

FEDERAL COURT OF AUSTRALIA

Deputy Commissioner of Taxation v Batchelor [2017] FCA 950

File number(s): VID 327 of 2017

Judge(s): **DAVIES J**

Date of judgment: 11 August 2017

Catchwords: **TAXATION** – Application for summary judgment in relation to tax debts – no defence filed and no reasonable prospects of success

PRACTICE AND PROCEDURE – summary judgment on where no defence filed – no reasonable prospects of success

Legislation: *Federal Court of Australia Act 1976 (Cth)*
Income Tax Assessment Act 1997 (Cth)
Tax Administration Act 1953 (Cth)
Federal Court Rules 2011 (Cth)

Date of hearing: 11 August 2017

Registry: Victoria

Division: General Division

National Practice Area: Taxation

Category: Catchwords

Number of paragraphs: 6

Counsel for the Applicant: Mr PD Crutchfield QC and Mr SA Linden

Solicitor for the Applicant: Minter Ellison

Counsel for the Respondent: The Respondent did not appear

ORDERS

VID 327 of 2017

BETWEEN: **DEPUTY COMMISSIONER OF TAXATION**
Applicant

AND: **TIMOTHY LOUIS BATCHELOR**
Respondent

JUDGE: **DAVIES J**

DATE OF ORDER: **11 AUGUST 2017**

THE COURT ORDERS THAT:

1. The Respondent pay the Applicant the sum of \$270,346.09.
2. The freezing order made on 3 April 2017 an extended on 13 April 2017 and 6 June 2017 against the Respondent be extended until further notice.
3. The Respondent pay the Applicant's costs of the proceedings, including the costs of the applications for summary judgment and freezing orders and reserved costs.

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

REASONS FOR JUDGMENT

DAVIES J:

- 1 The Deputy Commissioner of Taxation (“**the DCT**”) has applied for summary judgment against the respondent under r 26.01 of the *Federal Court Rules 2011* (Cth) for the sum of \$270,346.09 in respect of unpaid income tax for the year ended 30 June 2014, shortfall interest charge imposed pursuant to s 280-100 of Schedule 1 of the *Tax Administration Act 1953* (Cth) (“**the TAA**”), administrative penalties imposed pursuant to s 284-75 of Schedule 1 of the TAA in respect of the income years ended 30 June 2013 and 30 June 2014 (“**the penalty assessments**”), and general interest charges. The Court may grant summary judgment against a party pursuant to r 26.01 where the party has no reasonable prospects of successfully defending the proceeding. Section 31A(3) of the *Federal Court of Australia Act 1976* (Cth) relevantly provides that a defence need not be hopeless or bound to fail for it to have no reasonable prospects of success. The DCT submitted that the respondent has no reasonable prospects of successfully defending the claim.
- 2 Each of the amounts claimed by the DCT is a tax-related liability under s 255-1 of Schedule 1 to the TAA and is a debt to the Commonwealth of Australia and payable to the Commissioner of Taxation: see also s 250-10 Items 37 (Income Tax), Item 70 (General Interest Charge), Item 37AA (Shortfall Interest Charge on Income Tax) and Item 140 (Administrative Penalties).
- 3 The DCT has produced a copy of the notice of amended assessment of income tax and shortfall interest charge. The DCT has also produced copies of the notices of assessment of administrative penalty. By virtue of the failure of the respondent to pay the income tax, administrative penalties and shortfall interest charge payable by the due dates for payment, the respondent became liable to pay general interest charges pursuant to s 5-15 of the *Income Tax Assessment Act 1997* (Cth) and Part IIA of the TAA in respect of the income tax and shortfall interest charge and pursuant to s 298-25 of schedule 1 to the TAA and Part IIA of the TAA in respect of the administrative penalties.
- 4 Pursuant to s 350-10 of Schedule 1 to the TAA, the production of copies of the amended assessment and penalty assessments is conclusive evidence in this proceeding that the amounts and all the particulars of those assessments are correct. The effect of s 350-10 is that

the respondent cannot, in this proceeding, challenge the liabilities imposed by the assessments.

5 The DCT has also produced evidentiary certificates pursuant to s 255-45 of Schedule 1 of the TAA which are prima facie evidence as at 10 August 2017 of the amounts due and payable in respect of the tax related liabilities claimed by the DCT in these proceedings and that those amounts are due and payable as at that date.

6 The DCT has established that the respondent has no reasonable prospects of defending these proceedings for recovery of the amounts claimed and no defence has been filed by the respondent. Accordingly the DCT is entitled to judgment on his claim.

I certify that the preceding six (6) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Davies.

Associate:

Dated: 18 August 2017