustee.
- A new and better restructure and recovery regime for SMEs.

Recent Assignments

- **Liquidation of:**
 - A salt cake (aluminium by-product) recycling company
 - An office interior design and fit-out company
 - A transport company
- **Continuing liquidations and bankruptcies involving:**
 - Recovery of voidable superannuation payment
 - Claim against ATO for invalid garnishee recovery
 - Pursuit of preference recovery claim
- **Personal insolvency administrations, including individuals involved with:**
 - Transportation
 - A Queensland café
- **Informal insolvency advice to various businesses, including those involved in a cooking school, construction, bicycle & accessories retailing and property investment.**
- **Litigation support, including:**
 - Valuation of an electrical contracting business
 - An expert report regarding the assessment of damages in a Supreme Court matter
 - Investigation and sundry advice regarding various Family Court matters including quantification of the parties' asset pool.

"If you look at what you have in life, you'll always have more. If you look at what you don't have in life, you'll never have enough." Oprah Winfrey

DID YOU KNOW?



During a 2004 interview of Stephen Hawking, a reporter asked him how he manages to keep his spirits up and stay so cheerful.

He said, 'Life would be tragic if it weren't funny. My expectations were reduced to zero when I was 21. Everything since then has been a bonus.'

The New York Times Magazine (Deborah Solomon, 12 Dec 2004).



EDITORIAL

Are you, Um, using Crutches?

Crutch words (filler, fluff, weasel words): they are usually words dropped into sentences in order to give the speaker more time to think, fill a gap in a conversation or to emphasise a statement.

Over time, they become unconscious verbal tics formed out of habit. They often add no meaning to a statement, and can be annoying to the listener.

Crutch words distract from the purpose of the message and dilute its strength. They are generally useless adverbs, overcompensating adjectives, unnecessary prepositions or hedging phrases. They can be commonly used or our own unique pet phrases.

An example of a crutch word: **Actually**. The word is meant to signify something that exists in reality, but it is more often used as a way to add punch to a statement (as in, "I *actually* have no idea").

Another example (my pet hate): **Literally**. This adverb should be used to describe an action that occurs in a strict sense. But it is often used inversely to emphasise a hyperbolic or figurative statement: "I *literally* ran 300 kilometres today."

And other examples:

- **Honestly**: Incorrectly used to attempt to assert authority or express incredulity.
- **Basically**: This word should signify something that is fundamental or elementary but is often used to try to signal truth, simplicity and confidence.
- **Obviously**: Often used to emphasise a point about things that aren't necessarily obvious. It should signify an action which is readily observable, recognised or understood.

And there's more: Seriously, Totally, Essentially, Absolutely, The thing is, For what it's worth, At the end of the day, I'm not going to lie, To be honest, Really, Truly, Just, Like (Aargh!!), Look, Ultimately, To be fair, So, Well, In a weird way, You know, As it were, For the record and Fantastic/great/ really/very/awesome/super (lazy crutches).

Then there are the small "crutch-mumbles"; Um, Ah, Er, Uh. Useful occasionally but used too frequently they can make it difficult for the listener to retain the speaker's point.

What crutch words do you rely on? Do you realise? To convey confidence, assurance, expertise and competence, speak definitively with precision.

Avoid the crutches. Think before you speak. Pause..... if necessary.

CONTACTS



Jennifer Low
Principal
B.Sc., FCA
Registered Liquidator
Bankruptcy Trustee



David Blanchett
Senior Manager
BMS (Hons), CA



Shannon O'Connor
Manager
B.Com, BA (ComSt), CA