

CITATION: Meredith v Queensland Building Services Authority [2010] QCAT 188

PARTIES: Mr Steven Grant Meredith
v
Queensland Building Services Authority

APPLICATION NUMBER: OCR052-09

MATTER TYPE: General administrative review matters

HEARING DATE: 27 April 2010

HEARD AT: BRISBANE

DECISION OF: J Reid

DELIVERED ON: 27 April 2010

DELIVERED AT: BRISBANE

ORDERS MADE:

- i) The decision of the Authority is set aside;
- ii) The applicant is not an Excluded Individual pursuant to S56AC (1) and S56AC (3) of the *Queensland Building Services Authority Act*.
- iii) There is no order as to costs.

CATCHWORDS : Effect of Bankruptcy annulment; S56AC
Queensland Building Services Authority Act
1991.

APPEARANCES and REPRESENTATION (if any):

APPLICANT : Mr Steven Grant Meredith

RESPONDENT: Queensland Building Services Authority

REASONS FOR DECISION

1. The applicant sought an order that a decision made by the Queensland Building Services Authority (the Authority) be reviewed by the Tribunal and that the decision of the Authority be set aside.
2. The matter came before the Tribunal on 2 March 2010 and Senior Member Oliver directed the parties to file written submissions. All submissions were received in accordance with the timetable directed. The senior member further ordered that the matter be determined on the papers.
3. The parties submitted a joint Statement of Agreed Facts which stated as follows:
 - a. On 30 September 2009, the applicant lodged a Debtors Petition.
 - b. On 12 November 2009 the applicant's creditors resolved to accept the Applicant's proposal for a composition pursuant to Section 73(4) Bankruptcy Act 1966 (Cth).
 - c. On 12 November 2009 the Applicant's bankruptcy was annulled pursuant to section 74(5) Bankruptcy Act 1966(Cth).
 - d. On 17 November 2009 the Authority issues a written notice pursuant to s56AF of the Act notifying the Applicant that the Authority considered him to be an Excluded individual.
 - e. In that letter the Authority identified the event that caused it to come to that decision as: "*on or about 30 September 2009 you entered into bankruptcy under the Bankruptcy Act 1966 (Cth)*".
 - f. Further the Authority identified the reason for the decision as: "*you became bankrupt or otherwise took advantage of bankruptcy laws by entering into a Part IX or Part X arrangement or agreement under the Bankruptcy Act 1966.*"
 - g. On 7 January 2010 the Authority published reasons for its decisions of 17 November 2009.
4. The relevant section of the *Queensland Building Services Authority Act* (QBSA) to be considered is Section 56AC(1)(a) of the Act provides:-

56AC Excluded individuals and excluded companies

(1) This section applies to an individual if—

(a) after the commencement of this section, the individual takes advantage of the laws of bankruptcy or becomes bankrupt (relevant bankruptcy event); ...

5. I do not propose to repeat in full the submissions of the parties, but I do summarise them briefly as below.

Applicant's submission

6. The Act identifies two circumstances in which an individual will become an Excluded Individual and that is if:-
 - a. the individual takes advantage of the laws of bankruptcy ; or
 - b. the individual becomes a bankrupt.
7. The applicant submits that the applicant does not fall under (a) or (b). The submission is that the subsequent annulment of the bankruptcy makes this point now moot and in the alternative, that the applicant does not fall within the category of persons in contemplation of the Minister as outlined in the second reading speech of the Bill in the Parliament.
8. The applicant submits that the lawful effect of annulment of the applicant's bankruptcy is that it acts as complete reversal of the fact of bankruptcy. The applicant submits that a long line of cases establishes that annulment of bankruptcy is *ab initio* and accordingly there is no relevant bankruptcy event to found the Authority's decision.
9. The applicant submits that the decision in *Union Club v Lord Battenberg* can be distinguished as a decision that determines private rights in accordance with contract law rather than public statutory law.

The Respondent's submission

10. The respondent states that the applicant took advantage of the laws of bankruptcy and became bankrupt.
11. A relevant event occurred and the applicant became an Excluded Individual.
12. The effect of the bankruptcy annulment does not impact on the licensing regime established by the Queensland Building Services Authority.
13. The respondent submits that the Tribunal should reject the applicant's argument that the *Union Club* decision should be distinguished as an artificial distinction.
14. The respondent states the Tribunal should have regard to extrinsic material and refers the Tribunal to the Minister's second reading speech in Parliament. In that speech, the Minister referred to the provisions of Part 3 of the Act introduced to prevent *phoenix companies* and *shonks* and to provide a degree of protection to consumers from such persons. The respondent submits that the effect of bankruptcy is a *financial catastrophe* as anticipated by the Minister.
15. The respondent submits that the tribunal reject the decision in *Weldon v QBSA [2008] QCCTB 178* as being wrong at law and inconsistent with the application that was before the Tribunal. In that decision, then Member Oliver set aside the decision of the QBSA. It was a case where the applicant was seeking the review of a Permitted Individual rather than the application before this Tribunal, an application to review the decision as an Excluded Person.

Findings

16. The tribunal is cognisant that it stands in the shoes of the decision maker and is persuaded by the evidence before it. The tribunal notes that the decision is merit based and a decision maker is “*under a duty to arrive at the correct or preferable decision in the case before it according to the material before it*”. See *Drake v Minister for Education (1979) 46 FLR 409, 24 ALR 577*.
17. In *re John William Oates v Commissioner for Taxation [1990 27 FCR 289]*, His Honour Justice Hill considered the effect of annulment in a tax case before him. He stated “Thus, I am of the view that in each case, where the bankruptcy comes to an end, whether because the sequestration order is set aside or rescinded ab initio, or because the bankruptcy is to be treated as destroyed or annulled by force of an order under [s.154](#), the taxpayer **has never become a bankrupt** within the meaning of s.80(4) of the Act.” (Emphasis added).
18. Furthermore, Osborne’s law Dictionary defines annulment as “to deprive a judicial proceeding of its operation either retrospectively or as to future transactions”.
19. I accept the applicant’s submissions that the effect of the annulment is to render the bankruptcy on 30 September 2009 a nullity, and the applicant is then put back into the position he was prior to the filing of the debtor’s petition. Accordingly, I am not persuaded by the respondent’s argument that the annulment has had no effect on the Authority’s decision to categorize the applicant as an Excluded Individual.
20. I do not believe it is necessary to distinguish the *Union Case* nor *Weldon*. The lengthy line of decisions considered by Justice Hill in *Oates case* concludes that the effect of annulment is such that the bankruptcy is void *ab initio*.
21. Accordingly, the Tribunal makes the following orders:
 - i. The decision of the Authority is set aside;
 - ii. The applicant is not an Excluded Individual pursuant to S56AC (1) and S56AC (3) of the *Queensland Building Services Authority Act*.
 - iii. There is no order as to costs.