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Level 6, 114-120 Castlereagh Street  
Sydney NSW 2000  
Phone (02) 9238 6500 Fax (02) 9238 6533

PO Box A2405 Sydney South, NSW 1235

## TRANSCRIPT OF PROCEEDINGS

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O/N 33102

### **FEDERAL MAGISTRATES COURT OF AUSTRALIA**

### **FEDERAL MAGISTRATE DRIVE**

### **SYG179 of 2006**

### **DEPUTY COMMISSIONER OF TAXATION**

**and**

### **JOHN WILSON**

### **SYDNEY**

**11.29 AM, TUESDAY, 3 APRIL 2007**

**MS BOYCE appears for the applicant creditor**  
**MR WILSON appears in person**

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MS BOYCE: Your Honour, I appear on behalf of the applicant creditor.

HIS HONOUR: Thank you, Ms Boyce. I think we have Mr Wilson in person.

5 MS BOYCE: Yes.

HIS HONOUR: Tell me what this matter is about, Ms Boyce.

10 MS BOYCE: The respondent debtor is raising some constitutional issues.

HIS HONOUR: That sounds interesting. We might need to have a 78B notice.

15 MS BOYCE: We have issued a section 78B notice and served it on all the attorney generals.

HIS HONOUR: When did that happen?

20 MS BOYCE: On 8 March. I actually have some, an outline of submissions to hand up which summarises.

HIS HONOUR: All right. Just before we leave the 78B notice, though, is that on file?

25 MS BOYCE: Yes, it should be.

HIS HONOUR: Just let me check. I'll just open the file. There's a very large bulldog clip on it. Just going backstage, how did these proceedings start?

30 MS BOYCE: A bankruptcy notice is issued and a creditor's petition list is entered and then the respondent - - -

MR WILSON: From a kangaroo Court.

35 HIS HONOUR: That may be so, Mr Wilson, but I'll hear you presently. Yes, Ms Boyce, so it was a creditor's petition, was it?

MS BOYCE: That's correct.

40 HIS HONOUR: Which is opposed, I understand.

MS BOYCE: Yes.

45 HIS HONOUR: And the constitutional issue has come up in opposition to the creditor's petition.

MS BOYCE: That's correct.

HIS HONOUR: There appears to be no copy of the 78B notice on the file. Do you have a copy there?

MS BOYCE: Yes.

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HIS HONOUR: Could I see it.

MS BOYCE: It's attached to affidavits of service and albeit each of the attorney generals so it might be appropriate - - -

10

HIS HONOUR: It might be hiding behind one of those.

MS BOYCE: I haven't actually filed those. I was intending to file those today. I can give you a copy of the section 78B notice, itself.

15

HIS HONOUR: Thank you. But you had filed it in the Registry.

MS BOYCE: Yes. It was actually only filed yesterday. It was served prior to filing on 8 March.

20

HIS HONOUR: All right. Is this a spare copy I can keep?

MS BOYCE: That's a spare one, yes.

25

HIS HONOUR: What's the constitutional issue?

MS BOYCE: A constitutional right to trial by jury, and the respondent debtor is also questioning the jurisdiction of the Federal Magistrates Court, is my understanding, to hear the matter.

30

HIS HONOUR: So this was dated 18 March. Did it call for a response by a particular date?

MS BOYCE: Yes, by 14 March.

35

HIS HONOUR: Obviously, that's been and gone. Have you had any responses?

MS BOYCE: Yes. We've had seven responses. The only responses we haven't received are from Queensland and Victoria. Out of the seven responses, all of them, all the attorney generals have indicated that they have no intention to intervene in the proceedings at this stage.

40

HIS HONOUR: Very well. What do you anticipate I'm called upon to decide today?

45

MR WILSON: I beg your pardon. Did you say, "decide today"?

HIS HONOUR: I'm not necessarily deciding anything. I want to know - - -

MR WILSON: No. You can't. You've got no jurisdiction.

HIS HONOUR: I'll hear from Ms Boyce first and then I'll go to you, Mr Wilson.

5 MS BOYCE: We will be seeking a sequestration order today.

HIS HONOUR: All right. So that's what you want to go away with.

MS BOYCE: Yes.

10

HIS HONOUR: Mr Wilson, what's your position?

MR WILSON: My position is that I'm challenging the jurisdiction of the Court.

15 HIS HONOUR: On what basis?

MR WILSON: And no proceedings can go ahead until a jurisdiction is proven. So the special jury must be in power to decide the jurisdiction of the Court. I can't even see a jury box in this room.

20

HIS HONOUR: That's because it's a Civil Court, not a Criminal Court.

MR WILSON: Do you call it a Court?

25 HIS HONOUR: It is a Court.

MR WILSON: It isn't a Court without a jury box. Simple. Do you know what the definition of a Court is?

30 HIS HONOUR: I do, and I constitute it. Not you.

MR WILSON: All right. I'll tell you the real one. A court is a place where justice is administered and justice is the protection of rights and the punishment of wrongs. Therefore, this is not a court if my rights are not being protected. There is no justice being administered. It's a simple case. Every Australian has the right to trial by jury. That's written in Charter of Liberty, the constitutional law.

35

HIS HONOUR: The Constitution speaks of trial by jury in criminal matters. Not in civil matters.

40

MR WILSON: In any action.

HIS HONOUR: Do you have a copy of the Constitution with you?

45 MR WILSON: Yes. I've got many copies of it.

HIS HONOUR: Do you care to open it up and read me the section.

MR WILSON: It says, “full faith and credit shall be given to the Acts of the states” and those Acts of the states includes, Magna Carta, petition of rights, habeas corpus, bill of rights, they have been established as constitutional enactments since 25 July 1828.

5

HIS HONOUR: Now, you’re referring to the - - -

MR WILSON: In other words, that was just carried on into the Constitution, itself.

10 HIS HONOUR: You’re referring, I think, to the Charter of Justice of the Supreme Court of New South Wales.

MR WILSON: We’re talking about the Charter of Liberty as we’ve been handed from England. Any free man is entitled to trial by jury.

15

HIS HONOUR: There’s a lot of things, Mr Wilson - - -

MR WILSON: And to deny it is a felony. Now, we’ve already got one judge indicted for that and there’s going to be a lot more in future because it’s becoming practice in Australian courts to deny Australians the right to trial by jury.

20

HIS HONOUR: Are your arguments set out in writing anywhere, Mr Wilson?

MR WILSON: Yes, it’s in the notice of special appearance and the affidavit in support.

25

HIS HONOUR: All right. You’re relying on those?

MR WILSON: That’s a start.

30

HIS HONOUR: I have those before me.

MR WILSON: Those issues will be presented to a jury, nothing inferior.

35 HIS HONOUR: Do you think you’re entitled to a jury trial on a creditor’s petition?

MR WILSON: I know. “Any action, in any court”, they are the words.

HIS HONOUR: There is provision in the Bankruptcy Act for jury matters but not as a rule in relation to creditor’s petition.

40

MR WILSON: No laws can take away the rights of the people. Any legislation attempting to do so is ultra vires. They have – no Parliament has the power to take away the rights of the people.

45

HIS HONOUR: Parliament has the right to make laws in relation to bankruptcy and has done so.

MR WILSON: But not take away the rights of the people.

HIS HONOUR: Well, it depends what you regard as rights - rights are circumscribed on many occasions.

5

MR WILSON: The rights of the people – we’ve had this right since Magna Carta guarantee. The right to trial by a jury. To the judgment of our equals, not by our inferiors.

10 HIS HONOUR: But there is a relevant distinction to be drawn between civil matters and criminal matters.

MR WILSON: No, there’s not. The words are, “in any action”, Magna Carta, it says that “no free man should be imprisoned or taken or destroyed in any way”, in  
15 any way, any matter.

HIS HONOUR: I don’t think anybody’s – nobody’s proposing to imprison you, as far as I know. I don’t think anybody’s proposing to imprison you.

20 MR WILSON: Destroyed in any way.

HIS HONOUR: I don’t think anybody’s proposing to destroy you, either, in a physical sense.

25 MR WILSON: Well, yes, they are, if they want to take my assets. Absolutely. If they take away my rights, that’s grounds enough in itself.

HIS HONOUR: So your position is that I have no jurisdiction to proceed with the creditor’s petition.

30

MR WILSON: Exactly right. You don’t. I’m challenging the jurisdiction of the Court. That is legal procedure.

HIS HONOUR: Yes, it is.

35

MR WILSON: The legal procedures say that proceedings must be halted, stopped, until the jurisdiction is proven and it can only be proven to a special jury. It can’t be discerning by magistrates or judges exercising, they can’t judge in their own cause.

40 HIS HONOUR: Is the absence of a jury the only basis on which you oppose the petition?

MR WILSON: You’re asking me something?

45 HIS HONOUR: Yes, I am.

MR WILSON: What did you say?

HIS HONOUR: I said, is the absence of a jury the only basis upon which you're opposing the petition.

5 MR WILSON: No. Once I get a jury, then I'll – and any accusations placed against me. But I've got to get the jury in place first and then I can produce my defence to justify any actions I've made.

MS BOYCE: Your Honour, as far as I'm aware, the debt isn't actually disputed.

10 HIS HONOUR: I'm sorry.

MS BOYCE: As far as I'm aware, the debt isn't actually disputed.

15 HIS HONOUR: That's what I was trying to find out. I gather, Mr Wilson, what you're saying is that, for present purposes, you're saying nothing can be done in the absence of a jury but if you were successful in persuading the Court that you're entitled to a jury, then there may or may not be other grounds of opposition. Is that correct?

20 MR WILSON: I don't have to persuade the Court of anything. Is this a lawful Court or is it a kangaroo Court?

HIS HONOUR: I'm not a kangaroo.

25 MR WILSON: Are you disregarding my legal rights? Disregarding legal procedures?

30 HIS HONOUR: I'm attempting to give you the right to be heard in relation to the petition.

MR WILSON: Which is to have a trial by jury. My right overrules anything that the Government Department might want to throw up.

35 HIS HONOUR: It doesn't sound very persuasive, Mr Wilson.

MR WILSON: I don't have to persuade you at all. I'm demanding trial by jury.

HIS HONOUR: I hear your demand but I'm not granting it.

40 MR WILSON: Well, you're denying it so you are committing an offence and the offence carries five years in prison for you.

45 HIS HONOUR: Your rights, presumably, would include the opportunity to apply for a writ of prohibition against me.

MR WILSON: Nothing to do with it. My right to trial by jury overrules any other consideration.

HIS HONOUR: I've heard you on the point, Mr Wilson.

MR WILSON: I don't care if you hear it or not. This is a simple demand.

5 HIS HONOUR: I'm ruling that you have no entitlement to a trial by jury in relation to the petition.

MR WILSON: Well, you are guilty of an offence and you are a criminal and a traitor. You are a criminal and a traitor.

10 HIS HONOUR: Mr Wilson, I've heard you.

MR WILSON: You are a criminal and a traitor.

15 HIS HONOUR: If you're attempting to upset me, you have failed.

MR WILSON: No, I'm just telling the truth.

20 HIS HONOUR: I've heard you.

MR WILSON: You are corrupt. You are denying an ordinary Australian his right to trial by jury. That makes you a traitor.

25 HIS HONOUR: Mr Wilson, you have failed in your attempt to make me lose my temper. I'm going to hear the creditor's petition.

30 MR WILSON: I've got nothing to do with you. You are insignificant. I have a higher jurisdiction than you. I am at the level of democracy. You are only a bureaucrat. You have a lower level. I have to give my consent to give you any authority at all. You have none.

HIS HONOUR: I'm going to hear the petition.

35 MR WILSON: No, you won't.

HIS HONOUR: I'm ruling that you have no entitlement to a trial by jury on the petition and I will hear it.

40 MR WILSON: I'll get a transcript of this and then I'll indict you because you are a criminal and traitor.

HIS HONOUR: You may do as you please, Mr Wilson. Now, Ms Boyce, what are you relying on in support of the petition?

45 MS BOYCE: I can hand up a further affidavit of final search and affidavit of debt.

HIS HONOUR: All right. I note, for the record, that Mr Wilson is leaving the court room. Carry on.

MS BOYCE: Thank you.

HIS HONOUR: Now, these have not been filed?

5 MS BOYCE: No.

HIS HONOUR: You're seeking leave to file them in Court?

MS BOYCE: Yes, please.

10

HIS HONOUR: I give leave for the affidavits of Peter Clarke Garrathy, made on 2 April 2007 and Kelvin Boateng made on 2 April 2007 to be filed in Court and they have been. What else do you have for me?

15 MS BOYCE: I could take your Honour through the evidence, if that's convenient.

HIS HONOUR: Yes, please.

MS BOYCE: The petition is based upon non-compliance for the 21 day bankruptcy notice, dated 3 October 2006 and granted upon a District Court judgment obtained on 24 April 2002.

20

HIS HONOUR: Now, the bankruptcy notice, I think, is annexed to the affidavit of Greg Hughes, filed on 18 January, is that correct?

25

MS BOYCE: Yes.

HIS HONOUR: Yes, all right. I have that. And you rely on that?

MS BOYCE: Yes. We say the act of bankruptcy relied upon is committed on 7 November 2006. The creditor's petition was presented on 18 January 2007 and verified in relation to paragraphs 1, 2 and 3 by the affidavit of Amaoah Giarunte affirmed 15 January 2007.

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35 HIS HONOUR: I think the form of petition actually includes those now, doesn't it?

MS BOYCE: Yes.

HIS HONOUR: So they're in the petition.

40

MS BOYCE: That's correct.

HIS HONOUR: And so I see that.

MS BOYCE: Then the affidavit in relation to paragraph 4 of Rahine van Nassingham affirmed 18 January 2007, a sealed copy of the creditor's petition together with copies of the supporting affidavits were personally served on Mr Wilson on 31 January 2007.

45

HIS HONOUR: Now, do I have the affidavit of service?

MS BOYCE: I have a copy of - - -

5 HIS HONOUR: I'm just looking to see – I've got the affidavits for service of the bankruptcy notice.

MS BOYCE: I've got the original one here, sorry. I meant to file that as well.

10 HIS HONOUR: So this has not been previously filed?

MS BOYCE: No.

15 HIS HONOUR: I give leave for the affidavit of Murray Fahd made on 12 February 2007 to be filed in Court. Do you rely on that?

MS BOYCE: Yes.

20 HIS HONOUR: I see that deals with the issue of service of the petition.

MS BOYCE: And I've handed up, earlier today, the affidavit of ..... Nagy and the affidavit of debt of Peter Garrathy.

25 HIS HONOUR: Yes, I've received that.

MS BOYCE: And the affidavit of debt clearly shows the debt is still outstanding.

30 HIS HONOUR: Having heard Ms Boyce and reviewed the material upon which the petition in creditor relies, I'm satisfied that the debtor has committed the act of bankruptcy alleged in the petition and I am satisfied with the proof of the other matters of which subsection 52(1) of the Bankruptcy Act requires proof. I'll make the following orders. I make a sequestration order against the estate of John Wilson. Secondly, I order that the applicant creditor's costs, including reserved costs if any, be taxed and paid in accordance with the Act. I note that under the bankruptcy  
35 regulations a copy of these orders are to be given to the official receiver in Sydney within two days after entry of the orders. Now, what date do you say was the act of bankruptcy, Ms Boyce?

40 MS BOYCE: 7 November 2006.

HIS HONOUR: Last date for compliance with the bankruptcy notice and I note that the date of the bankruptcy was 7 November 2006. Now, is the official trustee going to be the trustee?

45 MS BOYCE: Yes.

HIS HONOUR: So I don't need to note the appointment of any private trustee. That seems to complete the matter.

MS BOYCE: Thank you.

HIS HONOUR: I suspect we may be hearing further from Mr Wilson. He may  
5 like you to have the orders made today entered and to serve a copy, a sealed copy of  
those orders on Mr Wilson by ordinary prepaid post at his last known address for  
service.

10 MS BOYCE: I can also email a copy because I have his email address.

HIS HONOUR: Mr Wilson has returned.

MR WILSON: I've just been to the 16th floor and I asked for a transcript of this  
15 hearing and they said there is no transcript. What's this fellow here doing?

HIS HONOUR: Transcript is being taken. You'll need to order a paper copy.

MR WILSON: She just said there are no transcripts.

20 HIS HONOUR: There are transcripts.

MR WILSON: Well, you've got to inform your staff because he just said there are  
no transcripts.

25 HIS HONOUR: There are no immediate transcripts. They have to be ordered.

MR WILSON: Because that's evidence against you. That'll see you in gaol. So  
when do I get the transcript.

30 HIS HONOUR: You'll have to contact Auscript, the transcript provider, and order a  
copy. Just identify the name of the proceedings.

MR WILSON: Well, are they in this building?

35 HIS HONOUR: No. The recorder is in the building but Auscript is another agency  
and you can telephone them.

MR WILSON: Give me an address of where I can find it.

40 HIS HONOUR: Yes, I'll see if the recorder can give you a note of that address and  
phone number on it. I see that's being passed over.

MR WILSON: Okay. I'll see you in Court.

45 HIS HONOUR: Mr Wilson, I've made some orders and I've asked Ms Boyce to  
serve a sealed copy on you at your address for service.

MR WILSON: You've got no jurisdiction to do anything. You're a fraud. You're a  
50 criminal.

HIS HONOUR: I've heard you on that, Mr Wilson. Thank you.

MR WILSON: That's it. That's the truth. Haven't you got a conscience?

5 HIS HONOUR: I'll make that order, Ms Boyce.

MR WILSON: It's all to do with having a conscience. You swear an oath to do right.

10 HIS HONOUR: I certainly did.

MR WILSON: Well, why are you doing evil?

15 HIS HONOUR: I'm acting in accordance with the Bankruptcy Act in the interest of justice, as I see it.

MR WILSON: Which is invalid. Anything that denies me trial by jury is invalid, have no consequence or example to be held for nothing.

20 HIS HONOUR: I've now completed the matter, Mr Wilson, I'm going to adjourn temporarily.

**MATTER ADJOURNED at 11.48 am INDEFINITELY**

25