

**NOT
RECOMMENDED**

1206

IN THE MATTER of the Companies Act
1955

A N D

IN THE MATTER of ED SNYDER BUILDER LTD

Hearing: 20 August 1986

Counsel: D.J.L. Saunders for Petitioner
O. Matson for Oakleys in support
G.D. Horne for Haymer in support
M.V. Smith for Bitumix Ltd
No appearance of company

Judgment: 20 August 1986

ORAL JUDGMENT OF HOLLAND, J.

This petition was called before me this morning. There is no appearance of the company. The petition claims a debt owing to the petitioning creditor of \$42,117.20. At the calling of the hearing counsel for the petitioner sought leave to amend the petition for the debt to be reduced to \$22,117.20. No specific application was made for an order dispensing with reservice of the amended petition but one must assume that was implicit in counsel's application.

I have not granted leave to amend the petition, but I decided I would hear the evidence. I am not impressed with the evidence that has been presented before me. The petition relies on a notice sent under section 218 of the Companies Act requiring the debtor to pay the sum of \$42,117.20 alleged to be due at the 6th June 1986 with interest accruing at a daily rate of \$10.36 pursuant

to a contract dated 22 March 1985. The witness in support of the petition has said some payments were made which he says were small and which were in respect of interest. He was unable to give me particulars of those payments. I am not satisfied that in the circumstances in which this notice was served that the failure to pay entitles me to deem that the company is unable to pay its debts or is insolvent. I accept the submissions advanced on behalf of the petitioner that insolvency can be proved in some other form, but at the moment there is before me no other such evidence.

The petition is adjourned to 3 September to enable the petitioner either to produce further evidence of insolvency or if that cannot be done then an application may be made by one of the supporting creditors for substitution.

A D Holland J