SUPREME COURT OF QUEENSLAND

CITATION:	*Onward Energy Pty Ltd (In Liquidation) v Sharma* [2026] QSC 148
PARTIES:	**ONWARD ENERGY PTY LTD (IN LIQUIDATION)** ACN 620 401 452 (respondent/first plaintiff) **RICHARD ALBARRAN AS LIQUIDATOR OF ONWARD ENERGY PTY LTD (IN LIQUIDATION)** ACN 620 401 452 (respondent/second plaintiff) **v** **MOHIT SHARMA** (applicant)
FILE NO/S:	SC No 523 of 2025
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	24 June 2026
DELIVERED AT:	Brisbane
HEARING DATE:	11 June 2026
JUDGE:	Morrison J
ORDERS:	**1. Pursuant to r 24(2) of the *Uniform Civil Procedure Rules 1999*, the Claim is renewed to 6 February 2026.** **2. Pursuant to r 24(2) of *the Uniform Civil Procedure Rules 1999*, the Claim as renewed under Order 1 is further renewed until 6 February 2027.** **3. The default judgment obtained on 2 April 2026 is set aside.** **4. The respondent pay the applicant's costs of the application.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – JUDGMENTS AND ORDERS – AMENDING, VARYING AND SETTING ASIDE JUDGMENTS AND ORDERS – ACTIONS TO REVIEW OR SET ASIDE JUDGMENT OR ORDER – WHERE JUDGMENT OR ORDER MADE IRREGULARLY, ILLEGALLY OR AGAINST GOOD FAITH – where in June 2024, the Australian Tax Office assessed that the first plaintiff owes a sum of $1,100,255.59 – where in February 2025, a

Claim and Statement of Claim were filed seeking that the applicant pay the sum of $1,100,255.59 for breach of director's duties or for insolvent trading – where in November 2025, an order for substituted service was made, permitting service to be effected by email – where in February 2026, service was effected – where service occurred when the claim was stale – where the applicant alleges he forwarded those documents to his solicitor – where default judgment was granted – where the applicant contends that the default judgment was obtained irregularly – whether the Claim should be renewed and the default judgment set aside

Corporations Act 2001 (Cth), s 588G, s 588M, s 1317H
Uniform Civil Procedure Rules 1999 (Qld), r 24, r 116, r 282

CGU Insurance Ltd v Blakeley (2016) 259 CLR 339; [2016] HCA 2, cited
Cook v D A Manufacturing Co Pty Ltd [2004] QCA 52, considered
Cusack v de Angelis [2008] 1 Qd R 344; [2007] QCA 313, cited
Embrey v Smart [2014] QCA 75, considered
Gillies v Dibbetts [2001] 1 Qd R 596; [2000] QCA 156, considered
Licul v Corney (1994) 180 CLR 213; [1976] HCA 6, cited
Shannon v Simmons [2020] QSC 115, cited
Star Recruitment Service Pty Ltd v Smith [2025] QSC 334, cited
The IMB Group Pty Ltd (In Liquidation) and Ors v ACCC [2005] QSC 139, cited
Zaporozhki v AAI Limited (trading as GIO) [2022] QSC 22, cited

COUNSEL: S Burchett for the applicant
J Gray for the respondents

SOLICITORS: Brightstone Legal for the applicant
Celtic Legal for the respondents

[1] The Applicant ("**Sharma**") applies to set aside a default judgment entered against him on 2 April 2026.

[2] The First Plaintiff ("**Onward Energy**") was put into liquidation on 14 June 2024 by Sharma, who was a director of that company.

[3] The Second Plaintiff is the Liquidator of Onward Energy.

Background

[4] At all relevant times Sharma was the sole director and secretary of Onward Energy.

[5] On 14 June 2024, the Australian Tax Office ("**ATO**") concluded an audit of Onward Energy and assessed that it owed the ATO the sum of $1,100,255.59.

[6] On 6 February 2025 the Claim and Statement of Claim were filed. The Claim seeks an order that Sharma pay the sum of $1,100,255.59 pursuant to s 1317H or s 588M of the *Corporations Act 2001* (Cth). That Claim is paraphrased in the respondent's outline as being for breach of director's duties or alternatively for insolvent trading.[1]

[7] On 13 November 2025 an order for substituted service was made. It permitted service to be effected by emailing the documents to Sharma's company.

[8] On 16 February 2026, service was effected in accordance with the order for substituted service, namely by emailing them to Sharma care of his private company, M Sharma Nominees Pty Ltd.

[9] Sharma deposes that on 16 February 2026, he forwarded those documents to his solicitor, Ms Riggio.

[10] On 19 May 2026, the application to set aside was filed.

Legal principles

[11] In *Cook v D A Manufacturing Co Pty Ltd*,[2] the Court of Appeal said:

> "[15] It is a clear inference from the stated reasoning of the learned judge at first instance on the application to set aside the default judgment that he considered that in order to succeed the appellant had to satisfy him on each of the three matters he identified; namely, give a satisfactory explanation for the failure to appear, establish no unreasonable delay in making the application, and demonstrate that it had a prima facie defence on the merits. As noted above the respondent conceded there was no delay in making the application after the appellant became aware of the default judgment, and the learned judge found the appellant had a prima facie defence on the merits. It was because he was not satisfied that a satisfactory explanation had been given for the failure to enter an appearance that the appellant failed on its application.
>
> [16] It is not the law that an applicant seeking to have a default judgment set aside must establish each of those three matters before the discretion to set aside the judgment can be exercised. The leading authority is *Evans v Bartlam* [1937] AC 473. It is instructive to quote from the reasoning of Lord Atkin at 480:
>
> > 'The discretion is in terms unconditional. The Courts, however, have laid down for themselves rules to guide them in the normal exercise of their discretion. One is that where the judgment was obtained regularly there must be an affidavit of merits, meaning that the applicant must produce to the Court evidence that he has a prima facie defence. It was suggested in argument that there is another rule that the applicant must satisfy the Court that there is a reasonable explanation why judgment was

1 Paragraph 3.

2 [2004] QCA 52 at [15], [16], [17] and [19].

> allowed to go by default, such as mistake, accident, fraud or the like. I do not think that any such rule exists, though obviously the reason, if any, for allowing judgment and thereafter applying to set it aside is one of the matters to which the Court will have regard in exercising its discretion. If there were a rigid rule that no one could have a default judgment set aside who knew at the time and intended that there should be a judgment signed, the two rules would be deprived of most of their efficacy. . . .
>
> But in any case in my opinion the Court does not, and I doubt whether it can, lay down rigid rules which deprive it of jurisdiction. Even the first rule as to affidavit of merits could, in no doubt rare but appropriate cases, be departed from. The supposed second rule does not in my opinion exist.'

[17] To similar effect was the reasoning of Lord Russell of Killowen at 481; he went on at 482:

> 'The contention no doubt contains this element of truth, that from the nature of the case no judge could, in exercising the discretion conferred on him by the rule, fail to consider both (*a*) whether any useful purpose could be served by setting aside the judgment, and obviously no useful purpose would be served if there were no possible defence to the action, and (*b*) how it came about that the applicant found himself bound by a judgment regularly obtained, to which he could have set up some serious defence. But to say that these two matters must necessarily enter into the judge's consideration is quite a different thing from asserting that their proof is a condition precedent to the existence or exercise of the discretionary power to set aside a judgment signed in default of appearance.'

….

[19] Of more importance for present purposes is the significance which courts in recent times have placed on the fact that the applicant is able to demonstrate an arguable defence on the merits. McPherson J in *National Mutual Life Association of Australasia Ltd v Oasis Developments Pty Ltd* [1983] 2 Qd R 441 at 449-50, citing *Attwood v Chichester* (1878) 3 QBD 722 and *Rosing v Ben Shemesh* [1960] VR 173, said that the issue whether the applicant defendant had a prima facie case on the merits "is the most cogent" of the three matters referred to by Kelly J in *Aboyne Pty Ltd v Dixon Homes Pty Ltd* [1980] Qd R 142. In *Aboyne* Kelly J had referred to the three relevant considerations being whether the defendant had given a satisfactory explanation for failure to appear, any delay in making the application, and whether the defendant had a prima facie defence on the merits. McPherson J went on to say: "It is not often that a defendant who has an apparently good ground

of defence would be refused the opportunity of defending, even though a lengthy interval of time had elapsed provided that no irreparable prejudice is thereby done to the plaintiff'. That passage has received the express approval of this court (Davies, McPherson and Pincus JJA) in *National Australia Bank Ltd v Singh* [1995] 1 Qd R 377 at 380. (See also *Troiani v Alfost Properties Pty Ltd* [2002] QCA 281.)"

[12] That the most cogent of the three matters referred to is whether there is a *prima facie* defence, was confirmed by the Court of Appeal in *Embrey v Smart*:[3]

> "[67] Rule 290 confers a discretion to set aside a judgment by default. The rule does not require an applicant to establish each of the three matters referred to in *National Mutual Life Association of Australiasia Ltd v Oasis Developments Pty Ltd*. But these matters assume importance, and it has been said that the issue whether the applicant defendant has a *prima facie* case on the merits "is the most cogent" of the three matters.
>
> [68] The third matter has been described in different ways. Lord Atkin in *Evans v Bartlam* referred to rules that guide the discretion and one of them was "an affidavit of merits, meaning that the applicant must produce to the Court evidence that he has a prima facie defence". It has been said that the affidavit "must set out all the defences on which the defendant intends to rely and briefly set out the facts by which the defendant seeks to establish such defences". The defendant must make more than a bare allegation: the allegation must be supported by "some reference to evidence to suggest that the defence is plausible and not just raised for the purpose of having default judgment set aside". It is insufficient for an applicant:
>
>> 'to allege that he has a defence upon the merits and swear to such a defence generally. He must go further and disclose what such merits are, and show to the court that his application is *bona fide*.'
>
> [69] The requirement to refer to evidence, not generalities, does not necessarily require a lengthy affidavit of merits. As *Prus-Butwilowicz v Moxey* illustrates, the contents of a fulsome draft defence may be sworn to by a short affidavit. In that case it was not necessary for the applicant to swear "a long affidavit touching the same matters as appear in his long, detailed pleading". This case is different. The affidavit does not swear to the truth of the contents of the draft defence and itself swears to matters of defence very generally."

Applicant's submissions

3 [2014] QCA 75 at [67]-[69]. Citations omitted.

[13] Mr Burchett contended that the Statement of Claim was deficient in so far as it pleaded a breach of director's duties, said to arise from s 588G of the *Corporations Act*. The submission was that there was no "duty" imposed under that section.

[14] The submission cannot be accepted. Section 588G imposes a personal liability on a director for debts incurred while the company is insolvent. Section 588G(2) provides: "By failing to prevent a company from incurring a debt, the person contravenes this section if …". Section 588G(3) then provides that the person commits an offence if the debt is incurred in certain circumstances.

[15] Section 588G has been construed as imposing a duty. In *CGU Insurance Ltd v Blakeley*[4] the High Court described the effect of s 588G as creating a duty:

> "The cause of action created by s 588M is enlivened by a breach on the part of a company director of the duties imposed by s 588G of the Act to prevent the company incurring debts when it is insolvent or if it would become insolvent by incurring the debts and where there are reasonable grounds for suspecting that the company is or would become insolvent."

[16] Other courts have also uniformly construed s 588G as imposing a duty.[5]

[17] Further:

(a) Section 588G uses the heading "Director's duty to prevent insolvent trading by company"; and

(b) ASIC's Regulatory Guide 217 (December 2024) expresses the view that s 588G imposes a "positive duty to prevent insolvent trading".[6]

(c) The Explanatory Memorandum introducing the Safe Harbour provisions described the provisions as creating "a new safe harbour from the directors' duty to prevent insolvent trading".[7]

[18] The four things that must be pleaded to establish an entitlement to relief under s 588M[8] are pleaded here:

(a) that the respondent was a director of the company when it incurred the relevant debt;[9]

(b) that the company was insolvent at the time it incurred the relevant debts;[10]

(c) that at the time the relevant debts were incurred, there were reasonable grounds for suspecting that the company was insolvent;[11] and

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4 [2016] HCA 2 at [3].

5 See, for example: *Star Recruitment Service Pty Ltd v Smith* [2025] QSC 334 at [68] and [73]; Tourprint International Pty Ltd (in liq) v Bott (1999) 32 ACSR 201 at [67]; *Re Orzel* [2024] WASC 6 at [21]; *In the matter of Stellar Agritech Pty Ltd* [2023] NSWSC 1003 at [51]; *Re Gemwood Projects Pty Ltd (in liq)* [2025] VSC 819 at [92]; *Trinick as Liquidator of Forgione Family Group Pty Ltd (in liq)* [2015] FCA 642 at [504], [509].

6 RG 217.9 - 217.17.

7 See *Star Recruitment Service Pty Ltd v Smith* [2025] QSC 334 at [60].

8 See *Shannon and Ors v Simmons* [2020] QSC 115 at [23].

9 Statement of Claim paragraphs 3 and 6.

10 Statement of Claim paragraphs 5 and 7.

11 Statement of Claim paragraph 8.

(d) that the respondent failed, in breach of s 588G(2), to prevent the company from incurring the relevant debts, in circumstances where the respondent was aware that the company was insolvent or that there were grounds for so suspecting.[12]

[19] Those matters are pleaded in the Statement of Claim here.

[20] Other similar contentions were that the pleading was deficient because it was not clear what the debt was, and when it was incurred, and that the debt was seemingly incurred over time which gave rise to doubt about the pleaded case.

[21] I do not agree. The case is that the ATO audit crystalised the debt (liability to pay tax) at $1,100,255.59, on 14 June 2024. The pleaded case is that the company was insolvent then and had been at all times when the ATO liability arose. Further, that as at 14 June 2024, when the debt arose, the director knew the company was insolvent, or ought to have known it.

[22] I do not consider the contentions as to the state of the pleading to advance the application. They are complaints that might give rise to applications to strike out or for particulars, but do not descend to the question whether there is a defence on the merits.

Was the judgment obtained irregularly?

[23] Mr Burchett submitted that the default judgment had been obtained in circumstances where the Claim had become stale (i.e. not "in force") when it was served and therefore the default judgment was obtained irregularly.

[24] The Claim was filed on 6 February 2025. The Order for substituted service was made on 13 November 2025. The Claim and Statement of Claim was served on 16 February 2026.

[25] Rule 24 of the *Uniform Civil Procedure Rules* 1999 provides:

> "24 **Duration and renewal of claim**
>
> (1) A claim remains in force for 1 year starting on the day it is filed.
>
> (2) If the claim has not been served on a defendant and the registrar is satisfied that reasonable efforts have been made to serve the defendant or that there is another good reason to renew the claim, the registrar may renew the claim for further periods, of not more than 1 year at a time, starting on the day after the claim would otherwise end.
>
> (3) The claim may be renewed whether or not it is in force.
>
> (4) However, the court's leave must be obtained before a claim may be renewed for a period any part of which falls on or after the fifth anniversary of the day on which the claim was originally filed.

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12 Statement of Claim paragraph 9.

> (5) Before a claim renewed under this rule is served, it must be stamped with the court's seal by the appropriate officer of the court and show the period for which the claim is renewed.
>
> (6) Despite subrule (1), for any time limit (including a limitation period), a claim that is renewed is taken to have started on the day the claim was originally filed."

[26] The Claim was not "in force" under r 24(1) when it was served. However, it could be renewed under r 24(2) and (3).

[27] Where a claim is not "in force" because of the effluxion of the one-year period, it does not cease to be a valid claim, nor is it a nullity.[13]

[28] There is a consistent line of authority to the effect that a claim cannot be regularly served when it is not "in force" under r 24(1).

[29] In *Gillies v Dibbetts*,[14] the Court of Appeal considered a case where service was effected of a plaint that was stale under r 24(1) when served. Having noted that r 367 gave the court a wide power to make orders about the conduct of the proceedings, the Court proceeded on the basis that r 24(1) deals with a situation where there has been a failure to serve the defendant, and related to renewal of process so that it might be served. Further, service after the plaint became stale was said to be "ineffective".

[30] Wilson J[15] said:[16]

> "[17] The service on WorkCover in July 1999 was ineffective because the process was stale. The primary judge refused to renew the amended plaint. …
>
> ….
>
> [19] Rule 24 of the *Uniform Civil Procedure Rules* provides …
>
> Like its predecessor, O 9 r 1 of the *Supreme Court Rules*, it deals with the situation where there has been a failure to serve a defendant. In cases under the old rules the Court invoked O 93 r 22 ("Practice where not prescribed") to order renewal of a writ to allow service on a statutory insurer with a right to elect to defend. See, for example, *Moore v Boyne Smelters Limited* [1998] 1 Qd R 649 and *Crawford v Brisbane Gas Co Ltd* [1979] Qd R 226. In so doing, the Court approached the applications for renewal as if the requirements of O 9 r 1 otherwise applied. The new rules do not contain a provision similar to O 93 r 22, but they contain a much wider power to make orders about the conduct of a proceeding, rule 367, which is in these terms …
>
> [20] The court may make an order renewing an originating process so that it may be served upon a statutory insurer if it is in the interests of justice to do so. The court should have regard to the

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13 *Licul v Corney* (1994) 180 CLR 213 at 225 per Gibbs J.

14 [2001] 1 Qd R 596; [2000] QCA 156.

15 With whom McPherson and Thomas JJA concurred.

16 *Gillies* at [17] and [19]-[22].

provisions of r 24 which would ordinarily apply to the renewal of originating process so that it may be served on a defendant.

[21] Under r 24 the Registrar may renew a claim "for further periods, of not more than a year at a time, starting on the day after the claim would otherwise end." Although the rule refers to renewal for "not more than a year at a time," the court may renew it for a greater period in exercise of its general power to extend a time set under the rules: r 7; *Brown v Coccaro* (1993) 10 WAR 391; *Singh (Joginder) v Duport Harper Foundries Ltd* [1994] 1 WLR 769 at 775.

[22] Service of stale process is not a nullity, but an irregularity: r 371(1). See *Van Leer Australia Pty Ltd v Palace Shipping KK* (1980) 180 CLR 337. The Court may waive the irregularity under r 371 (see *Leal v Dunlop Bio-Processes International Ltd* [1984] 1 WLR 874; *Boocock v Hilton International Co* [1993] 1 WLR 1065; *Brealey v Board of Management Royal Perth Hospital* (1999) 21 WAR 79), but it should do so only if it is proper to renew the process."

[31] Service of a claim while it was stale was also considered an irregularity by Holmes J,[17] in *The IMB Group Pty Ltd (In Liquidation) and Ors v ACCC and Ors*, relying on *Gillies*:[18]

"[25] In considering whether any or all of the Registrar's decisions should be set aside it is appropriate to consider not only what was before him but all the information now before me. If I were to take the view that the claim was at any stage wrongly renewed, its service while stale would be an irregularity capable of cure in the exercise of my powers under r 371; but such an exercise would be appropriate only if I were satisfied that it was proper to renew the claim. Rule 24(3) provides that a claim may be renewed whether or not it is in force."

[32] Further, in *Zaporozhki v AAI Limited (trading as GIO)*,[19] Wilson J adopted *Gillies* and referred to r 24 and r 371, in terms that effective service must take place while the claim is in force:

"[81] To be effective, service of a claim must take place whilst the claim remains in force, which is for one year after filing. In this case, service did not occur within one year of filing, as the claim was filed on 1 February 2019 and served upon the defendant more than two years later. Service of a stale claim is, however, an irregularity, not a nullity. It is therefore capable of being cured in the exercise of my powers under rule 371 of the UCPR. However, such an exercise would be appropriate only if I were satisfied that it was proper to renew the claim under rule 24."

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17 As her Honour then was.
18 [2005] QSC 139 at [25]. Citations omitted.
19 [2022] QSC 22, at [81]. Citations omitted.

[33] Rule 282 UCPR provides:

> “**282 Service must be proved**
>
> A plaintiff must prove service of a claim on a defendant in default before judgment may be given under this division against the defendant.”

[34] Here, the Claim was not “in force” at the time it was served. However, as was accepted, service was in accordance with the order for substituted service.

[35] UCPR rule 116 provides for substituted service:[20]

> “**116 Substituted service**
>
> (1) If, for any reason, it is impracticable to serve a document in a way required under this chapter, the court may make an order substituting another way of serving the document.
>
> (2) The court may, in the order, specify the steps to be taken, instead of service, for bringing the document to the attention of the person to be served.
>
> (3) The court may, in the order, **specify that the document is to be taken to have been served on the happening of a specified event or at the end of a specified time**.
>
> (4) The court may make an order under this rule even though the person to be served is not in Queensland or was not in Queensland when the proceeding started.”

[36] The Order for substituted service is important here. It relevantly provides:

> “1. Pursuant to Rule 116 of the *Uniform Civil Procedure Rules 1999* (“**UCPR**”):
>
> a. personal service of the Claim and Statement of Claim on the Defendant, filed in the Supreme Court of Queensland at Brisbane on 6 February 2025 with court number 523/25, be dispensed with;
>
> b. In lieu of personal service, a copy of the Documents together with a sealed copy of this Order, be served by sending:
>
> i. in PDF format to the Defendant’s solicitors at domenica@riggiosolicitors.com;
>
> ii. in PDF format to the registered office of M Sharma Nominees Pty Ltd (ACN 648 646 486) at info@nexiasydney.com.au;
>
> iii. via post to the registered office of M Sharma Nominees Pty Ltd (ACN 648 646 486) at Level 22, 2 Market Street Sydney, NSW, 2000.

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[20] Emphasis added.

c. The Documents shall be taken to have been served four (4) days after compliance with paragraph 1(b) above."

[37] Notably, the Order stipulated that a copy of "the Documents", that being a reference to "the Claim and Statement of Claim", could be served, and that they "shall be taken to have been served' four days later.

[38] However, given the line of authority referred to above, commencing with *Gillies v Dibbetts*, the Order cannot be construed as permitting that which would be irregular, i.e. service of the Claim when it was stale. The Order must be construed as providing that service would be effected by the stipulated methods, provided the Claim was in force at the time.

[39] As set out above, service here was irregular. That service was the basis for the default judgment.

[40] In *Cusack v de Angelis*,[21] Muir JA said:

> "It has been long accepted that a defendant is entitled to have an irregularly entered judgment set aside as of right, subject to the exercise of a power of amendment and the futility of interfering with the judgment. Such judgments are the product of the exercise of administrative acts performed without legal authority. Irregularity, as that term is used in relation to default judgments, normally results from a failure to comply with the rules of court relating to the entering of default judgments."

[41] That is the case here, and the judgment must be set aside.

Explanation of the delay

[42] On 16 February 2026, the day of service, Sharma sent the documents to Ms Riggio, stating:

> "… please see the docs attached. I'm not sure why are they sending these to my old company accountant. Can you please advise what these letters mean?"

[43] Sharma deposes that on 16 February 2026, he forwarded those documents to his solicitor, Ms Riggio. He swears that:

> "6. At the time I received those documents I did not understand the relationship of the documents to my private company or their effect, that there was a period of 28 days within which a defence had to be filed or that anything was required of me in relation to the claim. I had engaged Ms Riggio in or about 2024 to act for me in relation to the liquidator's claim against me, and I relied on her to deal with any documents relating to it and to advise me. I understood from her that she was dealing with the matter and had been seeking information from the liquidator.

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21 [2008] 1 Qd R 344 at 351 [36]. Citations omitted.

7. I had authorised Ms Riggio to deal with the liquidator, Hall Chadwick, and with the Plaintiff's solicitors, Celtic Legal, on my behalf. I did not receive any advice from her, that I needed to do anything in relation to the documents received.

8. Between 16 February 2026 and 30 April 2026 no one from the Plaintiffs' solicitors contacted me directly about the proceeding."

[44] That explanation cannot be accepted. The surrounding facts make it so implausible that it should be rejected, even at this stage of the proceedings.

[45] First, the covering letter was addressed to Sharma personally:[22]

> "**M Sharma**
>
> **c/ M Sharma Nominees Pty Ltd** (ACN 648 646 486)
>
> Level 22, 2 Market Street
>
> SYDNEY NSW 2000"

[46] Secondly, the letter commenced "Dear Mr Sharma". Self evidently, it was addressed to, and intended for, Sharma personally.

[47] Thirdly, the heading of the letter was:

> "**RE: BS523/25 Onward Energy Pty Ltd (In Liquidation) (ACN 620 401 452) & Anor -v- Mohit Sharma**".

[48] Thus, the heading of the letter made clear that its subject was a proceeding between Onward Energy (in liquidation), and Sharma personally. On its face it did not involve Sharma's private company. The two different ACN's make it plain that the company in the proceeding was not the Sharma private company. Of course, Sharma knew Onward Energy was in liquidation as he had put the company into voluntary liquidation himself.

[49] Fourthly, the letter says that the solicitors "act for the Plaintiff in the abovenamed proceedings". Plainly the Plaintiff was Onward Energy and the defendant was Sharma personally. What was evident from that, is that the action was by the company in liquidation against Sharma personally.

[50] Fifthly, the letter said the documents were given "by way of service". Nothing in Sharma's affidavits suggest that he did not know what "service" meant.

[51] Sixthly, the list of items in the body of the letter revealed that the proceedings were in the Supreme Court of Queensland. There is not the faintest suggestion that Sharma's private company was involved in proceedings in the Supreme Court of Queensland.

[52] Seventhly, item No 3 was said to be an "Order for Substituted Service". Reference to that document would have revealed clearly that the Supreme Court of Queensland was permitting Sharma to be served with documents.

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[22] Emphasis added.

[53] Eighthly, even the briefest glance at the Claim or Statement of Claim would have revealed plainly that Onward Energy was suing Sharma personally. The Sharma private company is nowhere mentioned.

[54] Ninthly, the history concerning the ATO's assessment of the debt after the audit, and the liquidator's claim that Sharma was liable for insolvent trading, leave no other inference but that Sharma (and Ms Riggio if it matters) knew what the proceedings were about.

[55] On 25 March 2024 the ATO wrote to Onward Energy stating that the audit had been completed and that Onward Energy owed $1,052,994.21.

[56] On 30 April 2026, the ATO wrote to Sharma (emailing the letter to the email address mohitsharma@me.com), and told him that the finalisation letter had been updated to correct minor errors. It noted that the ATO had not "been able to reach you to discuss payment of the debt".

[57] Sharma deposes that mohitsharma@me.com is his personal email address.

[58] On 14 June 2024, Onward Energy resolved that it be wound up. As Sharma was the sole director and shareholder, the resolution was his.

[59] On 10 September 2024, the liquidator wrote to Sharma. The letter was sent to "PO BOX 363, Pyrmont NSW". That is the same box number that was applicable for Onward Energy and used by the ATO to correspond with Onward Energy. The letter stated that the liquidator considered Onward Energy had been insolvent since 1 July 2019, and that Sharma was liable under s 588G and s 588M to pay compensation for insolvent trading, in the sum of $810,504.93. The liquidator demanded payment of that sum.

[60] On 13 September 2024 the solicitors for Sharma, by Ms Riggio, wrote to the liquidator disputing liability for insolvent trading and stating "we hereby put you on notice that any action taken by you will be strenuously defended".

[61] Tenthly, Sharma deposed that when he received the document on 16 February 2026:

> "… I understood from their format that they comprised court documents. I had a panic response when I saw them and did not read them in any detail. I forwarded the bundle to Ms Riggio at 2:17 PM the same day. My understanding at that time was that Ms Riggio, as my solicitor instructed since June 2024 on this very matter, would deal with the documents."

[62] From that it is evident that:

(a) Sharma knew they were court documents;

(b) he did read the documents to some degree;

(c) he sent them to Ms Riggio because she was instructed "**on this very matter**"; and

(d) what he instructed Ms Riggio on, was the Claim foreshadowed by the liquidator for recovery due to insolvent trading: see paragraphs [59] and [60] above.

[63] Eleventhly, the facts prior to service under the order for substituted service reveal that Sharma and Ms Riggio were anticipating service of legal proceedings by the liquidator.

[64] In October 2024, Ms Riggio had been retained by Sharma to act for him "in all dealings with Celtic Legal as solicitors for Hall Chadwick and Mr Albarran". The authority given to Ms Riggio was:[23]

> "to correspond with Hall Chadwick and (from in or about October 2024) Celtic Legal on my behalf **in respect of the underlying liquidation".**

[65] The question whether Ms Riggio would be instructed to accept service on behalf of Sharma was discussed between her and Celtic Legal on 24 October 2024, when Ms Riggio said:

> "I am seeking instructions as to whether I can accept service on his behalf and will advise you in due course."

[66] On 20 December 2024, Ms Riggio again stated to Celtic Legal that the Claim would be "strenuously defended". That Claim was the one foreshadowed by Hall Chadwick on 10 September 2024: see paragraph [59] above.

[67] On 28 April 2025, Celtic Legal sent a copy of the Claim and Statement of Claim to Ms Riggio.

[68] On 5 February 2026, Ms Riggio again told Celtic Legal that she was seeking instructions as to whether she could accept service.

[69] Twelfthly, it was accepted that service had been effected in accordance with the order for substituted service. Reference to the order shows that service on Ms Riggio personally was part of the way ordered to effect service.[24] That occurred on 16 February 2026, by email direct to Ms Riggio.[25]

[70] Thirteenthly, it is notable that there is no affidavit from Ms Riggio confirming Sharma's account. In light of Ms Riggio's involvement as detailed above, it would be astonishing if she did not read the documents when they were received on 28 April 2025, and on 16 February 2026 directly to her email, nor that she did not understand what they were when she received the service copy on 16 February 2026 from Sharma. In fact, Ms Riggio responded to a request from Sharma's current solicitors, saying that upon receipt of the documents on 16 February 2026, she and Sharma "had a discussion".[26]

[71] In my view, Sharma could have been in no doubt that the documents were addressed to and concerned him personally and that they were part of court proceedings to recover against Sharma on the basis of insolvent trading. The suggestions to the contrary must be rejected.

Demonstration of a *prima facie* defence?

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23 Emphasis added.
24 Substituted Service Order, paragraph 1(b)(i).
25 Affidavit of Sharma sworn 18 May 2026, Ex MS 3.
26 Affidavit of Sharma sworn 18 May 2026, Ex MS 7 (page 65).

[72] This aspect may be dealt with fairly shortly.

[73] The authorities establish that the applicant must produce to the Court evidence that he has a *prima facie* defence.

[74] Here, Sharma has produced a defence which, amongst other things: (a) challenges insolvency at all relevant times prior to the crystallisation of the ATO debt on 14 June 2024; (b) denies his responsibility for the loss or damage, and asserts it falls on various advisers to Onward Energy; (c) says he had a reasonable expectation of solvency at all times; (d) says he reasonably relied on professional advisors as to solvency; (e) says that he took reasonable steps to prevent the incurring of debts; and (f) says he acted honestly at all times.

[75] Sharma has deposed that the facts pleaded in the defence are true.

[76] On this application it is not possible to conclude that those claims are misplaced. That is a matter for trial. In my view, there is sufficient to demonstrate a *prima facie* defence.

Renewal of the Claim?

[77] The liquidator seeks renewal of the Claim, at least to the point of service on 16 February 2026. There is no good basis to resist that application. The history set out above shows repeated attempts to achieve service, and almost certain knowledge of the Claim on the part of Sharma and his solicitors. Once the default judgment is set aside there is no possible prejudice to Sharma in doing so.

[78] Further, renewal should not be dependant upon a fight as to the supposed deficiencies in the Statement of Claim. The Claim articulates a claim for relief under s 1317H or alternatively s 588M of the *Corporations Act.* Attacks on the Statement of Claim can be dealt with at a later time.

Orders

[79] For the reasons above I order that:

1. Pursuant to r 24(2) of the *Uniform Civil Procedure Rules 1999*, the Claim is renewed to 6 February 2026.

2. Pursuant to r 24(2) of the *Uniform Civil Procedure Rules 1999*, the Claim as renewed under Order 1 is further renewed until 6 February 2027.

3. The default judgment obtained on 2 April 2026 is set aside.

4. The respondent pay the applicant's costs of the application.