FEDERAL COURT OF AUSTRALIA

Joyce (Trustee), in the matter of Carr (Bankrupt) (Deceased) [2018] FCA 507

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| File number: | WAD 46 of 2018 |
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| Judge: | **BARKER J** |
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| Date of judgment: | 13 April 2018 |
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| Catchwords: | **BANKRUPTCY AND INSOLVENCY** – application by Trustee for orders pursuant to s 53 and s 248A of the *Bankruptcy Act 1966* (Cth) to consolidate bankrupt estates – where Inspector General’s approval of remuneration of Trustee sought – where it is in the interests of the creditors for the estates to be consolidated |
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| Legislation: | *Bankruptcy Act 1966* (Cth) ss 53, 142, 248A, Sch 2, Pt 3, Div 60, Subdiv 60-11 |
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| Date of hearing: | Determined on the papers |
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| Registry: |  |
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| Division: |  |
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| National Practice Area: |  |
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| Sub-area: |  |
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| Category: | Catchwords |
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| Number of paragraphs: | 18 |
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| Counsel for the Applicant: | Ms K Parker |
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| Solicitor for the Applicant: | Murfett Legal |

ORDERS

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|  | | WAD 46 of 2018 |
| IN THE MATTER OF THE BANKRUPT ESTATES OF GEOFFREY CARR (DECEASED) & CHRISTINA MARY CARR | | |
|  | HELEN LOUISE JOYCE  Applicant | |

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| JUDGE: | BARKER J |
| DATE OF ORDER: | 13 APRIL 2018 |

THE COURT ORDERS THAT:

1. Pursuant to s 53 and s 248A of the *Bankruptcy Act 1966* (Cth), the bankrupt estate of Geoffrey Carr (deceased) number WA 1175/17/8 and the bankrupt estate of Christina Mary Carr number WA 1534/17/1 be consolidated to facilitate the proper administration of their joint estate.
2. The applicant’s costs of the application be costs in the joint bankrupt estates of Geoffrey Carr (deceased) and Christina Mary Carr.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

BARKER J:

1. The **Trustee** of the bankrupt estates of **Mr** Geoffrey **Carr** (deceased) and **Mrs** Christina Mary **Carr** applies for orders that:
2. Pursuant to sections 53 and 248A of the *Bankruptcy Act 1966* **(‘the Act’)**, the Bankrupt Estate of Geoffrey Carr (Deceased) number WA 1175/17/8 and the Bankrupt Estate of Christina Mary Carr number WA 1534/17/1 be consolidated to facilitate the proper administration of their joint estate.
3. Pursuant to section 30 of the Act , the Applicant’s fees for administering the Estate of Geoffrey Carr (Deceased) and the joint estate of Geoffrey Carr (Deceased) and Christina Mary Carr be approved in terms of the in the amounts of:

2.1 Estate of Geoffrey Carr (Deceased) in the total amount of $20,000 (excluding GST), being comprised of:

a. $16,254.50 for fees incurred between 31 July 2017 and 31 October 2017; and

b. $3,745.50 for fees incurred from 1 November 2017 until the completion of the administration.

2.2 The joint estate of Geoffrey Carr (Deceased) and Christina Mary Carr in the total amount of $60,000 (excluding GST), being comprised of:

a. $5,102.50 for fees incurred between 31 July 2017 and 31 October 2017; and

b. $54,897.50 for fees incurred from 1 November 2017 until the completion of the administration.

3. The Applicant’s costs of this application be costs in the joint bankrupt estates of Geoffrey Carr (Deceased) and Christina Mary Carr.

1. The application for approval of these orders, at least as to orders 1 and 3, is supported by the affidavit of the Trustee made 2 February 2018.
2. The circumstances in which the orders are sought are as follows.
3. Mr Carr, who died on 30 January 2016, and Mrs Carr were at material times married.
4. Probate of the Will of Mr Carr was granted in the Supreme Court of Western Australia on 29 August 2016 and Mrs Carr was appointed executor.
5. On 1 February 2017, Mrs Carr filed an administrator’s petition in the Federal Court of Australia seeking a sequestration order under the *Bankruptcy* ***Act*** *1966* (Cth) against Mr Carr’s deceased estate, which order was made by the District Registrar on 31 July 2017.
6. Until Mr Carr’s death, Mr and Mrs Carr operated a business known as “Just Containers” in partnership, which business was dissolved by law on Mr Carr’s death.
7. On 12 October 2017, Mrs Carr presented a debtor’s petition under the Act and the Trustee was appointed as her trustee in bankruptcy.
8. As a result the Trustee is currently the trustee of the bankrupt estate of Mr Carr (deceased) and Mrs Carr’s estate.
9. The Trustee explains that she has, since her appointment as trustee of Mrs Carr’s estate, administered the bankrupt estate as if there were three separate estates:

* Mr Carr’s estate;
* Mrs Carr’s estate; and
* The joint estate of the two of them.

1. The Trustee also explains that in accordance with s 142 of the Act she has apportioned her fees from 31 July 2017 across the bankrupt estates in accordance with the work she has completed and expects to complete.
2. On or about 8 November 2017 the Trustee sent a circular to creditors of:
3. Mr Carr’s estate, which amongst other things, attached a remuneration approval notice seeking approval of remuneration totalling $20,000 excluding GST, being comprised of $16,254.50 for fees incurred between 31 July 2017 and 31 October 2017; and $3,745.50 for fees incurred from 1 November 2017 until the completion of the administration.
4. Mrs Carr’s estate, which amongst other things, attached a remuneration approval notice seeking approval of remuneration totalling $20,000 excluding GST, being comprised of $5,816.00 for fees incurred between 31 July 2017 and 31 October 2017; and $14,184.00 for fees incurred from 1 November 2017 until the completion of the administration.
5. The joint estates, which amongst other things, attached a remuneration approval notice seeking approval of remuneration totalling $60,000 excluding GST, being comprised of $5,102.50 for fees incurred between 31 July 2017 and 31 October 2017; and $54,897.50 for fees incurred from 1 November 2017 until the completion of the administration.
6. The Trustee further explains that creditors of Mrs Carr’s estate approved the remuneration, but her remuneration for each of Mr Carr’s estate and the joint estates was not approved.
7. She then sought, pursuant to Sch 2, Pt 3, Div 60, Subdiv 60-11 of the Act:
8. on 2 January 2018, the Inspector General’s approval of her remuneration for Mr Carr’s estate; and
9. on 3 January 2018, the Inspector General’s approval of her remuneration for the joint estates.
10. On 5 January 2018, her professional colleague was informed that, in summary, because Mrs Carr’s and Mr Carr’s dates of bankruptcy were different it was not possible for the Inspector General to approve her remuneration without an order for consolidation under s 53 of the Act.
11. It is in these circumstances that the Trustee submits it is the best interests of creditors for Mrs Carr’s and Mr Carr’s estates to be consolidated in accordance with s 53 of the Act.
12. I am satisfied that it is in the interests of the creditors for the estates to be consolidated in the manner proposed. I will therefore make orders in the terms of paragraphs 1 and 3 of the application. The costs of this application should appropriately come from the joint bankrupt estates.
13. However, I will not make any order in terms of paragraph 2 of the application as such orders are not supported by the affidavit; and it would appear that, following consolidation, the Inspector General will be in a position to deal with the Trustee’s earlier request for approval for remuneration.

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| I certify that the preceding eighteen (18) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Barker. |

Associate:

Dated: 13 April 2018