

SUPREME COURT OF QUEENSLAND
CIVIL JURISDICTION
ATKINSON J

No BS1256 of 2004

IN THE MATTER OF THE CORPORATIONS ACT 2001 AND
IN THE MATTER OF QUEFORCE PTY LTD ACN 103 888 193

QUEFORCE PTY LTD
ACN 103 898 193

Applicant

and

DEPUTY COMMISSIONER OF TAXATION

Respondent

BRISBANE

..DATE 30/04/2004

ORDER

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HER HONOUR: This is an application that a statutory demand said to be issued by the Deputy Commissioner of Taxation on 16 January 2004 directed to Queforce Pty Ltd ACN 103 898 193 be set aside.

1

...

10

HER HONOUR: Section 459G of the Corporations Act provides that a company may apply to the Court for an order setting aside a statutory demand served on the company. Section 459G(2) provides that an application may only be made within 21 days after the demand is so served. There is no dispute that the application was filed within 21 days after the service of the demand.

20

What is in dispute, in this case, is whether or not section 459G(3) has been complied with. It provides that:

30

"An application is made in accordance with the section only if, within those 21 days:

- (a) an affidavit supporting the application is filed with the Court; and
- (b) a copy of the application, and a copy of the supporting affidavit, are served on the person who is served the demand on the company."

40

The initial jurisdictional question, in this case, is whether or not an affidavit supporting the application was filed with the Court within 21 days of the demand being served.

50

An affidavit was filed within the 21 days, that is, an affidavit of a solicitor, Marek Reardon. It says that Mr Reardon is the solicitor of this Court and that he is the town agent for lawyers who are the solicitors for the application. It says that he received a facsimile copy of an affidavit of Michael Byrne sworn 6 February 2004. It says that a copy of that affidavit is exhibited.

It is common ground that applications to set aside the statutory demand is interlocutory in nature for the purpose of the admissibility of evidence. As such an affidavit is admissible under rule 430(2) which may contain statements based on information and belief if the person making it states the sources of the information and the grounds for the belief.

The affidavit by Mr Reardon does not sufficiently comply with those requirements to make the annexed facsimile copy of an affidavit and its exhibits admissible as truth of the contents contained in them. It is only admissible in the form in which it has been filed as proof of the fact that Mr Reardon received such an affidavit.

It is also common ground that for an affidavit to be considered a supporting affidavit for the purposes of section 459G(3)(a) the affidavit must say something that promotes the company's case. The affidavit of Mr Reardon says nothing that supports the company's case. It does not, therefore, fulfil the requirements of a supporting affidavit and set out by Justice Sunburg in Graywinter Properties Pty Ltd -v- Gas and

Fuel Corporation Superannuation Fund 1996, 17 FCR 452 quoted
with approval by Justice Jones in Madison Resort Pty Ltd -v-
The Deputy Commissioner of Taxation, number 628 of 2002
delivered 12 May 2003.

In the circumstances, I am satisfied that section 459G has not
been complied with and, therefore, the application must be
dismissed.

...

HER HONOUR: With costs to be assessed.
