

# SUPREME COURT OF QUEENSLAND

CITATION: *Re: Equititrust Limited (in liq)* [2013] QSC 346

PARTIES: **DAVID WHYTE AS RECEIVER OF THE PROPERTY OF THE EQUITITRUST INCOME FUND (RECEIVER APPOINTED)**  
(applicant)  
v  
**RICHARD ALBARRAN, BLAIR PLEASH AND GLEN OLDHAM AS LIQUIDATORS OF EQUITITRUST LIMITED ACN 061 383 944 (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)**  
(respondents)

FILE NO/S: BS 6790 of 2013

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 17 December 2013

DELIVERED AT: Brisbane

HEARING DATE: 5 December 2013

JUDGE: Philip McMurdo J

ORDER: **It is declared that the document which is Exhibit JSK3 to the affidavit of Jacqueline Suzanne Kemp sworn on 24 July 2013 was and is not a proof of debt or claim for the purposes of s 553D of the *Corporations Act 2001* (Cth) or regs 5.6.39 to 5.6.74 of the *Corporations Regulations 2001* (Cth).**

CATCHWORDS: CORPORATIONS – WINDING UP – CONDUCT AND INCIDENTS OF WINDING UP – PROOF OF DEBTS – PROCEDURE – where the applicant is the receiver of an income fund – where the respondents are the liquidators of a company responsible for administering the fund – where the applicant submitted a notice to the respondents claiming that the company was indebted to the fund – where the notice was submitted to the respondents in their capacity as administrators of the company – where the company subsequently went into liquidation and the respondents were appointed liquidators – where the applicant did not submit any notice to the respondents subsequent to their appointment as liquidators – where the respondents treated the applicant’s notice as a formal proof of debt –whether a formal proof of

debt can be submitted at an administrator's meeting – whether the notice submitted by the applicant at the administrator's meeting was a formal proof of debt – whether a formal proof of debt submitted at an administrator's meeting constitutes a formal proof of debt that has been submitted with a liquidator, where the company subsequently goes into liquidation – whether the notice submitted by the applicant at the administrator's meeting constituted a formal proof of debt submitted to the respondent liquidators for the purposes of the liquidation – whether a formal proof of debt has been submitted to the respondent liquidators where none has been presented to them

*Corporations Act 2001 (Cth)*, s 439A, s 553D

*Corporations Regulations 2001*, reg 5.6.23, reg 5.6.26

*Bovis Lend Lease Pty Ltd v Wily* (2003) 45 ACSR 612; [2003] NSWSC 467, applied

*Derwinto Pty Ltd (in liq) v Lewis* (2002) 42 ACSR 645; [2002] NSWSC 731, considered

*Re: Castleplex Pty Ltd (in liq)* [2010] QCA 59, discussed  
*Selim v McGrath* (2003) 177 FLR 85; [2003] NSWSC 927, cited

COUNSEL: S E Brown QC with M S Trim for the applicant  
C A Wilkins for the respondents

SOLICITORS: Gadens Lawyers for the applicant  
Thomsons Lawyers for the respondents

- [1] The applicant is the court appointed receiver of a fund called the Equititrust Income Fund. The respondents are the liquidators of Equititrust Limited (in liquidation) (receivers and managers appointed), which I will call the Company and which was the responsible entity for that Fund.
- [2] Prior to its liquidation, the Company was under administration. At a second meeting of its creditors, which was held on 20 April 2012, it was resolved that the Company be wound up. For the purposes of that meeting, the applicant provided a document to the respondents, as the administrators, which claimed that the Company was indebted to the Fund in an amount of \$537,656.57. I will refer to this as the Document.
- [3] The parties are in dispute as to the Document's effect, if any, after the meeting of creditors for which it was provided. The respondents as liquidators have treated it as a formal proof of debt and they have rejected it. The applicant says that the Document had no effect after the creditors' meeting of April 2012. His case is that the Company is indebted to the Fund, but for substantially more than the amount which was claimed in the Document. He wishes to lodge a proof of debt for that higher claim. He has purported to withdraw the Document, if it did have some effect after the meeting of April 2012. The respondents say that he could do so only with their consent, which they have refused to provide.

- [4] By this proceeding, the applicant has appealed a number of decisions of the respondents in relation to the Document. Upon the premise that the Document was a proof of debt and remained so after the commencement of the liquidation, the applicant appeals against the refusal of the respondents to permit its withdrawal. Alternatively, he has appealed against the respondents' decision to reject or disallow the debt or claim.
- [5] The parties agreed that the Court should determine certain questions in advance of others in this proceeding. Pursuant to r 483 of the *Uniform Civil Procedure Rules 1999 (Qld)*, the following questions are to be determined separately before the trial of the proceeding:
1. Was the Document a formal proof of debt for the purposes of the *Corporations Act* and the *Corporations Regulations*?
  2. If "No" to 1, could the respondents adjudicate upon and reject the debt or claim described in the Document without requiring a formal proof of debt to be submitted pursuant to reg 5.6.47 of the *Corporations Regulations*?
  3. If "No" to 1, did the applicant require the respondents' consent to withdraw the Document?
  4. Should the decision of the respondents to adjudicate upon the debt or claim referred to in the Document be reversed on the basis that no power to make that adjudication existed, because the Document was neither a formal proof of debt nor submitted in accordance with regulation 5.6.39 of the *Corporations Regulations*?
  5. Should that decision to adjudicate upon the debt or claim referred to in the Document be reversed on the basis that the debt or claim had been withdrawn by the applicant prior to the purported adjudication by the respondents?
- [6] The determination of these questions turns upon questions of the proper interpretation of certain provisions within the *Corporations Regulations*. Before going to those questions, it is necessary to set out the facts, about which there is no relevant controversy.
- [7] The respondents were appointed administrators of the Company on 15 February 2012. A meeting was convened under s 439A of the *Corporations Act* on 20 April 2012. The Document was signed by the applicant and dated 19 April 2012. It was in the form of a formal proof of debt or claim under reg 5.6.49(2) and, for the most part, it followed the terms of Form 535 under the *Corporations Regulations*. But there were some departures from that form: in particular it was not addressed to liquidators. It was addressed to the administrators. It contained a statement that the Company was indebted to the Fund on 15 February 2012 and remained so indebted, in the sum of \$537,656.57. It particularised that claim by attaching a letter from the applicant to the respondents dated 19 March 2012.
- [8] The Document was submitted by the applicant when he attended the meeting of creditors on 20 April 2012. The evidence does not reveal whether the applicant was permitted to vote according to the Document.
- [9] On 26 March 2013, the respondents (by their solicitors) informed the applicant that they intended to adjudicate upon the Document as a proof of debt. They asked certain questions in relation to the case set out in the Document and requested any further documents or evidence to support that claim. They advised that if no

response was received from the applicant within 14 days, the respondents would proceed to adjudicate upon that proof of debt.

- [10] On 10 April 2013, the applicant’s solicitors replied that the applicant was undertaking further inquiries with respect to his claim against the Company and that “without prejudice to [the applicant’s] right to lodge a formal proof of debt in due course”, they were instructed to “withdraw the [applicant’s] proof of debt dated 19 April 2012 (which ... was lodged ... for the purposes of voting at the second meeting of creditors ... which took place on 20 April 2012)”.
- [11] On 16 April 2013, the respondents’ solicitors replied that the proof of debt could not be withdrawn, without the consent of the respondents as liquidators under reg 5.6.56, and that the respondents did not provide that consent. They called for any further material in support of the proof of debt by 23 April, failing which the respondents would proceed to adjudicate on the proof without further notice.
- [12] After some further correspondence, the liquidators issued a notice of rejection of the Document, as a proof of debt, on 10 July 2013.
- [13] The respondents say that the Document was a formal proof of debt which was presented at the meeting of creditors pursuant to reg 5.6.23, which provides, in part, as follows:

**“Creditors who may vote**

- (1) A person is not entitled to vote as a creditor at a meeting of creditors unless:
- (a) his or her debt or claim has been admitted wholly or in part by the liquidator or administrator of a company under administration or of a deed of company arrangement; or
  - (b) he or she has lodged, with the chairperson of the meeting or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
    - (i) those particulars; or
    - (ii) if required – a formal proof of the debt or claim.”
- [14] Regulation 5.6.23 applies to meetings of many kinds. By regulation 5.6.11(2), it is provided that regulations 5.6.12 to 5.6.36A apply to meetings convened under Parts 5.3A, 5.4, 5.4B, 5.5 or 5.6 of the *Corporations Act*. Therefore, regulation 5.6.23 applies to a second meeting of creditors convened by an administrator as well as to meetings convened by a liquidator.
- [15] The relevant regulations sometimes refer to a “proof of debt or claim” and in other cases to, a “formal proof of debt or claim”. Regulation 5.6.11(1) provides that in regs 5.6.12 to 5.6.57, unless the contrary intention appears:
- “*proof of debt or claim* includes a statement of particulars of a debt or claim submitted in accordance with regulation 5.6.39 as well as a formal proof of debt or claim.”
- [16] Counsel for the applicant suggest that reg 5.6.23 refers to a third kind of document by the expression “a formal proof of *the* debt or claim”. It is said that the insertion of “the” in the expression is deliberate. However, reg 5.6.26 provides the

chairperson of a meeting with power to admit or reject “a proof of debt or claim” for the purposes of voting. It thereby appears that anything which is provided to the chairperson under reg 5.6.23(1)(b) is a “proof of debt or claim”. In no other regulation is the expression “formal proof of *the* debt or claim” employed. Nor is a distinct meaning of that expression revealed by the Regulations (or the Act itself). It appears then that the expression is an intended reference to “a formal proof of debt or claim”, the meaning of which is revealed by the Regulations.

[17] At this point it is necessary to set out other relevant regulations:

**“5.6.39 Notice to submit particulars of debt or claim**

- (1) A liquidator may from time to time fix a day, not less than 14 days after the day on which notice is given in accordance with subregulation (2), on or before which a creditor may submit particulars of his or her debt or claim.
- (2) A liquidator must, at least once, give notice in writing of the day fixed under subregulation (1) by advertising the date in a daily newspaper circulating generally in each State or Territory in which the company has its registered office or carries on business.
- (3) An advertisement mentioned in subregulation (2) must be in accordance with Form 533.

**5.6.40 Preparation of a proof of debt or claim**

- (1) A proof of debt or claim may be prepared by the creditor personally or by a person authorised by the creditor.
- (2) A proof prepared by an authorised person must state his or her authority and means of knowledge.

**5.6.41 Disclosure of security**

A proof of debt or claim must state:

- (a) whether the creditor is or is not a secured creditor; and
- (b) the value and nature of the creditor's security (if any); and
- (c) whether the debt is secured wholly or in part.

...

**5.6.47 Admission of debt or claim without formal proof**

- (2) If a liquidator admits a debt or claim without formal proof, it is not necessary for the liquidator formally to admit the debt or claim in writing.
- (3) If a creditor's debt or claim has been admitted without formal proof, a notice of dividend is sufficient notice of the admission.
- (4) A liquidator must not reject a debt or claim without:
  - (a) notifying the creditor of the grounds of the liquidator's rejection; and
  - (b) requiring that a formal proof of debt or claim be submitted for that debt or claim.

**5.6.48 Notice to creditors to submit formal proof**

- (1) A liquidator may from time to time fix a day, not less than 14 days after the day on which notice is given in accordance with subregulation (2), on or before which creditors of the

company whose debts or claims have not been admitted are formally to prove their debts or claims.

...

- (4) A creditor of the company who fails to comply with a requirement of a liquidator under subregulation (1) is excluded:
- (a) from the benefit of a distribution made before his or her debt or claim is admitted; and
  - (b) from objecting to that distribution.

#### **5.6.49 Formal proof of debt or claim**

- (1) A debt or claim may be formally proved by delivering or sending by post a formal proof of debt or claim to the liquidator.
- (2) A formal proof of debt or claim:
  - (a) that is prepared and submitted in accordance with regulation 5.6.45 – must be in accordance with Form 536; and
  - (b) in any other case – must be in accordance with Form 535.

#### **5.6.50 Contents of formal proof of debt or claim**

- (1) A formal proof of debt or claim must:
  - (a) contain detailed particulars of the debt or claim sought to be proved; and
  - (b) in the case of a debt, include a statement of account; and
  - (c) specify the vouchers (if any) by which the statement can be substantiated.
- (2) The liquidator may at any time call for the production of the vouchers mentioned in subregulation (1).

...

#### **5.6.53 Time for liquidator to deal with proofs**

- (1) A liquidator must, within:
  - (a) 28 days after receiving a request in writing from a creditor to do so; or
  - (b) if ASIC allows – any further period;
 in writing:
  - (c) admit all or part of the formal proof of debt or claim submitted by the creditor; or
  - (d) reject all or part of the formal proof of debt or claim; or
  - (e) require further evidence in support of it.

...

#### **5.6.54 Grounds of rejection and notice to creditor**

- (1) Within 7 days after the liquidator has rejected all or part of a formal proof of debt or claim, the liquidator must:

- (a) notify the creditor of the grounds for that rejection in accordance with Form 537; and
- (b) give notice to the creditor at the same time:
  - (i) that the creditor may appeal to the Court against the rejection within the time specified in the notice, being not less than 14 days after service of the notice, or such further period as the Court allows; and
  - (ii) that unless the creditor appeals in accordance with subparagraph (i), the amount of his or her debt or claim will be assessed in accordance with the liquidator's endorsement on the creditor's proof.
- (2) A person may appeal against the rejection of a formal proof of debt or claim within:
  - (a) the time specified in the notice of the grounds of rejection; or
  - (b) if the Court allows – any further period.

...

#### **5.6.56 Withdrawal or variation of proof of debt or claim**

A proof of debt or claim may be withdrawn, reduced or varied by a creditor with the consent of the liquidator.”

- [18] Division 6 of Part 5.6 of the *Corporations Act* provides for the proof and ranking of claims within the liquidation. In particular, s 553D provides as follows:

**“Debts or claims may be proved formally or informally**

- (1) A debt or claim must be proved formally if the liquidator, in accordance with the regulations, requires it to be proved formally.
- (2) A debt or claim that is not required to be proved formally:
  - (a) may be proved formally; or
  - (b) may be proved in some other way, subject to compliance with the requirements of the regulations (if any) relating to the informal proof of debts and claims.
- (3) A debt or claim is proved formally if it satisfies the requirements of the regulations relating to the formal proof of debts and claims.”

- [19] The *Corporations Act* makes no provision for the proof of debts within an administration and, more specifically, for the purposes of a meeting convened under s 439A. Nor does it empower the administrator to require the submission of a proof of debt, or a formal proof of debt, for such a meeting or any other purpose. The only relevant provision of the Act by which a formal proof of debt may be required is s 553D. Similarly the only relevant regulations which provide for the requirement of a formal proof of debt are regs 5.6.47 and 5.6.48. Each of these three provisions deals with a requirement *by a liquidator* for a formal proof.

- [20] Regulations 5.6.49 and 5.6.50 prescribe the contents and means of provision of a formal proof of debt or claim. They do so in terms which refer only to the context

of a liquidation. Regulation 5.6.49(1) provides that a debt or claim may be formally proved by delivering or sending a formal proof of debt or claim *to the liquidator*. The relevant forms<sup>1</sup> each provide for the document to be addressed to a liquidator.

- [21] Therefore the submission of a formal proof of debt or claim to an administrator, for a meeting under s 439A, is not easy to reconcile with the Act and the Regulations. Within reg 5.6.23, the formal proof must be something which is “required”. This may refer to a requirement of the chairperson of the meeting. But the Regulations do not otherwise provide for the chairperson to make such a requirement. Alternatively, it may be a reference to a requirement by a liquidator, for which the Regulations do provide.
- [22] Clearly, reg 5.6.23 must be applied, so far as possible, to the context of a meeting under s 439A. This has led to a view, expressed in several cases, that it provides for the submission of a formal proof of debt at a meeting under s 439A.<sup>2</sup> However, in none of these cases was there a discussion of the apparent tension between the use of a formal proof of debt in this context and the regulations and prescribed forms to which I have referred, which seem to limit the submission of a formal proof to the context of a liquidation. Counsel for the respondents submits that the prescription of the content of a formal proof, within regulation 5.6.49(2) can be adapted to the context of a meeting under s 439A.
- [23] Apart from authority, I would doubt whether the reference to a formal proof in reg 5.6.23(b) applies to a meeting under s 439A. However, the view which has been expressed about its relevance in this context is not clearly wrong and should be accepted here.
- [24] The first of the questions for determination is whether the document was a formal proof of debt for the purposes of the *Corporations Act* and the *Corporations Regulations*? As would appear, that question may be too wide for its answer to assist in the disposition of this case. But it should be answered by saying that the document was a formal proof of the debt or claim within reg 5.6.23(1)(b).
- [25] The document was in terms which very closely follow Form 535. It described itself as a formal proof of debt. If it is accepted that a formal proof could be provided in a meeting under s 439A, there is really no basis for doubting that this was such a formal proof.
- [26] Underlying each of the remaining questions is an issue of the relevance or otherwise of a formal proof lodged at an administrator’s meeting if and when the company goes into liquidation. In neither *Bovis Lend Lease Pty Ltd v Wily* nor *Selim v McGrath* was that issue considered. In *Re: Castleplex Pty Ltd (in liq)*, the question was considered by McMeekin J but not by the other members of the court.
- [27] In *Re: Castleplex Pty Ltd (in liq)*, the appellant unsuccessfully appealed a liquidator’s partial rejection of the appellant’s proof of debt. In the course of the hearing of the case in the Court of Appeal, a question arose as to whether a formal proof of debt had been lodged where none had been presented to the liquidators. As

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<sup>1</sup> Form 535 and 536

<sup>2</sup> *Bovis Lend Lease Pty Ltd v Wily* (2003) 45 ACSR 612 at 677 [265] per Austin J; *Selim v McGrath* (2003) 177 FLR 85 at 108 [82] per Barrett J; *Re: Castleplex Pty Ltd (in liq)* [2010] QCA 59 at [80]–[81] per McMeekin J.



in the present case, the creditor had lodged a proof of debt, following Form 535, during the administration of the company. The liquidator treated that document as a formal proof of debt in the liquidation. McMeekin J held that he was entitled to do so. His Honour referred to s 553D(3) and its provision that a “claim is proved formally if it satisfies the requirements of the regulations relating to the formal proof of debts and claims”, and concluded that those requirements had been satisfied.

[28] McMeekin J reasoned as follows:

“[81] The point of reg 5.6.47 is to ensure that the liquidator (and if necessary a court) be appraised precisely of the claim made so as to enable an accurate assessment of it. It is not immediately apparent as to why, in order to achieve that aim, a temporal requirement needs to be introduced into the regulations such that a proof of claim could only be considered a ‘formal’ one if lodged subsequent to the appointment of liquidators. I would be reluctant to read into the Regulations any such requirement. The path followed here of administrators acting for a period, obtaining proofs of claims, and then becoming the liquidators of the company is hardly a novel one. To require re-lodgement, perhaps of all claims made, despite full compliance with the requirements of the Act, does not seem to me to achieve any significant purpose. This approach is consistent with the view taken by Einstein J sitting in the Equity Division in the Supreme Court of NSW, and by members sitting in the Administrative Appeals Tribunal, that the liquidator’s duty to deal with the proof of debt is not dependent on him having called for formal proofs of debt.”

[29] McMeekin J then noted that the appellant had not “suggested that any consequence flows from the failure to formally call on him to lodge the same form that he had already lodged” and that he had contended, at one stage, that the proof of debt lodged with the administrator was a formal proof of debt in the liquidation.<sup>3</sup> It appears then that the present issue was not debated in *Re: Castleplex Pty Ltd (in liq)*. This explains why the discussion of the need or otherwise for a formal proof to be submitted to the liquidator was not discussed by reference to the relevant regulations.

[30] The starting point is that there is no provision of the Act or of the Regulations which is in terms that a proof of debt lodged at an administrator’s meeting will constitute a proof of debt as if it had been lodged with a liquidator, in the event that the company is placed in liquidation.

[31] Next there is the difference between a proof of debt which is relevant to an administrator in a meeting under s 439A and a proof of debt for a liquidation, as to the date or dates upon which a debt is said to be owing. For the administrator, the relevant date is that of the meeting itself. For a liquidator the amount of a debt or claim is to be computed as at the “relevant date”,<sup>4</sup> which is the day on which the

<sup>3</sup> *Re: Castleplex Pty Ltd (in liq)* [2010] QCA 59 at [82].

<sup>4</sup> *Corporations Act 2001* (Cth), s 554(1).

winding up, because of Division 1A of Part 5.6, is taken to have begun.<sup>5</sup> Where a company was under administration immediately before the passing of a resolution for its winding up (as here), then the winding up is taken to have begun when the administration began.<sup>6</sup> Therefore, the relevant date for the purposes of s 554(1), in a case such as the present one, is necessarily a different date from that on which the meeting under s 439A was held.

- [32] Further, the liquidator must have a statement, according to Form 535, that the company was not only indebted to the creditor as at the relevant date, but remained indebted as at the date of the proof of debt.
- [33] Consequently a proof of debt for voting purposes at a meeting under s 439A could not comply with the requirement of reg 5.6.49(2), at least because it would address the indebtedness as at a different date or dates. As it happens, the document here stated the amount of the debt as at the commencement of the administration. But that factual matter does not affect the proper interpretation of the relevant regulations.
- [34] A meeting under s 439A has three possible outcomes: a deed of company arrangement, an end to the administration or a liquidation.<sup>7</sup> Conceivably the creditors might resolve to end the administration but the company might subsequently be wound up, either by the court or voluntarily. In such a case, (again) the relevant date for the existence of the debt would differ between the administration and the liquidation.
- [35] Regulation 5.6.48 permits a liquidator to fix a day by which creditors whose debts or claims have not been admitted are to formally prove their debts or claims. If a formal proof lodged for voting at an administrator's meeting is to be treated as a formal proof in the liquidation, the operation of reg 5.6.48 would be unclear where the debt or claim has not been admitted by the liquidator.
- [36] Importantly, reg 5.6.49 provides that a formal proof of debt is to be delivered or sent *to the liquidator*. A proof lodged with the administrator, as the chairperson of a meeting under s 439A, would not satisfy reg 5.6.49 unless subsequently the document was delivered or sent by the creditor to the liquidator. In *Re: Castleplex Pty Ltd (in liq)*, the position apparently was that the creditor asked to have his proof of debt, which had been lodged with the administrator, treated as one which had been submitted to the liquidator.
- [37] Further, it would be problematical to give a proof of debt which has been lodged with an administrator an ongoing effect as a proof lodged with a liquidator where the proof had been rejected by the administrator.<sup>8</sup> In *Derwinto Pty Ltd (in liq) v Lewis*, Austin J said that apart from the possibility of an appeal, a rejected proof of debt has no status for the purposes of the winding up and reg 5.6.56 can therefore have no application to a proof of debt that has been rejected.<sup>9</sup> His Honour was not there referring to a rejection of a proof for voting purposes. But it is difficult to accept that a proof, which has been rejected by an administrator for voting purposes,

<sup>5</sup> *Corporations Act 2001* (Cth), s 9.

<sup>6</sup> *Corporations Act 2001* (Cth), s 513B, s 513C.

<sup>7</sup> *Corporations Act 2001* (Cth), s 439C.

<sup>8</sup> *Corporations Regulations 2001* (Cth), reg 5.6.26.

<sup>9</sup> (2002) 42 ACSR 645 at 657 [57].

should nevertheless take effect as a proof which is maintained by the creditor in the liquidation.

- [38] In the present case, the creditor has not asked the liquidator to treat the document as a formal proof of debt in the liquidation. In my view, the document was not a formal proof of debt for the purposes of the liquidation. If reg 5.6.23 does provide for the lodgement of a formal proof in a meeting under s 439A, such a document will not be a proof of debt in and for the purposes of a liquidation, at least unless the creditor acts in a way towards the liquidator which effectively puts forward the document as a proof of debt intended to be assessed by the liquidator. Otherwise a proof of debt lodged at an administrator's meeting will not constitute a proof of debt in the liquidation.
- [39] It follows that a proof of debt or claim which may be withdrawn, reduced or varied only with the consent of the liquidator is one which the creditor has submitted to the liquidator.
- [40] I return to the four other questions for separate determination. Questions two and three are upon the premise of a negative answer to the first question. Nevertheless they can and should be answered. Could the respondents adjudicate upon and reject the claim within the document, at least without requiring a formal proof of debt to be submitted pursuant to reg 5.6.47? It follows that this question must be answered "no". There was no formal proof of debt upon which the respondents could adjudicate: indeed there was no proof of debt upon which they could adjudicate.
- [41] As to the third question, reg 5.6.56 was not engaged because there was no proof of debt or claim within that provision. There was no proof or debt to be withdrawn because none had been submitted to the liquidator.
- [42] The remaining questions are whether the decision for the liquidators to adjudicate upon the debt or claim should be reversed upon the bases that there was no power to make that adjudication or that there was no debt or claim for their adjudication. The answer is that there was no proof of debt upon which the respondents could adjudicate so that their purported adjudication was of no effect. It follows that there was no decision to be "reversed".
- [43] The disposition of these questions is appropriately reflected in a declaration that the document which is Exhibit JSK3 to the affidavit of Jacqueline Suzanne Kemp sworn on 24 July 2013 was and is not a proof of debt or claim for the purposes of s 553D of the *Corporations Act 2001* or regs 5.6.39 to 5.6.74 of the *Corporations Regulations 2001*.