

Sheridans' View



A fresh start for bankrupts – really?

In the last issue of *Sheridans' View* we reported the case of *De Santis v Aravanis [2014] FCA 1243*, appealed to the Federal Court of Australia, in which it was held that property acquired by a bankrupt with after-acquired income does not vest in the trustee.

This decision appears to have been overturned in a recent appeal to the Federal Court of Australia, which stated that "The issue must be decided by this Court as a question of statutory construction."

In the recent case of *Di Cioccio v Official Trustee in Bankruptcy [2015] FCAFC 30* the facts were not in dispute.

Mr Di Cioccio was made bankrupt while he was in prison. Upon his release from prison, he lived rent-free with his parents, seemingly to allow him to get back on his feet. Using income he had earned for work done while he was in prison and some post-release Newstart Allowance, the bankrupt invested in shares. The income Di Cioccio had received was below the income contribution threshold.

Di Cioccio had managed to save \$8,850, which he used to purchase shares. Later in the year the bankrupt advised the Official Trustee that he intended to buy a motor car. When asked by the Official Trustee, the bankrupt advised that the money to purchase the car was to come from the sale of the shares he had purchased with the income he had saved.

The Official Trustee then informed Di Cioccio that the shares he had purchased were "after-acquired property" and therefore an asset which vested in the Official Trustee. The bankrupt sought a review by AFSA, which affirmed the Official Trustee's position, and then he took the matter to the Federal Court for further review. In the meantime, the Official Trustee sold the shares for \$9,240.

Di Cioccio contended that the shares were excluded from the operation of Section 58(1) of the Bankruptcy Act by reason of Div 4B of Part VI of the Act.

The appeal to the Federal Court was dismissed. The Court found no reason to depart from the earlier decisions of *Rodway v White [2009] WASC 201* and *Re Gillies; Ex parte Official Trustee in Bankruptcy [1993] FCA 289*.

In summary, had Di Cioccio left his income and savings in his bank account until his discharge from bankruptcy, he would have continued to own the funds. However, because he converted his income and savings to an asset, he lost the protection that would have otherwise been afforded to his income.

In light of the above, and subject to an amendment to the existing provisions, the decision appears to be in conflict with the "fresh start" objective that the bankruptcy legislators often refer to.



FOREWORD

Lessons from Noah's Ark

1. Don't miss the boat.
2. Remember that we are all in the same boat.
3. Plan ahead. It wasn't raining when Noah built the Ark.
4. Stay fit. When you are 600 years old, someone may ask you to do something really big.
5. Don't listen to critics; just get on with the job that needs to be done.
6. Build your future on high ground.
7. Speed isn't always an advantage; the snails were on board with the cheetahs.
8. For safety's sake, travel in pairs.
9. When you're stressed, float a while.
10. Remember, the Ark was built by amateurs; the Titanic by professionals.

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Beware – Directors' liability to compensate employees

In the very recent case of *Roberts v A1 Scaffold Group Pty Ltd & Ors [2015] FCCA 422*, in a default judgement, the Federal Court used Sections 550 and 545(2)(b) of the Fair Work Act to hold directors personally liable to pay compensation for Award underpayments to an employee.

In this case the directors, both past and present, were each found to be a person "involved in" a contravention of the Act. Following on from this, in addition to a civil penalty, compensation was ordered.

In this case, the employer was a corporate entity in liquidation.

Frequently Asked Questions

(i) Where can I find an insolvency practitioner?

- At Sheridans.
- Consult your accountant or lawyer.
- ASIC's professional registers: registered liquidators and official liquidators.
- Last resort – Google!

(ii) Can a bankrupt travel overseas?

A bankrupt can travel overseas provided that they have their trustee's written permission prior to travelling and a legitimate reason to travel. The trustee can impose conditions on the travel. If the trustee is the Official Trustee, an application fee is payable.

Recent Assignments

- **Administration or liquidation of:**
 - A commercial transport company
 - An Eagle Boys Pizza franchisee
- **Personal insolvency administrations, including those involved with:**
 - A car mechanics business
 - Provision of services to the mining industry
 - Car sales
- **Informal insolvency advice to various businesses, including those involved in property investment, retail and construction trades**
- **Litigation support, including:**
 - Review of a Single Expert valuation report for a Family Court matter
 - Quantification of loss for a District Court action
 - Valuation of a labour hire business
 - Review and assessment of the financial position of a group structure for a Family Court matter
 - Assistance with the quantification of the parties' asset pool in Family Court matters
 - Investigations and sundry advice regarding various Family Court matters

"An ounce of practice is worth more than tons of preaching."

Mahatma Gandhi

DID YOU KNOW?



The official American policy in WWI was to not issue parachutes to pilots.

Early aircraft were little more than flying death traps: dry wooden frames covered in fabric doped with a highly flammable stiffening agent. Parachutes did exist, although they were rudimentary by today's standards. The American Air Force hierarchy believed that the issuing of parachutes would make pilots more likely to jump out of their planes at the first hint of danger, and too many planes would therefore be lost.



EDITORIAL

Relentless Buzz

Buzzwords. Love them or hate them, they are omnipresent and running amok. A buzzword is a word or phrase that becomes very popular for a while, often outworn, superseded or evolving with time.

Buzzwords often originate in jargon, acronyms or neologisms. No area of our lives is immune to buzzwords (general conversation, social media, work, business - especially marketing and sales, education, science and technology, and politics).

While buzzwords are often maligned and ridiculed as a communications travesty, they are nonetheless ingrained in our "word speak".

Buzzwords can be extremely annoying, especially when overused, and often tend to confuse rather than clarify. According to management professor Robert Kreitner, "Buzzwords are the literary equivalent of Gresham's Law. They will drive out good ideas."

Often buzzwords attempt to be important-sounding but can have little meaning, although they are routinely used to impress others (resulting in the playing of the game "Buzzword bingo" by bored and bemused audiences).

However, buzzwords aren't all bad. They can be useful shorthand or internal shortcuts that make perfect sense to a particular group or community (a tribal vocabulary). Clearly they can be a prop to get attention or attempt to focus attention on a particular issue. They can be useful for establishing a "personal brand". Buzzwords can be revealing, and sometimes they are just downright funny or cute. Infectious.

So now to reach out, push the envelope, run up the flag pole and bring to the table some buzzword classics to make you laugh or cringe:

- **Decruiting:** Current euphemism for firing people.
- **Eating your own dog food:** Using a product yourself which you sell to others.
- **Psychic income:** The satisfaction derived from your job, usually a substitute for money.
- **Mushroom management:** A management technique that keeps employees in the dark.
- **MEGO effect:** The impact on an audience by an inept presenter: "My eyes glazed over."
- **Golden retriever:** A cash bonus that lures a retired business executive back into an active business role.
- **Boil the ocean:** To undertake an impossible task or project, or to make a task or project unnecessarily difficult.
- **Eyebrow management:** Arms-length management style where a top executive can stop a course of action by the slightest hint of disapproval.

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