SUPREME COURT OF QUEENSLAND

CITATION:	*Prema Life Pty Ltd v Popplestone* [2019] QSC 326
PARTIES:	**PREMA LIFE PTY LTD** (applicant) **v** **CRAIG POPPLESTONE** (respondent)
FILE NO/S:	3472 of 2019
DIVISION:	Trial
PROCEEDING:	Application
DELIVERED ON:	31 July 2019, *ex tempore*
DELIVERED AT:	Brisbane
HEARING DATE:	31 July 2019
JUDGE:	Dalton J
ORDER:	**The respondent's statutory demand served on the respondent on 11 March 2019 be set aside pursuant to section 459G of the Corporations Act** **The respondent pay the applicant's costs of and incidental to the application on a standard basis**
COUNSEL:	A A Corbutt for the applicant J S Wright for the respondent
SOLICITORS:	A G Edwards for the applicant Colwell Wright Solicitors for the respondent

HER HONOUR: This is an application to set aside a statutory demand which was served on the 11th of March 2019. The creditor had a default judgment in the Magistrates Court and, unusually, served three statutory demands in relation to that same debt. The first was served on the 5th of March. The second (the subject of this application) was served on the 11th of March, and the third was served on the 15th of March 2019. The demands were all in identical terms. Perhaps understandably, there was confusion on the part of the applicant before me, and only one application was made to set a demand aside, and that was this application. It was filed and served on the 1st of April 2019, that is, it was within 21 days of service of the demand.

Section 459G(1) allows an application to be made to set aside a statutory demand, but by subsection (2) that application must be made within 21 days. I think that the judgment of Austin J in James Estate Wines Pty Ltd v WideLink (Aust) Pty Ltd [2003] NSWSC 744 [23] ff shows that there can be concurrent operative demands for the same debt. In this case, I think I should focus on the terms of the application which is made. It is made within time, and there is no reason, it is conceded, why I

should not set aside the demand, for the default judgments in the Magistrates Court have themselves be set aside.

On the unusual facts in this case, there is some point to my setting aside the demand which was served on the 11th of March 2019. While no application to set aside the demands of the 5th of March or the 15th of March has been made, the time for the creditor to bring winding up proceedings based on those two demands (ie, the first and third demands) has passed, so their utility is, in fact, spent. Because the applicant has brought this application in relation to the demand served on the 11th of March 2019, section 459F means that if I do not set this demand aside, the creditor will have seven days in which to bring an application to wind up the applicant, that is, there is some point in determining the application which has been made.

It was said on behalf of the creditor that no such winding up application would be made and I considered, therefore, whether or not I could record that as an undertaking and make an order in the form, essentially, on the undertaking of the creditor not to bring winding up proceedings based on the demand served on the 11th of March 2019 the application was dismissed. The difficulty with that would be that the applicant has obligations to report various matters to the Stock Exchange, and one of them would be if it failed to set aside this statutory demand, and there is good reason for that because unless it is set aside, the company is deemed insolvent, so I think there is a good reason to determine the application which is made, rather than to, in effect, refuse to determine it or dismiss it on a prophylactic undertaking offered by the creditor. So in those circumstances, I think that where the application is, on its face, within the 21 days, and there is a real point to my dealing with the application, I should deal with it and set aside the demand.

I will record that the creditor relied upon the case of Godfrey v Weriton Finances Proprietary Limited [2013] FCA 1057, a case dealing with a bankruptcy notice. That was a case where multiple copies of the same bankruptcy notice were served. The Court, in that case, really was of the view that there was no point to setting aside a second bankruptcy notice in circumstances where the first bankruptcy notice would have remained operative and effective, but the decision in that case was not, as the respondent creditor put it to deem the time for compliance with the second bankruptcy notice to be shortened because an earlier bankruptcy notice had been served. Rather, the effect of the decision in Godfrey v Weriton Finance was that service of a second bankruptcy notice did not extend the time to comply with the first bankruptcy notice. So I do not see any reason, flowing from the logic of that case, to do anything except grant the application.

So my formal order will be, in terms of paragraph 1 of the originating application, that the respondent's statutory demand served on the respondent on 11 March 2019 be set aside pursuant to section 459G of the Corporations Act. All right.

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HER HONOUR: All right, then. Thanks very much. I will make an order that the respondent pay the applicant's costs of an incidental to the application on a standard basis. I have made that change to your draft order, Ms Corbett, so it will be order as per draft, initialled by me and placed with the papers. Although, I think the creditor is fairly and squarely responsible for the necessity to bring the application and seems to have created a great deal of confusion in trying to handle the matter himself rather than seek legal advice, as he ought to have done, I do not there is anything so unreasonable in his actions that it makes me suspect any ulterior motive of the type discussed in cases such as Colgate Palmolive and other cases dealing with indemnity costs.