

CASENOTE

Nationwide Plant Hire Pty Ltd v. Casal Corporate Advisory Pty Ltd [2020] VSC 688

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SUPREME COURT OF VICTORIA

His Honour Associate Justice Randall

30th October, 2020.

Application to set aside Statutory Demand—genuine dispute as to the existence of debts on which Statutory Demand was based

The Plaintiff applied under s.459G of the Corporations Act to set aside a statutory demand.

FACTS

The Defendant agreed to provide accounting services to the Plaintiff. Earlier, the Defendant had informed the Plaintiff that it would charge approximately \$3,000- per day for its services.

Plaintiff paid a total of \$32,000- in 7 separate payments towards the Defendant's invoices, but \$80,000- remained outstanding.

The Plaintiff told the Defendant that it was lacking in cash and that it would 'pay what it could'.

Later, the Plaintiff said it disputed that total amount charged was for 'work undertaken' and it asserted that the Defendant's charges were exorbitant.

LEGISLATION

Corporations Act s.459H:

- (1) This section applies where, on an application under section 459G, the Court is satisfied of either or both of the following:

- (a) that there is a **genuine dispute** between the company and the respondent about the existence or amount of a **debt** to which the demand relates;
 - (b) that the company has an offsetting claim.
- (2) The Court must calculate the substantiated amount of the demand in accordance with the formula:

Admitted total – Offsetting total

where:

admitted total means:
 - (a) the admitted amount of the debt;...
offsetting total means:
 - (a) ...offsetting claim[s]...
- (3) If the substantiated amount is less than the statutory minimum, the Court must, by order, set aside the demand.

MEANING OF 'GENUINE DISPUTE'

The term 'genuine dispute' connoted 'a plausible contention requiring investigation' that is 'real and not spurious, hypothetical, illusory or misconceived', his Honour said.¹

DID THE INVOICES CREATE 'DEBTS' FOR THE PURPOSE OF S.459E

His Honour said he could not conclude that 'an approximate daily rate of \$3,000- was a term of the agreement between the parties' because the daily rate fluctuated in statements of account issued by the Defendant.²

Where a contract does not provide a mechanism to calculate a specific amount that is due and payable, an amount claimed under that contract will not constitute a 'debt' under s.459E his Honour said.³ In this case, the Engagement Letter did not provide a mechanism to determine the amounts claimed in the Defendant's invoices.⁴

Whether the Plaintiff and Defendant had agreed to a daily rate of approximately \$3,000- or lump sum amounts was a matter to be further investigated⁵, [ie. there was a genuine dispute on this point].

¹ [2020] VSC 688, paragraph 41

² [2020] VSC 688, paragraph 63

³ [2020] VSC 688, paragraph 60

⁴ [2020] VSC 688, paragraph 61

⁵ [2020] VSC 688, paragraph 65

WERE DEBTS CREATED BY THE PLAINTIFF'S COURSE OF CONDUCT?

A reasonable bystander may regard the Plaintiff's conduct as having accepted that the amounts in the invoices were required to be paid because the Plaintiff did not raise a dispute as to the amounts after each invoice was issued.⁶

However, as the amounts in the invoices could not be ascertained by reference to an objective standard, a reasonable bystander may also consider that these amounts had not been accepted by the Plaintiff which had not paid the amounts in full.⁷

His Honour found there was is a genuine dispute on this point also.

QUANTUM MERUIT

His Honour quoted Macfarlan JA in *Edwards v. ASIC* [2009] NSWCA 424:

..a liability in quantum meruit to pay a plaintiff **reasonable** remuneration for work done at the request of the defendant is a 'debt' within the meaning of s 588G of [the Corporations Act]⁸

If the amounts were claimed on a *quantum meruit* basis, 'there is a genuine dispute as to the existence of the debts because the **reasonableness** of their values has not been ascertained', Randall JA said.⁹

OUTCOME

The Statutory Demand was set aside on the basis that there was a genuine dispute as to the existence of the debts.

'TAKE-AWAYS' FROM THE CASE

In their terms of trade / contracts Creditors should set out a clear method for calculating the amount owed.

As soon as it becomes apparent that a Debtor is unwilling or unable to pay an invoice, the Creditor should write to the Debtor and ask it to set out any objection to the invoice. It is best for the Creditor that any objection to an

⁶ [2020] VSC 688, paragraph 112

⁷ [2020] VSC 688, paragraph 112

⁸ [2020] VSC 688, paragraph 75

⁹ [2020] VSC 688, paragraph 84

invoice be raised at an early stage so that it can be resolved before the matter escalates into a dispute involving lawyers.

A Debtor should raise any objection to an invoice at the earliest opportunity to avoid a later insinuation that the objection is disingenuous.