FEDERAL COURT OF AUSTRALIA

Shaw v The Official Trustee in Bankruptcy Vic 1697/14/1 of Australian Financial Security Authority (No 2) [2019] FCA 1574

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| File number: | VID 778 of 2019 |
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| Judge: | **SNADEN J** |
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| Date of judgment: | 26 September 2019 |
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| Catchwords: | **BANKRUPTCY AND INSOLVENCY** – proof of debt – application to review trustee’s decisions to admit proof of debt – judgment debt in the form of costs orders – whether the court should go behind costs orders – whether debt is owed – whether a joint proof of debt is permissible – trustee’s decision to admit proof of debt confirmed – application dismissed**PRACTICE AND PROCEDURE** – subpoenas –interlocutory applications to set aside subpoenas – whether subpoenas constitute an abuse of process – whether subpoenas amounted to “fishing” or were sought to agitate an issue already litigated – whether any basis for subpoenaed party to be in a position to provide relevant or helpful evidence – subpoenas set aside  |
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| Legislation: | *Acts Interpretation Act 1901* (Cth) s 23*Bankruptcy Act 1966* (Cth) ss 84, 102, 104, 153B*Evidence Act 1995* (Cth) s 136*Federal Court of Australia Act 1976* (Cth) ss 35A, 37AO  |
|  |  |
| Cases cited: | *BDT Holdings Pty Ltd v Piscopo* [2009] FCA 151*Corney v Brien* (1951) 84 CLR 343*Daevys v Official Trustee in Bankruptcy* [2011] FCA 398*Doggett v Commonwealth Bank of Australia* [2019] FCAFC 19*Fried v National Australia Bank Ltd* (2000) 175 ALR 194*P T Garuda Indonesia Pty Ltd v Grellman* (1994) 48 FCR 252*Payne; Ex parte Levi* (unreported, Supreme Court of Western Australia, Toohey J, 23 September 1986)*Ramsay Health Care Australia Pty Ltd v Compton* (2017) 261 CLR 132*Re Kittay, in the matter of Frigger (No 2)* [2018] FCA 1032*Re Robert Henry Masters Ex parte: Elizabeth Gerovich and Hazel Henley v Bernard Putnin* [1985] FCA 282*Re Rodgers; Ex parte CMV Parts Distributors Pty Ltd* (1989) 20 FCR 561*Shaw v Yarranova Pty Ltd* [2010] VSC 567*Shaw v Yarranova Pty Ltd & Anor* [2011] VSCA 55*Shaw v Yarranova & Anor* [2014] FCAFC 171*Shaw v Yarranova Pty Ltd & Anor* [2016] FCA 88*Shaw v Yarranova Pty Ltd & Anor* [2017] FCAFC 88*Shaw v Yarranova Pty Ltd & Anor* [2017] HCASL 219*Shire of Katanning v Bride* [2016] WASC 118*Tomlinson v Ramsey Food Processing Pty Ltd* (2015) 256 CLR 507*Wren v Mahony* (1972) 126 CLR 212*Yarranova Pty Ltd v Shaw (No 2)* [2014] FCA 616  |
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| Date of hearing: | 13 September 2019 |
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| Registry: | Victoria |
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| Division: | General Division |
|  |  |
| National Practice Area: | Commercial and Corporations |
|  |  |
| Sub-area: | General and Personal Insolvency |
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| Category: | Catchwords |
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| Number of paragraphs: | 65 |
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| Counsel for the Applicant: | The Applicant appeared in person |
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| Counsel for the Respondent: | Mr C R Brown |
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| Solicitor for the Respondent: | Harris Carlson Lawyers |

ORDERS

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|  | VID 778 of 2019 |
|   |
| BETWEEN: | JOHN RASHLEIGH SHAWApplicant |
| AND: | THE OFFICIAL TRUSTEE IN BANKRUPTCY VIC 1697/14/1 OF AUSTRALIAN FINANCIAL SECURITY AUTHORITYRespondent |

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| JUDGE: | SNADEN J |
| DATE OF ORDER: | 13 September 2019 |

THE COURT ORDERS THAT:

1. Pursuant to rule 24.15 of the *Federal Court Rules 2011* (Cth), each of the following subpoenas is wholly set aside, namely:
	1. the subpoena issued herein on 20 August 2019 and directed to Mr H Lanzer;
	2. the subpoena issued herein on 28 August 2019 and directed to Mr M Buxton; and
	3. the subpoena issued herein on 28 August 2019 and directed to Mr A Buxton.
2. The applicant pay the costs of and incidental to Mr Lanzer’s interlocutory application dated 9 September 2019.
3. The applicant pay the costs of and incidental to the interlocutory application, dated 10 September 2019, made by or on behalf of Messrs Andrew and Michael Buxton.

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

ORDERS

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|  | VID 778 of 2019 |
|  |
| BETWEEN: | JOHN RASHLEIGH SHAWApplicant |
| AND: | THE OFFICIAL TRUSTEE IN BANKRUPTCY VIC 1697/14/1 OF AUSTRALIAN FINANCIAL SECURITY AUTHORITYRespondent |

|  |  |
| --- | --- |
| JUDGE: | SNADEN J |
| DATE OF ORDER: | 26 September 2019 |

THE COURT ORDERS THAT:

1. Pursuant s 104(2) of the *Bankruptcy Act 1966* (Cth), the decision of the respondent (made on or about 23 July 2019) to partially admit in the applicant’s bankruptcy the proof of debt submitted to it by Yarranova Pty Ltd and Newquay Stage 2 Pty Ltd is confirmed.
2. The originating application of 24 July 2019 is otherwise dismissed.
3. The applicant pay the respondent’s costs as agreed or otherwise as taxed without prejudice to the right of the respondent to claim the costs as costs in the administration of the estate.

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

REASONS FOR JUDGMENT

SNADEN J:

1. The applicant, Mr Shaw, is an undischarged bankrupt. The respondent (hereafter, the “**Trustee**”) is the trustee of his bankrupt estate.
2. Mr Shaw applies under s 104(1) of the *Bankruptcy Act 1966* (Cth) (hereafter, the “**Act**”) for a review of a decision that the Trustee has made under s 102(1) of the Act to partially admit a proof of debt advanced in the bankruptcy by two of Mr Shaw’s creditors (or purported creditors), Yarranova Pty Ltd (hereafter “**Yarranova**”) and Newquay Stage 2 Pty Ltd (hereafter, “**Newquay**”).
3. By his application, Mr Shaw asks the court to reverse that decision. He also sought interlocutory injunctive relief directed at a related decision of the Trustee’s to sell a property that forms part of his estate. The settlement of that sale is scheduled for Friday, 4 October 2019. The interlocutory relief that Mr Shaw sought was the subject of discussion at a case management conference that took place on 9 August 2019. At my invitation, the parties there agreed that the court should hear and determine the substantive application in advance of the settlement of the sale. Doing so obviated the need for a separate hearing directed to Mr Shaw’s application for interlocutory relief. The substantive application was then set down for a hearing to commence at 10:15am on Friday, 13 September 2019.
4. For the reasons that follow, the Trustee’s decision to admit the proof of debt is confirmed.

# Background

1. This proceeding is the latest in a shockingly long-running war between Mr Shaw (on the one hand) and Yarranova and Newquay (on the other). I have not tallied up the total number of proceedings, appeals and related applications in which Mr Shaw has represented himself in the prosecution of that battle; but it suffices to say that the litigation that he has waged over the best part of two decades, both in this court and in the Supreme Court of Victoria, well exceeds what could sensibly be described as proportionate to the relatively modest sums at stake.
2. Several decisions of this court have summarised the unfortunate history that serves as the backdrop to this proceeding. In *Shaw v Yarranova & Anor* [2014] FCAFC 171 (Bennett, Flick and Yates JJ), the court recorded the following by way of background:

3 In April 2000 Yarranova Pty Ltd, as nominee for MAB Docklands Pty Ltd, sold an apartment in Melbourne to Mr John Shaw. Yarranova Pty Ltd assigned the benefit of that contract to Newquay Stage 2 Pty Ltd. Mr Shaw failed to pay the balance of the purchase price. Newquay Stage 2 Pty Ltd served on Mr Shaw in August 2003 a notice of default and rescission.

4 In March 2006 a Judge of the Supreme Court of Victoria dismissed a claim by Mr Shaw seeking specific performance of the contract of sale and entered judgment in favour of Yarranova Pty Ltd and Newquay Stage 2 Pty Ltd (the “judgment creditors”). Mr Shaw appealed unsuccessfully. The Court of Appeal ordered an inquiry as to damages sustained by the judgment creditors. Master Daly (as her Honour then was) assessed damages plus interest in a sum slightly in excess of $60,000. Mr Shaw was ordered to pay costs.

5 That initial failure to pay the purchase price has spawned judicial outings in the Supreme Court of Victoria, the Court of Appeal in Victoria and in this Court on no less than 10 occasions.

6 The point of principle sought to be vindicated by Mr Shaw is his contention that the judgment creditors have in fact suffered no loss or damage. He maintains, in very summary form, that the judgment creditors falsely represented to Master Daly that they were all part of a group of companies owned by MAB Corporation Pty Ltd and that they had committed a “*fraud*” by falsely representing to Master Daly that they had been held out of funds – being the sale proceeds – and were not able to invest those monies.

7 The commitment of Mr Shaw to vindicating his principle has led him to pursue largely unsuccessful litigation. In the course of doing so he has been repeatedly ordered to pay the costs incurred. Between September 2009 and October 2011 those costs orders amounted to a sum in excess of $400,000. The costs orders were not paid.

8 On 14 December 2012 the judgment creditors served on Mr Shaw a *Bankruptcy Notice*. The *Bankruptcy Notice* was founded upon the unpaid orders for costs. He did not comply with the terms of that *Notice*.

9 An application to set aside the *Bankruptcy Notice* was unsuccessful: *Shaw v Yarranova Pty Ltd & Anor* [2013] FCCA 1627. An appeal from that decision was dismissed: *Shaw v Yarranova Pty Ltd* [2014] FCA 557.

10 The Respondents filed a *Creditors Petition*.

11 On 11 June 2014 a sequestration order was made by a Judge of this Court: *Yarranova Pty Ltd v Shaw (No 2)* [2014] FCA 616.

1. The passage above appears in the reasons for judgment of the full court in Mr Shaw’s appeal (hereafter, the “**Sequestration Appeal**”) from a sequestration order made against him in June 2014 (in a proceeding referred to, hereafter, as the “**Sequestration Proceeding**”). Both the Sequestration Proceeding and the Sequestration Appeal were decided against Mr Shaw: *Yarranova Pty Ltd v Shaw (No 2)* [2014] FCA 616 (Gordon J; hereafter, the “***Sequestration Decision***”); *Shaw v Yarranova & Anor* [2014] FCAFC 171 (Bennett, Flick and Yates JJ; hereafter, the “**Sequestration Appeal Decision**”). Since the failure of the Sequestration Appeal, Mr Shaw has commenced at least two further proceedings in this court (other than the present matter): one an unsuccessful application under s 153B of the Act to have the sequestration order annulled or set aside (hereafter, the “**Annulment Proceeding**”) and one an appeal from that decision (hereafter, the “**Annulment Appeal**”). Again, both the Annulment Proceeding and the Annulment Appeal were decided against Mr Shaw: *Shaw v Yarranova Pty Ltd & Anor* [2016] FCA 88 (Pagone J; hereafter, the “***Annulment Decision***”); *Shaw v Yarranova Pty Ltd & Anor* [2017] FCAFC 88 (North, Perry and Charlesworth JJ; hereafter, the “***Annulment Appeal Decision***”).
2. All of those proceedings, like this one, centred upon the costs orders that are referred to in [7] of the passage extracted above. Those orders arose in connection with the proceeding that Mr Shaw commenced against Yarranova and Newquay (to which reference is made in [4] of the passage extracted above—hereafter, the “**Supreme Court Proceeding**”). The existence and effect of those orders (hereafter, the “**Costs Orders**”) is not in dispute. They are conveniently summarised in the reasons for judgment published in the Sequestration Proceeding—*Sequestration Decision*, [22] (Gordon J):

22 Between 24 September 2009 and 11 October 2011, the following taxed costs orders were made against Mr Shaw in favour of the applicant creditors:

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| **Date of Order** | **Amount of taxed costs**  | **Date and subject matter of underlying costs order** |
| 24 September 2009 | $51,950.20 | On 7 March 2008, Master Daly ordered Mr Shaw to pay the applicant creditors “costs of the assessment save for the costs of preparing the supplementary affidavit of Ian Michael Smith affirmed 8 November 2007, and the costs reserved on 11 December 2007, on a party / party basis”: … |
| 24 September 2009 | $9,919.43 | On 1 August 2008, the Court of Appeal dismissed an application for leave to appeal made by Mr Shaw and awarded costs against him: …  |
| 27 April 2010 | $25,000.00 | On 19 November 2009, the applicant creditors’ issued a summons for taxation in relation costs orders made against Mr Shaw on 22 May 2009…, 27 May 2009…, 16 July 2009…, 24 August 2009…and 3 September 2009… |
| 29 July 2010 | $11,470.49 | Mr Shaw was ordered to pay the applicant creditors a further amount of $11,470.49 in relation to the applicant creditors 19 November 2009 summons for taxation, which was resumed part heard from 27 April 2010.  |
| 7 October 2011 | $149,372.67 | On 15 April 2010, Harper J ordered Mr Shaw pay on a solicitor and client basis the costs of and incidental to summons filed by Mr Shaw on 7 October 2009 and summons filed by the applicant creditors’ on 29 September 2009 and 14 October 2009 (save for the applicant creditors appearances on 16 and 19 October 2009).  |
| 10 October 2011 | $55,759.12 | On 25 October 2010, the Court of Appeal dismissed summons filed by Mr Shaw on 17 November 2009 and 22 December 2009 and ordered Mr Shaw pay the applicant creditors’ costs.  |
| 10 October 2011 | $74,140.61 | On 4 December 2009, Judd J dismissed a summons filed by Mr Shaw on 24 November 2009 and ordered Mr Shaw to pay the applicant creditors’ costs on an indemnity basis. On 17 December 2009, Judd J ordered that costs of and incidental to an oral application made by the applicant creditors on 4 December 2009 and the applicant creditors’ summons of 7 December 2009 be paid by Mr Shaw.  |
| 10 October 2011 | $4,501.20 | On 26 July 2010, Mr Shaw was ordered to pay the applicant creditors’ costs of a notice to review filed by Mr Shaw on 4 May 2010.  |
| 11 October 2011 | $14,320.90 | On 18 February 2011, the Court of Appeal ordered Mr Shaw to pay the applicant creditors’ costs of an application by Mr Shaw for leave to appeal.  |
| 11 October 2011 | $9,422.62 | On 13 December 2010, Mr Shaw was ordered to pay the applicant creditors’ costs of an application for review filed by him on 24 August 2010.  |
| 11 October 2011 | $4,297.54 | On 15 September 2011, Mr Shaw was ordered to pay the applicant creditors’ costs of an application by Mr Shaw for the production of documents outlined in a letter dated 15 August 2011.  |
| 11 October 2011 | $2,736.86 | On 25 October 2010, Mr Shaw was ordered to pay the applicant creditors’ costs of a hearing on 2 June 2008 before Judd J. |
| **TOTAL** |  **$412,891.64** |  |

1. Mr Shaw resisted the making of those Costs Orders. His basis for doing so (which assumes some relevance in the present proceeding) was simple enough. He submitted that Yarranova and Newquay—which, it might be recalled, were the successful defendants in the Supreme Court Proceeding—did not incur (or, in any event, were not liable to pay) any costs that could properly have been made payable by means of the Costs Orders. That was so, he said, because the fees charged by the solicitors that acted for them were paid not by them but by a related entity, apparently known as MAB Corporation.
2. At least two of the Costs Orders were the subject of appeals, each advanced in reliance (or part reliance) upon the contention summarised in the preceding paragraph. The first such appeal, heard by a single judge, failed: *Shaw v Yarranova Pty Ltd* [2010] VSC 567 (Beach J). Mr Shaw then sought leave to appeal that failure to the Court of Appeal. That application also failed: *Shaw v Yarranova Pty Ltd & Anor* [2011] VSCA 55 (Redlich and Mandie JJA; hereafter, the “***Court of Appeal Decision***”).
3. In the *Court of Appeal Decision*, the Court of Appeal examined the so-called “indemnity rule”: the principle that a successful litigant may not recover costs beyond that which he or she is obliged to pay his or her own solicitors. After noting (at [22]) that “…the indemnity rule has been treated as permitting recovery of costs from the party against whom the order is made [notwithstanding that] a third party has indemnified the successful party or paid their costs,” their Honours went on to hold (references omitted):

23 Payment by MAB Corporation of the respondents’ costs did not give rise to an inference that the respondents had no liability for their solicitors’ costs. The existence of a concurrent obligation by MAB to pay the respondents’ solicitors’ costs pursuant to its retainer, and the fact that the accounts for services may not have been rendered to the respondents, did not preclude the presumption from applying. A litigant who is liable to his or her own solicitor for the costs of proceedings and is indemnified in whole or in part for those proceedings is entitled to recover his or her taxed or assessed costs for the benefit, in whole or in part, of the party providing that indemnity. Having paid or agreed to pay the solicitors for the successful party’s costs, the indemnifier would become subrogated to all rights of the successful party, subrogation being an equitable right which does not depend upon a contractual entitlement.

24 There being a strong presumption of a retainer, it was for the applicant to either prove that there was no retainer or establish that there was an express or implied agreement between the respondents and their solicitors that under no circumstances whatsoever were they to be liable for their solicitors’ fees.

25 There was no evidence to support an inference that there was an agreement between the respondents and their solicitors that they should not be liable for their solicitors’ fees…

…

27 Once it is recognised that it will ordinarily be presumed in the case of a solicitor who acts on the record for a party that there is a retainer and that the party for whom the solicitor acts is liable for the solicitor’s costs notwithstanding that the party is indemnified by another for the payment of those costs, there was nothing before the Costs Judge that made it likely that any of the material sought by the applicant would advance the contention that the indemnity principle had been displaced. The evidence did not raise the likelihood that the costs that had been or were to be paid were less than those that had been taxed.

1. Following the making of the Costs Orders, Yarranova and Newquay applied to this court for a sequestration order. Mr Shaw resisted that application. In doing so, he invited the court to peer behind the Costs Orders and conclude that, their existence notwithstanding, neither of Yarranova or Newquay was, in fact, entitled to the costs for which any of them made provision. Again, his basis for so submitting was that those costs were, instead, paid by another entity, MAB Corporation, and that the orders could be impugned as the product of fraud (such that they might not be considered reliable evidence as to the existence of the debt). By her decision in the Sequestration Proceeding, Gordon J declined to go behind the Costs Orders and a sequestration order was made.
2. Mr Shaw then appealed that judgment to a full court. The court there concluded that Gordon J did not err in concluding “…that she would not go behind the judgment and that Mr Shaw had not adduced any evidence as to fraud”: *Sequestration Appeal*, [24]-[25] (Bennett, Flick and Yates JJ).
3. Undeterred, Mr Shaw then applied under s 153B of the Act for orders that Gordon’s J sequestration order be annulled or set aside. Again, Mr Shaw invited the court to go behind the Costs Orders and conclude that, in truth and reality, neither of Yarranova or Newquay incurred any costs in connection with the Supreme Court Proceeding. The court declined to do so, in the process making the following observations:

12 Mr Shaw sought to cast doubt upon the judgment debt, and the subsequent creditors’ petition, by asserting claims without foundation that the respondents were not entitled to the costs which had been ordered in their favour or were not authorised to have issued the bankruptcy notice or to have sought the sequestration order. Many of Mr Shaw’s contentions, upon which his claims depend, have previously been argued and determined against him. His reliance upon the indemnity principle ground, for example, had been fully agitated and had been dealt with and decided against him by a number of courts, including those exercising bankruptcy jurisdiction: see *Shaw v Yarranova Pty Ltd* [2011] VSCA 55, [8]-[16]; *Shaw v Yarranova Pty Ltd* [2014] FCA 557, [47]-[56]; *Yarranova Pty Ltd v Shaw (No 2)* [2014] FCA 616, [89]. His claim that either Yarranova or NewQuay lacked legal standing to seek costs is misconceived in circumstances where the costs had been ordered in favour of both respondents in proceedings which he had commenced against them. His more particular complaint that Yarranova “was not a bona fide party to any of the proceedings that resulted in the cost orders and judgment debts” cannot be accepted since Yarranova had been made a defendant by Mr Shaw. Mr Shaw’s oral submission that Yarranova was otherwise not entitled to the fruits of the judgment and ought not to have applied for costs were assertions by him without foundation and were inconsistent with his conduct in having made Yarranova a party to the proceeding which he lost: it was a party to the proceedings, he had made it a party, he had lost the proceedings, and it was awarded the costs incurred in the proceedings which he had commenced.

…

14 Mr Shaw’s submission that Yarranova or NewQuay were not entitled to have their costs paid was based in part upon his lack of understanding of corporate group accounting and, in particular, his lack of understanding of the accounting between companies in a group of companies, and of the role played in such a group of a company providing a treasury function for the group. Mr Shaw pursued in cross-examination (and in applications for discovery, notices to produce, and subpoenas) the hypothesis that Yarranova and NewQuay had incurred no costs because any legal fees had been formally billed to, or paid by, a group company which acted as the finance company in the group rather than to the two companies actually sued by him and for whose proceeding the costs were incurred. His cross examination of the witnesses on this issue, and his submissions, revealed that Mr Shaw’s hypothesis was not based upon any evidence that the costs were not properly owed by him to those who had the benefit of the costs orders, but was based, at most, upon a misunderstanding of group accounting and upon a hope of finding a lack of obligation to pay where no lack could be seen. Mr Shaw may have had a grievance about the way he had been treated by the respondents, and may have formed a suspicion that perhaps the companies he had sued might, somehow, not have been entitled to the costs which had been incurred in defending his actions against them, but he had, and there was, no basis for his claim…

…

[Mr Shaw’s contentions overlooked] that whatever may have been the internal position as between Yarranova and NewQuay, or as between them and the solicitors who acted for them, the fact was that costs were awarded to the parties he had unsuccessfully brought to Court. There was no doubt about the Court orders for the payment of costs in the proceedings he had commenced. It was his actions that occasioned the costs incurred by the respondents whatever may have been the internal arrangements within the MAB group about how they were to be billed and paid. In any event there was ample evidence to establish how the respondents were billed and how their costs were accounted for within the group accounts. ABL was retained at all times to act for the MAB group and acted for that part of the group, namely the respondents, in the litigation which Mr Shaw had commenced against them. The authority to act arose from general retainer and the costs were incurred in Mr Shaw’s proceedings against Yarranova and NewQuay. The costs were billed by ABL to the group and accounted for internally in the MAB accounts. There is no basis for the suggestion that the judgment debts were not due by Mr Shaw to Yarranova and NewQuay and there is neither reason nor basis to go behind the judgment debts.

(*Annulment Decision*, [12]-[14] (Pagone J)).

1. Later, his Honour concluded (at [17]):

Mr Shaw had no evidentiary basis to support his grounds for going behind the judgments other than what he might hope to obtain by persistent applications for discovery, subpoenas or questions in cross-examination. He was not, in other words, seeking to pursue a case which he had any reasonable foundation to believe existed.

1. The court declined to annul or set aside the sequestration order that Gordon J had made (and that Mr Shaw had unsuccessfully appealed). Again undeterred, Mr Shaw appealed to a full court. Amongst the 75 grounds that he advanced in the Annulment Appeal, Mr Shaw charged Pagone J with having erred by refusing to go behind the Costs Orders. That ground was rejected. The court made the following observation (*Annulment Appeal Decision*, [22] (North, Perry and Charlesworth JJ)):

Where, as here, a judge hearing the application for a sequestration order has declined to go behind a judgment that evidences or constitutes a petitioner’s debt, the bankrupt will face a significant hurdle in demonstrating that the Court should do so on a subsequent annulment application. That is particularly so where, as here, the judge hearing the creditor’s petition determined not to go behind the judgment and that determination has been unsuccessfully challenged on an appeal. In those circumstances, it will be necessary to show that there is evidence in existence that was not before the judge who made the sequestration order and that that judge would have been bound, in the face of that evidence, not to make the sequestration order. In other words, an annulment application is not an occasion for a bankrupt to have the question of whether to go behind the judgment considered anew, as though the proceedings on the creditor’s petition and the subsequent appeal had never occurred.

1. Later (at [64]-[67]), their Honours considered the so-called “indemnity principle” (or “rule”) and the “new” evidence upon which Mr Shaw relied in support of his contention that the court, in assessing whether to annul or set aside the sequestration order, ought to have gone behind the Costs Orders:

64 As to the application of the “indemnity principle”, the primary judge was, with respect, correct to determine (Reasons [12]) that the issue was one that had been argued by, and determined against, Mr Shaw in previous proceedings. Although the primary judge referred to only two proceedings, that short list of proceedings should not be understood as exhaustive. So much is apparent from his Honour’s earlier reference (Reasons [3]) to the fraud proceedings that had been commenced by Mr Shaw in this Court and summarily dismissed by Jessup J. It was open to the primary judge to find that the issue of indemnification had been a central grievance litigated or sought to be litigated by Mr Shaw repeatedly in the Supreme Court and in this Court. Of critical importance is the circumstance that the issue was one that Mr Shaw had unsuccessfully raised in opposition to the respondents’ creditor’s petition and on his appeal against the sequestration order. The primary judge was correct to take into account the earlier proceedings in determining whether Mr Shaw had shown sufficient reason to go behind the judgments.

65 As the primary judge had observed from the outset, it was not sufficient for Mr Shaw to show merely that the costs orders were wrongly made. Rather, it was necessary in all of the circumstances to show evidence of fraud, collusion or a miscarriage of justice. Mr Shaw acknowledged as much in the course of submissions on this appeal. He then submitted that there was before the primary judge sufficient “new material” to justify the Court going behind the orders made in the taxation assessment proceedings: [Notice of Appeal] [25]. The “new material” was said to include:

… invoicing & payment practice, [purchase] order no 3656, course of dealing, apparent lack of written authorisation & internal corporate accounting & testimony of Mr Perry, Mr Calvi, Mr Smith & Mr King …

66 In relation to invoicing, it was not disputed that solicitors from the law firm Arnold Bloch L[ei]bler (ABL) had appeared for the respondents in all of the proceedings to which we have referred. The purchase order to which Mr Shaw refers is an order relating to an invoice from ABL to MAB Corporation. The revelation that ABL had issued its invoices to an entity in the MAB Group other than the respondent was not new...The purchase order to which Mr Shaw referred corresponded with an ABL invoice that Mr Shaw had relied upon in earlier proceedings. It added nothing to the undisputed evidence that ABL had not addressed any invoices to Yarranova or NewQuay for legal services.

67 The evidence of Mr Perry, Mr Calvi, Mr Smith and Mr King (all named at [Notice of Appeal] [25]) was to the effect that there existed no written retainer between ABL and either of the respondents. The circumstance that there existed no written retainer or authorisation between Yarranova, NewQuay and ABL could not properly be regarded as “new”. No written retainer had been adduced in previous proceedings, nor did Mr Shaw demonstrate that it had ever been asserted by the respondents that any such written retainer ever existed.

1. Mr Shaw then applied for special leave to appeal that judgment to the High Court. That application failed: *Shaw v Yarranova Pty Ltd & Anor* [2017] HCASL 219 (Bell and Gageler JJ).

# The present application

1. That lengthy litigation history at an end—or seemingly so—the Trustee set about administering Mr Shaw’s bankrupt estate. On 9 October 2018, it issued a notice of intention to declare dividends to creditors and called for the submission of proofs of debt.
2. By a notice dated 15 November 2018, Yarranova and Newquay submitted (or purported to submit) such a proof (hereafter, the “**YN Proof**”). It alleged a debt payable by Mr Shaw in the sum of $1,763,691.00. That debt was said to comprise the judgment debt arising by reason of the Costs Orders, interest on those amounts, and other legal costs payable by Mr Shaw from 18 February 2011 onwards. That final category of debt accounted for $1,276,974.34 of the total that was said to be owed.
3. On or around 23 July 2019, the Trustee partially admitted the YN Proof in the amount of $450,584.08. That amount comprised the Costs Orders (which totalled $412,891.64), less some costs that Yarranova and Newquay owed to Mr Shaw (totalling $24,011.48), plus interest of $61,703.92.
4. It is that decision that is the subject of the present application (and that Mr Shaw asks the court to reverse under s 104(2) of the Act). The amount of the YN Proof that the Trustee admitted is not doubted: that is to say, there is no challenge to any of the component figures by which it is calculated. Rather, Mr Shaw submits that its admission should be reversed for two reasons, namely because:
5. in truth and reality, he (or his estate) does not owe Yarranova and Newquay the amounts that are the subject of the Costs Orders; and
6. the YN Proof, having been submitted jointly by Yarranova and Newquay, is defective or invalid.
7. In support of his application, Mr Shaw filed and read six affidavits, namely:
8. an affidavit that he affirmed on 24 July 2019;
9. an affidavit that he affirmed on 6 August 2019;
10. an affidavit that he affirmed on 16 August 2019;
11. an affidavit that he affirmed on 19 August 2019;
12. an affidavit that he affirmed on 5 September 2019; and
13. an affidavit that he affirmed on 10 September 2019.
14. At the hearing before me, the Trustee provided a note outlining a number of objections to various passages of that body of affidavit material. It did not ask that I rule upon each such objection. Instead, I was asked to consider the objections raised and, where I considered it appropriate to do so, to limit the use to which the relevant passages might be put under s 136 of the *Evidence Act 1995* (Cth). I have done so.
15. The Trustee filed and read two affidavits, namely:
16. an affidavit of its solicitor, Ms Crescen Alinea, affirmed on 7 August 2019; and
17. an affidavit that Ms Alinea affirmed on 30 August 2019.
18. Mr Shaw raised a small number of objections to various parts of the Trustee’s affidavit evidence, all of which were dismissed at the time that they were read.
19. With Mr Shaw’s agreement, the Trustee also tendered a copy of the transcript of the Annulment Proceeding.

# The court’s power to review the YN Proof

1. Section 104 of the Act provides as follows:

(1) A creditor, or the bankrupt, may apply to the Court for review of a decision of the trustee under subsection 102(1), (3) or (4) in respect of a proof of debt.

(2) The Court may, upon the application, confirm, reverse or vary the decision of the trustee.

(3) Subject to the power of the Court to extend the time, an application under this section to review a decision shall not be heard by the Court unless it was made within 21 days from the date on which the decision was made.

1. The principles governing the exercise of the court’s powers under s 104 of the Act were not materially in contest. At issue is whether the Trustee’s decision to admit the YN Proof should be reversed (as Mr Shaw contends) or confirmed (as the Trustee contends). The application is not an appeal, in the sense that the court is not concerned with whether or not the Trustee’s decision was correct on the evidence that was before it. Rather, the court must consider on the basis of the evidence now whether or not the decision to admit the YN Proof should be confirmed or reversed: *Re Rodgers; Ex parte CMV Parts Distributors Pty Ltd* (1989) 20 FCR 561, 562-563 (von Doussa J), citing *Payne; Ex parte Levi* (unreported, Supreme Court of Western Australia, Toohey J, 23 September 1986); *P T Garuda Indonesia Pty Ltd v Grellman* (1994) 48 FCR 252, 255 (Lockhart J); *BDT Holdings Pty Ltd v Piscopo* [2009] FCA 151, [4] (Rares J).
2. As the applicant, Mr Shaw bears the onus of establishing that the Trustee’s decision to admit the YN Proof should be reversed: *Daevys v Official Trustee in Bankruptcy* [2011] FCA 398, [14] (Flick J). Failure to discharge that onus requires that the decision be confirmed: *Re Robert Henry Masters Ex parte: Elizabeth Gerovich and Hazel Henley v Bernard Putnin* [1985] FCA 354, [9] (Toohey J).
3. If, ultimately, the court is satisfied that the debt to which the YN Proof relates is owed, then the Trustee’s decision to admit it under s 102(1) of the Act should be confirmed.

# Preliminary issue: subpoenas

1. On 28 August 2019, Mr Shaw was granted leave to issue three subpoenas: two were addressed to officers of MAB Docklands Pty Ltd, Messrs Andrew and Michael Buxton; and the third was addressed to Mr Henry Lanzer, the managing partner of the law firm, Arnold Bloch Leibler (which acted for Yarranova and Newquay in their successful defence of Mr Shaw’s Supreme Court Proceeding). Each subpoena required the addressee to produce to the court certain categories of documents, and to attend and give evidence at the hearing. It is unnecessary that I should set out in detail the nature of the documents sought or of the evidence that it was proposed might be led. It is sufficient to note that the subpoenas were directed to advancing Mr Shaw’s contention that the court ought to go behind the Costs Orders because, in truth and reality, Yarranova and Newquay were not owed any of the costs to which those orders pertain.
2. By an interlocutory application dated 9 September 2019, Mr Lanzer applied to have his subpoena wholly set aside. Messrs Andrew and Michael Buxton made an equivalent application on 10 September 2019. In each case, the addressees sought to characterise the subpoenas as an abuse of the court’s process, in that each amounted to “fishing” and sought to agitate an issue that had already been extensively litigated (both in this court and in the Victorian Supreme Court). Additionally, Mr Lanzer sought to set aside the subpoena addressed to him on the basis that there was no basis to suspect that he might be able to give any helpful or relevant evidence.
3. Those applications were scheduled to be heard before a registrar of the court at 2:15pm on Wednesday, 11 September 2019. At the commencement of that hearing, Mr Shaw made an application under (or of the kind contemplated by) s 35A(7)(b) of the *Federal Court of Australia Act 1976* (Cth), the effect of which was to require that those interlocutory applications be determined by a judge of the court. They were then scheduled for hearing at 9:30am on Friday, 13 September 2019, immediately before the substantive hearing.
4. Upon hearing from counsel for the addressees and from Mr Shaw, I made orders setting aside the three subpoenas in their entirety. I indicated that I would provide reasons for doing so.
5. The bases upon which a court might set aside a subpoena were not in dispute: it may do so if the subpoena amounts to an abuse of the court’s processes or to an exercise in “fishing” (the latter being an example of the former). An abuse of process might occur in circumstances where a party seeks to re-litigate a matter that has already been determined: *Tomlinson v Ramsey Food Processing Pty Ltd* (2015) 256 CLR 507, 518-519 [25]-[26] (French CJ, Bell, Gageler and Keane JJ); *Shire of Katanning v Bride* [2016] WASC 118, [28] (Tottle J). A subpoena will amount to “fishing” where the evidence to which it is directed is sought in order to establish whether the issuing party has a case that might be run (as opposed to establishing an evidential basis for a case for which a proper basis already exists): *Fried v National Australia Bank Ltd* (2000) 175 ALR 194, 200-201 [30] (Weinberg J).
6. Plainly, the subpoenas presently in issue were directed to uncovering evidence supportive of Mr Shaw’s submission that the debts to which the Costs Orders gave rise did not, in truth or reality, exist (because neither of Yarranova or Newquay incurred any liability for costs in the Supreme Court Proceeding, such that the Costs Orders themselves should not have been made). In order to warrant consideration of that issue, the court would first need to be persuaded that it should go behind the Costs Orders (which, of course and by themselves, are *prima facie* evidence to the contrary).
7. Just as it appears to have been in the Sequestration Proceeding and the Annulment Proceeding, it was common ground before me—and the authorities, in any event, make clear—that a court exercising bankruptcy jurisdiction is not compelled to accept a judgment as proof that a debt is owed. In the *Sequestration Decision*, Gordon J summarised the relevant principles as follows (at [69]):

1. The Court may, in an appropriate case, go behind a judgment to see whether in truth and reality a debt is due from the judgment debtor to the judgment creditor: *Corney v Brien* (1951) 84 CLR 343 and *Wren v Mahony* (1972) 126 CLR 212.

2. An appropriate case may include where a judgment debt that has been obtained by fraud or collusion or where there has been some miscarriage of justice: *Corney* at 347-348 and 352-353 and *Emerson v Wreckair Pty Ltd* (1992) 33 FCR 581 at 588.

3. If the judgment in question followed a full investigation at a trial on which both parties appeared, the court will not reopen the matter unless a *prima facie* case of fraud or collusion or miscarriage of justice is made out: *Corney* at 356.

4. The enquiry involved is a two stage process enquiring (1) as to whether there is sufficient reason to question the existence of a real debt behind the judgment and (2) if there is, determining that issue. These two steps may be determined together or independently: *Makhoul v Barnes* (1995) 60 FCR 572 at 584 and *Wolff v Donovan* (1991) 29 FCR 480.

1. A court exercising bankruptcy jurisdiction—including the aspect thereof to which s 104(1) of the Act is directed—is concerned not with “…whether there is a judgment, but rather whether there is a debt”: *Re Kittay, in the matter of Frigger (No 2)* [2018] FCA 1032, [31] (Colvin J). It has a discretion to not accept a judgment as proof that a particular debt exists: *Wren v Mahony* (1972) 126 CLR 212, 224 (Barwick CJ, with whom Windeyer and Owen JJ agreed), 235-236 (Menzies J, with whom Walsh J agreed; dissenting but not on this point); *Ramsay Health Care Australia Pty Ltd v Compton* (2017) 261 CLR 132, 144-146 ([42]-[48]) (Kiefel CJ, Nettle and Keane JJ). That discretion is most typically enlivened when there is evidence that suggests that the judgment that is advanced as proof of a particular debt was the product of “fraud, collusion or miscarriage of justice”: *Corney v Brien* (1951) 84 CLR 343, 356 (Fullagar J). It may also be enlivened if “other sufficient cause” exists for suspecting that the judgment might not reflect reality: *Ramsay Health Care Australia Pty Ltd v Compton* (2017) 261 CLR 132, 151-152, [68]-[71] (Kiefel CJ, Nettle and Keane JJ); *Doggett v Commonwealth Bank of Australia* [2019] FCAFC 19, [30]-[31] (Kerr, Davies and Thawley JJ).
2. The court, then, in exercising its review function under s 104 of the Act, may go behind court orders that are advanced as proof of a debt and consider for itself whether any such debt, in truth or reality, exists. As he has done on many other occasions in many other contexts, Mr Shaw invited the court in this case to embark down that path.
3. To that end, Mr Shaw submitted that the circumstances here prevailing were such as ought to enliven the court’s discretion to go behind the existence of the Costs Orders and consider, independently, whether he was (or ought to have been) indebted to Yarranova and Newquay for the costs to which they pertained. He identified those circumstances in his written submissions as follows (errors original, footnotes omitted):

44. For over 15 years Tax Invoices for legal costs for the related proceedings were made out to MAB Docklands (*referring to the MAB Docklands purchase order 3656*)

45. MAB Corporation paid ABL directly in satisfying those invoices. Not one accounting document exists referring to Yarranova or Newquay

46. The creditors have admitted in court that there is no record or written retainer, authorization or instruction to act from either creditor but there is a retainer agreement between MAB Corporation & ABL that predates 01 Jan 2007

47. The creditors & ABL have been unwilling or unable to explain when, how & on what terms they were engaged by the creditors.

48. In proceeding VID 774 of 2014 Mr King, The ABL partner in charge of the relevant proceedings and billing gave evidence that did not know why over a period of 15 years all ABL invoices were made out to MAB Docklands & not the creditors. *Refer Transcript*

49. This conduct amounts to an acceptance between ABL & MAB Corp that is the basis of the retainer contract due to their course of dealing.

1. Mr Shaw also submits that Yarranova and Newquay have acted unconscionably by not explaining (or not producing records to explain) the basis upon which Arnold Bloch Leibler was retained and paid in the Supreme Court Proceeding. That unconscionable conduct, it was said, was a circumstance that warranted the court’s going behind the Costs Orders.
2. Mr Shaw elaborated upon those submissions orally at the hearing. Intending no disrespect, much of what he submitted was difficult to follow or of questionable relevance to the issue confronting the court (or both). The extract above from his written submissions is a fair summary of the contentions that he advances. It is conveniently distilled in the following exchange that took place at the hearing:

HIS HONOUR: … I said to you earlier what I’m looking for is whether there’s something different. I’m not yet sure whether there is. I don’t know that you’ve taken me to anything different. What you’ve said is that certain things that you’ve said in the past haven’t been properly decided or haven’t been adequately reasoned, etcetera. But this is what I would like you to confine your submission on. What is it in the body of evidence that’s now before me that I should look at and say, well, you know what, that is a reason why I should go behind the costs orders?

MR SHAW: Well, basically, your Honour, I’m saying that, you know, in a nutshell I’m saying that the judgments were wrong. I’m saying that, okay, they were wrong. And you’ve got a body of evidence before you that you were able to look at and decide, you know, in the relevant circumstances whether all this evidence would put a court on inquiry as to whether or not those debts were correct, forgetting about, okay, there has been judgments coming along the way and, obviously, the appeal judgments refer to the previous judgment, and if they’re upholding them there’s no real change. But what I’m saying, your Honour, is in this review that I’ve requested that I just want the opportunity to put this other evidence to you in its entirety…

1. The judgments that Mr Shaw there described as wrong include the *Court of Appeal Decision*, the *Sequestration Decision*, the *Sequestration Appeal Decision*, the *Annulment Decision* and the *Annulment Appeal Decision*. The “other evidence” was the evidence that Mr Shaw hoped to be able to lead by means of his subpoenas.
2. The facts to which Mr Shaw points are established by the evidence (and, in any event, are not materially challenged). The problem for him now, as it has always been, is that none of them individually is, and no two or more of them in combination are, sufficient to amount to “fraud, collusion or miscarriage of justice” or “other sufficient cause” of the kind that might warrant an exercise of the court’s discretion to go behind the Costs Orders. Mr Shaw has no proper basis for his contention that the Costs Orders are unreliable or were irregularly obtained such that the court should venture behind them. In reality, he has nothing more than a bald hope or suspicion that they are or were; a hope or suspicion that he wished to investigate by means of the court’s coercive subpoena process.
3. The subpoenas were, then, wholly exploratory. Again intending no disrespect, Mr Shaw has no idea whether Yarranova and Newquay were liable for the legal fees to which the Costs Orders relate. He has no idea as to the nature of the arrangements—formal or otherwise, express or implicit—that existed as between Yarranova and Newquay, their lawyers and the related entity that paid their lawyers. He complains that nobody has ever properly explained to him (or to this or any other court) what those arrangements were. Let it be assumed that Mr Shaw is right about that: in the absence of some basis for suspecting something untoward, those arrangements are not of concern to Mr Shaw or the court. The court will not default to a position of suspicion; particularly not in light of what, on its face, appears to be an entirely unremarkable example of one entity in a group performing a treasury-type function for others. It most certainly will not do so in circumstances where Mr Shaw has agitated and lost precisely the same contention on as many occasions as he has, both in this court and in the Victorian Supreme Court.
4. Not only has Mr Shaw never been able to prove that neither of Yarranova and Newquay was ever liable to pay the costs to which the Costs Orders pertain, he has also never been able to persuade a court that he should be indulged by means of coercive process in order to obtain (or attempt to obtain) that proof. This is not the first—or the second, or the third—occasion on which Mr Shaw has sought to compel the production of evidence that might, *might*, establish the bald hypothetical upon which he hopes to escape the ordinary consequences of his unsuccessful suit against Yarranova and Newquay. Speaking of the first two occasions (which were advanced before Wood AsJ and Beach J in the Victorian Supreme Court), the Victorian Court of Appeal observed (*Court of Appeal Decision*, [26] (Redlich and Mandie JJA); references omitted):

Wood AsJ and Beach J were correct to conclude that this was not a case in which the production of invoices and other indicia of payment should have been ordered. The principles governing an application for an order that documents be produced are not different from those governing applications for access to documents produced in answer to a subpoena. So where an application is made in the Costs Court that the party in whose favour a costs order has been made produce documents asserted to be relevant to the application of the indemnity principle, the applicant must identify a legitimate forensic purpose for which access is sought, and establish that it is ‘on the cards' that the documents will materially assist his case. There will be no legitimate forensic purpose if, 'all the party is doing is trying to get hold of the documents to see whether they may assist him in his case.’

1. In the Sequestration Proceeding, a similar attempt to compel the production of evidence by subpoena also failed: *Sequestration Decision*, [49] (Gordon J). So, too, did Mr Shaw’s attempt to compel the production of documents by means of a notice to produce. As to that attempt, Gordon J observed (at [88]):

Mr Shaw should not be permitted to fish for evidence of fraud through discovery or like processes. Mr Shaw should not be permitted to fish for this evidence in order to make out a prima facie case of fraud that he needed to establish to advance his applications

1. In the Annulment Appeal, a full court of this court had occasion to consider Mr Shaw’s apparent tendency to run and re-run contentions upon which he has consistently failed. Their Honours observed (*Annulment Appeal Decision*, [22]):

…an annulment application is not an occasion for a bankrupt to have the question of whether to go behind the judgment considered anew, as though the proceedings on the creditor’s petition and the subsequent appeal had never occurred. Nor is an annulment application an occasion to seek to obtain, by compulsory processes, evidence that might sway the judge on the annulment application to a different view from that reached by the judge who made the sequestration order. A bankrupt who alleges grounds for the annulment of his or her bankruptcy should not advance grounds for annulment that cannot be proven by evidence already known to, or in the possession of, the bankrupt. That is particularly so when the grounds for annulment include allegations of fraud or other wrongdoing. The annulment proceedings ought not to be commenced in the hope that such evidence might somehow emerge, by compulsive processes or otherwise.

1. Here, the subpoenas are as clear an example of “fishing” as might be imagined. Further and insofar as they were sought in order to re-litigate a matter that Mr Shaw has agitated before—namely, that the Costs Orders were the product of fraud, collusion or a miscarriage of justice, or were otherwise attended by circumstances that should warrant this court’s going behind them—they amounted to an abuse of the court’s processes. They were set aside on those bases.
2. An additional basis existed for setting aside the subpoena directed to Mr Lanzer. The evidence led in support of his application to set aside the subpoena addressed to him made clear that he had no involvement in the Supreme Court Proceeding or in the making of arrangements by which his firm’s fees therein were to be invoiced or paid. Mr Shaw advanced no evidence to the contrary, nor was there any basis to doubt what was advanced on Mr Lanzer’s behalf. Mr Shaw’s desire to question Mr Lanzer was, again, entirely speculative and was set aside on that additional basis.

# Mr Shaw’s challenge to the admission of the YN Proof

1. As stated above, Mr Shaw advances two challenges to the Trustee’s decision to admit the YN Proof: first, that the debt is not, in truth, owed; second that the proof is administratively defective. I turn to consider each.

## The contention that the debt is not owed

1. In large measure, the comments made above with respect to the subpoenas also answer Mr Shaw’s first ground of challenge. Mr Shaw invites the court to venture behind the Costs Orders and find that neither of Yarranova and Newquay was entitled to the costs to which they pertain.
2. For the reasons already identified, Mr Shaw’s arguments that the court should look behind the Costs Orders fails to rise beyond the barest of assertions that those orders were the product of fraud, collusion or a miscarriage of justice—or some other circumstance—such that I should doubt that they might serve as reliable proof of the existence of the debt that is the subject of the YN Proof.
3. I have no such doubt. Respectfully, I adopt the observations of the Court of Appeal: above, [11]. Mr Shaw has not produced any evidence sufficient to elicit any real doubt that the debt of which the Costs Orders serve as *prima facie* proof is, in truth and reality, one that Yarranova and Newquay are owed. Those orders were the subject of contest. A subset of them was the subject of an appeal, which in turn was the subject of an application for leave to appeal. Their reliability as proof of what Yarranova and Newquay are owed is, in my view, beyond doubt. They are, at the very least, sufficiently reliable to warrant against an exercise of the court’s discretion to go behind them.
4. I am fortified in that view by the fact that this is at least the fifth occasion that Mr Shaw has sought to convince the court that it should venture behind the Costs Orders. The submission that Mr Shaw advances—and the evidence to which he points in support of it—is not materially different now to that which he advanced on prior occasions. Mr Shaw’s invitation to go behind the Costs Orders has been consistently and unambiguously rejected on every occasion that he has extended it. I do not hesitate to add my name to the long list of judges of this court who have stated as plainly as day the futility of Mr Shaw’s resistance to Yarranova and Newquay’s attempts to recoup from him the costs of their successful defence of his Supreme Court Proceeding.

## The contention that the “joint” proof is defective

1. The second ground upon which Mr Shaw challenges the Trustee’s decision to admit the YN Proof focuses upon the fact that it was submitted jointly by Yarranova and Newquay. The contention is that a proof of debt advanced under s 84 of the Act may only be advanced on behalf of a single person or entity.
2. Section 84 of the Act provides as follows:

(1) Subject to this Division, a creditor who desires to prove a debt in a bankruptcy shall lodge, or cause to be lodged, with the trustee a proof of debt in accordance with this section.

(2) A proof of debt:

(a) shall set out particulars of the debt;

(b) shall be in accordance with the approved form;

(c) shall specify the vouchers, if any, by which the debt can be substantiated; and

(d) shall state whether or not the creditor is a secured creditor.

(3) Where the trustee is of the opinion that it is desirable that all the matters, or some of the matters, contained in a proof of debt lodged with him or her by a creditor should be verified by statutory declaration, the trustee may serve on the creditor a written notice informing the creditor that he or she is of that opinion and that, unless the creditor lodges with the trustee a statutory declaration verifying the matters contained in the proof of the debt or such of those matters as the trustee specifies in the notice, the trustee will administer the estate as if the proof of debt had not been lodged.

(4) A statutory declaration verifying matters in a proof of debt lodged by a creditor may be made by:

(a) the creditor; or

(b) a person whose own knowledge includes the facts set out in the statutory declaration and the proof of debt, and who is authorised by the creditor to make the declaration.

(5) Where the trustee serves a notice on a creditor under subsection (3) in respect of a proof of debt, the proof of debt shall, for the purposes of this Act (other than section 263), be deemed not to have been lodged with the trustee unless and until the creditor has lodged with the trustee a statutory declaration verifying the matters in the proof of debt or such of those matters as are specified in the notice, as the case requires.

(6) A proof of debt under this section, or a statutory declaration referred to in subsection (3), sent to the trustee by post as certified mail (postage being prepaid) shall be deemed to have been lodged with the trustee and shall be deemed to have been so lodged at the time at which it would have been delivered in the ordinary course of post unless it is shown that the trustee did not receive it at that time.

1. Mr Shaw does not suggest that the YN Proof fails to comply with any of the requirements for which s 84 of the Act provides. His contention is more conceptual: he simply suggests that a joint proof of debt is not something that the Act contemplates or permits. By his written outline of submissions, Mr Shaw contended (errors original, references omitted):
2. The proofs of debt submitted jointly by two different entities without ABN’s claiming the same debt are not allowed by the Bankruptcy Act.
3. How can the trustee know if the debt is joint, several or joint & several, distribute a dividend or withhold the correct amount of tax for each entity?
4. Joint creditors can issue a bankruptcy notice or creditors petition to submit the debtor to the requirements of the bankruptcy act but once the estate is under the administration of the trustee each creditor must prove their entitlement to a share of the estate with adequate proof.
5. The singular language in the Bankruptcy Act & the approved proof of debt form requires proofs of debt from each individual creditors so dividend can be properly distributed without causing disputes amongst creditors or joint creditors (Particularly if there is a shortfall).
6. I reject Mr Shaw’s contention. Mr Shaw cites no authority in support of it and I have been unable to uncover any. There is no reason why the reference in s 84 to the singular “creditor” should not also be read, in the usual way, as a reference to the plural “creditors”: *Acts Interpretation Act 1901* (Cth), s 23(b).
7. The YN Proof reflects the fact that the Costs Orders were made in favour of Yarranova and Newquay jointly (which, no doubt in turn, reflects that those entities had the same legal representation in the Supreme Court Proceeding). The sums to which the Costs Orders relate are not sums that arose from a commercial transaction out of which might arise an obligation to withhold or remit any form of taxation (although it is not clear why that might matter were it otherwise). Likewise, it is not a concern of a Trustee’s (or, for that matter, of a bankrupt’s) that payment of a dividend to a creditor might lead to some dispute as between that creditor and another person at some later point in time. Mr Shaw’s submissions on those fronts are unfounded.
8. Just as creditors might jointly issue a bankruptcy notice or might jointly petition a court for a sequestration order, so too might they prove a debt that is owed to them jointly. There is no warrant to impugn the YN Proof as defective, deficient or invalid.

# Conclusion

1. For the reasons outlined above, the decision of the Trustee to admit the YN Proof is confirmed. Mr Shaw’s application is otherwise dismissed. I will make the usual order as to costs.
2. Before concluding, I wish to make an observation—perhaps gratuitously—about what it is that Mr Shaw has sought to achieve by this application and the many that have preceded it. Mr Shaw did not have to commence the Supreme Court Proceeding. He did not have to join Yarranova and Newquay as defendants to it. He chose to do both. He ran his case and he lost. Liability for the costs of those who defeated him is inevitable and his attempts to circumvent that unremarkable consequence of failure is opportunistic in the extreme.
3. Not only that, it is and has long been without foundation. Mr Shaw’s persistence in advancing his contention that the Costs Orders were made in violation of the indemnity rule—despite having been told time and again that it’s wrong—bespeaks a troubling unwillingness to accept court rulings (including those that have been the subject of appellate consideration). Mr Shaw is, of course, well entitled to advance submissions that he calculates to be in his best interests and to appeal rulings that he thinks are wrong; but those entitlements are not unlimited. This court is not a forum for litigants, self-represented or otherwise, to indulge in hopeless vanity projects. If Mr Shaw continues to clog up the court’s resources with arguments that he ought, by now, to know cannot succeed, then he can expect eventually to be made the subject of a vexatious proceedings order under s 37AO(2) of the *Federal Court of Australia Act 1976* (Cth).

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| I certify that the preceding sixty-five (65) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Snaden. |

Associate:

Dated: 26 September 2019