FEDERAL COURT OF AUSTRALIA

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JML Rose Pty Ltd v Jorgensen (No 3) [2025] FCA 976

File number:	QUD 529 of 2024
Judgment of:	**WHEATLEY J**
Date of judgment:	19 August 2025
Catchwords:	**BANKRUPTCY AND INSOLVENCY** – Annulment – Whether Court satisfied that sequestration order ought not to have been made – Where default judgment that founded the bankruptcy notice and the sequestration order set aside – Where debt to petitioning creditor was greater than the statutory minimum provided by the *Bankruptcy Act 1966* (Cth) – Where supporting creditor was available to be substituted as the petitioning creditor – Whether discretion ought to be exercised to grant annulment – Where debtor failed to provide evidence of his financial position and solvency – Application dismissed. **PRACTICE AND PROCEDURE** – Litigant in person – Use of Generative Artificial Intelligence (**AI**) – Hallucinated case references, legislation and Court rules – Irrelevant case and statute references – Where Generative AI used to prepare written and oral submissions – Submissions generated misconceived or irrelevant.
Legislation:	*Corporations Act 2001* (Cth) s 553C *Bankruptcy Act 1966* (Cth) ss 5, 49, 52, 54, 149, 153B, 154 *Family Law Act 1975* (Cth) *Income Tax Assessment Act 1936* (Cth) *Federal Court (Bankruptcy) Rules 2016* (Cth) r 7.04 *Federal Court Rules 2011* (Cth) *Bankruptcy Regulations 2021* (Cth) s 10A *Legal Profession Act 2007* (Qld) ss 308, 310, 316
Cases cited:	*Ayinde v The London Borough of Haringey* [2025] EWHC 1383 *Bayne v Baillieu* (1907) 5 CLR 64; [1907] HCA 39 *Boles v Official Trustee* (2001) 183 ALR 239; [2007] FCA 639 *De Robillard v Carver* (2007) 159 FCR 38; [2007] FCAFC 73 *Finance Facilities Pty Ltd v Federal Commissioner of Taxation* (1971) 127 CLR 106; [1971] HCA 12 *Francis v Eggleston Mitchell Lawyers Pty Ltd* [2014] FCAFC 18 *Geismayr v The Owners, Strata Plan KAS 1970* [2025] BCCRT 217 *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd* (2017) 52 WAR 90 *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd* (2018) 53 WAR 325 *Heinrich v Commonwealth Bank of Australia* [2003] FCAFC 315 *JML Rose Pty Ltd ACN 620 307 217 v Jorgensen and Jorgensen atf The Leigh Jorgensen Family Trust* [2025], Magistrate Hay, 30 May 2025 *JML Rose Pty Ltd v Jorgensen (No 2)* [2025] FCA 282 *JML Rose Pty Ltd v Jorgensen* [2024] FCA 1421 *Kaur v Royal Melbourne Institute of Technology* [2024] VSCA 264 *Ko v Li* [2025] ONSC 2766 *Lamb v Sherman* (2023) 298 FCR 79; [2023] FCAFC 85

Lambshed v Lambshed (1963) 109 CLR 440; [1963] HCA 60
Luck v Secretary, Services Australia [2025] FCAFC 26
May v Costaras [2025] NSWCA 178
Nikolic v Nationwide News Pty Ltd (T/as The Australian) [2025] VSCA 112
Nilant v Macchia (2000) 104 FCR 238; [2000] FCA 1528
Official Receiver v Schultz (1990) 170 CLR 306; [1990] HCA 45
Official Trustee in Bankruptcy v Mateo (2003) 127 FCR 217; [2003] FCAFC 26
Re Deiru (1970) 16 FLR 420
Re Ditford; Ex parte Deputy Commissioner of Taxation (1988) 19 FCR 347
Re Macks; Ex parte Saint (2000) 204 CLR 158; [2000] HCA 62
Re Raymond; *Ex parte Raymond* (1992) 36 FCR 424; [1992] FCA 495
Re Scott (1975) 6 ALR 558
Re Wakim; Ex parte McNally (1999) 198 CLR 511; [1999] HCA 27
Rigg v Baker (2006) 155 FCR 531; [2006] FCAFC 179
Wren v Mahoney (1972) 126 CLR 212; [1972] HCA 5
Yang v L & H Group (a limited partnership) (2015) 13 ABC(NS) 269; [2015] FCA 932
Zaghloul v Jewellery & Gift Buying Service Pty Ltd t/as Nationwide Jewellers [2020] FCA 1045

Division:	General Division
Registry:	Queensland
National Practice Area:	Commercial and Corporations
Sub-area:	General and Personal Insolvency
Number of paragraphs:	105
Date of hearing:	14 August 2025
Counsel for the Applicant:	Mr R Kipps
Solicitor for the Applicant:	JML Rose Pty Ltd
Counsel for the First Respondent:	The First Respondent appeared in person
Counsel for the Second Respondent:	Ms S Philippou
Solicitor for the Second Respondent:	Rose Litigation Lawyers

ORDERS

QUD 529 of 2024

BETWEEN: **JML ROSE**
Applicant

AND: **LEIGH ALAN JORGENSEN**
First Respondent

LEON LEE, AS TRUSTEE OF THE BANKRUPT ESTATE OF LEIGH ALAN JORGENSEN (THE BANKRUPT)
Second Respondent

ORDER MADE BY:WHEATLEY J
DATE OF ORDER: 19 AUGUST 2025

THE COURT ORDERS THAT:

1. The First Respondent's application for annulment filed 16 July 2025 be dismissed.

2. The costs of the Applicant, to the application to annul be paid from the estate of the First Respondent debtor in accordance with the *Bankruptcy Act 1966* (Cth).

3. The costs of the Second Respondent (the Trustee), to the application to annul be paid from the estate of the First Respondent debtor in accordance with the *Bankruptcy Act 1966* (Cth).

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

REASONS FOR JUDGMENT

WHEATLEY J:

INTRODUCTION

1 On 16 July 2025, the First Respondent in these proceedings, who is the bankrupt, Mr Jorgensen, filed an application that the sequestration order made against him on 16 October 2024 be annulled pursuant to s 153B of the *Bankruptcy Act 1966* (Cth) (**Act**) (**Annulment Application**).

2 The grounds relied upon by Mr Jorgensen were set out in the Annulment Application as follows:

> (a) The default judgment on which the bankruptcy was based has since been set aside by the Magistrates Court of Queensland, which removes the legal foundation for the sequestration order.
>
> (b) The alleged debt arose in connection with legal work said to involve the LJ Family Trust, where [Mr Jorgensen] was acting solely as trustee. The creditor mischaracterised the claim as personal, despite no enforceable personal liability being established.
>
> (c) No valid or enforceable cost agreement was in place, and the document relied upon was unsigned, non-compliant, and contained an incorrect or disputed client name.
>
> (d) [Mr Jorgensen] was denied procedural fairness by not receiving notice of the default judgment and due to court registry delays that postponed the formal processing of [Mr Jorgensen's] timely application to set aside the judgment. Under law, the Court should have considered this notice regardless of processing delays.
>
> (e) The bankruptcy notice was defective, including because it used an incorrect debtor name inconsistent with the default judgment, and misrepresented the debt as personal when it was not.
>
> (f) The sequestration order was made in the absence of [Mr Jorgensen], even though both the creditor and the Registrar were aware of the dispute and the pending application to set aside the judgment. This contravenes natural justice.
>
> (g) The bankruptcy process caused unjustified and disproportionate harm, including psychological and financial stress, reputational damage, and the unlawful freezing of multiple trust accounts, despite them not being personal assets.
>
> (h) The proceedings disrupted other unrelated legal matters that [Mr Jorgensen] was actively pursuing at the time, compounding the damage caused.

(i) [Mr Jorgensen] reserves all rights to pursue appropriate remedies elsewhere in relation to the broader harm caused.

3 Although I have referred to the Annulment Application as an application that the sequestration order be annulled, it was not in the proper form and did not comply with the *Federal Court Rules 2011* (Cth) (**FCR**). This document is best described as a hybrid or combined document. It sought to combine the application, which included the grounds of the application, together with an affidavit in support and submissions. The Annulment Application was filed in the creditor's petition proceedings.

4 Further, contrary to r 7.04 of the *Federal Court (Bankruptcy) Rules 2016* (Cth) (**FCBR)**, Mr Jorgensen has not provided any evidence that he has given notice to each person he knows to be a creditor of this application.

5 The Annulment Application is opposed by the Applicant in the proceedings, being the petitioning creditor, **JML** Rose Pty Ltd. JML was the creditor which brought the relevant creditor's petition, upon which the sequestration order was made. JML also relied on an affidavit of the supporting creditor in the hearing of the Annulment Application.

6 Mr Leon Lee (the **Trustee** in bankruptcy of Mr Jorgensen's estate) has appeared to assist the Court, but neither opposes nor supports Mr Jorgensen's Annulment Application.

7 It became apparent that Mr Jorgensen was using a form of generative artificial intelligence (**AI**), to assist with his written and oral submissions. Many of the case citations were inaccurate. Some of the purported quoted passages did not exist. Such matters are likely the product of "hallucinations". There has been an approach, which I will adopt, of redacting false case citations so that such information is not further propagated by AI systems: *Luck v Secretary, Services Australia* [2025] FCAFC 26 at [14], Rofe, Hespe and Kennett JJ, see also *Kaur v Royal Melbourne Institute of Technology* [2024] VSCA 264 at [26] (fn19), Walker JA, *cf Nikolic v Nationwide News Pty Ltd (T/as The Australian)* [2025] VSCA 112 at [36]-[41], Beach JA.

8 I have made some additional observations regarding AI at the end of these reasons. It is sufficient at this point to observe that the use of the AI was of no real assistance to Mr Jorgensen.

9 For the reasons given below, the Annulment Application must be dismissed. This is because (in summary):

(1) First, Mr Jorgensen has not established that there is no debt owing by him to JML upon which the bankruptcy proceedings could have relied on, even though the judgment has been set aside. Further and separately, there was and is evidence of a supporting creditor who was willing to be substituted on the creditor's petition on the date of the sequestration order. There remains a debt owing to that supporting creditor. Accordingly, I am not satisfied that the Court was not bound to make the sequestration order on 16 October 2024 or on 20 March 2025. That is, I am not satisfied that the sequestration order ought not to have been made, and hence Mr Jorgensen has not satisfied the first element of s 153B(1) of the Act.

(2) Second, and in any event, including even if I was satisfied that the sequestration ought not to have been made, I would not, in an exercise of discretion, annul the bankruptcy. Mr Jorgensen has not provided sufficient evidence of his solvency, either at the time of the sequestration, or now. In contrast, there is evidence of outstanding amounts that are due and owing. Mr Jorgensen also has not provided full and frank disclosure of his financial affairs, completed his statement of affairs and he has not made any proposal for the payment of the fees and disbursements of the Trustee. The lack of evidence of Mr Jorgensen's financial position and solvency is a sufficient reason not to exercise the discretion in favour of annulling the bankruptcy. When the discretion is also considered in the totality of the evidence (or lack of it), it is clear it does not weigh in favour of granting the annulment sought.

BACKGROUND

10 On 9 September 2024, JML presented a creditor's petition against Mr Jorgensen.

11 The creditor's petition was first before the Court on 9 October 2024. However, Mr Jorgensen was granted an adjournment of a week to provide further material.

12 On 16 October 2024, the matter was heard by Registrar Schmidt (**Registrar**). Mr Jorgensen did not appear on 16 October 2024. On that date, the following orders were made:

> **THE COURT ORDERS THAT:**
>
> 1. The estate of LEIGH ALAN JORGENSEN be sequestrated under the *Bankruptcy Act 1966*.
>
> 2. The applicant creditor's costs, including reserved costs, if any, be fixed in the sum of $4,585 be paid from the estate of the respondent debtor in accordance with the *Bankruptcy Act 1966*.
>
> 3. The costs of the supporting creditor, BODY CORPORATE FOR CAIRNS CENTRAL PLAZA APARTMENTS COMMUNITY TITLES SCHEME 40022, be taxed in accordance with the Federal Court Rules and paid from the estate of the respondent debtor in accordance with the *Bankruptcy Act 1966* (Cth).
>
> The Court notes that the date of the act of bankruptcy is **30 AUGUST 2024**.
>
> The Court also notes that a consent to act as trustee signed by Leon LEE has been filed under section 156A of the *Bankruptcy Act* 1966.

13 As is clear from the orders of the Registrar, the creditor's petition was also supported by the Body Corporate for Cairns Central Plaza Apartments Community Titles Scheme 40022, as a **Supporting Creditor**.

14 On 1 November 2024, Mr Jorgensen filed an application to review and set aside the decision of the Registrar and to stay the orders of the Registrar of 16 October 2024, until the hearing of the application to review.

15 On 29 November 2024, his Honour Justice Logan heard and dismissed the stay application: *JML Rose Pty Ltd v Jorgensen* [2024] FCA 1421.

16 On 20 March 2025, Logan J heard and dismissed the application to review the sequestration order of 16 October 2024: *JML Rose Pty Ltd v Jorgensen (No 2)* [2025] FCA 282 (**2025 Judgment**). However, Logan J at [47] did vary the date noted for the act of bankruptcy to 31 August 2024, from 30 August 2024.

17 The creditor's petition from which the sequestration order was made relied on an act of bankruptcy being non-compliance by Mr Jorgensen with a bankruptcy notice. That bankruptcy notice was issued on the basis of a default judgment of the Magistrates Court of Queensland dated 29 June 2022 in proceedings between JML and Mr Jorgensen (**Default Judgment**) "*in his personal capacity and as trustee of the Leigh Jorgensen Family Trust*": 2025 Judgment at [11].

18 On 30 May 2025 the Default Judgment dated 29 June 2022 (which was relied for the issue of the bankruptcy notice) was set aside: *JML Rose Pty Ltd ACN 620 307 217 v Jorgensen and Jorgensen atf The Leigh Jorgensen Family Trust* [2025], Magistrate Hay, 30 May 2025, (**QMC Judgment**). Costs of that application are reserved and are yet to be determined.

19 Magistrate Hay accepted that JML's claim was a liquidated one and that the Default Judgment was regularly entered: QMC Judgment at [42]. The explanation provided by Mr Jorgensen for the delay and failure to appear was accepted (QMC Judgment at [44]-[47]). It was also accepted that there was a *prima facie* defence on the merits. This was on the bases that:

(1) the legal fees sought in the Magistrates Court by JML were in relation to fees billed to Mr Jorgensen on a solicitor and own client basis in the sum of $84,419.73. Mr Jorgensen had paid a total of $30,950, leaving a total of $53,469.73 unpaid together with interest thereon. The total legal fees were calculated on the basis of the costs agreement instead of calculated on the appropriate Court scale: QMC Judgment at [51]-[52];

(2) Mr Jorgensen contended that he did not receive the relevant disclosure notices, with the costs agreement contrary to s 308 and s 310 of the *Legal Profession Act 2007* (Qld) (**LPA**). The Magistrate observed that on the evidence which was currently before that Court, there was no documentary evidence to support the position that the appropriate disclosures notices were provided. This was found to support a *prima facie* defence under s 316 of the LPA: QMC Judgment at [54]-[57].

20 After the QMC Judgment was handed down on 30 May 2025, on 16 July 2025, Mr Jorgensen filed this Annulment Application.

21 The Annulment Application was listed for a case management hearing on 1 August and set for hearing on 14 August 2025. This expedited hearing and truncated timetable was due to Mr Jorgensen's insistence that this matter be dealt with promptly.

LEGAL PRINCIPLES – ANNULMENT BY THE COURT

22 Section 153B(1) of the Act provides as follows:

> **153B Annulment by Court**
>
> (1) If the Court is satisfied that a sequestration order ought not to have been made or, in the case of a debtor's petition, that the petition ought not to have been presented or ought not to have been accepted by the Official Receiver, the Court may make an order annulling the bankruptcy.

23 The effect of an annulment is set out in s 154 of the Act.

24 The power of the Court to annul a bankruptcy involves two elements (***Rigg** v Baker* (2006) 155 FCR 531; [2006] FCAFC 179 at [59], French J, with whom Spender J agreed at [2]) which can be described as:

(1) the Court's satisfaction that the sequestration order ought not to have been made; and

(2) the Court's exercise of a discretion to make an order annulling the bankruptcy.

25 It is clear from the relevant settled principles outlined below, that these two elements are cumulative and the second, being the discretion, only arises if the first element is satisfied.

26 In *Rigg* at [61] the first element was described by French J as follows:

> 61 In determining whether a sequestration order ought to have been made the Court may consider "not only the case as disclosed at the time that the order was made, but as it would have been disclosed had all the true facts been before the court on the making of the order": *Re Cook* (1946) 13 ABC 245 at 259 (Clyne J); *Re Williams* (1968) 13 FLR 10 at 23 (Gibbs J). **But facts which have come into existence since the making of the order are not relevant to the question whether it ought to have been made**: *Re Scott* [1975] Qd R 125 at 126-127 (Lucas J); *Re Frank; Ex parte Piliszky* (1987) 16 FCR 396 at 400 (Fisher J); *Re Ditford; Ex parte Deputy Commissioner of Taxation* (1988) 19 FCR 347 at 350 (Gummow J).
>
> [emphasis added]

27 The word "*ought*" is significant in s 153B of the Act. A sequestration order ought not be annulled unless the Court was in the circumstances bound not to make the sequestration order: *Rigg* at [62]. The onus for establishing that the sequestration order ought not to have been made, rests on the applicant for such an order: *Rigg* at [11] and [63].

28 In determining whether a sequestration ought not to have been made, the Court must consider other facts existing at the earlier time, being the time when the sequestration order was made, even if those facts were not placed before the Court making the sequestration order. However, facts which have occurred since the sequestration order, should be excluded: ***Yang** v L & H Group (a limited partnership)* (2015) 13 ABC(NS) 269; [2015] FCA 932 at [29(b)], Beach J. Such facts, occurring subsequently, are however relevant to the exercise of the discretion.

29 A useful applicable summary has been provided by the Full Court, in ***Heinrich** v Commonwealth Bank of Australia* [2003] FCAFC 315, Carr, Finn and Sundberg JJ at [20]:

> 20 The Court must first consider whether the sequestration order ought not to have been made. If it so finds, then the Court must consider whether, in the exercise of its discretion, the bankruptcy should be annulled: *Re Deriu* (1970) 16 FLR 420. Later evidence of previously unknown facts may disclose matters which show that the sequestration order ought not to have been made. That is, the Court is entitled to consider not only the case as disclosed at the time when the sequestration order was made, but also those facts now known then to have existed. The Court excludes those facts which have occurred since the order was made. Later evidence of previously unknown facts may disclose matters which show that the sequestration order ought not to have been made: *Re Frank; Ex parte Piliszky* (1987) 16 FCR 396; *Stankiewicz v Plata* [2000] FCA 1185 at [19]; *Re Williams* (1968) 13 FLR 10 at 23; *Re Ditfort; Ex parte Deputy Commissioner of Taxation* (1988) 19 FCR 347. These authorities, all of which were cited by the learned primary judge in his judgment, were accepted at first instance as reflecting the relevant law.

30 Another Full Court endorsed the following summary of the relevant principles from Tracey J in *Francis v **Eggleston** Mitchell Lawyers Pty Ltd* [2014] FCAFC 18 at [16], Rares, Flick and Bromberg JJ, as follows:

> 16 Tracey J helpfully summarised a number of principles relevant to the exercise of the discretionary power conferred by s 153B in *Bulic v Commonwealth Bank of Australia Limited* [2007] FCA 307 at [12] including the following:
>
> > Section 153B(1) and its predecessors have been considered in many decisions of this and other Courts. These authorities establish a number of relevant propositions. They are:
> >
> > …
> >
> > (2) **An applicant who seeks an annulment of his or her bankruptcy "carries a heavy burden**". It is incumbent on an applicant "to place before the Court all relevant material with respect to his or her financial affairs so that the Court may be properly informed and may make a judgment that is based on the actual circumstances of the applicant": *Re Papps; Ex parte Tapp* (1997) 78 FCR 524 at 531.
> >
> > (3) In determining whether or not a sequestration order "ought not to have been made" the Court is not confined to a consideration of whether the order should have been made on the facts known to the Court at the time at which it was made. The Court must take account of facts, known at the time at which the sequestration order was made and at which it determines an annulment application, even if those facts were not before the Court at the time at which the sequestration order was made: *Boles v Official Trustee in Bankruptcy* (2001) 183 ALR 239 at 243; *Re Raymond; ex parte Raymond* (1992) 36 FCR 424 at 426.

(4) A sequestration order "ought not to have been made" if, on the facts known at the time of the annulment application, the Court would have been bound not to make the sequestration order: *Re Frank; ex parte Piliszky* (1987) 16 FCR 396.

…

(6) If the Court is so satisfied, it is not precluded from annulling the bankruptcy because the bankrupt had not sought to have the default judgment set aside or failed to oppose the creditor's petition or failed to seek a review of the sequestration order: *Re Raymond; ex parte Raymond* (1992) 36 FCR 424 at 426.

(7) **The power conferred on the Court by s 153B(1) is discretionary in nature. Even if persuaded that the sequestration order ought not to have been made, the Court can, in appropriate circumstances, decline to annul the bankruptcy**: *Boles v Official Trustee in Bankruptcy* (2001) 183 ALR 239 at 243.

(8) Considerations which may have a bearing on the exercise of discretion include unexplained delay in the making of the application, whether or not the applicant is solvent, whether or not the applicant has made full disclosure of his or her financial affairs and a failure by the bankrupt to oppose the creditor's petition and attend the hearing at which the sequestration order was made: *Re Williams* (1968) 13 FLR 10 at 24–5; *Boles* at 247; *Re Papps; ex parte Tapp* (1997) 78 FCR 524 at 531; *Rigg v Baker* (2006) 155 FCR 531 at 548 [79] (per French J); *Cottrell v Wilcox* [2002] FCA 1115 at [7]. Additional considerations are collected in D. A. Hassall, "Annulment of Bankruptcy and Review of Sequestration Orders" (1993) 67 ALJ 761 at 766.

[emphasis added]

31 Finally, in relation to the exercise of the Court's discretion, Banks-Smith J in ***Zaghloul*** *v Jewellery & Gift Buying Service Pty Ltd t/as Nationwide Jewellers* [2020] FCA 1045, helpfully summarised [at 12] the guiding factors to include the following, which I gratefully adopt:

(a) whether the applicant debtor is solvent;

(b) whether the applicant has made full disclosure of his financial affairs, a matter as to which the applicant carries a heavy burden (*Bulic* at [12]; and *Re Papps; Ex parte Tapp* (1987) 78 FCR 524 at 531);

(c) unexplained delay in any application;

(d) a failure by the bankrupt to oppose the creditor's petition and attend the hearing at which the sequestration order was made;

(e) whether the applicant debtor has made any proposal for the payment of the fees and disbursements of his or her trustee in bankruptcy; and

(f) the basis for any finding that a sequestration order ought not to have been made.

32 In this regard also see *Yang* at [29(d)], to a similar effect.

CONSIDERATION

(1) Ought the sequestration order not to have been made?

33 There was no dispute between the parties that the Default Judgment had been set aside on 30 May 2025. The dispute concerned the effect of the Default Judgment being set aside.

34 Mr Jorgensen contends that now, as the Default Judgment has been set aside and as this was the sole basis for the bankruptcy notice and sequestration order, it is clear that the sequestration order was made in error and is "void *ab initio*". It was also submitted by Mr Jorgensen that the setting aside of the Default Judgment extinguished the petitioning creditor's debt.

35 Further, Mr Jorgensen contended that upon the setting aside of the Default Judgment, the act of bankruptcy underpinning the creditor's petition "*ceased to exist ab initio*". Mr Jorgensen cited ***Re Macks****; Ex parte Saint* (2000) 204 CLR 158; [2000] HCA 62 for this proposition. *Re Macks* was not a case concerning a creditor's petition, an act of bankruptcy or the setting aside of a default judgment, such that it considered the proper characterisation of such matters. *Re Macks* was considering legislation passed by certain States following *Re Wakim; Ex parte McNally* (1999) 198 CLR 511; [1999] HCA 27, regarding cross-vesting.

36 Mr Jorgensen also referred to and relied on *Re Macks* at [50]-[51] and submitted that "*the High Court [in re Macks]…confirmed that the discretion under section 153B of the Bankruptcy Act is not at large and must be exercised to annul where the factual basis for a sequestration order has disappeared*." I do not accept this submission. There is no reference to s 153B of the Act in *Re Macks* at [50]-[51] or at all.

37 In the circumstances of this case, it is not correct to describe the making of the sequestration order as being one made as a result of an error. At the time the sequestration order was made on 16 October 2024 and effectively confirmed in the *de novo* hearing in the 2025 Judgment, the Default Judgment was still valid and effective. On this basis, I do not accept Mr Jorgensen's submissions to the contrary.

38 The subsequent setting aside of the Default Judgment on 30 May 2025 does not operate to automatically dissolve, set aside or annul the bankruptcy in and of itself. Furthermore, the setting aside of the Default Judgment does not operate such that the sequestration order is "*void ab initio*" or that the act of bankruptcy is "*void ab initio*". It is necessary for Mr Jorgensen (as he has done) to make an application under s 153B of the Act. The effect of any annulment, if that were ordered, is set out in s 154 of the Act. The two elements required to be considered on an application under s 153B of the Act are set out above. Of importance is that any annulment is discretionary. As the above settled principles clearly articulate, even if the Court was bound not to make the sequestration order, as an exercise of discretion the bankruptcy may not be annulled. The Act by s 153B requires an application for annulment to be made and requires the Court to be satisfied as an exercise of discretion to annul the bankruptcy. The Act does not provide that upon the setting aside of a judgment debt which founded a bankruptcy notice and the subsequent sequestration order, the bankruptcy is automatically annulled or expunged.

39 Mr Jorgensen submits that the "statutory condition" is satisfied in the circumstances of this case. This is presumably a reference to the first element of s 153B that he must satisfy the Court that the sequestration order ought not to have been made and Mr Jorgensen relies of the Default Judgment being set aside as satisfaction of this. This, as the authorities outlined above demonstrate, must be on the basis of facts existing at the time the sequestration order is made, even if such facts were not placed before the Court at the time. This has been described as providing all of the "true facts", at the time that the order was made.

40 Mr Jorgensen further submits that if the foundational debt no longer exists, then there is no justification for continuing with the bankruptcy. Further, now that the Default Judgment has been set aside, so Mr Jorgensen submits, the debt no longer exists. It is contended by Mr Jorgensen that the debt was extinguished when the Default Judgment was set aside. The amount was unliquidated and unrecoverable in law, so it is contended. Mr Jorgensen also advanced the submission another way, by saying that the alleged debt was for unassessed legal fees contrary to the relevant provisions of the LPA. Without an enforceable debt, so Mr Jorgensen submits, the act of bankruptcy falls away. However, these submissions conflate whether or not Mr Jorgensen owes an amount to JML and whether there is a judgment debt. Mr Jorgensen also submitted that based on the payments already made to JML on account of their fees, there was no amount owing, in any event. In this context, Mr Jorgensen submitted that such a claim, being unliquidated, was not a provable debt for bankruptcy purposes. Mr Jorgensen purported to read, in his submissions from *Official Receiver v* ***Schultz*** (1990) 170 CLR 306; [1990] HCA 45 at 312-313 stating "*but I quote, 'Bankruptcy jurisdiction should not be*

exercised where the debt is not truly owing or enforceable.' " There is no such passage in *Schultz* at 312-313, or at all.

41 JML have provided evidence that an amount (whether it is for the full amount or something less, depending upon the basis of the calculation of the outstanding legal costs) is still outstanding. The QMC Judgment observed that the total fees on a solicitor and own client basis outstanding to JML was $53,469.73. This was the amount claimed in the statement of claim in those Magistrate Court proceedings. As is apparent from the statement of claim, those fees were charged by JML in relation to two matters. One of those matters was an appeal to the District Court from a judgment entered in the Magistrates Court in proceedings concerning alleged unpaid body corporate fees. The second being proceedings concerning a proceeding commenced by the Fair Work Ombudsman. The appeal to the District Court was successful and an order for costs in Mr Jorgensen's (as trustee) favour was made. The evidence which JML rely on includes the costs statement of the costs from that successful District Court Appeal. Even deducting the amount Mr Jorgensen paid to JML on account of the appeals proceedings (being the $16,950) or the entire amount paid by Mr Jorgensen, on account of legal fees for both matters (being $30,950), the net amount of the assessed costs in the District Court appeal is more than the statutory minimum (s 5(1) of the Act and s 10A of the *Bankruptcy Regulations 2021* (Cth)).

42 That is, there is evidence of an amount still due and owing to JML, the petitioning creditor. Therefore, so it is contended by JML, that although the Default Judgment has been set aside, an underlying debt remains. This fact, that there was still an outstanding debt to JML, was the same (although the quantum might be different) at the date the sequestration order was made on 16 October 2024 and on the *de novo* hearing on 20 March 2025.

43 Further, JML submit that by the time of the 2025 Judgment:

> (a) the application to set aside the Default Judgment remained reserved and the Court was aware of this on the review hearing (2025 Judgment at [43]); and
>
> (b) as it was a hearing *de novo*, the Court had to be satisfied as to whether to sequestrate the estate. The Court was satisfied to sequestrate and also observed that the supporting creditor's position, that it would immediately seek to be substituted as the petitioning creditor, was highly persuasive to affirm the sequestration (2025 Judgment at [46]).

44 In ***Re Scott*** (1975) 6 ALR 558, Lucas J was considering an application to annul a bankruptcy on the basis that the judgment upon which the bankruptcy notice and creditor's petition were founded, was set aside. Relevantly Lucas J stated at 559, with reference to s 154(1) (which was the relevant annulment provision under the Act at the time, which relevantly used the same phrase "*ought not to have been made*"):

> These words, however, in my opinion, have to be read in the light of the words of the section and they are that the sequestration "ought not to have been made". It seems to me that the facts – the true facts – which this principle must refer to are the facts as they existed upon the date when the sequestration order was made and that facts which have come into existence since that date cannot be considered for the purpose of seeing whether it ought to have been made.

45 Lucas J also referred to *Bayne v Baillieu* (1907) 5 CLR 64; [1907] HCA 39 wherein the bankruptcy was annulled. The facts of that case were very different. First, there is no reference to any relevant statutory provision which required consideration that the sequestration order "*ought not to have been made*". Second, although the judgment debt remained, the High Court held (Griffth CJ at 67, with whom Barton and O'Connor JJ agreed) that there was an absence of evidence that the creditor desired to have the debtor's estate administered in insolvency. That is, it appeared that the sequestration was for the purposes of providing difficulties for prosecuting the appeal, rather than for administration in insolvency.

46 In ***Re Raymond***; *Ex parte Raymond* (1992) 36 FCR 424; [1992] FCA 495, Spender J made an order annulling the bankruptcy which had been earlier ordered. The judgment upon which the bankruptcy notice relied was a default judgment of the Magistrates Court. The judgment was entered on the basis of a default in appearance and defence. The judgment was subsequently set aside. However, Spender J observed that the

judgment was based upon a contract debt to which the debtor was not a party. That is, the debtor was not (at any relevant time) indebted to the creditor, contrary to what appeared on the face of the judgment that was entered. Spender J was satisfied that on the "true facts" as they existed at the time of the sequestration order, it ought not to have been made because the judgment was one which ought not to have been made against the debtor. This was because the judgment was based on erroneous facts, propounded by the creditor.

47 With reference to *Re Scott*, Gummow J, then of this Court, in *Re Ditford; Ex parte Deputy Commissioner of Taxation* (1988) 19 FCR 347 at 350 described the "true facts" as:

> … The "true facts" which are considered in deciding whether the sequestration order ought not to have been made include those now known then to have existed, but exclude those facts which have occurred since the order was made …

48 On this basis, a debtor will not necessarily satisfy the first element under s 153B of the Act, simply because the judgment upon which the bankruptcy notice and hence the creditor's petition was based, is set aside. It is necessary to satisfy the Court, at the time the sequestration order is made, that the Court was *bound* not to make the sequestration order. It is clear that in *Re Raymond*, the true position was that there was no debt owed by the debtor at all, at the date of the sequestration order. As there was no debt (and certainly no basis to support the judgment that existed at the time), that would have meant that the Court was bound not to make a sequestration order. Whereas in *Re Scott* the sequestration order was made on 14 November 1974 and the judgment upon which it was founded was set aside on 25 March 1975. It was set aside on the basis that the debtor may have a defence. It was apparent that on 7 or 14 November 1974 the debt was not going to be challenged by the debtor.

49 Mr Jorgensen submitted that any amount said to be owing to JML was always disputed and that he provided notice of that dispute. Mr Jorgensen made much of his attempts to dispute the amount owing to JML. This seemed also to be based upon a distinction, he submitted, which was without difference as to the presentation of documents to a Court and then when those documents are actually filed. It was not entirely clear of the relevance of such a matter to the circumstances of this case. However, in so far as it is submitted that filing a document with a Court is a mere matter of technicality, I do not accept that submission: see for example *Lamb v Sherman* (2023) 298 FCR 79; [2023] FCAFC 85, Rares, Rofe and Downes JJ.

50 However, the fact that Mr Jorgensen disputed the amount claimed by JML was apparent, as outlined below. Mr Jorgensen lodged an application to set aside the default judgment in the Cairns Magistrates Court on 5 October 2024, which was sent to the Brisbane Magistrates Court and received on 11 October 2024: QMC Judgment at [12] and [16]. Those documents were returned to Mr Jorgensen unfiled due to errors and omissions: QMC Judgment at [13]. The application to set aside the Default Judgement was filed on 21 October 2024: QMC Judgment at [17].

51 Mr Jorgensen submits that it is the fact that the debt was disputed, which is relevant, not whether the documents seeking to set aside the Default Judgment were filed, in a technical sense, prior to the sequestration date of 16 October 2024. Mr Jorgensen submits that he put JML on notice that an application to set aside would be made and that the claim for the legal fees was disputed well prior and potentially around 12 August 2024.

52 The creditor's petition was first before the Court on 9 October 2024. The transcript of that proceeding records that Mr Jorgensen informed the Court on that occasion, of the application to set aside the Default Judgment as follows:

> … I've file in the Magistrates Court an application to stay and proceedings, but also an application to set aside and I've filed an affidavit in support of those applications. I only, at about 3.40pm yesterday, or yesterday afternoon, I received the actual document from the file in that registry. As you may be aware, I'm up in Cairns.

53 There was argument before the Court on 9 October 2024 in relation to the basis and length of any proposed adjournment. The registrar on that occasion observed as follows:

> … I'm not going to make any directions, unless I'm pressed by the parties, for directions for the filing of material. But let me be plain, Mr Jorgensen, a short adjournment is only being granted because at this stage the court doesn't have, and when I say the court, I mean this court, **doesn't have any material or evidence from you showing that an application to set aside a default judgment has in fact been filed before the Magistrates Court**. If you're able to obtain a copy of the sealed application, that should be put before the court on the next occasion, together with any evidence upon which you intend to rely in respect of that application.
>
> [emphasis added]

54 Mr Jorgensen did file an affidavit on 15 October 2024 in the bankruptcy proceedings which had annexed to it, a Notice stating grounds of opposition to application. Those grounds clearly disputed the existence of the debt referred to in the bankruptcy notice. Although the Notice itself does not appear to have been filed, it was annexed to an Affidavit of Mr Jorgensen which was filed.

55 Although these events indicate that Mr Jorgensen was in the process of seeking to set aside the Default Judgment prior to the sequestration order, that does not mean that the "true facts" then at the sequestration date were that the Court was bound not to make the sequestration order. The Default Judgment being set aside, is a fact which has occurred after 16 October 2024 and after 20 March 2025. As was the case in *Re Scott* the "true facts" were that the Default Judgment, and the debt underlying it remained.

56 Separately and importantly an underlying debt to JML in an amount of at least the statutory minimum would have still been owing at the date of the sequestration order (again, either at 16 October 2024 or 20 March 2025). This is irrespective of whether Mr Jorgensen is successful in his argument that the costs should calculated on a scale basis as opposed to the rates in the cost agreement (which I am expressly not deciding).

57 Even further, and in any event, at the time of the sequestration there was a supporting creditor who was disposed to immediately seek to be substituted as the petitioning creditor: 2025 Judgment at [34]-[42] and [46]. This would provide another reason why the Court cannot be satisfied that on 16 October 2024 or 20 March 2025, it ought not to have made the sequestration order.

58 Against the arguments that it would have been possible to substitute the supporting creditor, Mr Jorgensen relied on *Re Deiru* (1970) 16 FLR 420. There is no discussion or consideration in this case of the position of substituting a creditor, on the creditor's petition. This case concerned an application for rescission of the bankruptcy, however, Gibbs J permitted amendment to the application so that the bankrupt applied for annulment, instead, which was granted.

59 Mr Jorgensen submitted, with reference to ***Finance Facilities*** *Pty Ltd v Federal Commissioner of Taxation* (1971) 127 CLR 106; [1971] HCA 12 at 134, said to be in the judgment of Barwick CJ that "*A bankruptcy notice must be founded on a debt due and payable*." *Finance Facilities* at 134 is the decision of Windeyer J, not Barwick CJ. There is no mention of a "bankruptcy notice" at 134 of that decision or at all. *Finance Facilities* concerned certain provisions under the *Income Tax Assessment Act 1936* (Cth) regarding dividends.

60 Mr Jorgensen also relied on *Official Trustee v Mateo* [citation redacted], to support the proposition that once the judgment underlying a bankruptcy notice is set aside the basis for the sequestration is extinguished. There is a decision of the Full Court in *Official Trustee in Bankruptcy v Mateo* (2003) 127 FCR 217; [2003] FCAFC 26, however there is no mention of a bankruptcy notice in that decision. It was a matter considering certain interactions between the Act and the *Family Law Act 1975* (Cth).

61 For these reasons, I am not satisfied that the Court was bound not to make a sequestration order on 16 October 2024 or 20 March 2025. As such, Mr Jorgensen has not satisfied the first element of s 153B(1) of the Act.

(2) Should the discretion to annul be exercised?

62 As Mr Jorgensen has not satisfied the Court as to the first element, that the Court was bound not to make the sequestration order on 16 October 2024 (or 20 March 2025), it is not necessary to consider whether the discretion should be exercised. However, as it was fully argued, I will consider the relevant guiding factors.

63 In Mr Jorgensen's written submissions, he referred to and relied on a decision of *Re Thomson* [balance of the case name redacted] and [citation redacted], for a proposition regarding the discretion under the annulment provision. The proposition was contrary to authority. The citation provided (and hence redacted) was not the citation for a case by the name of *Re Thomson*, in fact, the full case name provided could not be located at all. *Lambshed v Lambshed* (1963) 109 CLR 440; [1963] HCA 60 was the closest citation, however that case concerned delay, laches in relation to a claim for specific performance and is clearly not relevant.

64 Mr Jorgensen, at times, has accepted the discretionary nature of s 153B of the Act. However, he submits that once the statutory condition is satisfied, namely that the debt is no longer owing, then it is not truly discretionary in substance and the provision is mandatory such that the Court "shall" annul the bankruptcy. That is, that the annulment should take place as a matter of course. This submission cannot be accepted. It is clear from the terms of s 153B itself, even if the Court was bound not to make the sequestration order at the time it was made, a discretion must be exercised as to whether to annul the bankruptcy: also see *Rigg* at [79], *Heinrich* at [20], *Eggleston* at [16(7)], *Yang* at [28] and [29(d)] and *Zaghloul* at [10] and [12]-[13]. As was observed by Emmett J, with Katz and Conti JJ agreeing in *Boles v Official Trustee* (2001) 183 ALR 239; [2007] FCA 639 at [16]:

> 16 … On the other hand, at the hearing of an application for annulment, even if the court is satisfied that the sequestration order ought not to have been made, the court nonetheless has a discretion to decline to order that the bankruptcy be annulled, at least in some circumstances.

65 Further, Mr Jorgensen orally submitted:

> In *Hamersley Iron Proprietary Limited v Forge Group Power Proprietary Limited* [citation redacted] at [64], the Court of Appeal stated, and I quote:
>
> > *Insolvency processes are not to be used to coerce payment of a debt which is genuinely disputed.*

66 First, the citation stated was incorrect. There are the following decisions, *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd* (2017) 52 WAR 90, that being the first instance decision, or the latter appeal, being *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd* (2018) 53 WAR 325. Second, paragraph [64] in either the first instance decision or on appeal does not state what Mr Jorgensen purported to quote.

67 In Mr Jorgensen's supplementary written submissions, he submits the following, "*Bankruptcy was used as a debt-collection tactic contrary to Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd (in liq)* [2017] WASC 152." This citation in the written submission is accurate. However, the first instance decision, on the preliminary questions (see [4]) was regarding set-off and s 553C of the *Corporations Act 2001* (Cth) was overturned on the appeal. In any event, neither of these decisions are of instance in the circumstances of this case.

68 Mr Jorgensen also purported to quote from *Wren v Mahoney* (1972) 126 CLR 212; [1972] HCA 5, however the passage said to exist, did not.

69 From the authorities, it is clear that Mr Jorgensen bears a "heavy burden".

(a) Solvency

70 The evidence available does not establish that Mr Jorgensen is solvent. This was a matter for Mr Jorgensen to prove. He submits that solvency is irrelevant and that it has never been in doubt. I do not accept this submission. Solvency is a relevant consideration when determining whether to exercise the discretion to annul the bankruptcy. Furthermore, it is a matter that was incumbent upon Mr Jorgensen to establish and as it is not established, it weighs against annulling the bankruptcy.

71 Mr Jorgensen was also on notice that his financial matters would be relevant. On 24 July 2025, JML wrote to Mr Jorgensen and expressly brought such matters to his attention, relevantly stating:

> 6 Those who seek annulment carry a "*heavy burden*".
>
> 7 Such an application requires you to show that the sequestration order "*ought not to have been made*" and, provided that is found, the Court must consider if the bankruptcy should be annulled as a matter of discretion.
>
> 8 It is incumbent on you as applicant "*to place before the Court all relevant material with respect to his or her financial affairs so that the Court may be properly informed and may make a judgment that is based on the actual circumstances of the applicant"*: *Re Papps; Ex parte Tapp* [1997] FCA 1031; (1997) 78 FCR 524 at 531.

72 At the case management hearing for this annulment application on 1 August 2025, JML proposed a draft order which sought for Mr Jorgensen to provide copies of his notices of assessment and any amended assessments from the Australia Taxation Office for the year ending 30 June 2016 onwards, proof of payment of such assessments and his signed and lodged statement of affairs. In addition, JML proposed that Mr Jorgensen also file an Affidavit including any other material he wished to rely on regarding his financial affairs. Mr Jorgensen strongly objected to Orders in such terms being made, particularly as to the express provisions of certain documents.

73 Orders were made on 1 August 2025, providing Mr Jorgensen with an opportunity to file any further material he sought to rely on (which notably did refer to it including his financial affairs), in the following terms:

> 3. By 4pm on 5 August 2025, the Respondent file and serve any affidavit material on which he intends to rely on at the hearing, including any material he wishes to rely upon as to his financial affairs.

74 There is evidence from the Trustee of creditor's claims for more than $630,000. One claim, in relation to a debt to the supporting creditor was sworn to by the Trustee as being more than $160,000. There was no other documentary evidence as to this amount. Another claim for which further enquiries were being made was in relation the Cairns Regional Council. The amount of its claim was "unknown". In this regard however, there is evidence that in July 2024 the Cairns Regional Council had given notice of intention to sell land, to Mr Jorgensen as trustee of that property. There was rates and charges outstanding on the property that were more than 3 years overdue.

75 Although there is evidence that Mr Jorgensen owns motor vehicles and a property as trustee, it is not possible to be satisfied that Mr Jorgensen is solvent. The evidence is incomplete.

76 It was for Mr Jorgensen to prove that he is solvent. He has not done so.

77 I do not draw an adverse inference against Mr Jorgensen that because he has not provided such evidence, it would not have assisted. The burden of proof to establish he was solvent was one which rested on him. Mr Jorgensen (if necessary) was on notice that he would have to establish his financial position. He did not do so. In this regard Mr Jorgensen has not discharged his burden of proof and established that he is, in fact, solvent.

(b) Disclosure of Financial Affairs

78 Mr Jorgensen has not provided full and frank disclosure of his financial affairs to this Court on his application for annulment of the bankruptcy. Mr Jorgensen has not discharged the "heavy burden" he carries and as such this weighs against annulling the bankruptcy.

79 By way of example only, Mr Jorgensen did not provide evidence that his taxation returns were up to date or of any bank accounts held by him. There was evidence in the Trustee's earlier affidavit which annexed the Australian Taxation Office's proof of debt that there were outstanding taxation lodgement obligations for the years ending 30 June 2016 to 2024.

80 Mr Jorgensen did not provide any evidence of whether the rates and charges were now paid, that were earlier the subject of the notice of intention to sell. Further, it is apparent that Mr Jorgensen has other current litigation, details including costs orders or the amounts in dispute were also not disclosed.

81 Mr Jorgensen has also not provided evidence of having given this application to annul to all of his creditors: r 7.04 of the FCBR. Of course, on the basis of the evidence before the Court it is not possible to properly understand who all of his creditors are, however, one such creditor would appear to be Cairns Regional Council. There was no evidence that it was notified of this application.

82 Further, Mr Jorgensen has not completed his statement of affairs and provided it to the Trustee; s 54 of the Act. The statement of affairs was required within 14 days of being made aware of the bankruptcy. The following passage of Hill J in *Nilant v Macchia* (2000) 104 FCR 238; [2000] FCA 1528 at 245 was endorsed by the Full Court, Buchanan J, with whom Moore and Conti JJ agreed in *De Robillard v Carver* (2007) 159 FCR 38; [2007] FCAFC 73 at [136], which explains the importance of the statement of affairs:

> 136 Given the penal nature of the obligation created by s 54, it is difficult to see that breach of the section, no matter how inadvertent, could be categorised as merely formal. The policy behind s 54 is clear. The obligation to file a statement of affairs in a public register is intended to make information concerning the bankrupt's affairs available to creditors and, for that matter, members of the public. The former may inspect without payment of a fee, the latter only on payment of a fee. But it is in the interests of the public in the encouragement of morality in trading that the financial situation of a bankrupt debtor be open to inspection. Because, ordinarily, the administration of the estate and ultimate distribution of dividends from the estate, will be dependent upon the trustee having full details of the trade dealings and debts of a debtor, the statement is to be made available as well to the trustee in bankruptcy. Given the scheme of the legislation and the important role that the statement of affairs plays in it, there is considerable difficulty in seeing that Parliament would have intended that the Court, through s 306, have the ability to treat non-compliance with the statutory obligation as merely formal.

83 Section 54(1) is a penalty provision, which is an offence of strict liability; s 54(3) of the Act.

84 The statement of affairs is also important for when the bankrupt is automatically discharged: s 149(1)(a) of the Act.

(c) Any unexplained delay

85 The trigger for making this Annulment Application, was the setting aside of the Default Judgment. That occurred on 30 May 20205. The Annulment Application was lodged on 16 July 2025 but is dated 6 June 2025. The initial affidavit in support of the Annulment Application was also dated 6 June 2025.

86 There is no explanation for why it took more than five weeks from preparing the Annulment Application and affidavit in support, to actually lodging and filing those documents with the Court (even allowing for Mr Jorgensen living in Cairns).

87 However, given the relatively short period of time and where Mr Jorgensen lives, this factor is neutral.

(d) A failure to attend on the making of the sequestration order

88 It was observed at [14] of the 2025 Judgment that Mr Jorgensen attested to communication difficulties to explain his non-attendance at the hearing on 16 October 2025. As the 2025 Judgment had to consider the

matter *de novo*, no concluded view of his failure to attend, was taken: 2025 Judgment at [14]-[16].

89 No further material or explanation was sought to be provided on this hearing of the Annulment Application. Further, it should be noted that Mr Jorgensen did appear at the *de novo* hearing on 20 March 2025.

90 In these circumstances, this factor is also neutral.

(e) Trustee's fees

91 Mr Jorgensen has not made any offer or put forward any proposal for the payment of the fees and disbursements of the Trustee. This factor weighs against annulling the bankruptcy.

(f) The basis for finding that the sequestration order ought not to have been made

92 In the circumstances of this case, I have not accepted the submission that the Court would have been bound not to make the sequestration order. This is for two separate reasons. First, the underlying debt owing to JML even after the Default Judgment has been set aside is still more than the statutory minimum. Therefore, that debt could still satisfy the requirements of s 52(1)(c) of the Act. Second, a supporting creditor was disposed to immediately be substituted as the petitioning creditor: s 49 of the Act and 2025 Judgment at [46].

93 Although the Default Judgment has been set aside, there remains an underlying debt to JML and there remained a supporting creditor capable of being substituted. As such, the circumstances do not weigh in favour of annulling the bankruptcy.

Conclusion – Discretion

94 As noted, it was not necessary to consider whether or not to exercise the Court's discretion as Mr Jorgensen had not satisfied the Court that sequestration order ought not to have been made.

95 However, in any event, most of the discretionary factors weigh against annulling the bankruptcy. I am not satisfied that any of the discretionary considerations weigh in favour of annulling. This is particularly so in circumstances where Mr Jorgensen has failed to discharge his "heavy burden" in relation to his financial position and has failed to prove his solvency.

CONCLUSION

96 For all of the above reasons, Mr Jorgensen's application to annul his bankruptcy must be dismissed with costs.

97 As a final observation, it became apparent that Mr Jorgensen attempted to file additional materials, after the hearing. Although it was raised with Mr Jorgensen at the hearing, whether he sought additional time, he declined that invitation. As such, there were no Orders granting leave for additional material. Therefore, I have not had regard to any material sought to be provided after the hearing.

GENERATIVE AI

98 The First Respondent debtor, the applicant on the application to annul, clearly used AI, and accepted that he had done so during the course of the hearing in preparing his oral and written submissions. This gave rise to a number of difficulties, including that his submissions cited:

(a) authorities which did not exist (sometimes being both the case name and the citation, and sometimes only in the citation);

(b) authorities which did not stand for the principle which was submitted;

(c) purported quotes from authorities which did not exist;

(d) authorities of little, if any, relevance;

(e) a section of the Act which was repealed in 2016;

(f) a rule which does not exist in the FCR or the FCBR;

99 These kind of results have been described as a "hallucination". This is where the AI generates an incorrect result: ***Ayinde*** *v The London Borough of Haringey* [2025] EWHC 1383 at [13], Dame Sharpe, President of the King's Bench Division, and Mr Justice Johnson. Their Honours described such hallucinations at [14] as "*faulty and contained fictional citations*" or "*entirely fabricated*". The Court in *Ayinde* also approved of the following descriptions of hallucinations in Canada authorities, at [101] and [102], respectively:

(a) where "*artificial intelligence generates false and misleading results*": *Geismayr v The Owners, Strata Plan KAS 1970* [2025] BCCRT 217 at [25], Tribunal Member Peter Mennie; and

(b) where AI "*create(s) fake legal citations*": *Ko v Li* [2025] ONSC 2766 at [14], FL Myers J.

100 In *Ayinde*, AI was described at [6] as a tool that carries risks, which was said to be well-know. An appendix to the judgment in *Ayinde* at [83]-[102] contains a selection of examples from England and Wales, the United States, Australia, New Zealand and Canada where material was put before the Court that was generated by an AI tool which was erroneous.

101 The use of AI technology in the Courts has been the subject of judicial observations, particularly regarding legal practitioners who are subject to professional and ethical obligations and responsibilities. However, as Bell CJ observed in *May v* ***Costaras*** [2025] NSWCA 178 at [15], with whom Payne JA and McHugh JA agreed, in the context of considering the use of AI in the preparation of submissions, that "*(a)ll litigants are under a duty not to misled the court or their opponent*." The reliance on unverified materials produced by generative AI does have the potential to misled the Court.

102 Although the termed used in relation to erroneously generated references by AI is "hallucinations", this is a term which seeks to legitimise the use of AI. More properly, such erroneously generated references are simply fabricated, fictional, false, fake and as such could be misleading.

103 All persons appearing before the Court have a duty to verify that the case law and legislation referred to and relied on, is accurate and that such materials actually exist. The references in *Ayinde* at [85] and [86] and in *Costaras* at [14]-[15], to matters involving litigants who are acting in person who rely on AI generated material clearly supports the position that all are required to verify the submissions made to the Court. There are many publicly available legal research websites, some which are accessible without a fee. Further, and without attempting to be exhaustive, the Queensland Supreme Court library is open and available to the public.

104 The use of generative AI to prepare submissions that may include fake authorities will nearly always introduce added costs, complexity and add to the burden of other parties and to the Court: *Costaras* at [16] and [49]. I gratefully adopt the observation from *Ayinde* at [9] that "*(t)here are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused*." The Court in *Ayinde* observed from [10] to [31] the existing guidance, regulatory duties of the profession, referrals and the Court's powers. Matters which are within the Court's own domain include in the most serious of cases contempt of Court. The observations in *Ayinde* at [26]-[28] regarding contempt of court are not limited to legal practitioners.

105 As the reasons above demonstrate, the circumstances of this case involved many fake authorities, fabricated quotes and false propositions. It is unhelpful for the Court to be referred to, and for parties to rely on, such matters.

I certify that the preceding one hundred and five (105) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Wheatley.

Associate:

Dated: 19 August 2025