

10 November 2016

To Senator the Hon. Stephen Parry
President of the Senate
PO Box 6100
Senate
Parliament House
CANBERRA ACT 2600
By email: senator.parry@aph.gov.au

Copy Senator Rodney Culleton
PO Box 6
WEST PERTH WA 6872
By email: senator.culleton@aph.gov.au

Dear Mr President

Senator Rodney Norman Culleton
In the matter of Balwyn Nominees and Rodney Norman Culleton
Creditor's Petition in the Federal Court of Australia No. WAD 492 of 2016

1 Introduction

Our client is Balwyn Nominees Pty Ltd, a company which obtained a judgment debt against Senator Rodney Norman Culleton in the District Court of Western Australia in October 2013, which remains outstanding. Our client has filed a creditor's petition in the Federal Court of Australia seeking sequestration orders under the *Bankruptcy Act 1966* (Cth) against Senator Culleton.

2 Purpose of this letter

We are instructed to write to you in your capacity as President of the Senate to respectfully:

- (a) bring this matter to your attention as a matter of public interest, as it has the potential to affect the composition of the Senate, should our client's application for sequestration orders be successful (in light of section 44(iii) of the Constitution); and
- (b) note that the first hearing of the creditor's petition has been listed for 21 November 2016 in Perth, which we note is a sitting date for the Senate and also the date on which the High Court of Australia has scheduled a hearing (as the Court of Disputed Returns) for the purposes of giving directions as to the hearing and determination of certain questions transmitted by the Senate which concern Senator Culleton and section 44(ii) of the Constitution.

3 Background

3.1 Judgment debt in 2013

It is a matter of public record that Balwyn Nominees obtained judgment against the now Senator Culleton and his wife, Mrs Ioanna Culleton, in the District Court of Western Australia on 24 October 2014. Judgment was handed down by his Honour Judge Curthoys (now Justice Curthoys) in the sum of \$205,536.50, together with interest.¹

3.2 Judgment debt has been upheld

The District Court Judgment has been upheld twice by the Court of Appeal of Western Australia² and an application made to the Federal Court to restrain enforcement of the judgment debt has also been recently dismissed.³ Senator Culleton has filed a fresh application to appeal the original judgment, which is to be heard in February 2017.⁴ This fresh application is fundamentally without merit.

3.3 Creditor's Petition

The creditor's petition seeks a sequestration order against Senator Culleton by reason that he failed to comply with the requirements of a bankruptcy notice served on him on 8 August 2016.

The creditor's petition has been listed for hearing on 21 November 2016, which we realise is a Parliamentary sitting date for the Senate. We have raised this matter with the Federal Court as a matter of courtesy, and have requested that the matter be adjourned to a non-sitting date, however the Court responded that it was not inclined to re-list the matter. This correspondence was also copied to Senator Culleton.

We now observe that 21 November 2016 is the date on which the High Court of Australia has scheduled a hearing (as the Court of Disputed Returns) for the purposes of giving directions as to the hearing and determination of certain questions transmitted by the Senate which concern Senator Culleton and section 44(ii) of the Constitution.

Accordingly, we propose as a courtesy to re-approach the Federal Court to request that the hearing date for the creditor's petition be moved.

3.4 Service of the Creditor's Petition on Senator Culleton

We have provided the creditor's petition to Senator Culleton by way of email and registered post, and no doubt he is aware of its existence and the hearing date. To date, we have been unable to serve the creditor's petition on Senator Culleton personally. We will however continue attempts to effect service upon Senator Culleton in a lawful manner.

¹ See *Dakin Farms Pty Ltd v Elite Grains Pty Ltd (No 2)* [2013] WADC 160 at [200] per Curthoys DCJ.

² See *Culleton v Dakin Farms Pty Ltd* [2015] WASCA 183 per Murphy JA (Marlin CJ and Newnes JA agreeing); and *Culleton v Dakin Farms Pty Ltd* [2016] WASCA 152 per Newnes and Murphy JJA.

³ *Re Culleton* [2016] FCA 1193 at [31] per McKerracher J.

⁴ On 27 September 2016, Senator Culleton filed an application in the Court of Appeal challenging the validity of the original District Court Judgment obtained in 2013. This application has been listed for hearing on 2 February 2017.

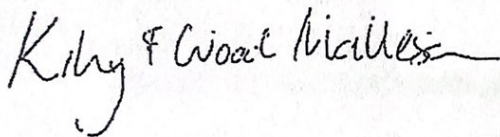
KING & WOOD MALLESONS

4 Conclusion

In the foregoing circumstances, we respectfully:

- (a) ask that you note the existence of the creditor's petition proceedings in the Federal Court;
- (b) ask that you indicate whether any other parties need to be informed of the creditor's petition, such as the Attorney General for the Commonwealth of Australia; and
- (c) inform you that we propose to seek an alternative date from the Federal Court for the first hearing of the creditor's petition.

Yours faithfully



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