

IN THE SUPREME COURT OF QUEENSLAND

No. 4234 of 1999

Brisbane

Before Mr Justice Ambrose

[Beralt v Joe Battaglia Plastering P/L]

BETWEEN

BERALT PTY LTD

Applicant

ACN 060 064 020

AND

JOE BATTAGLIA PLASTERING PTY. LTD.

Defendant

ACN 010 049 046

REASONS FOR JUDGMENT - B.W. AMBROSE J.

Delivered the 3rd day of September 1999

**CATCHWORDS:**

CORPORATIONS LAW - Statutory Demand - application to set aside a statutory demand under s. 459G - wh statutory demand complies with S. 459E(2)(e) - wh statutory demand complies with Form 509H - wh failure to comply with paragraph 5 of Form 509H could be regarded merely as a defect within s.459J(2) - wh application to set aside a statutory demand complies with s.459G(3) - wh r. 14 of the *Corporations (Queensland) Rules* allows for interstate service by facsimile of an application to set aside a statutory demand - wh s. 9 of the *Service and Execution of Process Act 1992* (Cth) prohibits interstate service by facsimile

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

*David Grant & Co. Pty. Ltd. v. Westpac Banking Corporation*  
(1995) 15 A.S.C.R. 771

*Highfield Woods Pty Ltd v. Bayview Crane Hire Pty Ltd*  
(1996) 19 A.C.S.R. 429

*Re A Debtor No. 21 of 1950, Ex parte The Debtor v Bowmaker*  
*LD & Anor (No. 1) [1951] 1 Ch. 313*

*Scanlon v. Dome Supplies* (1995) 17 A.C.S.R. 662

*Spencer Constructions v. Aldridge* (1997) 24 A.C.S.R. 353

*Topfelt v State Bank (N.S.W.)* (1993) 12 A.C.S.R. 381

*Topfelt Pty Ltd v State Bank of New South Wales Ltd* 47  
F.C.R. 226

*Ultimate Manufacturing Pty Ltd v. Lyell Morris Pty Ltd*  
(1995) 13 A.C.L.C. 1268

*Bankruptcy Act 1914 (U.K.)*

*Corporations Law*

*Corporations (Queensland) Rules*

*Service and Execution of Process Act 1992 (Cth)*

Counsel: Mr P.W. Hackett for the applicant  
Mr C.M. Hall (solicitor) for the respondent

Solicitors: Colwell Wright for the applicant  
Tucker & Associates for the respondent

Hearing 29 July 1999

Date:

Final written submissions received on 24  
August 1999

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1 This is an application by Beralt Pty Ltd ACN 060 064 020 pursuant to ss.459G and H of the *Corporations Law* to set aside a statutory demand dated 14 April 1999 which appears to have been served under cover of a letter dated 15 April 1999.

2 It seems from the material that it was served upon the registered officer of the applicant in New South Wales by post on 19 April 1999.

3 Under s.459G(2) an application to set aside a statutory demand may only be made within 21 days "after the demand is so served".

4 Under s.459G(3) it is provided:-

"An application is made in accordance with this 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 served the demand on the company."

5 The effect of this section was considered in *David Grant & Co Pty Limited v. Westpac Banking Corporation* (1995) 184 CLR 265 where it was held that the time constraint with respect to the filing and serving of an application and supporting affidavit imposed by s.459G(3) could not be overcome by recourse to s.1322 of the *Corporations Law* by treating service outside the 21 day period specified under that section as an irregularity capable of remedy as a "deficiency of notice or time".

6 The statutory demand asserts that the applicant owes a specified debt to the respondent the address of which is specified to be "Unit 3, 12 Days Court, Southport in the State of Queensland 4215". It does not appear from the material whether or not the registered office of the respondent creditor is at that address.

7 Paragraph 6 of the statutory demand states:-

"6. The address for Service of the Creditor for service of copies of any application and affidavit is care of its lawyers Nash O'Neill Tomko Ref Nick McCready Level 17 Hunter Street Sydney in the State of New South Wales 2000."

8 This notification complies with para.6 of Form 509H which provides:-

"6. The address of the creditor for service of copies of any application and affidavit is (*insert the address for service of the documents in the State or Territory in which the demand is served on the company, being, if solicitors are acting for the creditor, the address of the solicitors*)."

9 Under s.459E(2)(e) it is provided that a statutory demand "must be in the prescribed form".

10 The statutory demand served on the applicant in this case does not comply with the prescribed Form 509H in a very material respect.

11 Paragraph 5 of that Form reads:-

"5. Section 549G of the Corporations Law provides that a company served with a demand may apply to a court having jurisdiction under the Corporations Law for an order setting the demand aside. An application must be made within 21 days after the demand is served and, within the same period:

(a) an affidavit -- etc;"

(b) copy of the application -- etc."

12 In this case the statutory demand reads as follows:-

"5. Section 459G of the *Corporations Law* provides that the company served with a demand may apply to a court having jurisdiction under the *Corporations Law* for an order setting the demand is served and within the same period:-

(a) an affidavit -- etc;

(b) a copy of the application -- etc."

13 Although no explanation is given for the departure from the prescribed form in my view the omission of the words "aside. An application must be made within 21 days after the demand is served" resulted in a failure to notify the applicant of a matter which was critical if the demand was to substantially comply with Form 509H.

14 The purported statutory demand served upon the applicant in the present case because of its departure from the prescribed form in a material respect rendered it ineffective by reason of its failure to comply substantially with s.459E(3) and Form 509H. Non compliance with it therefore does not attract the consequences either of s.459F(1) or s.459S.

15 Upon a timely application, the applicant could have sought to have the statutory demand set aside for the deficiency contained in para.5 of it. Such a course would have been open under s.459J(1)(b).

16 In my view the omission of the critical words which para 5 of Form 509H requires of an effective statutory demand could not be regarded "merely as a defect" within s.459J(2).

17 It is clear that the person serving the statutory demand on the applicant which was not in the prescribed form was Queensland Trade and Services Pty Ltd (ACN 083 698 668), the registered office of which is 10 Cloyne Road, Southport, Qld, 4215. That service was purportedly effected in compliance with the *Corporations (Queensland) Rules*, although the registered office of the applicant was in Sydney in the State of New South Wales. Where the registered office of the respondent was located does not appear - perhaps it was in Queensland!

18 *Prima facie* then had the statutory demand been valid because it complied with s.459E(2), compliance with s.459G(3) required service of the application "on the person" effecting service of the statutory demand on or before 10 May 1999 - presumably by effecting service on that person's solicitor.

19 The prescribed form of statutory demand does not seem to envisage an interstate service of an application to set it aside. It envisages service of such an application within the state where the demand was served. I refer to the consideration of this topic in *Scanlon v. Dome Supplies* (1995) 17 A.C.S.R. 662 at 665 per Mahony S.M. However in a letter to the applicant's solicitors dated 1 April 1999 the solicitors for the respondent confirmed that "you should direct your correspondence in relation to your client's applications etc directly to our Client Queensland Trade and Services directly... [at a specific postal address in Queensland]".

20 It was not until 10 May 1999 which was agreed to be the last day upon which service of the notice of the application and supporting affidavit might be made under s.459G of the *Corporations Law* that the solicitors for Joe Battaglia Plastering advised that that company required service at their Sydney office in accord with the direction given in para. 6 of the demand. In my view the Company had the right to specify such address for service.

21 It is relatively clear on the material that by the time the company notified the solicitors for Beralt of this fact it was impossible for Beralt to effect either personal service or service by post upon the respondent's solicitors in Sydney within the 21 day period.

22 In spite of this, the solicitors for Beralt in fact did endorse a copy of the application with the notice required under the *Service and Execution of Process Act* and forwarded it, together with the supporting affidavit by post. Clearly, service by post in those circumstances could not be effected within the required period.

23 However, as well as service by post, the solicitors for Beralt also faxed to the solicitors for Joe Battaglia Plastering a copy of the application together with a copy of the affidavit in support purporting to comply with r. 14 of the *Corporations (Queensland) Rules*.

24 In essence, the affidavit faxed to the solicitors for Joe Battaglia Plastering complained that the plastering work performed was defective and that expense would have to be undertaken to employ other plastering contractors to rectify the defects in that work.

25 Subsequently, on 14 July 1999, a further affidavit was filed by the same deponent to support Beralt's application asserting payments made before and after the date of service of the statutory demand and asserting also that some of the work had not been completed.

26 In light of the conclusion to which I have come as to my jurisdiction to set aside the statutory demand and as to its effectiveness, it is unnecessary to analyse the content of the two affidavits or to determine whether the second raises new grounds or merely expands upon those raised in the first.

27 While on the whole of the material and arguments addressed upon it, it appears that Beralt may have a right to challenge a valid statutory demand under s.459 on the basis of the existence of a dispute or offsetting claim, although Joe Battaglia Plastering does not concede this, the principal opposition to the application is non-compliance with the requirements of s.459G - ie that the application and supporting material although filed in this Court in time (on 10 May 1999) was not served upon the Sydney solicitors acting for Joe Battaglia Plastering within 21 days from the date of its agent in Queensland effecting service by post of the statutory demand on Beralt in New South Wales.

28 Beralt relies upon rr.14(b)(ii) of the *Corporations (Queensland) Rules* which provides *inter alia*:-

"14.(1) Subject to rules 13 and 56 and an order of the Court to the contrary if a document is required or permitted under these rules to be served on a person (whether the expression 'give', 'send' or 'serve' or another expression is used), the document may be served-

(b) on a company -

(i) by leaving it at, or by sending it by prepaid post to, the company's registered office; or

(ii) by facsimile transmission directed and sent to the facsimile transmission number operated at the company's registered office."

Rule 14(3) provides:-



"(3) If the document is served personally, the service must be effected between 9.00 a.m. and 5.00 p.m. on a business day."

Rule 14(4) provides:-

"(4) If the document is served by sending it by prepaid post, it is taken to have been served at the time it would have been delivered in the ordinary course of post, even though it may be returned by Australia Post to the sender."

Rule 14(5) provides:-

"(5) If the document is served by facsimile transmission, it is taken to have been served the day following the day the copy is transmitted excluding Saturdays, Sundays and public holidays."

The combined effect of s.459E(2)(e) and Form 509H is to require a creditor making a statutory demand for payment of a debt to notify the debtor company of an address for service of an application to set the demand aside which may be at the offices of the Creditor's solicitors in the State where service is effected.

29 For the respondent it is contended that the *Service and Execution of Process Act* in express terms under s.9 requires interstate service to be effected at a company's registered office."

30 It is pointed out that the provision relating to service under the *Service and Execution of Process Act* 1992 makes no provision for service by facsimile transmission as is the position under the *Corporations (Queensland) Rules*. It is contended that the provisions of the *Service and Execution of Process Act* 1992 on their face are intended to "cover the field" and therefore under that Act service by fax is not permitted - whatever may be the position with respect to service in Queensland under the Queensland rules.

31 Section 9(1) provides:-

"Service of a process --- under this Act on a company is to be effected by leaving it at or by sending it by post to the companies registered office.

32 Section 9(8A) provides:-

"(8A) Without limiting the operation of this section, if the process, --- is not an initiating process --- service may be effected at the address for service of the company --- in accordance with any applicable rules of court."

33 It is contended that the application to set aside a statutory demand is "an initiating process" and therefore interstate service of it is not governed by s.9(8A).

34 Section 15 of the *Service and Execution of Process Act* also provides:-

"15(1) An initiating process issued in a State may be served in another State.

(2) ---

(3) Service on a company --- must be effected in accordance with s.9."

35 Essentially it is the contention of the respondent that the provision for service by facsimile transmission in r.14 governs only service within Queensland. That may be correct because s.459E(2)(e) read with Form 509H contemplates such an application being served within Queensland. It is said that it can have no application to service of the application to set aside the statutory demand and supporting material in New South Wales. It is contended that because it can have no such application, there was never in fact any service upon the respondent within the 21 day period required and that the only service properly effected was that effected by post which was out of time.

36 This argument assumes that it was open to the respondent to specify an address for service in New South Wales the State where service of the demand was effected. In my view such an assumption is warranted in the light of the content of para 5 of Form 509H and the requirement of s.459E(2)(e) for an effective statutory demand, provided the respondent is regarded as "the person who served the demand on" the applicant, rather than that company's agent in Queensland.

37 The matter is also complicated by the fact that on 14 July 1999, two affidavits were filed by the solicitor for the respondent. One affidavit sets forth material relevant to taking objection to the mode of service and consequentially putting in issue compliance with the requirements of s.459G. In its nature it could be construed as something in the nature of a conditional appearance to enable a jurisdictional point to be raised based upon the mode of service purportedly effected on 10 May 1999 and not upon non-receipt in fact of a copy of the application and supporting affidavit within the 21 day period.

38 However another affidavit filed at the same time raises matters going to the substance of the dispute and raises questions of the reliability or *bona fide* nature of the claim to set aside the statutory demand. In my view however questions of submission to jurisdiction or waiver on the part of the respondent are irrelevant to determination of whether the application to set aside the demand was in law filed and served within the requisite 21 day period.

39 A point was later argued as to whether the statutory demand in a form not complying with that prescribed should be struck out on that ground without consideration of the matters dealt with in s.459H.

40 As I understand the arguments advanced on behalf of the respondent the applicant did not "serve" the demand as required at all on 10 May 1999 within the meaning of s.459G(3) because pursuant to s.9 of the *Service and*

*Execution of Process Act* it could only validly be served if, endorsed with the appropriate notice provided by the Act, it was served personally or by post at the registered office of the company in Sydney. If service had been so effected, it may not have complied with the requirements of s. 459E(2)(e) and Form 509H. Nothing in the *Corporations Law* or the relevant rules seems to contemplate service of this application out of the State of Queensland. The scheme of the Act made clear in Form 509H is that the application to set aside a statutory demand must be served at an address for service within the state where the statutory demand was in fact served and s.453(G) makes it clear that it must be served upon the person who served the demand.

41 Section 459G on its face requires service of the application not upon the "Creditor" or upon the Creditor's solicitors in New South Wales but upon "the person who served the demand upon the Company" - ie Queensland Trade and Services Pty Ltd which is in Queensland.

42 Had it been intended to require service of the application to be effected upon the Creditor it is difficult to understand by s.459G(3) did not simply say so.

The respondent's argument did not really address difficulties that arise when the application to set aside the statutory demand is treated as a "initiating process" within s. 15(1) of the *Service and Execution of Process Act* which under that Act must be served at the respondent company's registered office. Paragraph 6 of that statutory demand (in conformity with the content of paragraph 6 of Form 509H) requires such service to be effected at the address of the lawyers acting for the respondent. Presumably where service interstate of an application is effected, it should be served upon both the registered office of the creditor of a company, and also upon the lawyers acting for that company specified in paragraph 6 of Form 509H.

43 The evidence does not disclose the address of the registered office of the respondent unless it happens that

the address of the solicitors for the respondent is also the address of its registered office. It does disclose the address of the registered office of the applicant. Of course, service of the application to set aside the statutory demand on the assumption that it is "an initiating process" within the meaning of the *Service and Execution of Process Act* would not have been effective even had it been served at that office either by post or personally and whether or not endorsed as required under the *Service and Execution of Process Act* unless that office happened to be the registered office of the creditor. Vide *Highfield Woods Pty Ltd v. Bayview Crane Hire Pty Ltd* (1996) 19 A.C.S.R. 429 at 433 1.50 per Mahony S.M.

44 Although undoubtedly interesting questions arise as to the effect of the mandatory provisions of the *Service and Execution of Process Act* upon the rules relating to service of applications and supporting affidavits to be found in the *Corporations (Queensland) Rules*, these matters were not fully argued and in my view it is unnecessary in the light of the defects in the statutory demand actually served upon the applicant to embark upon further consideration of them.

45 Because the deficiency in the statutory demand to which I have referred was not addressed upon the application to set it aside by either party on 19 August 1999 submissions were sought on this point. Written submissions from both applicant and respondent dated 24 August 1999 were received. I have made the letter of 19 August 1999 inviting further submissions together with those further submissions Ex. 1 upon the application.

46 Under s.9 of the *Corporations Law* "statutory demand served on the company" under s.459G(1) means *inter alia* -

"(a) a document that is or purports to be a demand served under s.459E"

47 Under s.9 "defect", in relation to a statutory demand, includes:

- "(a) an irregularity; and
- (b) a misstatement of an amount or total; and
- (c) a misdescription of a debt or other matter; and
- (d) a misdescription of a person or entity."

48 There is no definition of "irregularity" in the *Corporations Law*.

49 In my view clearly the defective statutory demand served upon the applicant was one purporting to be a statutory demand whether or not the omission of the material required to be inserted under paragraph 5 of Form 509H could be said to amount merely to "an irregularity" within the definition of "defect" under s.9.

50 In *re A Debtor, No. 21 of 1950, Ex parte The Debtor v. Bowmaker LD & Anor (No. 1)* [1951] 1 Ch. 313 Harmon J considered whether a formal defect in a bankruptcy notice constituted "an irregularity" which might be overlooked when determining its legal effect.

51 In that case s.147(1) of the *Bankruptcy Act* 1914 provided:

"No proceedings in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court."

52 After referring to authority Harmon J said at 320:

"I am to ask myself, therefore, not whether this is a mistake which has misled the debtor, but whether it could mislead him."

53 His Honour then concluded that it could not be said that the debtor in that case had not been embarrassed by the deficiencies in the notice and that "according to the

authorities therefore I feel myself constrained to hold that this is not an irregularity which we can overlook." His Honour had earlier found that there was no evidence that any injustice had resulted to the debtor as the result of the irregularity in the bankruptcy notice.

54 In *Topfelt v State Bank (N.S.W.)* (1993) 12 A.C.S.R. 381 at 393 Lockhart J observed at 1.20-

"There may however be cases where deficiencies in the form of demands are so fundamental that the demands are incapable of assuming the description of statutory demands within the meaning of the Corporations Law. This is a question to be decided in future cases. The demand in the present case is not, for reasons mentioned later, a demand of this kind."

55 Interestingly in that case the applicant sought a declaration that "the statutory demand" was not a statutory demand within the meaning of s.459E of the *Corporations Law*. At 397,1.15 Lockhart J observed -

"I shall deal briefly with the argument of counsel for the respondent that it is not open to the applicant to obtain the declaration which it seeks in the amended application. Section 459G provides the procedure whereby a court may set aside a statutory demand. There must be an application to the court for an order setting it aside; it must be made within 21 days after the demand is served and be accompanied by an appropriate affidavit which has been filed with the court; and copies of the relevant documents must be served upon a debtor company. But I see nothing in the terms or spirit of s. 459G which would lend support to the view that a party may not amend its application under s. 459G to add further grounds."

56 In *Spencer Constructions v. Aldridge* (1997) 24 A.C.S.R. 353 at 359 a Full Court of the Federal Court of Australia comprising Northrop, Merkel and Goldberg JJ considered the observations of Lockhart J in *Topfelt Pty Ltd v State Bank of New South Wales Ltd* 47 F.C.R. 226 at 238 and held *inter alia* that the power of a court "on an application under s. 459G" to set aside a demand under either or both s. 459J(1)(a) and (b) required that it be

satisfied that substantial injustice would be caused unless the demand was set aside - whether under (a) or (b).

57 Properly construed, s. 459J(1)(a) and (b) each require that an applicant show substantial injustice will be caused if the demand is not set aside.

58 Under s. 459J(2) a statutory demand must not be set aside "merely because of a defect".

59 I have discovered no authority which gives any real assistance as to whether the deficiency in the statutory demand in this case (because it "purports to be" one - albeit that it fails substantially to comply with the essential requirements of a statutory demand) might be described as a "mere defect/irregularity". In my judgment upon a proper consideration of the demand and the prescribed Form 509H, the deficiency in the demand served on the applicant is so fundamental that it does not come within the description of a "statutory demand" to which s. 459E refers. The scheme of the *Corporations Law* is to facilitate the speedy determination of whether a company's failure to pay an alleged debt within the time specified in the statutory demand should be irrefutable (or almost irrefutable) evidence of that company's insolvency. The form of the prescribed demand is designed to ensure that the debtor company is informed:-

- (1) Of the nature and amount of the debt the creditor seeks to recover; and
- (2) That failure either to pay that debt or to secure or compound for its payment within 21 days or to apply to have the demand set aside within 21 days will allow the creditor to apply to a court to have the debtor company wound up.

60 A statutory demand which fails to inform a debtor company of these essential matters, in my view cannot be treated as an effective demand for the purposes of s. 459E



albeit that it comes within the definition of "statutory demand" in s. 9 because it purports to be one.

61 It is contended for the respondent however that because the application to set it aside and affidavit supporting were not served within the required period of 21 days I have no power to set aside the demand even accepting that it would have been set aside had effective service of the application been made within 21 days.

62 Under s. 459S should the respondent persist in taking proceedings to wind up the applicant based upon its non-compliance with the defective statutory demand, the applicant could not oppose that application without leave of the court even on the ground that the demand was inherently defective because under s. 459(1)(b) the applicant could have relied upon that deficiency upon an application made to set it aside within 21 days of the service of the demand upon it.

63 On the material placed before me - whether or not that material could have been relied upon had the application been served on 10 May - it is clear in my view that the applicant has a strongly arguable case that most of the money demanded has in fact been paid and indeed there is a *bona fide* dispute as to the existence and amount of any debt to which the demand relates and indeed that the applicant has an offsetting claim which will probably exceed any monies owing to the respondent.

64 I cannot believe that if that material were placed before a court upon any application the respondent might make to wind up the applicant on the ground of its non-compliance with the statutory demand in issue, that court would not grant leave to the applicant to raise the deficiency in the form of the statutory demand served.

65 However the problem I have in setting this statutory demand aside is that service of the application to set it aside in fact effected on the last day was not effected in the manner required by the *Service and*

*Execution of Process Act*. Indeed, as I have already indicated, unless perchance the office of the solicitors for the respondent happened also to be its registered office, service by post of the application appropriately endorsed under the *Service and Execution of Process Act* would still not have effected a valid service of that initiating process as required by that Act.

66 These are all matters which might well be raised and debated before a court entertaining any application by the respondent to wind up the applicant for non-compliance with the statutory demand in issue. The basic contention of the respondent is that "as a consequence of the applicant's failure to comply with s.15(3) of the *Service and Execution of Process Act*, the applicant's application is not in accordance with s.459G of the *Corporations Law*. Therefore it is not under s. 459G. (See *David Grant & Co. Pty. Ltd. v. Westpac Banking Corporation* (1995) 15 A.S.C.R. 771 and also see *Ultimate Manufacturing Pty Ltd v. Lyell Morris Pty Ltd* (1995) 13 A.C.L.C. 1268 -)".

67 It is contended that if the application is not under s. 459G, s. 459J has no operation.

68 At the end of the day I conclude that the decision to take proceedings in Queensland to set aside the statutory demand served on the applicant at its registered office in New South Wales which on its face required service of such proceedings upon the solicitors for the respondent creditor in New South Wales placed the applicant in a position of unnecessary procedural difficulty. The difficulty involved effecting a valid service of the application made in Queensland to set aside the demand made in New South Wales in strict compliance with the requirements of the *Service and Execution of Process Act*. The obvious way to avoid this difficulty was to make the application in New South Wales. The applicant failed to do this and in my view the application argued before me was not one "under" or "in accordance with" s. 459G(2) of the *Corporations Law*. In this respect I am content to adopt the

approach of Mahony S.M. in *Ultimate Manufacturing Pty Ltd v. Lyell* (1995) 13 A.C.L.C. 1256.

69 I dismiss the application.

70 Both parties had the opportunity to fully argue the effect of the deficiency in the statutory demand. In my view the defect to which I have referred was such as to deprive the debtor company of notice of the time within which it was entitled to seek to have the demand set aside if it wished to avoid the statutory consequence of non-compliance with it.

71 While I lack the jurisdiction to set that demand aside, it would be appropriate if possible to avoid the expense and likely commercial consequences to the applicant should the respondent seek to apply to have the applicant wound up for non compliance with that demand. In my view a court would not wind up the applicant having regard to the defect in the demand. In my judgment this consideration justifies the making of a declaration as to the effectiveness of that statutory demand.

72 Under s. 459F(2)(a)(ii) the period for compliance with the defective statutory demand in this case will expire seven days after the determination of this application.

73 If during that period the respondent does not undertake not to make application to wind up the applicant under s. 459Q, in my view it will be open to the applicant to seek an injunction to restrain the respondent from making such an application to avoid the commercial consequences of such an application being made irrespective of the result of its outcome.

74 I declare that the statutory demand dated 14 April 1999 served by Queensland Trade and Services Pty Ltd as agent of the respondent upon the applicant on 19 April 1999, does not substantially comply with the essential requirements of s.459E of the *Corporations Law* and Form

509H, and non compliance with it is insufficient to support an application to wind up the applicant.

75 In the event that the respondent does not by Tuesday, 7 September 1999 undertake not to apply to have the applicant wound up for non compliance with that statutory demand, I give the applicant leave to apply forthwith for an injunction restraining the respondent from making such an application.

76 I will hear submissions on the question of the costs of the application.