

SUPREME COURT OF QUEENSLAND

CITATION: *Wilson v PUNP1 Pty Ltd* [2026] QSC 244

PARTIES: **ROBERT WILSON AND ANNETTE WILSON**
(applicants)
v
PUNP1 PTY LTD (ACN 644 257 116)
(respondent)

FILE NO/S: BS 3968 of 2026

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 9 October 2026

DELIVERED AT: Brisbane

HEARING DATE: 29 September 2026

JUDGE: Martin J

ORDER: **The application is dismissed.**

CATCHWORDS: CORPORATIONS – WINDING UP – APPLICATIONS FOR WINDING UP BY COURT – GENERALLY – where the applicants served a statutory demand on the respondent company – where the respondent company did not pay the statutory demand or do anything within the 21 day period – where the applicants filed an application for the court to wind up the respondent company – where the respondent company paid the amount of the demand in full the evening before the application was to be heard by the court – where the applicants maintain that the respondent company should be wound up – whether the respondent company should be wound up on the basis of the presumption of insolvency

Corporations Act 2001, s 459E

Braams Group Pty Ltd v Miric (2002) 44 ASCR 124; [2002] NSCWA 417

De Montford v Southern Cross Exploration NL (1987) 17 NSWLR 468

Deputy Commissioner of Taxation v Swoosh Hand Car Wash Pty Ltd [2014] FCA 73

Motor Terms Co Pty Ltd v Liberty Insurance Ltd (In liquidation) (1967) 116 CLR 177

COUNSEL: P O'Shea, Solicitor, for the Applicants
J Gray, Solicitor, for the Respondent

SOLICITORS: O'Shea Lawyers for the Applicants
Celtic Lawyers for the Respondent

- [1] The applicants seek an order winding up the respondent on the basis of the respondent's failure to comply with a statutory demand under s 459E of the *Corporations Act 2001*. The respondent company did not file or serve any material within the 21 day period allowed by the statutory demand and did not do anything until 7:33 pm on 14 September 2026 when the amount of the demand was paid in full. That was the evening before the date fixed for the hearing of the application for winding up. On that date the application was adjourned to 29 September 2026.
- [2] The applicants maintain that the company should be wound up on the basis of insolvency, which is presumed following the failure of the company to challenge the statutory demand within 21 days or to pay the amount claimed within that time. The payment by the respondent company outside that 21 day period does not remove the presumption of insolvency.
- [3] The applicants rely on both the presumption and on the costs which they have incurred – a total of \$11,104.50 – in pursuing this application. This, it was argued, is an additional debt incurred by the respondent company. It is not. The costs incurred by the applicants do not become a debt owed by the respondent to the applicants unless and until an order of this Court is made to that effect.
- [4] The applicants sought to rely upon Jacobson J's decision in *Deputy Commissioner of Taxation v Swoosh Hand Car Wash Pty Ltd*,¹ where he said:

“[14] ... in my opinion, the Plaintiff is entitled to rely upon the debt without issuing a further statutory demand. It has the benefit of the presumption of insolvency arising under s 459C(2) of the Act. The Plaintiff's position is little different from that of a substituted creditor who would be able to pursue a winding up order without issuing a further demand.”

¹ [2014] FCA 73.

- [5] In *Swoosh* the company had, after paying the amount in the statutory demand, incurred further tax debts about which his Honour said:

“[15] What is critical is that the additional debt is not, and cannot, be disputed.”

- [6] That is not the case here. There would, in the event of an order for costs being made, be an opportunity for the respondent in this matter to dispute, through the assessment process, the costs claimed.

- [7] I was referred to other single judge decisions but prefer to determine this on the basis that there is no “new” debt. There is still, though, the question of the discretion available in this case.

- [8] This issue was also dealt with in general terms by Menzies J in *Motor Terms Co Pty Ltd v Liberty Insurance Ltd (In liquidation)*² where he said:

“In the course of argument upon this appeal, reference was made to the consequence of a petitioning creditor being paid off between the presentation of the petition and the making of an order. That circumstance would not, in my opinion, put an end to the petition nor would it affect the jurisdiction of the court to hear and determine the petition although, of course, in such circumstances proceedings might not be continued and, if they were, the court could, in the exercise of its direction refuse to make a winding up order upon the petition of a person not then a creditor.”³

- [9] I am persuaded by the decision of the Court of Appeal of New South Wales in *Braams Group Pty Ltd v Miric*.⁴ In that case, Ipp JA⁵ said that in the situation that arises when a debtor pays a creditor in full after the expiry of the statutory 21-day period, the principles enunciated by Needham J in *De Montfort v Southern Cross Exploration NL*⁶ must govern the position:

“I should have thought that, while the effect of the s 364 notice undoubtedly continues so as to allow another creditor to become substituted for the original plaintiff, that principle could not possibly apply to a case where it is the plaintiff itself who claims to continue the proceedings after being paid out the only amount which he has claimed in those proceedings. It would, I think, be quite unacceptable for a creditor to serve a notice upon a debtor specifying a sum in that

² (1967) 116 CLR 177.

³ At 194-195.

⁴ (2002) 44 ASCR 124; [2002] NSWCA 417.

⁵ With whom Mason P agreed.

⁶ (1987) 17 NSWLR 468.

notice, then, when the debtor failed to comply with that notice, take proceedings, be paid the full amount claimed, and then seek to wind the defendant up nonetheless.”

- [10] While the company has not proved its solvency, no other creditor has sought to be substituted. I am not satisfied that it is appropriate to make an order winding up the respondent in these circumstances and I dismiss the application.

Orders

- [11] The application is dismissed. I will hear the parties on costs.