# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Griffith Group Ripley Pty Ltd v Starbucks Coffee Australia Pty Ltd* [2026] QSC 256 |
| PARTIES: | **GRIFFITH GROUP RIPLEY PTY LTD ACN 652 024 827**<br>(applicant)<br>**v**<br>**STARBUCKS COFFEE AUSTRALIA PTY LTD ACN 169 062 926**<br>(respondent) |
| FILE NO/S: | 3503/26 |
| DIVISION: | Trial Division |
| PROCEEDING: | Application |
| ORIGINATING COURT: | Supreme Court at Brisbane |
| DELIVERED ON: | 23 October 2026 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 30 September 2026 |
| JUDGE: | Smith J |
| ORDER: | **1. The application is dismissed.**<br>**2. I will hear the parties on the question of costs.** |
| CATCHWORDS: | CORPORATIONS – WINDING UP – WINDING UP AND INSOLVENCY – STATUTORY DEMAND – APPLICATION TO SET ASIDE DEMAND – GENUINE DISPUTE AS TO INDEBTEDNESS – ASSESSING GENUINENESS – GENERALLY – where the applicant has been served with a statutory demand by the respondent – where the applicant alleges that the claim is not a debt or liquidated demand – where the applicant alleges no liability arises for the payment of the monies – whether genuine dispute is raised<br><br>*Corporations Act 2001* (Cth) s 459G, s 459H, s 459J<br><br>*Allianz Australia Insurance Limited v Delor Vue Apartments CTS 39788* [2022] HCA 38; (2022) 277 CLR 445, applied<br>*Australian Communication Exchange Ltd v Pilot Partners Pty Ltd* [2017] QSC 176, cited<br>*BRC Group Pty Ltd v Watagan Park Pty Ltd* [2025] VSCA 36, cited<br>*Britten-Norman Pty Ltd v Analysis & Technology Australia Pty Ltd* [2013] NSWCA 344; (2013) 85 NSWLR 601, cited |

*Eyota Pty Ltd v Hanave Pty Ltd* (1994) 12 ACSR 785, cited
*Graywinter Properties Pty Ltd v Gas & Fuel Corporation Superannuation Fund* [1996] FCA 822; (1996) 70 FCR 452, cited
*Ligon 158 Pty Ltd v Huber* [2016] NSWCA 330; (2016) 117 ACCR 495, cited
*M Resources Trading Pty Ltd v Australia Pacific Coal Ltd* [2026] QCA 150, applied
*Sargent v ASL Developments Ltd* [1974] HCA 40; (1974) 131 CLR 634, applied
*Thomson v Australia and New Zealand Banking Group Ltd* [2024] QCA 73, applied

COUNSEL: R A Kipps for the applicant
S L Philippou for the respondent

SOLICITORS: Enyo Lawyers for the applicant
O'Sullivan Sneddon Law for the respondent

**INTRODUCTION**

[1] This is an application to set aside a creditor's statutory demand for payment of debt served on the applicant (**Griffith**) on 6 July 2026.

[2] Griffith owned premises at 2 Binnies Road, Ripley in Queensland. The respondent (**Starbucks**) was the tenant of Lot 3 of the premises. Starbucks paid rent of $250,000 per year to Griffith.

[3] However, on 20 September 2024, Griffith as landlord entered into an Incentive Deed with Starbucks as tenant with respect to the lease. This had the effect of creating a rebate for rent paid if the average weekly sales (**AWS**) of Starbucks were less than a nominated sum of money.

[4] Starbucks says that under the Incentive Deed it is owed $449,441.08. Griffith denies that it owes this sum.

[5] For the reasons which follow, it is concluded there is no genuine dispute as to the debt claimed and the application is dismissed.

**BACKGROUND**

[6] The discussions concerning the lease commenced in late 2022. The parties agreed upon a commercial structure whereby the face rent of the lease would be set at $250,000 per annum plus GST, but the effective rent would be adjusted by an Incentive Deed providing for abatement tied to the trading performance of the store in its first lease year.

[7] The Incentive Deed provided as follows:

"**2. Rent Incentive**

(a) Despite the amount of Rent payable by the Tenant to the Landlord under the Lease, the Landlord waives payment of $150,000 of the Rent by twelve equal monthly instalments for the first Lease year (**Rent Incentive**).

(b) For the avoidance of doubt:

(i) all other monies payable by the Tenant under the Lease (including outgoings and operating expenses) remain payable in full in accordance with the Lease and are unaffected by the Rent Incentive; and

(ii) the Rent Incentive must not be considered in any review of the Rent under the Lease.

(c) If the Tenant defaults under any Lease Documents:

(i) any remaining obligations of the Landlord (but not the Tenant) under this clause 2 are suspended from the expiry date of Landlord's notice of default under this clause 2 until the date on which the default may be remedied to the Landlord's reasonable satisfaction provided the Landlord has given the Tenant reasonable written notice to remedy the default and the Landlord's intention to suspend the Landlord's obligations under the clause 2; and

(ii) the Tenant must pay to the Landlord any amount reasonably necessary to fully compensate the Landlord for any Claim concerning the Tenant's default.

**3. Rent Abatement**

(a) In this clause:

(i) **Average Weekly Sales** means the average weekly sales (whether for cash or on credit or by instalment) of all goods (including food and beverages) and services sold, transacted or otherwise supplied by the Tenant from or attributable to the Premises; and

(ii) **Rent Abatement Amount** means:

(A) if the Average Weekly Sales in the first Lease Year are equal to or less than $45,000.00 excluding GST – the Rent Abatement Amount is $30,900.00 excluding GST in second Lease Year and then increased by 3% on the commencement of each subsequent Lease Year; and

(B) if the Average Weekly Sales in the first Lease Year are between $45,000.01 and $55,000.00 excluding GST (inclusive) – the Rent Abatement Amount is $15,450.00 excluding GST in second Lease Year and

then increased by 3% on the commencement of each subsequent Lease Year.

(b) Subject to clauses 3(d) and 3(e), despite the amount of Rent payable by the Tenant to the Landlord under the Lease, the Landlord waives $30,000 excluding GST of the Rent by twelve equal monthly instalments during the first Lease Year (**Rent Waiver**).

(c) Within 30 days after the end of the first Lease Year the Tenant must provide the Landlord with an audited statement of its Average Weekly Sales.

(d) If the Average Weekly Sales in the first Lease Year are $55,000.01 excluding GST or more then:

(i) within 60 days after the end of the first Lease Year the Tenant must repay the Landlord the $30,000.00 excluding GST waived under clause 3(b); and

(ii) the Rent Abatement described in clause 3(f) does not apply.

(e) If the Average Weekly Sales in the first Lease Year are between $45,000.01 and $55,000.00 excluding GST (inclusive) then within 60 days after the expiry of the first Lease Year the Tenant must repay the Landlord $15,000.00 excluding GST of the amount waived under clause 3(b).

(f) Despite the amount of Rent payable by the Tenant to the Landlord under the Lease, the Landlord waives payment of the Rent Abatement Amount by equal monthly instalments during each Lease Year during the Term from the commencement of the second Lease Year (**Rent Abatement**).

(g) For the avoidance of doubt:

(i) all other monies payable by the Tenant under the Lease (including outgoings and operating expenses) remain payable in full in accordance with the Lease and are unaffected by the Rent Waiver and the Rent Abatement, and

(ii) the Rent Waiver and the Rent Abatement must not be considered in any review of the Rent under the Lease.

(h) If the Tenant defaults under any Lease Documents:

(i) any remaining obligations of the Landlord (but not the Tenant) under this clause 3 are suspended from the expiry date of the Landlord's notice of default under this clause 3(h)(i) until the date on which the default may be remedied to the Landlord's reasonable satisfaction, provided the Landlord has given the Tenant reasonable written notice to remedy the default and of the Landlord's intention to suspend the Landlord's obligations under this clause 3(h)(i); and

(ii) the Tenant must pay to the Landlord any amount reasonably necessary to fully compensate the Landlord for any Claim concerning the Tenant's default.

….

**5. Payout of Incentive and sale of Land**

(a) At any time during the currency of the Incentive the Landlord may elect to pay out to the Tenant that part of the Incentive not yet provided to the Tenant in full and final satisfaction of the Landlord's obligations in respect of the Incentive.

(b) The Landlord will not sell or otherwise dispose of the Premises unless the purchaser or transferee has executed a deed in favour of the Tenant agreeing to be bound by this Deed. Provided the Landlord complies with this clause 5(b) it will be released from its obligation under this Deed arising after it ceases to be the owner of the Premises. This clause 5(b) does not apply if the Landlord elects to exercise its rights under clause 5(a) on or before the date the Landlord ceases to be the owner of the Premises."

[8] Trading commenced on 27 March 2025.

[9] On or about 19 April 2025, Griffith and Starbucks entered into a lease agreement. The term of the Lease was 12 years and the rent for the first year of the lease was $250,000 per annum plus GST.

[10] Clause 14 of the lease provided that Starbucks was required to keep the business open during core business hours, i.e. Monday to Sunday, 8am to 6pm.

[11] In early July 2025, Griffith informed Mr Hastie of Starbucks that it was preparing to market and sell the premises. It wished to sell the property on an unencumbered basis without the prospective purchaser assuming the landlord's ongoing incentive obligations.

[12] On 7 July 2025, Griffith's solicitor emailed Starbucks' solicitor noting that the property would shortly go to the market stating:

> "My client will shortly be taking this property to the market and wishes to payout the Incentive Deed (pursuant to clause 5(a) before settlement). Payout of clause 2 of the Incentive Deed is simple however payout of clause 3 is more difficult given the exact quantum of the incentive won't be known until the average weekly sales for the first lease year are available. In order to facilitate the payout of clause 3 my client proposes that:
>
> 1. My client pays the maximum amount payable to your client under clause 3 before the sale of the properties; and
>
> 2. Once the actual amount due to your client under clause 3 is able to be calculated after the first lease year then your client will reimburse my client for any overpayment made under point 1 above.

Can you please advise if the above is acceptable to your client? If so, I will put together a short deed of variation to the Incentive Deed to document this arrangement."

[13] As a consequence, a Deed of Variation was negotiated and executed on 14 August 2025. This provided as follows:

"**1. Variation**

The Incentive Deed is varied as follows effective from the date of this document:

1. clause 5(b) is amended by deleting the final sentence and replacing it with the following:

   This clause 5(b) does not apply if the Landlord elects to exercise its rights under clause 5(a) (and if applicable clause 5(c)) on or before the date the Landlord ceases to be the owner of the Premises. If the Landlord elects to exercise its rights under clause 5(a) (and if applicable clause 5(c)) on or before the date the Landlord ceases to be the owner of the Premises, then this Deed will not be assigned to the new landlord.

2. Insert a new clause 5(c), 5(d) and 5(e) as follows:

   (c) If the Landlord wishes to payout the Incentive to the Tenant under clause 5(a) before the Tenant provides the Landlord with the audited statement of Average Weekly Sales under clause 3(c), then for the purpose of determining the amount to be paid under clause 5(a) on account of the Rent Waiver and the Rent Abatement the parties agree as follows:

   (i) the Landlord may at any time payout to the Tenant the maximum outstanding amount the Tenant is entitled to for:

   (A) the Rent Incentive (clause 2) (Balance Rent Incentive Payout); and

   (B) the Rent Waiver (clause 3(b)) and the Rent Abatement (clause 3(f)) (Maximum Incentive Payout); and

   (ii) once the actual outstanding amount the Tenant is entitled to for the Rent Waiver (taking into account any repayment due to the Landlord under clause 3(d)i) or 3(e)) and the Rent Abatement is able to be calculated pursuant to clause 3 (being when the Tenant provides the audited statement of Average Weekly Sales under clause 3(c))

(**Actual Incentive Payout**), then the Tenant must repay the Landlord any difference between the Maximum Incentive Payout and the Actual Incentive Payout within 60 days after the end of the first Lease Year.

*For example:*

*If the Landlord pays out the Incentive pursuant to clause 5(a) on 27 September 2025 then the Landlord must pay the Tenant the following amounts under clause 5(a):*

(1) *$75,000.00 plus GST on account of the Rent Incentive under clause 2(a); plus*

(2) *the Maximum Incentive Amount of $410,760.89 plus GST comprising:*

(A) $15,000.00 plus GST on account of the balance Rent Waiver under clause 3(b); and

(B) $395,760.89 plus GST on account of the Rent Abatement under clause 3(f), and

*if the Average Weekly Sales provided under clause 3(c) then shows Average Weekly Sales of $50,000.00 excluding GST, then the Actual Incentive Payout will be $182,880.44 comprising:*

(1) *-$15,000.00 plus GST on account of the Tenant owing the Landlord that amount pursuant to clause 3(e); and*

(2) *$197,880.44 plus GST on account of the Rent Abatement under clause 3(f).*

*then:*

(3) *the Maximum Incentive Payout is $410,760.89 plus GST;*

(4) *the Actual Incentive Payout is $182,880.44 plus GST; and*

(5) *the amount payable by the Tenant to the Landlord under clause 5(c)(ii) is $227,882.74 plus GST.*

(d) If the Average Weekly Sales under clause 3(c) is equal to or less than $45,000 excluding GST, then the difference between the Maximum Incentive Payout and the Actual Incentive Payment will be

\$0.00 and the Tenant will not be required to make any payment to the Landlord.

(e) No part of the Balance Rent Incentive Payout will be repayable by the Tenant to the Landlord under clause 5(c) of this Deed and the payment of the Balance Rent Incentive Payout and Maximum Incentive Payout pursuant to clause 5(c) must be made in accordance with the Tenant's written direction."

[14] On 21 August 2025, Griffith emailed Starbucks advising that settlement date was on 25 September 2025. A request was made for the summary of weekly turnover figures since the site opened.

[15] On 21 August 2025 Starbucks replied, thanking Griffith for their help in getting the payout finalised and asking for confirmation of the final payout figure and when it would be paid.

[16] On 25 September 2025, Griffith completed the sale and transferred the Ripley premises to the purchaser. Griffith did not require the purchaser to execute a deed of covenant in favour of Starbucks under clause 5(b).

[17] On 30 September 2025, Griffith emailed Starbucks setting out its calculations of payment stating the "incentive payment needs to be finalised". Griffith asked Starbucks to review and confirm the figures. They wanted the name of someone to liaise with to "confirm" and "finalise payment details." The incentive payout was calculated over a 12-year period at \$483,582.80 excluding GST. The year one balance was \$87,821.92 excluding GST.

[18] Later, on 30 September 2025, Starbucks emailed Griffith calculating the total payout due at \$485,760.89. The figures were sent to the finance team to confirm. It was noted that the \$75,000 rent incentive could be made as it was not subject to AWS calculations, but the \$15,000 for year 1 and \$395,760.89 for years 2 to 12 would need to remain in trust until the AWS was known.

[19] On 2 October 2025, Griffith noted that as Starbucks had paid rent to the end of September, the rent was adjusted with the purchaser so the incentive payout should be calculated only from 1 October.

[20] On 8 October 2025, Griffith followed up with an email asking if Starbucks' finance team had reviewed [the numbers].

[21] On 23 October 2025, Starbucks emailed Griffith stating they had confirmation on the Ripley payout and could confirm that the numbers were accepted, "Can you please arrange for this amount to be transferred to our lawyers' trust account as soon as possible."

[22] There was an exchange of correspondence between the parties' lawyers on 11 December 2025 and 12 December 2025.

[23] Griffith's lawyers agreed that the balance rent incentive under clause 2(a) of the incentive deed was \$75,000 plus GST but they were advised the maximum incentive

payout under clause 5(c)(i)(B) of the Incentive Deed should be $408,582.80 plus GST. Figures were set out and Ms Lin said on behalf of Griffith, "please confirm your client agrees with these figures, we look forward to hearing from you."

[24] On 15 December 2025, Starbucks' lawyers replied stating, "We are instructed to confirm the maximum incentive amount as $408,582.80 plus GST $449,441.08."

[25] I conclude that at this stage there was an agreement as to the calculation of the maximum amount.

[26] On 5 December 2025, Starbucks issued a tax invoice to Griffith in the sum of $75,000 plus GST of $7,500 totalling $82,500 described as "balance payout of the Rent Incentive under clause 2(a) of the Incentive Deed."

[27] Between January 2026 and March 2026, Mr Hastie emailed Griffith noting the invoice remained outstanding and chasing payment.

[28] On 16 February 2026, Mr Hastie emailed Griffith stating, "Can you please provide an update on this, have the funds been paid yet? Invoices were provided in Dec and Finance are chasing to close this out. We are also expecting the additional circa $400K to be paid, please follow this up."

[29] On 9 March 2026, Griffith replied stating that the $82,500 invoice would be paid by the end of the month and asked Starbucks, "would you be comfortable if we waited for the audited trading figures to be finalised and then arrange a single payment for the total outstanding abatement amount at that time?"

[30] On 9 March 2026, Starbucks replied stating, "The store is still not hitting the $45K weekly threshold, the full abatement will be payable. I'll see if I can get something out of the finance team now to confirm this. Noting this, please have the outstanding abatement paid at the same time, no later than the end of this month."

[31] Griffith replied seeking to have the figures to reconcile "everything" and work through finalising the "outstanding abatement."

[32] On 1 April 2026, Mr Hastie wrote to Griffith advising he had now been asked to formally engage lawyers to seek payment and interest claimable on the overdue funds. "The $75K should have been paid when you sold the site, and the $400K was meant to be put in trust …".

[33] On 1 April 2026, Griffith replied stating the $75K plus GST payment had been made that day. "Regarding the balance we are proposing to set up a payment plan about this to be reimbursed over the following 12 months. When do you think you'll be in a position to provide the 12 months' worth of turnover/trading history?"

[34] Later that day, the proposition as to a payment plan was rejected by Mr Hastie. He pointed out that Griffith was well aware from the moment the store opened that the sales were not in excess of $45k per week. He demanded payment of $400,000 by the next day.

[35] On 2 April 2026, a tax invoice was issued from Starbucks to Griffith for the amount of $449,441.08.

[36] On 8 April 2026, Griffith's solicitor was provided with a formal statement as to AWS for the Ripley store dated 8 April 2026, certified by Rowena Burgess CPA, the Chief Financial Officer of Starbucks. This confirmed that the average weekly sales from 27 March 2025 until 29 March 2026 were $38,878.01.

[37] Mr Hastie swears[1] that because the average weekly sales were less than $45,000 excluding GST:

(a) Under clause 3(a)(ii)(A) of the Incentive Deed, the rent abatement amount was confirmed at $30,900 excluding GST for the second lease year, increasing by 3 per cent compound annually for each subsequent lease year;

(b) Under clause 5(d) of the varied Incentive Deed, the difference between the maximum incentive payout and the actual incentive payout was exactly zero dollars; and

(c) Starbucks was not required to make any repayment to Griffith and the full balance of $449,441.08, as confirmed, was immediately due and payable.

[38] On 15 May 2026, Starbucks served a creditor's statutory demand for $449,441.08 on Griffith.

[39] On 27 May 2026, Griffith's solicitors wrote to Starbucks' solicitors disputing the demand on the grounds that the statement certified by Ms Burgess did not satisfy the requirement for an "audited statement" under clause 3(c) as she was not an independent registered company auditor.

[40] On 29 May 2026, without any admission of liability and to remove any argument concerning the certification, Starbucks withdrew the statutory demand. Starbucks then engaged its independent external auditors PricewaterhouseCoopers (**PwC**) to conduct a procedures review of the sales records of the Ripley store for the first lease year in accordance with the Australian standard.

[41] On 12 June 2026, PwC issued its report establishing:

(a) Total sales recorded in the general ledger were $2,061,930 excluding GST producing average weekly sales of $39,221 excluding GST; and

(b) Total sales recorded in the point-of-sale retail system were $2,062,685 excluding GST producing average weekly sales of $39,235.

[42] All of these figures were below the $45,000 threshold.

[43] On 18 June 2026, Starbucks' solicitors sent a letter of demand enclosing a copy of the PwC report claiming payment of the sum of $449,441.08 within seven days.

[44] There was no response by Griffith to this claim. Following the failure to comply with the letter of demand, Starbucks served the creditor's statutory demand dated 6 July 2026.

[45] Mr Hastie rejects the proposition that Starbucks did not operate the business in accordance with the lease. The Ripley store remained open for trade throughout its

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1 Paragraph 42.

first lease year. The photograph in Mr Griffith's affidavit showed a temporary isolated closure of the drive-through lane. At all times, the main cafe, dining room, bar and takeaway facilities have remained fully open and operational to the public during core trading hours. At no stage was a notice of default or breach served by Griffith.

[46] He also says that the sales figures are bona fide and have been verified.

[47] Mr Griffith states in his affidavit he believes there is a genuine dispute with respect to the alleged debt for the following reasons:

(a) He does not believe the AWS statement relied on by Starbucks meets the requirements or definition of an audited statement as contemplated in the Incentive Deed. As a result, the correct rent abatement amount cannot be calculated.

(b) He disagrees with Starbucks' interpretation of clause 5(c). He alleges that the clause means that the maximum incentive payment is an interim amount only pending the provision of AWS and the adjustment provisions of clause 3.

(c) Starbucks' trading operations may not have been conducted in accordance with the lease.

[48] With respect to the last allegation, I accept Mr Hastie's evidence. It is unchallenged.

**SUBMISSIONS**

**Applicant's submissions**

[49] The applicant submits that the demand should be set aside as there is a genuine dispute about the existence of the debt.

[50] It is submitted that the Incentive Deed did not convert the waiver of rent into a present obligation to pay money. The claim is for unliquidated damages and is not a debt capable of being the subject of the statutory demand.

[51] It is submitted that nothing in the deed itself makes the waivers for the balance of the term payable now as a sum of money. It is submitted that clause 5(a) conferred a right on the applicant to elect and clause 5(c) was conditional.

[52] It is submitted that there was no exercise of the right to pay out the incentive. It is submitted that the correspondence relied on does not bear the character of an election. The December 2025 exchange was directed to the arithmetic calculation of a defined figure i.e. the maximum incentive payout. Agreement about how an amount is calculated is not a promise to pay. The figure was expressly subject to adjustment once the actual amount could be calculated. This means there was no agreed sum. Both parties treated the maximum as provisional. A sum to be held in trust pending determination is not a sum presently owing to the respondent. There were no admissions made by the applicant which asked for audited statements. A request by the applicant to pay the amount over 12 months was inconsistent with a completed election.

[53] Alternatively, the parties did not agree that the applicant would pay $408,582.80. The payment on 1 April 2026 was not part performance of a promise to pay the maximum.

It was payment of the accrued first year incentive. At the least, whether an election or agreement arose from conduct is a contested question of fact.

[54] It is also submitted that the deed itself did not create a present debt. It is submitted that a waiver of a "rent abatement amount" is not a debt payable to the respondent. The deed contained no acceleration mechanism. The respondent's remedy was a claim for breach of clause 5(b) which sounds in damages. Any damages are unliquidated.

[55] It is further submitted that clause 5(c) is a transitional mechanism. It is submitted that the Burgess statement and the PwC report were not audited statements as required by clause 3(c). This is a second reason why no liquidated sum is presently due.

[56] It is submitted that the applicant's obligation under clauses 2 and 3 was to waive rent, not pay money. After 25 September 2025, it was no longer the landlord, and it could not waive anything. Accrued components are not sums the applicant promised to pay. They are unliquidated. The payment on 1 April 2026 did not treat any accrued component as a debt. It is no admission.

[57] In the circumstances, the matters raised are not devoid of substance and a genuine dispute exists or there is some other reason to set aside the demand.

**Respondent's submissions**

[58] The respondent submits there is no genuine dispute. The debt has been acknowledged at least twice in correspondence. The reason for non-payment is the applicant's cashflow difficulties. The demand should not be set aside for another reason. The claim here is for a money amount alleged to be due and owing under a contract.

[59] It is further submitted that the applicant's affidavit at its highest asserts:

(a) There is a dispute that the AWS statement does not meet the requirements of an AWS statement under the deed.

(b) The respondent may not have traded in accordance with its obligations under the lease.

[60] The *Graywinter*[2] principle applies here. A bare denial of the alleged debt is insufficient.

[61] It is submitted that there was a definite debt due and owing. The only requirement was for the respondent to quantify its claim by producing an AWS statement of its average weekly revenue. The deed did not prescribe the form or content of such a statement. Upon the production of the AWS statement and the PwC AWS statement the sum of the rent abatement amount became indisputable.

[62] The payment of the $82,500 was an admission of liability. Also, the applicant acknowledged the outstanding debt and sought to repay it in April 2026.

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2 *Graywinter Properties Pty Ltd v Gas & Fuel Corporation Superannuation Fund* [1996] FCA 822; (1996) 70 FCR 452.

[63] On 8 April 2026, the respondent provided the AWS statement to the applicant and the PwC statement was provided on 18 June 2026. The amount of the agreed debt was crystallised on service of each of those statements.

[64] It is submitted that Griffith did elect to pay out the incentive under clause 5 of the Incentive Deed. Indeed, the applicant executed the Deed of Variation to facilitate the payout. The applicant agreed on the calculation.

[65] The existence of the debt cannot be disputed. The respondent was entitled to payment in accordance with the formula dictated by the Deed of Variation. The applicant agreed to this mechanism.

[66] With respect to the AWS statement, the Incentive Deed does not prescribe the form of statement, only that an AWS statement must be given. Regardless, the PwC AWS statement resolves the issue. The applicant also ignores the email dated 23 October 2025 in which the parties agreed that the amount owing by the applicant to the respondent was $485,760.89.

[67] There is no evidence to support the assertion that the respondent breached the lease.

[68] There is nothing in respect of any foreshadowed set-off or counter claim. The application should be dismissed as there is no genuine dispute or other reason.

**DISCUSSION**

**Applicable law**

[69] Section 459H(1) of the *Corporations Act* provides:

> "**459H Determination of application where there is a dispute or offsetting claim**
>
> (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.
>
> …"

[70] Section 459J of the *Corporations Act* provides:

> "**459J Setting aside demand on other grounds**
>
> (1) On an application under section 459G, the Court may by order set aside the demand if it is satisfied that:
>
> (a) because of a defect in the demand, substantial injustice will be caused unless the demand is set aside; or

(b) there is some other reason why the demand should be set aside.

(2) Except as provided in subsection (1), the Court must not set aside a statutory demand merely because of a defect."

[71] The onus is on the applicant to establish the existence of a genuine dispute on the balance of probabilities.[3]

[72] As to the requirements of the supporting affidavit, the following principles apply:[4]

(a) It must, as a minimum, contain the material facts on which the applicant intends to rely to show a genuine dispute.

(b) It may "read like a pleading" and need not detail in admissible form all the evidence that supports the contention of a genuine dispute.

(c) A mere denial is insufficient.

[73] In *BRC Group Pty Ltd v Watagan Park Pty Ltd*[5] it was said:

(a) The affidavit must "support" the application by providing the basis for establishing that there is a genuine dispute about the existence or amount of the debt.

(b) Most commonly this will be done by the deponent describing the dispute. That description will delineate the scope of the dispute.

(c) The ground for resisting the demand must be raised expressly, by necessary inference, or reasonably available inference.

(d) Where the dispute about the existence or amount of the debt is based purely on the construction of a document, the requirement may be satisfied by exhibiting the document.

(e) Mere assertion that the debt is disputed is insufficient.

(f) An affidavit filed within time that does not identify the dispute later sought to be relied upon is not a "supporting affidavit" insofar as the different genuine dispute is concerned. The question of sufficient identification will be considered in context, having regard to the degree of specificity with which the initial dispute is defined.

[74] In *Thomson v Australia and New Zealand Banking Group Ltd*,[6] the Queensland Court of Appeal set out that the principles to be applied are as follows:

(a) for a dispute to be genuine, it must be *bona fide* and truly exist in fact;

(b) the grounds for alleging the existence of a dispute must be real and not spurious, hypothetical, illusory or misconceived;

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3 *Australian Communication Exchange Ltd v Pilot Partners Pty Ltd* [2017] QSC 176 at [19].

4 *Graywinter Properties Pty Ltd v Gas & Fuel Corporation Superannuation Fund* [1996] FCA 822; (1996) 70 FCR 452 at p 459.

5 [2025] VSCA 36 at [47].

6 [2024] QCA 73 at [40].

(c) the dispute must have a sufficient objective existence and *prima facie* plausibility to distinguish it from a merely spurious claim, bluster or assertion, and sufficient factual particularity to exclude the merely fanciful or futile. Something between mere assertion and the proof that would be necessary in a court of law may suffice;

(d) a genuine dispute may involve a plausible contention requiring investigation and raise the same sort of considerations as the serious question to be tried test that applies in the case of interlocutory injunctions;

(e) the court should not uncritically accept statements about an alleged genuine dispute which are equivocal, lacking in precision, inconsistent with undisputed contemporary documents or inherently improbable;

(f) if the dispute appears to be something merely created or constructed in response to the pressure represented by the service of the statutory demand, then it is not advanced in good faith and will not be regarded as genuine; and

(g) whilst the underlying nature of the dispute about the existence of a debt must be exposed, the court will not deal with the merits and nothing of substance will be decided.

[75] It was noted at [41] that the court does not conduct a mini-trial or extended inquiry and does not determine the merits of the dispute. It determines whether a *bona fide* dispute exists.

[76] In *Ligon 158 Pty Ltd v Huber*,[7] it was noted that the task confronting the company is by no means a difficult or demanding one. The claim will only fail where the claim is so devoid of substance that "no further investigation is warranted." [8]

[77] In *Eyota Pty Ltd v Hanave Pty Ltd*,[9] it was said that a "genuine dispute" connotes a plausible contention requiring an investigation raising much the same sort of considerations as "a serious question to be tried." There must be a sufficient "prima facie" plausibility to "merit further investigation as to its truth."

[78] More recently, the Queensland Court of Appeal in *M Resources Trading Pty Ltd v Australia Pacific Coal Ltd*[10] said that establishing a genuine dispute is not a high bar. There must be a plausible contention requiring further investigation. While this is a relatively low threshold, the matters raised by the applicant must be more than spurious, bluster or assertion.

**Disposition**

[79] It is clear from the material that the parties agreed to a face rent value with respect to the premises of $250,000 a year[11] for the 12-year period, but the rent incentive and abatement was important to the parties.

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7 [2016] NSWCA 330; (2016) 117 ACSR 495 at [9]. Also see *Australian Communication Exchange Ltd v Pilot Partners Pty Ltd* [2017] QSC 176 at [19]-[20].

8 [2016] NSWCA 330; (2016) 117 ACSR 495 at [8]. Also see *Britten-Norman Pty ltd v Analysis & Technology Australia Pty Ltd* [2013] NSWCA 344; (2013) 85 NSWLR 601 at [30]-[31].

9 (1994) 12 ACSR 785.

10 [2026] QCA 150 at [26]-[27].

11 With 3% annual increases.

[80] Clause 2(a) meant that the landlord waived its entitlement to $150,000 of rent for the first Lease Year.

[81] Further, the parties by clause 3(a) agreed that Starbucks should have a rent abatement based on Starbucks' average weekly sales for the first year. The clause provided a precise formula to determine the amount to be paid by the applicant to the respondent.

[82] Clause 3(a)(ii)(A) defined the rent abatement amount as "Rent Abatement amount means … if the Average Weekly Sales in the first Lease Year are equal to or less than $45,000.00 excluding GST – the Rent Abatement Amount is $30,900.00 excluding GST in the second Lease Year and then increased by 3% on the commencement of each subsequent Lease Year".

[83] The first question is whether the clause was engaged. Clause 5(a) of the deed provided that the applicant could elect to pay out the incentive "not yet provided."

[84] Once a party, with knowledge of the relevant facts, acts in a manner that is unequivocal and consistent only with one of the alternative rights, that action is treated as a binding election, and the party is precluded from exercising the other inconsistent right. Detriment to the other party is not a necessary ingredient for an election to be binding.[12]

[85] The applicant did make an election to pay out the incentive under this clause because of the following.

[86] First, the email from the applicant to the respondent dated 7 July 2025 stated unequivocally that the applicant wished to pay out the incentive deed pursuant to clause 5(a).

[87] Second, the applicant executed the Deed of Variation to facilitate the payout. Indeed, it amended clause 5 to enable the applicant to pay out the maximum amount to the respondent before the AWS statement was provided.

[88] Third, the correspondence from the applicant to the respondent acknowledged that the election had been made:

(a) On 30 September 2025, Griffith said that "the incentive payment needs to be finalised" and attached relevant calculations.

(b) On 12 December 2025, Griffith's solicitor stated "Our client agrees that the balance rent incentive under clause 2(a) … is $75,000 plus GST but we are advised that the maximum incentive payout under clause 5(c)(i)(B) … should be $408,582.80 plus GST" attaching calculations.

(c) On 15 December 2025 Starbucks agreed to this calculation.

(d) On 1 April 2026, the applicant paid $82,500 to the respondent on account of the rent incentive.

(e) On 2 and 8 April 2026 the applicant requested that payment be made by 12 monthly instalments.

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12 *Sargent v ASL Developments Ltd* [1974] HCA 40; (1974) 131 CLR 634; *Allianz Australia Insurance Ltd v Delor Vue Apartments CTS 39788* [2022] HCA 38; (2022) 277 CLR 445 at [50]-[51].

[89] I conclude that once the election under clause 5(a) was made, the machinery provision to determine the amount due from Griffith to Starbucks commenced.

[90] The parties had agreed upon a formula for payment. The parties adopted the formula and had agreed that the amount owing to Starbucks was $485,760.89.

[91] It was then for Starbucks to quantify its claim. It had to produce an audited AWS statement of its average weekly earnings under clause 3(c) of the Incentive Deed as modified by clause 5(c) of the Deed of Variation.

[92] Neither deed defined the term "audited statement." The term "audit" in ordinary parlance is "an official examination of accounts."[13]

[93] I accept the respondent's submissions that both the AWS statement by Ms Burgess and the PwC AWS statement fall within the terms of that definition. The statement from Ms Burgess shows that she is the Chief Financial Officer of Starbucks Australia. She opined that the average weekly sales from 27 March 2025 until 29 March 2026 were $38,878.01. There was no requirement for the statement to be independent. But regardless, the PwC statement dated 12 June 2026 resolves the issue. PwC may be regarded as independent and the procedures adopted seem entirely reasonable.

[94] Once this was determined, the rent abatement amount became indisputable and indeed Griffith admitted the amount was payable on 1 April 2026 and 8 April 2026.

[95] Griffith contends the amount is not a debt or liquidated demand. I do not accept this contention. A claim for money alleged to be due and owing under a contract is in law a claim for debt.[14] It does not matter whether the claim is for breach of contract alleging the wrongful withholding of money from the plaintiff or for a breach of promise to pay money under the contract.[15]

[96] The debt became due on either 8 April 2026 or 18 June 2026 when the AWS statements were delivered.

[97] Mr Griffith has made a bald assertion in his affidavit that average sales may be wrong. However, there is no evidence led to justify this assertion.

[98] As the AWS for the period 27 March 2025 until 29 March 2026 were less than $45,000, clause 3(a)(ii)(A) applied and the rent abatement amount was $30,900 excluding GST in the second year of the lease increasing by 3 per cent per year. Also, under clause 5(d) of the Deed of Variation, the tenant was not required to make any repayment to the landlord.

[99] The debt owing from Griffith to Starbucks is as follows:

| **Year** | **Face Rent** | **Rent Abatement** | **Effective Rent** |
|---|---|---|---|
| Year 1 | $250,000 | $30,000 | $90,000 |

13 See the Australian concise Oxford dictionary second edition.
14 *PT Thiess Contractors Indonesia v Pt Arutmin Indonesia* [2015] QSC 123 at [90].
15 *PT Thiess Contractors Indonesia v Pt Arutmin Indonesia* [2015] QSC 123 at [91].

| | | | |
|---|---|---|---|
| Year 2 | $257,500 | $30,900 | $226,600 |
| Year 3 | $265,225 | $31,827 | $233,398 |
| Year 4 | $273,181.75 | $32,781.81 | $240,399.94 |
| Year 5 | $281,377.20 | $33,765.26 | $247,611.94 |
| Year 6 | $289,818.52 | $34,778.22 | $255,040.30 |
| Year 7 | $298,513.07 | $35,821.57 | $262,691.51 |
| Year 8 | $307,468.47 | $36,896.22 | $270,572.25 |
| Year 9 | $316,692.52 | $38,003.10 | $278,689.42 |
| Year 10 | $326,193.30 | $39,143.20 | $287,050.10 |
| Year 11 | $335,979.09 | $40,317.49 | $295,661.60 |
| Year 12 | $346,058.47 | $41,527.02 | $304,531.45 |
| | | **$395,760.89** | |

- $75,000 Business Rent Incentive due
- $15,000 Balance Rent Abatement fee
- **$90,000** Balance Rent Incentive and Abatement due
- **$395,760.89** Years 2 to 12 Rent Abatement due
- $485,760.89 total payable excluding GST
- $534,336.98 including GST
- Less $82,500 paid 1 April 2026

**Outstanding $451,836.98. However, there was an agreement[16] that the agreed amount would be $408,582.80 plus GST i.e. a total sum of $449,441.08.**

[100] As to the allegation that Starbucks breached the lease, there is no evidence to support this assertion.

[101] The debt is due and payable and there is no offsetting claim. There is no genuine dispute. There is no other reason to set aside the statutory demand.

**ORDER**

[102] I make the following orders:

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16 Emails dated 11 and 15 December 2025.

1. The application is dismissed.
2. I will hear the parties on the question of costs.