SUPREME COURT OF QUEENSLAND

CITATION:	*CPR Solutions Mackay Pty Ltd v Zammit Earthmoving Pty Ltd* [2020] QSC 165
PARTIES:	**CPR SOLUTIONS MACKAY PTY LTD** ACN 166 773 271 (applicant) **v** **ZAMMIT EARTHMOVING PTY LTD** ACN 124 851 501 (respondent)
FILE NO/S:	SC No 17 of 2020
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Mackay
DELIVERED ON:	11 June 2020
DELIVERED AT:	Rockhampton
HEARING DATE:	28 April 2020
JUDGE:	Crow J
ORDER:	**1. The application to set aside the statutory demand is dismissed.** **2. The parties are to file and serve submissions regarding costs as follows:** **a. respondent by close of business Friday 12 June 2020; and** **b. applicant by close of business Tuesday 16 June 2020.**
CATCHWORDS:	CORPORATIONS – WINDING UP – WINDING UP IN INSOLVENCY – STATUTORY DEMAND – APPLICATION TO SET ASIDE DEMAND – PROCEDURAL REQUIREMENTS – SERVICE OF APPLICATION – where application to set aside statutory demand filed within period for service – where the application is stamped as received and a filing receipt issued by the registry – where complete application is not provided to applicant for a further twenty-one days - where unsealed copy of the application, bearing no return date, file number, or 'received' stamp emailed to respondent's solicitors within period of service – where receipt for filing was emailed to respondent's solicitors within period for service – where complete application to set aside statutory demand served outside period of service - whether the application served

was a copy for the purpose of s 459G of the *Corporations Act* 2001 (Cth) – whether service had been properly effected

CORPORATIONS – WINDING UP – WINDING UP IN INSOLVENCY – STATUTORY DEMAND – APPLICATION TO SET ASIDE DEMAND – PROCEDURAL REQUIREMENTS – OTHER MATTERS – where the procedural rules regarding corporation's proceedings are set out in the *Uniform Civil Procedure Rules* 1999 (Qld) as the *Corporations Proceedings Rules* – where registrar has duty to immediately affix a court seal, return date, and matter number to filed applications - where s 15 of the *Covid-19 Emergency Response Act* 2020 (Qld) empowers the court to modify statutory time limits relating to a proceeding – whether s 15 alters the duties of a registrar to immediately affix a court seal, return date, and matter number to filed applications - whether the alteration or suspension of procedural requirements under the *Corporations Proceedings Rules* can effect operation of *Corporations Act* 2001 (Cth)

Corporations Act 2001 (Cth), s 459G, s 459H, s 559E, s 1337B
COVID-19 Emergency Response Act 2020 (Qld), s 2, s 15
Uniform Civil Procedure Rules 1999 (Qld), r 26, r 964, r 967, r 968, r 978, Schedule 1A

Ainsworth & Ors v Redd (1990) 19 NSWLR 78, cited
Benonyx Pty Ltd v Fetrona Pty Ltd [1999] NSWSC 181, cited
Chelring Pty Ltd v Coombs [2000] WASC 60, cited
Cooloola Dairys Pty Ltd v National Foods Milk Ltd (2004) 211 ALR 293; [2004] QSC 308, applied
Craneford Nominees Pty Ltd v VGC Co-operative Limited [2012] SASC 74, applied
David Grant & Co Pty Ltd v Westpac Banking Corporation (1995) 184 CLR 265; [1995] HCA 43, applied
Elite Motor Campers Australia v LeisurePort Pty Ltd (1996) 22 ACSR 235; [1996] FCA 951, cited
LJAW Enterprises Pty Ltd v RJK Enterprises Pty Ltd [2004] QSC 134, followed
McArthur v Herald & Weekly Times Ltd & Ors (1957) QWN 16, cited
Robowash Pty Ltd v Robowash Finance Pty Ltd (2000) 158 FLR 338; [2000] WASCA 409, cited
Universal Trade Exchange Pty Ltd v Westpac Banking Corporation (2002) 20 ACLC 1302, cited

COUNSEL: M T de Waard for the applicant.
S Kelly for the respondent

SOLICITORS: Taylors Solicitors for the applicant
Wilson Ryan Grose for the respondent

Background

[1] The applicant, CPR Solutions Mackay Pty Ltd, came into existence upon registration on 14 November 2013.[1] The sole director and shareholder is Mr Darren Anthony Haack. The sole director of the respondent, Zammit Earthmoving Pty Ltd, is Simon Paul Zammit. Mr Haack and Mr Zammit had been friends for a number of years.[2] In paragraph 5 of his affidavit filed 22 April 2020, Mr Haack deposes:

> "Since around 2009, the Respondent and I agreed that we would do works for each other and generally not charge each other because the value of the works would balance out over time. An example of this arrangement was in 2012 when I constructed a concrete pad for the Respondent at the Respondent's request, this job involved approximately 310 cubic metres of concrete being poured. At the time, the 'going rate' for such a job, if I completed the work for any other customer would have been around $1,300.00 to $1,500.00 per cubic metre. By me doing those works and not charging the Respondent like I normally would another customer, I estimate that I would have saved the Respondent around 50% of the total cost of the job, that is saving around $200,000.00."

[2] Mr Haack deposes that from approximately 29 August 2016, the applicant provided the respondent with a 'Concrete Vibrator', which has an estimated commercial-hire rate of $80 per day inclusive of GST, and two 'Brad finishing guns', which have an estimated commercial-hire rate of $40 each, per day inclusive of GST.[3] Mr Haack estimates that the respondent was provided with the equipment for approximately, as of mid-April 2020, 1, 332 days and quantifies that the cost of hiring that equipment, for that period at commercial rates, to be $213,120.[4] That is, Mr Haack alleges, but for the oral agreement between the applicant and respondent not to charge each other for works performed, the respondent would be indebted to the applicant in the sum of approximately $413,120. Mr Haack further alleges that the respondent is indebted to the applicant for the sum of $84,312 for other works for which invoices have been issued.[5]

[3] Mr Haack deposes that he received statements from time to time from the respondent and in particular had received statements on 28 February 2014 ("2014 Statement"), 1 May 2015 ("2015 Statement") and on or around 31 January 2019 ("2019 Statement").[6] The 2014 statement recorded a total debt owing of $8,030 as at 28 February 2014. The 2015 statement recorded a total of $29,114.25 owing as at 1 May 2015. The 2019 statement claimed a total of $146,439.28 as the 'amount due'.

[4] Mr Haack deposes that the 2019 statement did not contain references to tax invoice numbers 5939, 5943, 5944, 5945, 5946, 5947, 5948, 5949, 5950, 5951, and 5952.[7]

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1 Affidavit of Darren Anthony Haack filed 17 March 2020.
2 Affidavit of Darren Anthony Haack filed 22 April 2020.
3 Affidavit of Darren Anthony Haack filed 22 April 2020.
4 Affidavit of Darren Anthony Haack filed 22 April 2020.
5 Affidavit of Darren Anthony Haack filed 22 April 2020.
6 Affidavit of Darren Anthony Haack filed 22 April 2020.
7 Affidavit of Darren Anthony Haack filed 22 April 2020.

Exhibit DH-5,[8] is a letter of demand from the solicitor for the respondent addressed to the applicant, claiming a total indebtedness by the applicant to the respondent of $329,804.81, less a setoff of $56,519. The letter of demand claims the net total debt owed by the applicant to the respondent to be $273,285.81.

[5] The applicant, acting through its solicitors, sought copies of the invoices referred to in the letter of demand, the invoices are provided in Exhibit DH-7.[9] On the face of the invoices there are obvious problems. Invoices 5938, 5940, 5941, and 5942 all pre-date the coming into existence of the applicant company. Those invoices are addressed to Darren and Nichole Haack and total almost $50,000.

[6] The next eight tax invoices are directed to the applicant company, but directed from a different company; 'Big Boys Toys Blast and Paint Pty Ltd'. The next 11 tax invoices are issued by Zammit Earthmoving Pty Ltd to CPR Solutions Mackay Pty Ltd, however all 11 pre-date 14 November 2013. The remaining 14 tax invoices issued by the respondent to the applicant date from 30 May 2014 until 30 September 2015. Those documents were sent to the applicant's solicitor on 8 November 2019.

[7] On 26 February 2020, the respondent served a creditor's statutory demand (pursuant to the s 559E of the *Corporations Act* 2001 (Cth) ("*Corporations Act*")) on the applicant for payment in the sum of $244,824.04.[10] The statutory demand provided for the address of service for the respondent as the offices of its solicitors. The creditor's statutory demand warned the applicant of the consequences of failure to make an application to the court and serve copies of the application within the 21-day statutory period following service.

[8] The applicant responded to the statutory demand by its solicitor's letter of 16 March 2020,[11] disputing the validity of the statutory demand on three grounds. Firstly, by alleging that some of the works being claimed were not requested; secondly, that in any event the respondent was indebted to the applicant for a greater sum of money; and, thirdly, that some of the monies related to invoices in excess of 6 years ago, which may be statute barred. The applicant's solicitor's letter raised a genuine dispute in respect of the statutory demand and sought the cooperation of the respondent to withdraw the statutory demand. The respondent declined to withdraw the statutory demand.

[9] On 17 March 2020, (twentieth day following service of the statutory demand) the applicant filed an application pursuant to ss 459G and 459H(1) of the *Corporations Act* to set aside the statutory demand and a supporting affidavit.[12] Immediately upon filing the application and supporting affidavit, the applicant's solicitor paid the application fee of $2,812.90 and was provided with a Queensland Courts official receipt for that sum in respect of the originating application for the corporations matter "CPR Solutions Mackay -v- Zammut [sic] Earthmoving".[13] Mr Cunningham deposes that the usual practice of the Mackay district registry, upon the filing of an originating application, would be to seal the originating application and make it

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8 Exhibit DH-5 to the affidavit of Darren Anthony Haack filed 17 March 2020.
9 Exhibit DH-7 to the affidavit of Darren Anthony Haack filed 17 March 2020.
10 Exhibit DH-2 to the affidavit of Darren Anthony Haack filed 17 March 2020.
11 Exhibit DH-3 to the affidavit of Darren Anthony Haack filed 17 March 2020.
12 Affidavit of Darren Anthony Haack filed 17 March 2020.
13 Exhibit RAC-3 to the affidavit of Robert Andrew Cunningham filed 24 April 2020.

available for collection on the same day.[14] Despite the request of the applicant's solicitor for the return of the sealed application and supporting affidavit on the date of filing (17 March 2020), that did not occur. Exhibit RAC-1 sets out the information notices, news and practice directions issued from 13 March 2020 by the Supreme Court and other courts in response to the COVID-19 pandemic.[15]

[10] Having filed the application and supporting affidavit on 17 March 2020, and having not received the sealed copy from the court, the applicant's solicitor emailed the unmarked application, the supporting affidavit and the Queensland Courts receipt to the solicitor for the respondent on the afternoon of 17 March 2020.[16] The respondent's solicitor emailed advising they would not accept that formal service had been effected until they received sealed copies of the application with the court number and return date allocated.[17]

[11] In order to comply with what was understood to be the requirements of s 459G, the applicant's solicitor again attended at the district registry in Mackay on 18 March 2020,[18] seeking the sealed copies, but the copies were not available due to alterations to the registry staffing and practice, necessary to comply with COVID-19 restrictions.

[12] A third request for the documents was made on 1 April 2020, with the applicant solicitor's administrative assistant again attending the Registry seeking return of the documents and then being advised by Registry staff to email the acting registrar.[19] The applicant's solicitor did email the acting registrar at 9:50am on 1 April 2020 and was later advised in a phone call with the acting registrar that the application and affidavit "was still not available…it has been stamped as received on 17 March 2020 but he couldn't record a hearing date on it yet…"[20]

[13] The uncertainty as to the hearing dates for the Supreme Court at Mackay were significantly affected by the pre-emptive restrictions put in place to combat COVID-19. It was not until 6 April 2020 that a return date, being 28 April 2020, could be set for the application. Accordingly, on 6 April 2020, the acting registrar placed the return date on the application and advised the applicant that the application was ready for collection.

Part 5.4 Corporations Law – Operates Harshly

[14] Section 459G of the *Corporations Act* provides:

> **"459G Company may apply**
>
> (1) A company may apply to the Court for an order setting aside a statutory demand served on the company.

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14 Affidavit of Robert Andrew Cunningham filed 24 April 2020.
15 Exhibit RAC-1 to the affidavit of Robert Andrew Cunningham filed 24 April 2020.
16 Exhibit RAC-3 to the affidavit of Robert Andrew Cunningham filed 24 April 2020.
17 Exhibit RAC-4 to the affidavit of Robert Andrew Cunningham filed 24 April 2020.
18 Affidavit of Robert Andrew Cunningham filed 24 April 2020; Affidavit of Darcy Brown filed 24 April 2020.
19 Affidavit of Hayley Kristine Giles filed 24 April 2020.
20 Exhibit RAC-6 to the affidavit of Robert Andrew Cunningham filed 24 April 2020.

> (2) An application may only be made within the statutory period after the demand is so served.
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> (3) An application is made in accordance with this section only if, within that period:
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> (a) an affidavit supporting the application is filed with the Court; and
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> (b) a copy of the application, and a copy of the supporting affidavit, are served on the person who served the demand on the company."

[15] The leading decision upon the meaning and effect of s 459G is the decision of Gummow J in *David Grant & Co Pty Ltd v Westpac Banking Corporation* ("*David Grant*").[21] In *David Grant*, Gummow J (with whom Brennan CJ, Dawson, Gaudron and McHugh JJ agreed) said:[22]

> "In providing that an application to the court for an order setting aside a statutory demand 'may only' be made within the twenty-one day period there specified and that an application is made in accordance with s 459G only if, within those twenty-one days, a supporting affidavit is filed and a copy thereof and of the applications are served, sub-ss (2) and (3) of s 459G attach a limitation or condition upon the authority of the court to set aside the demand. In this setting, the use in s 459G(2) of the term 'may' does not give rise to the considerations which apply where legislation confers upon a decision-maker an authority of a discretionary kind and the issue is whether 'may' is used in a facultative and permissive sense or an imperative sense. Here, the phrase '[a]n application may only be made within twenty-one days' should be read as a whole. The force of the term 'may only' is to define the jurisdiction of the court by imposing a requirement as to time as an essential condition of the new right conferred by s 459G. An integer or element of the right created by s 459G is its exercise by application made within the time specified. To adapt what was said by Isaacs J in *The Crown v McNeil*, it is a condition of the gift in sub-s (1) of s 459G that sub-s (2) be observed and, unless this is so, the gift can never take effect. The same is true of sub-s (3).
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> …
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> These matters emphasise the importance of s 459G as an integral part of the particular scheme established by Pt 5.4. Paragraph (d) of s 1322(4) empowers the court to make an order where the period concerned ended before the application to extend it is made. An application to set aside the demand made not within the twenty-one days specified in s 459G but within another period allowed pursuant to an order under s

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21 (1995) 184 CLR 265.

22 *David Grant & Co Pty Ltd v Westpac Banking Corporation* (1995) 184 CLR 265 at 276, 278, 279.

> 1322(4), could not modify what otherwise would be the operation of the definition of the 'period for compliance' with the statutory demand set out in s 459F(2). That in turn would not change the answer to the question posed under s 459C(2) as to whether the court must presume the company to be insolvent because it had, within the period there specified, failed 'as defined by s 459F' to comply with the statutory demand.
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> …
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> Section 467A provides that an application under Pt 5.4 'must not be dismissed' merely because of 'a defect or irregularity in connection with the application', unless the court is satisfied that substantial injustice has been caused and this cannot otherwise be remedied. However, s 467A cannot assist the appellants. If an application for an order setting aside a statutory demand has not been made within 21 days after service of the demand, there is no application under Pt 5.4 before the court. Therefore, there is no question of such an application being dismissed because of a defect or irregularity in connection with it. In *Re J and E Holdings Pty Ltd*, Sheller JA summed the matter up as follows:
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> > 'The position is quite simply that unless the Court has a power to extend the time within which the application to set aside the statutory demand can be made, the plaintiff has no right to make it.'
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> Sheller JA also referred to various examples where it might be thought that, upon the construction he preferred, which I also have accepted, Pt 5.4 might operate harshly. In particular, reference was made to the drastic commercial consequences which may follow the issue of process for winding up and to the inability of a company, which for good reason had been late in filing or serving an application to set aside the statutory demand, to prevent the issue of that winding up process. The damage to the commercial reputation of the company in the meantime might not be answered by the eventual success of the company in defeating the application to wind it up as insolvent. Further, default clauses in securities given by the company may have been so drawn as not to take full account of the new statutory scheme, with the consequence that floating charges may have crystallised and the whole of the principal and interest become payable.
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> (Footnotes omitted.)

[16] In *David Grant* the applications and affidavits required under s 459G were filed and served after the 21-day period referred to in s 459G had expired.[23]

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23 *David Grant & Co Pty Ltd v Westpac Banking Corporation* (1995) 184 CLR 265 at 271.

[17] Holmes J (as her Honour then was) in *LJAW Enterprises Pty Ltd v RJK Enterprises Pty Ltd,*[24] surveyed the application of *David Grant* in several interstate cases,[25] including the appellant decision of *Robowash.*[26]

[18] Each of the cases as analysed by Holmes J showed different types of non-compliance with the requirements of s 459G(3) of the *Corporations Act*: in *Benonyx,*[27] the application served lacked a return date; in *Chelring*,[28] an incomplete copy of the application was served, the copies served "did not bear the seal of the Supreme Court, did not have the action number endorsed on it and did not bear the date and time for the hearing of the application";[29] in *Universal Trade*,[30] the application was served on the respondent, but lacked a return date; in *Robowash*,[31] the application was served but the annexure to the supporting affidavit was incomplete.

[19] In *LJAW*, the application and supporting affidavit was filed on the twenty-first day and an unsealed copy of the application bearing no return date or file number was faxed to the respondent's solicitor after 5pm on the twenty-first day. Holmes J said:[32]

> "[9] I can see no reason not to adopt the reasoning of Santow J in *Benonyx*. It is not necessary for me to embark on any attempt at delineation of what is required to constitute a 'copy' for the purposes of s 459G(3). It is patent here that the documents served failed to reflect the original application in a matter of substance: it did not contain the return date for the application. It is not to the point that the requirement that the copy served reflect the original, at least to that extent, may cause hardship. Indeed, precisely that result occurred in *Elite Motor Campers Australia v LeisurePort Pty Ltd*: delay by the court registry in filing a document, presumably the application, prevented the service of an application to set aside the statutory demand within 21 days. That was, observed Spender J, a regrettable circumstance, but it could not 'prevail over the absolute nature of the requirements of s 459G of the Corporations Law'. I conclude that a copy of the application was not served within 21 days of service of the demand, so that no application to set it aside has been made within the meaning of s 459G (2)."
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> (Footnotes omitted.)

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24 [2004] QSC 134.

25 *Benonyx Pty Ltd v Fetrona Pty Ltd* [1999] NSWSC 181; *Chelring Pty Ltd v Coombs* [2000] WASC 60; *Universal Trade Exchange Pty Ltd v Westpac Banking Corporation* (2002) 20 ACLC 1302.

26 *Robowash Pty Ltd v Robowash Finance Pty Ltd* (2000) 158 FLR 338.

27 *Benonyx Pty Ltd v Fetrona Pty Ltd* [1999] NSWSC 181.

28 *Chelring Pty Ltd v Coombs* [2000] WASC 60.

29 *LJAW Enterprises Pty Ltd v RJK Enterprises Pty Ltd* [2004] QSC 134 at [5].

30 *Universal Trade Exchange Pty Ltd v Westpac Banking Corporation* (2002) 20 ACLC 1302.

31 *Robowash Pty Ltd v Robowash Finance Pty Ltd* (2000) 158 FLR 338.

32 *LJAW Enterprises Pty Ltd v RJK Enterprises Pty Ltd* [2004] QSC 134 at [9].

[20] Holmes J then analysed the *Corporations Law Rules* 2000 (Cth) ("*Corporations Law Rules")* and the *Uniform Civil Procedure Rules* 1999 (Qld) ("UCPR"). Holmes J said:[33]

> "[17] The view that service of a demand with an affidavit which fails 'in a substantial way' to meet the requirements of s 459E(3) constitutes a defect in service rather than in the demand itself was endorsed by Nicholson J in *Delta Beta Pty Ltd v Everhard Vissers.* But I do not think that approach assists the applicant here. If there were a defect in service, it might warrant an application to set aside for 'some other reason' (in terms of s 459J(1)(b)), but it would hardly justify a declaration that the demand itself was not valid.
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> [18] More fundamentally, I would not regard the failure to sign each page of the affidavit as rendering it without effect. Rule 371(1) of the *Uniform Civil Procedure Rules* provides that:
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> > 'A failure to comply with these rules is an irregularity and does not render a proceeding, a document, step taken or order made in a proceeding, a nullity.'
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> As to the effect of such an irregularity, one must look to s 459J. It is a code for dealing with defects in demands and in affidavits; and such defects cannot 'result in invalidity save and except as provided in s 459J (1)': *Spencer Constructions Pty Ltd v G&M Aldridge Pty Ltd.* That leaves little room for the making of a declaration of the kind sought here, independent of any application to set aside."
>
> (Footnotes omitted.)

[21] *LJAW* and its preceding and succeeding cases were analysed by Chesterman J in *Cooloola Dairys Pty Ltd v National Foods Milk Ltd.*[34] In respect of the first demand in the *Cooloola*, Chesterman J said:[35]

> "[28] On 15 July 2004 the applicant filed and served its application. The copy of the application actually served was defective in a number of respects. The application number did not appear on the document. The space for the insertion of the date on which the application would be heard by the court was left blank. The seal of the court had not been affixed to the document which did not bear the Registrar's signature. By letter dated 21 July 2004 the respondent's solicitors notified the applicant's solicitors of these defects. On 23 July 2004 the respondent's solicitors were provided with a complete copy of the application.
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> …

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33 *LJAW Enterprises Pty Ltd v RJK Enterprises Pty Ltd* [2004] QSC 134 at [17], [18].
34 (2004) 211 ALR 293.
35 *Cooloola Dairys Pty Ltd v National Foods Milk Ltd* (2004) 211 ALR 293 at 300, 301.

[32] The facts in *LJAW Enterprises Pty Ltd v RJK Enterprises Pty Ltd* [2004] QSC 134 are also relevantly identical. A copy of an application to set aside a statutory demand, which omitted the court's seal, the return date and the action number, was served on the respondent. Holmes J followed *Benonyx*, *Chelring*, *Universal Trade Exchange* and *Robowash* to conclude that 'the documents served failed to reflect the original application in a matter of substance: it did not contain the return date for the application.' see [9]. Her Honour pointed out, as had other judges, that the requirement that the copy served reflect the original may cause hardship. Indeed in some of the cases the deficiency was not the fault of the applicant, although in this case it was. The cases have also pointed out that the requirements of s 459G are inflexible, depriving the court of a discretion to overlook any defects in service.

[33] UCPR 26(7) emphasises the need for an application, 'and any copies of the application for service', to specify the date set by the court for hearing the application. In this case the respondent was not disadvantaged by the defective copy of the application. All four applications were served together and only one was deficient. The other three applications contained notice of the return date, which was the same. The respondent's solicitors correctly guessed that the return date for application SC No 6180 of 2004 was also the same. This, however, is not the test. Moreover the guess might have been wrong.

[34] As with other line of authorities I should follow these cases unless convinced that they are wrong. I do not think they are. The opinion they express is a justifiable exposition of s 459G. The copy of the application which the section requires to be served must show that an application has been filed and when the respondent is required to attend and answer it. It will not perform these functions if it is not sealed and does not show the action number allocated by the court. The inclusion of the return date is obviously necessary.

[35] *The authorities establish that the copy of the application served on the respondent must be such as to show that it is a replication of the application which has been filed in the court*. To do that it must show the action number given it by the court and it must show the return date for the hearing of the application. It must, also, I think, show the seal of the court to indicate that there are curial proceedings on foot. The document in question did not exhibit those attributes. It was not therefore a copy of the application. The result is that the terms of s 459G(3) were not complied with and the application must be dismissed with costs."

(Emphasis added.)

[22] The approach of Holmes J in *LJAW* has been applied in several times across multiple jurisdictions.[36] In *Craneford Nominees*,[37] the copy of the application that was served omitted the registrar's signature, as well as the filing date. Nonetheless, Stanley J found that the copy served was "a sufficient copy of the application to satisfy s 459G(3)(b)". The facts of that case compelled Stanley J to examine what was meant by the expression "a copy of the application". His Honour said:

> "14. At issue in this appeal is a question of statutory construction. What is the meaning of the expression "a copy of the application" in s 459G(3)(b) of the Act? The literal meaning of the expression does little to elucidate the requirement of the provision. The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions in the statute. As the High Court has frequently observed, the context, the general purpose and policy of a provision and its consistency and fairness is a surer guide to its meaning than the logic with which it is constructed.
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> 15. Section 459E of the Act enables a statutory demand to be served on a company. Section 459F prescribes the period for compliance with the statutory demand. Section 459G permits a company served with a statutory demand to apply to the court for an order setting aside the demand. It requires that such application may only be made within 21 days after the demand has been served. Importantly, s 459G(3) provides that application is made only if, within those 21 days, an affidavit supporting the application is filed with the court and a copy of the application and a copy of the supporting affidavit are served on the person who served the demand on the company.
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> 16. Accordingly, it can be seen that the underlying purpose and policy of s 459G(3) is to permit a company to dispute the debt which constitutes the basis of the statutory demand only by instituting proceedings for that purpose within a confined time period and by alerting the person making the statutory demand, by service on that person, of copies of the application and the supporting affidavit, setting out the basis upon which the company asserts it has a genuine dispute in relation to the debt.
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> 17. The importance of the requirement for service was explained by Young J in *Howship Holdings Pty Ltd v Leslie*, following

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36 *Accommodation West Pty Ltd v Innis* [2009] WASC 337; *Bolivar Rd Pty Ltd v Stefren Pty Ltd* [2011] SASC 93; *Bache Business & Printing Services Pty Ltd v SA Hub Productions Pty Ltd* [2009] SASC 369; *Open Soft Australia Pty Ltd v Miller Street Pty Ltd* [2011] FCA 653; *TBK Beef Pty Ltd v Ark Mangoes Pty Ltd* [2012] NTSC 44; *Adhesive Pro Pty Ltd v Blackrock Supplies Pty Ltd* [2015] ACTSC 288; *Melglow Pty Ltd v Ballygrowman Pty Ltd* [2016] WASC 383; *PCM Nominees (WA) Pty Ltd v ACN 063 291 430 Pty Ltd* [2017] FCA 848; *In the matter of AXL Financial Pty Ltd* [2019] NSWSC 867; *Monsere Pty Ltd v RDM Nominees Pty Ltd* [2019] SASC 126; *Carbone v James McConvill and Associates Pty Ltd (No 2)* [2019] FCA 1594.

37 *Craneford Nominees Pty Ltd v VGC Co-operative Limited* [2012] SASC 74.

amongst other decisions, *Hope v Hope*, that service should be understood in the terms stated by Lord Cranworth:

> 'The object of all service is of course only to give notice to the party on whom it is made, so that he be made aware of and may be able to resist that which is sought against him; and when that has been substantially done, so that the court may feel perfectly confident that service has reached him, everything has been done that is required.'

18. The requirement in s 459G(3)(b) for service of a copy of the application and the supporting affidavit on the person who served the statutory demand exists to ensure that person has proper notice that curial proceedings have been commenced by the person subject to the statutory demand, the basis upon which that person asserts that a genuine dispute exists in relation to the debt constituting the statutory demand, and the date upon which those proceedings are to be heard by the court.

19. Identification of Parliament's purpose in imposing the requirement for service of a copy of the application and the supporting affidavit on the person who served the statutory demand, *does not require that the copy of the application required to be served pursuant to s 459G(3)(b) is in all respects an exact copy of the application filed in the court*. To construe the provision in that way is unnecessary for the purposes of fulfilling the underlying purpose and policy of the Act. Worse than that, to impose such a requirement might frustrate the operation of the Act in circumstances, not unlike the present case, where a party has served the copy of the application returned to it by the court registry, ignorant of marks or notations that may have been made on the filed document by the registry staff, only to find that by reason of this fact alone, it has failed to invoke the court's jurisdiction to obtain a determination of whether proper grounds exist to set aside the statutory demand. In my view, this is not what Parliament intended by the requirement to serve a copy of the application.

20. Moreover, to adopt a construction that requires service *of an exact replica* of the document filed in court will, in some circumstances, prove unworkable for the same reason. A party cannot know precisely every mark or notation that may be made on a document filed in court by the registry staff."

(Emphasis added, footnotes omitted.)

[23] In *Craneford Nominees*,[38] the court registry did return a copy of the application to the applicant, however, it omitted both the registrar's signature and the filing date.

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38 *Craneford Nominees Pty Ltd v VGC Co-operative Limited* [2012] SASC 74.

Stanley J considered the provisions of the *Supreme Court Civil Rules* 2000 (SA) and the *Corporations Rules* 2003 (SA) concluding that the omission of the registrar's signature and the filing date for the copy of the application duly constituted proper service of a copy of the application. It must be appreciated the facts in the present case differ significantly, as the registry did not issue or return a copy of the application to the applicant at all until 6 April 2020.

[24] What the cases show, particularly the Queensland decisions, is that satisfaction of the requirement for service of a copy of an application under s 459G is to be determined by close application of the applicable State's court rules; in Queensland, the *Corporations Law Rules* 2000 (Cth) and the UCPR.

[25] The rules for proceedings under the *Corporations Act* in Queensland are the '*Corporations Proceeding Rules'* as set out in Schedule 1A of the UCPR. Relevantly, r 1.7 of the *Corporations Proceedings Rules* provides:

> "**1.7 Substantial compliance with forms**
>
> (1) It is sufficient compliance with these rules in relation to a document that is required to be in accordance with a form if the document is substantially in accordance with the form required or has only such variations as the nature of the case requires.
>
> (2) Without limiting subrule (1), the registrar must not reject a document for filing only because a term used to describe a party in the document differs from the term used in these rules.
>
> (3) This rule does not limit the *Acts Interpretation Act 1954*, section 48A."

[26] The *Corporations Proceedings Rules* go on to provide:[39]

> **"2.3 Fixing of hearing**
>
> On receiving an originating application or interlocutory application, the registrar—
>
> (a) must fix a time, date and place for hearing and endorse those details on the originating application or interlocutory application; and
>
> (b) may seal a sufficient number of copies for service and proof of service."

[27] As Chesterman J pointed out in *Cooloola Dairys*,[40] r 26(7) UCPR is also applicable and provides:

> "(7) The application, and any copies of the application for service, must specify the day set for hearing the application."

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39 *Corporation Proceedings Rules* r 2.3.

40 *Cooloola Dairys Pty Ltd v National Foods Milk Ltd* (2004) 211 ALR 293 at 301.

[28] As Gummow J reflected in *David Grant*,[41] Part 5.4 can operate harshly and in particular, as noted by Chesterman J in *Cooloola Dairys,* the absence of an affixed hearing date, in breach of r 26(7) of the UCPR, renders the application incomplete. As Chesterman J said in *Cooloola Dairys*, a copy of the application served "must show the application has been filed and when the respondent is required to attend and answer it"[42] as that reflects r 2.3 of the *Corporations Proceedings Rules* and r 26(7) of the UCPR.

[29] It ought to be noted under r 2.3(b) of the *Corporations Proceedings Rules*, copies of the application for service need not be sealed, but pursuant to r 2.3(a), the registrar has a duty to fix a time, date, and place for the hearing and endorse those details on the originating application.

[30] The orthodox application of the aforementioned authorities and in particular *Cooloola Dairys* leads to the conclusion that a failure to include the date set for the hearing of the application upon the copy served means that in terms of s 459G of the *Corporations Act*, a copy of the application was not served within the 21 day time limitation, with the consequential "harsh" result that court does not have jurisdiction to entertain the application as s 459G(3) is not satisfied.

[31] As is made plain by Spender J in *Elite Motor Campers Australia v LeisurePort Pty Ltd,*[43] even if an applicant is not at fault and there is a delay in the court registry in processing and filing the application and supporting affidavit, that circumstance, however regrettably, "cannot prevail over the absolute nature of the requirements of s 459G of the Corporations Law."[44]

[32] In the present case, the facts are plain. The copy of the application served did not:

(a) show the action number given by the court;

(b) bear the seal of the court;

(c) a return date; or

(d) show a filing date.

Under the r 26(7) of the UCPR and r 2.3(b) of the *Corporation Proceedings Rules* there is not an explicit requirement for the court seal to be affixed to a copy for service. In any event, it is clear that a return date, as per r 2.3(a) of the *Corporations Proceedings Rules*, must be affixed to the copies for service.[45]

[33] In the present case, it is common ground that the application had been filed on 17 March 2020, the dispute relates to the validity of service of the application on the respondent.[46] The receipt for filing of the application had been obtained and was provided by the applicant to the respondent, however, the acting registrar did not fix a time, date and place for the hearing and endorse those details on the originating

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41 *David Grant & Co Pty Ltd v Westpac Banking Corporation* (1995) 184 CLR 265.

42 *Cooloola Dairys Pty Ltd v National Foods Milk Ltd* (2004) 211 ALR 293 at 301.

43 (1996) 22 ACSR 235.

44 *Elite Motor Campers Australia v LeisurePort Pty Ltd* (1996) 22 ACSR 235 at 236.

45 *Benonyx Pty Ltd v Fetrona Pty Ltd* [1999] NSWSC 181 at [9]; *Cooloola Dairys Pty Ltd v National Foods Milk Ltd* (2004) 211 ALR 293 at 301.

46 Paragraph 7(c) of the Respondent's written submissions filed 28 April 2020.

application upon receipt of the application as is required by r 2.3 of the *Corporations Proceedings Rules*, the registrar was unable to do so because of the alterations to the conduct of the registry and the court calendar which were a necessary consequence of the COVID-19 pandemic. It is plain, therefore, that the application when served did not comply with r 26(7) of the UCPR, as the application and service copy did not specify the date set for hearing of the application.

***COVID-19 Emergency Response Act* 2020 (Qld)**

[34] As Mr Cunningham's affidavits show, ordinarily in times not effected by COVID-19 restrictions, if an application and affidavits are filed in the Mackay district registry in the morning, they will be made available on the same day. The applicant relies upon the provisions of the *COVID-19 Emergency Response Act* 2020 (Qld), to argue that it did effect proper service.

[35] Pursuant to s 4 of the *Corporations (Commonwealth Powers) Act* 2001 (Qld), the State of Queensland referred its powers to make laws with respect to corporations to the Commonwealth. Section 1337B(2) of the *Corporations Act* provides:

> **"1337B Jurisdiction of Federal Court and State and Territory Supreme Courts**
>
> …
>
> (2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the Supreme Court of:
>
> (a) each State; and
>
> (b) the Capital Territory; and
>
> (c) the Northern Territory;
>
> with respect to civil matters arising under the Corporations legislation.
>
> …"

[36] As above, the procedural rules in respect to proceedings in Queensland are set out in Schedule 1A of the UCPR, the *Corporations Proceedings Rules*.

[37] Paragraph 1.3 of the *Corporations Proceedings Rules* provides as follows:

> **"1.3 Application of these rules and other rules of the court**
>
> (1) Unless the court otherwise orders—
>
> (a) these rules apply to a proceeding in the court under the Corporations Act, or the ASIC Act, that is commenced on or after the commencement of these rules; and

(b) part 15A applies to a proceeding in the court under the *Cross-Border Insolvency Act 2008* (Cwlth).

(2) The other rules of the court apply, to the extent they are relevant and not inconsistent with these rules—

(a) to a proceeding in the court under the Corporations Act, or the ASIC Act, that is commenced on or after the commencement of these rules; and

(b) to a proceeding in the court under the *Cross-Border Insolvency Act 2008* (Cwlth).

(3) Unless the court otherwise orders, the rules applying to a proceeding in the court under the Corporations Act, or the ASIC Act, as in force immediately before the commencement of these rules, continue to apply to a proceeding under the Corporations Act, or the ASIC Act, that was commenced before the commencement of these rules.

Note—

Under the *Acts Interpretation Act 1954*, section 7, a reference to the Corporations Act includes a reference to the Corporations Regulations."

[38] Therefore, the procedural rules which apply to the Supreme Court of Queensland, in exercising its jurisdiction with regard to corporations, are the *Corporation Proceedings Rules* which are set out in Schedule 1A of the UCPR and any other consistent rules of the UCPR. Pursuant to s 7 of the *Acts Interpretation Act* 1954 (Qld), a reference to an Act includes a reference to statutory inference made or in force under the law or a provision. The UCPR is a statutory instrument made under s 85 of the *Supreme Court of Queensland Act* 1991 (Qld); accordingly, the UCPR and the Corporations Proceedings Rules are considered an Act for the purpose of s 7.

[39] On 23 April 2020, the *COVID-19 Emergency Response Act* 2020 (Qld) (*Emergency Response Act")* received assent. Section 2 of the Act provides:

"2 Main purposes

The main purposes of this Act are—

(a) to protect the health, safety and welfare of persons affected by the COVID-19 emergency; and

(b) to facilitate the continuance of public administration, judicial process, small business and other activities disrupted by the COVID-19 emergency, including by easing regulatory requirements and establishing an office of small business commissioner; and

(c) to provide for matters related to residential, retail and prescribed leases affected by the COVID-19 emergency; and

(d) to support the Queensland rental sector during the COVID-19 emergency period."

[40] Section 15 of the *Emergency Response Act* provides:

"15 Regulation-making power, and power of court, to modify statutory time limit relating to proceeding

(1) This section applies if an Act provides for a period within which an entity is authorised or *required to do a thing relating to a proceeding*, including, for example—

(a) start, or take a step in, or hear, a proceeding; or

(b) make a complaint in relation to an offence; or

(c) present an indictment for an offence; or

(d) appeal, or give notice of appeal, or notice of application for leave to appeal; or

(e) make a decision; or

(f) give reasons for a decision.

(2) The period may be modified on the ground the modification is necessary for a purpose of this Act.

(3) The power to modify the period under subsection (2) may be exercised—

(a) if the modification applies generally or to particular classes of persons or matters—by a regulation made under the Act providing for the period; or

(b) if the modification applies in relation to a particular proceeding—by a court having jurisdiction relating to the proceeding giving each party to the proceeding a notice stating the modification and the reasons for the modification.

(4) If a regulation under subsection (3)(a) extends a period, the period may be extended only for a period that ends on or before 31 December 2020.

(5) The power to modify the period under subsection (2) may be exercised under subsection (3)(b) on the court's own initiative or on the application of a party to the proceeding.

(6) A regulation made under subsection (3)(a) may have retrospective operation to a day not earlier than 19 March 2020.

(7) This section does not limit any other power of the court to modify a period, including, for example, a power under the *Supreme Court of Queensland Act 1991*.

(8) To remove any doubt, it is declared that this section applies in relation to the following provisions—

(a) the Criminal Code, sections 590 and 671;

(b) the *Dangerous Prisoners (Sexual Offenders) Act 2003*, part 4;

(c) the *Justices Act 1886*, section 222;

(d) the *Limitation of Actions Act 1974*, parts 2 and 3.

(9) A reference in this section to a period within which an entity is authorised or required to do a thing relating to a proceeding includes a reference to any expression of time provided for under a provision for doing the thing.

Examples of an expression of time in a provision—

- a provision requiring a person to do a thing immediately
- a provision requiring a person to do a thing promptly

(10) In this section—

court includes—

(a) a tribunal; and

(b) an entity having a judicial or quasi-judicial function."

(Emphasis added.)

[41] The applicant argues that s 15 of the *Emergency Response Act* assists it in overcoming the difficulties which beset its compliance with s 459G of the *Corporations Act*. The applicant argues that s 15(1) of the *Emergency Response Act* is engaged as the UCPR and the *Corporations Proceedings Rules* are defined as an Act, and provide for a period within "which an entity is authorised or required to do a thing". Rule 2.3 of the *Corporations Proceedings Rules* requires the registrar to act "immediately", although there is no specification as to a period of time in which one may act "immediately", nonetheless the applicant relies on s 15(9) of the *Emergency Response Act* to overcome lack of reference in r 2.3 to a period of time.

[42] Whilst I accept that the requirements of s 15(1) of the *Emergency Response Act* are satisfied, namely, there is an Act, the UCPR and *Corporations Proceedings Rules*, which provide for a period, the immediate fixing of the time, date and place for the

hearing of an application pursuant to r 2.3 (with the extended definition of period in s 15(9)), the difficulty remains for the applicant that the satisfaction of s 15(1) provides a discretion to modify or extend a time period under a Queensland Act.

[43] Logically, therefore, because of the difficulties caused by COVID-19, even if the deputy registrar was relieved of the obligation to immediately upon receipt of the application, fix the time, date, and place for the hearing of the application, all s 15(2) allows the court to do, by provision of notice, is to extend that period for fixing the date, time and place of the hearing of the application. Section 15(2) does not, and as State legislation, cannot, modify or effect the strict and "harsh" requirements under s 459G of the *Corporations Act* for the application and supporting affidavit to be filed and copies served within the 21-day statutory time limit.

[44] I further note that the *Coronavirus Economic Response Package Omnibus Act* 2020 (Cth) extends the 21-day time period under s 459G of the *Corporations Act* from 21 days to 6 months. That affords the applicant no comfort in the present case, as the extension only applies to statutory demands served on or after the date of commencement of the Act, that is, 25 March 2020. In the present case, the respondent's statutory demand was served on 26 February 2020.

[45] As Stanley J said in *Craneford Nominees* what is "at issue…is the meaning of the expression 'a copy of an application' in s 459G(3)(b)". The application and affidavits were filed by the acting registrar, however, the acting registrar did not fix a time, date and place for the hearing and endorse those details upon receipt of the application.[47] A return date could not be set due to altered court arrangements as a consequence of "the Coronavirus situation".[48]

[46] The detail of what was filed in court may also be observed from Exhibit RAC-6,[49] namely the application filed in court had been date stamped as received on 17 March 2020. The return date of the application, which would appear to have been written originally as 26 April 2020 at 9:00am, which was altered to 28 April 2020 and a further stamp placed upon the alteration from 26 to 28 April 2020 (to indicate the alteration had been made by the registrar of the district registry at Mackay).

[47] The application is document 1 on the court file and does not bear a matter number. Furthermore, document 2 on the court file is the affidavit of Darren Anthony Haack, which bears the same date stamp as filed in the Supreme Court of Queensland at Mackay on 17 March 2020. With reference to the information provided in exhibit RAC-6, I conclude that when the originating application was received by the court on 17 March 2020, it was date stamped as filed on 17 March 2020 and the second stamp (the receipt stamp) was applied stating the filing date as 17 March 2020, the fee at $2,812.90 and receipt number of 4865640 was applied, together with the initials of the registry officer.

[48] Rule 964 of the UCPR requires the registrar to keep a separate file for each proceeding and give the proceeding a distinguishing number. For the Supreme

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47 See Exhibit RAC-6 to the affidavit of Robert Andrew Cunningham filed 24 April 2020.
48 Exhibit RAC-6 to the affidavit of Robert Andrew Cunningham filed 24 April 2020.
49 Exhibit RAC-6 to the affidavit of Robert Andrew Cunningham filed 24 April 2020.

Court, the letter S, followed by the court serial number for the proceeding at the top right-hand corner of the first page. In this case, the registrar did not record the serial number upon the application.

[49] Rule 967 provides that a document may be filed in the registry by delivery to the registry personally.

[50] Rule 968 of the UCPR provides as follows:

> **"968 Filing documents personally**
>
> (1) This rule applies to a document filed by personal delivery to the registry.
>
> (2) However, this rule does not apply to an exhibit or another document that does not require the court's seal on it.
>
> (3) The registrar may refuse to file the document if the document does not comply with these rules or may not otherwise be filed.
>
> (4) The document is taken to be filed when the registrar records the date of filing on the document and stamps the seal of the court on it.
>
> (5) Any prescribed fee for filing the document must be paid when the document is given to the registrar."

[51] Prior to its amendment by SL 127 of 2018 reg 65 operational from 24 August 2019, r 968 provided as follows:

> **"968 Filing documents personally**
>
> (1) This rule applies to a document filed by personal delivery to the registry.
>
> (2) However, this rule does not apply to an exhibit or another document that does not require the court's seal on it.
>
> (3) The registrar may record the document and stamp the seal of the court on it or, if the document does not comply with these rules or may not otherwise be filed, refuse to file the document.
>
> (4) The document is filed when the registrar records the document and stamps the seal of the court on it."

[52] It may be observed from the alteration to r 968(4), formerly a document was not filed until the registrar had recorded the document and stamped the seal of the court on it, whereas current r 968(4) is a deeming provision with respect to filing.

[53] Formerly under r 968(4) of the UCPR, even though a document may have been physically filed, that is placed in the court file, it was not considered filed until the registrar had recorded the document and stamped the seal of the court on it. The act

of recording the document was best taken to mean the act of the registrar placing the filing stamp on the document indicating the date and the court in which the document was received.

[54] The current r 968(4) differs from the former r 968(4) in that it deems a document to be filed regardless of when it is in fact placed on the file if the registrar has recorded the date of filing on the document and stamped the seal of the court on it. In the present case, as stated above, the document was received by the registrar, the document was recorded by the registrar by placing the date stamp and the filing receipt stamp upon it and the document was filed. The document, however, was not issued.

[55] Rule 978 of the UCPR provides:

> **"978 Issue of documents**
>
> (1) Each document issued by the court, other than an electronically issued document, must be signed by the appropriate officer for the court and stamped with the court seal.
>
> (2) If a document to be stamped with the court seal has 2 or more pages, only 1 page of the document is required to be stamped."

[56] In the present case as explained above, the document was not issued as the acting registrar was not able to secure a return date for the hearing of the application. Accordingly, when the originating application was filed it contained the date stamp and receipt stamp as indicated. It did not contained the return date, the seal of the court or the matter number as required by the rules.

[57] The application that was served on the respondent bore not stamps at all. The issue therefore is whether, for the purposes of s 459G(3)(b) of the *Corporations Act*, the application that was served, absent the date and receipt stamp of 17 March 2020, was a copy of the application.

[58] Stanley J is not the first judge to reflect that the words "a copy of" do not mean an "exact replica". In *McArthur v Herald & Weekly Times Ltd & Ors*,[50] O'Hagan J said:

> "I do not say that every service of a copy which is not in every respect a complete replica of the original is a nullity. But a copy which omits such an essential part of the summons as the requirement to enter an appearance within a prescribed time as limited by the Rules, is, in my opinion, a nullity."

[59] In *Ainsworth & Ors v Redd* (1990) 19 NSWLR 78, Kirby A-CJ (as his Honour then was) surveyed the development of personal service of the originating process from "the old requirement that the person to be served should be touched by the document" through to amendments of the *Supreme Court Rules* 1970 (NSW) allowing for the originating process to be left with a person to be served of "leaving

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50 (1957) QWN 16.

a copy of the document for the person or by putting the copy down in his presence and telling him the nature of the document."

[60] His Honour said "…It is now commonly accepted in Australian courts that the approach to the task of construction of legislation (including subordinate legislation such as *Supreme Court Rules*) should be purposive…"[51] His Honour continued "At least at the outset of litigation, the rule-maker has determined that the recipient of the process of the court should be left in such a position that the document will ordinarily come to his personal notice of the party served."[52]

[61] His Honour then said in respect of the NSW rule requiring personal service:[53]

> "The relevant object is to ensure that originating process in the form of a document will come to the notice of the person named as a party so that any later default in defending his or her position (for example, by entering an appearance and being represented before the Court) is fairly to be attributed to a decision of that person. The obligation of personal service thereby removes the risk that the jurisdiction of the Court over the person named will be asserted, conclusions reached and orders made, without a proper initial opportunity being given to the person named to appear and defend the proceedings."
>
> (Footnotes omitted.)

[62] I consider that the analysis of Stanley J in *Craneford Nominees* is correct, in that the:

> "16. [U]nderlying purpose and policy of s 459G(3) is to permit a company to dispute the debt which constitutes the basis of the statutory demand only by instituting proceedings for that purpose within a confined time period and by alerting the person making the statutory demand, by service on that person, of copies of the application and the supporting affidavit, setting out the basis upon which the company asserts it has a genuine dispute in relation to the debt."

[63] In the present case, particularly as the receipt proving filing of the application had been served, there can be no question that the respondent was alerted that there was a genuine dispute in relation to the debt. The receipt for filing provides the same information as the date stamp, which was recorded upon the application as filed in Registry. The regrettable inability of the registrar to comply with r 2.3 of the *Corporations Proceedings Rules* and rr 26(7) and 964 of the UCPR in the present case assists the applicant and not the respondent. The determination of what properly constitutes a "copy of the application" within the meaning of s 459G(3)(b) is resolved solely upon a comparison of the text of the application that was in fact filed on 17 March 2020 and the document served by the applicant purporting to be a copy of the application.

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51 *Ainsworth & Ors v Redd* (1990) 19 NSWLR 78 at 83.
52 *Ainsworth & Ors v Redd* (1990) 19 NSWLR 78 at 83.
53 *Ainsworth & Ors v Redd* (1990) 19 NSWLR 78 at 85.

[64] The purpose of s 459G(3)(b) of the *Corporations Act* is to ensure that a person who was served a statutory demand was provided with notice of an application to set aside the statutory demand, and this is to be achieved by providing a "copy of the application". In the present case, the registrar did not return a service copy to the applicant or issue a copy of the application.[54] Whilst it is not necessary for the document served to be "an exact replica", the document served was different from the document filed as it omitted the date of filing stamp and the receipt stamp. As the document did not have a matter number, a court seal, a registrar's signature or a return date, the only indication on the document that it had been filed in the Registry was the inclusion of the date and receipt stamps. Absent the date and receipt stamps there was nothing on the document to show that it had been filed and that curial proceedings had commenced. Although, the service of the court receipt provided the same information, that is not the test. The test is simply whether the document that was served was a sufficient copy of what was filed for the purpose of s 459G(3) of the *Corporations Act.* The document which was served was not a sufficient copy as it omitted the date stamp and the receipt stamp, which were the only indication that the application had in fact been filed and a curial proceedings had commenced.

[65] The application is dismissed.

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[54] The definition of "issued" being removed from Schedule 3 of the *Uniform Civil Procedure Rules* 1999 (Qld).