

SUPREME COURT OF QUEENSLAND

CITATION: *Logan City Demolitions Pty Ltd v PBV Pty Ltd* [2013] QSC 38

PARTIES: **LOGAN CITY DEMOLITIONS PTY LTD**
ACN 115 060 672
(applicant)
v
PBV PTY LTD ACN 145 749 060 as trustee for THE EBVG TRUST
(respondent)

FILE NO/S: 12275 of 2012

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 31 January 2013

DELIVERED AT: Brisbane

HEARING DATE: 31 January 2013

JUDGE: Atkinson J

ORDER: **1. The notice of the demand dated 7 December 2012 in the amount of \$6,495 be set aside.**

2. The respondent pay the applicant's costs of and incidental to the application on the indemnity basis fixed in the amount of \$10,000.

CATCHWORDS: CORPORATIONS – WINDING UP – WINDING UP IN INSOLVENCY – STATUTORY DEMAND – APPLICATION TO SET ASIDE DEMAND – GENUINE DISPUTE AS TO INDEBTEDNESS – ASSESSING GENUINENESS – GENERALLY – where the applicant applied to set aside a statutory demand pursuant to s 459G, 459H and 459J of the *Corporations Act* 2001 (Cth) – where the respondent was well aware that the demand was disputed and was the subject of an order by QCAT which provided that the applicant in those proceedings and all associated entities were relieved of any obligation for payment of the invoice which was said to form the basis of the statutory demand – where the respondent changed the name on the invoice and addressed it to the applicant – whether the

application to set aside the statutory demand should be allowed – whether indemnity costs should be awarded

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COUNSEL:

V G Brennan for the applicant
No appearance for the respondent

SOLICITORS:

Taylor David Lawyers for the applicant
No appearance for the respondent

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HER HONOUR: This is an application to set aside a statutory demand issued by PBV Pty Ltd as trustee for the EBVG Trust. The applicant on the application to set aside is Logan City Demolitions Pty Ltd. There was no appearance by the respondent. The respondent was called and did not appear. There is ample material before the Court which shows that the respondent had full knowledge of the application and of today's adjourned date for the hearing of the application.

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This is a case in which it is obvious that the statutory demand should be set aside. The respondent, who issued the statutory demand, is well aware that the demand is disputed and, indeed, has been the subject of an order by QCAT which provides that the applicant and all associated entities are relieved of any obligation for payment of the invoice which is said to form the basis of this statutory demand.

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The applicant before QCAT was a Margarita McKiernan. It appears that what the respondent has done is just changed the name on the very same invoice and address it to the company, which is the applicant, of which Ms McKiernan is a director, and demanded payment of that by statutory demand. That is an obvious abuse of the provisions of the Corporations Act for serving statutory demands. The respondent has been aware at all times that the debt is disputed, on what are apparently very strong grounds for disputing the debt.

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The applicant requested the respondent to withdraw the statutory demand on more than one occasion prior to filing the

application to have it set aside. The respondent refused to withdraw it at that time and it was only once the application was filed that the respondent attempted to withdraw this statutory demand in writing, although, on the second occasion, with some degree of equivocation and threat to issue yet another statutory demand. The applicant made it perfectly clear to the respondent that it would be asking for indemnity costs if the respondent did not consent to its application to set aside the statutory demand.

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That has not happened and, given the order made by QCAT and the apparent use of the statutory demand procedure to try and obtain payment of a debt which the respondent knows is disputed, which is an abuse of the process of the procedure for the service of statutory demands, I am inclined to agree with the applicant's solicitors that not only should the demand be set aside, but also that the respondent pay indemnity costs of the application.

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The application had to be adjourned on an earlier date because it was not reached on the list. That is not the responsibility of the respondent, so it would be inappropriate to order that the respondent pay two days costs on an indemnity basis. In order to save further disputation about the amount of indemnity costs, I intend to fix them in the amount of \$10,000.

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The order of the Court is that the notice of demand dated 7 December 2012 in the amount of \$6,495 be set aside. Secondly,

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that the respondent pay the applicant's costs of and
incidental to the application on an indemnity basis, fixed in
the amount of \$10,000. I make the order as per draft, which
I'll initial and place with the file.

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