

FEDERAL COURT SETS ASIDE INAPPROPRIATE STATUTORY DEMAND

The Federal Court of Australia recently delivered judgment in the case of R2M Pty Limited v Gourlay [2011] FCA 168. This case involved a challenge of a creditor's statutory demand issued against R2M Pty Ltd in circumstances where there was a genuine dispute about the debt.

The purported creditor issued a creditor's statutory demand for allegedly unpaid licence fees for intellectual property. The company strongly denied the debt on the basis that the intellectual property had never been delivered and there were significant off-setting claims.

Williams Love & Nicol acted for the company and was successful in obtaining orders from the Court to set-aside the statutory demand and obtaining an indemnity costs order against the respondent for the whole of the proceedings. In summary, His Honour Justice Buchanan found that:

"From the time that the statutory demand was served it was clear that there would be vigorous resistance to the suggestion that Mr Gourlay was entitled to a further payment. The nature of that resistance, the stated grounds for it, the contest about whether Mr Gourlay had discharged his own obligations and the earlier exchange between he and Dr Finlayson about that issue should all have made it quite apparent to Mr Gourlay and his advisers that his claim to payment was, and would be, denied. There is no basis to conclude that denial of his claim is fanciful or in any other sense not genuine. The statutory demand process, although efficient in appropriate circumstances, is not intended merely to provide a claimant with a means of imposing a short time for compliance with a disputed claim. It was not an appropriate process to use in the present case."

The decision highlights the importance of understanding that creditor's statutory demands are not a debt recovery tool and should only be used and defended in circumstances where the debt is not in dispute.

The indemnity costs order against the purported creditor further highlights the considerable commercial risk in continuing to defend a statutory demand where the debtor company has raised numerous factors that cause doubt about the genuineness of the debt.

JOHN LARKINGS, SENIOR ASSOCIATE

John has considerable experience in relation to insolvency and the conduct of corporate and commercial litigation. He acts for several Canberra-based businesses and liquidators in commercial disputes and the liquidation of companies.

He is adept at the procedural, strategic and commercial aspects of the conduct of litigation. In addition to the carriage of litigious matters, John has also appeared as counsel in several Federal, State and Territory jurisdictions, including the ACT Court of Appeal, and has conducted several public examinations of company directions in insolvency matters.

KATIE INNES, SOLICITOR

Katie Innes commenced working at WLN in the business and commercial strategic team in 2007 and has since worked across several fields including commercial and corporate governance law, commercial litigation, insolvency and planning and local government law.

Katie's clients have included industry representative bodies, insolvency practitioners, corporate retailers and individuals seeking to enter the corporate arena. Prior to working for WLN, Katie was employed by the Australian Competition and Consumer Commission and provided advice to individuals and businesses on their rights and obligations under the *Trade Practices Act 1974*.



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Williams Love & Nicol Lawyers can provide advice on your rights as a creditor or debtor, the use of the statutory demand process and can represent you in an appropriate application to set aside a statutory demand. Please be aware that strict time limits apply in such matters.