

# Our Two Cents: Creditor fails to Obtain Bankruptcy Orders for Non-Payment of One Cent

## Background

His Honour Justice Street in the case of *The Owners – Strata Plan No 18027 v Clarke* [2015] FCCA 2185 (23 September 2015) has refused to make orders bankrupting an individual, Ms Clarke, for short payment of a bankruptcy notice by one cent. The creditor's petition was dismissed with no order as to costs.

In determining this matter the Court applied the legal principle of "*de minimis non curate lex*", or "the law does not concern itself with trifling matters".

## Lessons Learnt

While it is important to be aware that a bankruptcy notice must be strictly complied with, the Court in the *Clarke case* drew the line at ordering that the short payment of a bankruptcy notice by one cent was an act of bankruptcy.

Creditors should ensure that bankruptcy proceedings are not commenced for any trifling amounts to avoid disappointment and incurring legal fees.

## Facts

- The Owners – Strata Plan No. 18027 caused a bankruptcy notice to be issued to Ms Clarke for the amount of \$8,157.56.
- Ms Clarke inadvertently paid the scheme \$8,157.55, being one cent less than the bankruptcy notice.
- The scheme filed a creditor's petition in the Federal Circuit Court of Australia for \$14,273.46 being for the one cent owing on the bankruptcy notice and \$14,273.45 in further unpaid strata levies that were said to have accrued.
- The Court accepted that a petitioning creditor can, pursuant to section 44 of the Bankruptcy Act 1966, when presenting a creditor's petition include any debts in existence at the time of the bankruptcy in addition to any amount outstanding from the bankruptcy notice.
- The problem in this case was, however, that only one cent remained outstanding from the bankruptcy notice and the Court held that a failure to pay one cent was not an act of bankruptcy.
- While the Court affirmed that there must be strict compliance with a bankruptcy notice, strict compliance doesn't exclude the principle of "*de minimis non curate lex*", or "the law does not concern itself with trifling matters".
- In reaching this decision the Court also noted that:
  1. There had been an accidental failure to pay one cent by Ms Clarke; and
  2. One cent coins are no longer in circulation.

## **In Conclusion**

Creditors should note that the Court will not entertain bankruptcy proceedings where any amount that remains unpaid from a bankruptcy notice is only a trifling amount such as one cent. For further information or queries in relation to bankruptcy matters please do not hesitate to contact Bannermans Lawyers.

**Prepared by Bannermans Lawyers  
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