

Hardel Pty Ltd v Burrell & Family Pty Ltd [2009] SASC 77

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Facts

- The *Corporations Act 2001* (Cth) provides that a person may serve a statutory demand on a company where either a single debt, or the sum of two or more debts, owed by the company to that person equals or exceeds the statutory minimum.
- The demand must require the company to pay the amount of the debt within 21 days after the demand is served.
- An application to set aside a statutory demand must be made within 21 days after the demand is served.
- There was a dispute between the parties as to whether an order with respect to an application to set aside a statutory demand was either an interlocutory or final judgment.
- At first instance, the Master dismissed Hardel's application to set aside a statutory demand.
- Hardel appealed the decision to a single Judge of the Supreme Court.
- Burrell & Family Pty Ltd challenged the competence of the appeal on the ground that the Master's decision was a final judgment and that the appeal therefore lay to the Full Court pursuant to the *Supreme Court Civil Rules 2006* (SA)

Issues

- Is an order of a Master dismissing an application to set aside a creditor's statutory demand made pursuant to the *Corporations Act 2001* (Cth) a "final judgment"?

Held

- The Full Court of the Supreme Court of South Australia determined that an order dismissing an application to set aside a creditor's statutory demand made pursuant to the *Corporations Act 2001* (Cth) is not a "final judgment".
- The test to determine whether an order is interlocutory or final is whether it finally determines the rights of the parties in a principal cause pending between them.
- After reviewing the relevant line of authorities, the Full Court (led by Kourakis J) determined that an order dismissing a demand is interlocutory because it does not finally determine the rights of the parties. The final order in this sequence of events is the "winding up order".

Quotes

"Applications to set aside a statutory demand are pre-action procedures which affect, and only affect, the proceedings on the winding up. Service of statutory demands, orders dismissing applications to set them aside and orders varying them do not determine or affect in any way the underlying controversy about the

alleged debtor's liability to pay the debt. If the creditor wishes to prove the debt and obtain an order for its payment, it must take separate proceedings for that purpose. Even orders made on the winding up proceedings cannot settle the controversy over the debt. The substantive right in question in the winding up proceedings is the right of the company to its corporate personality and to the exercise of the rights, powers and privileges that go with it."

(Kourakis J at [41] (emphasis added))

Full Text

The full text is available here: <https://jade.io/article/91719>

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