**IN THE HIGH COURT OF NEW ZEALAND**
**AUCKLAND REGISTRY**

**CIV 2009-404-002026**

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| | BETWEEN | GREYS AVENUE INVESTMENTS LIMITED<br>Plaintiff |
| | AND | HARBOUR CONSTRUCTION LIMITED<br>Defendant |

Hearing: 9 June 2009

Appearances: R Ferguson for the Plaintiff
S Robertson for the Defendant

Judgment: 12 June 2009 at 4:45pm

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**JUDGMENT OF WYLIE J**

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This judgment was delivered by Justice Wylie
on 12 June 2009 at 4:45pm
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Solicitors:

Ferguson Law, P O Box 106 866, Auckland 1143
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[1] Greys Avenue Investments Limited ("Greys Avenue") seeks to set aside a statutory demand issued by Harbour Construction Limited ("Harbour Construction") dated 24 March 2009.

**Factual background**

[2] Greys Avenue owns a commercial building at 48 Greys Avenue, Auckland. It wished to refurbish the building to accommodate a new tenant, New Zealand Mint Limited. The refurbishment required the demolition of part of the existing building and further construction works.

[3] In mid 2008, Harbour Construction was retained by Greys Avenue to carry out the demolition work. Subsequently, Harbour Construction was retained by Greys Avenue to undertake the necessary construction works.

[4] Significant works were attended to by Harbour Construction. It claimed progress payments from Greys Avenue for the same. The first three progress payment claims were met. Three progress payment claims, numbers 4, 5 and 6, were not met, and on 24 March 2009, Harbour Construction issued the statutory demand in issue in these proceedings to Greys Avenue for $439,024.01 (including GST).

[5] Payment claim number 4 was submitted to Greys Avenue on 2 December 2008, payment claim number 5 was submitted on 23 December 2008, and payment claim number 6 was submitted on 22 January 2009. The total amount detailed in the claims was $465,853.62 (exclusive of GST). In an attempt to maintain the relationship between the parties, and to secure payment, Harbour Construction made several concessions. There was a schedule attached to the statutory demand showing how the amount claimed was made up, and recording the credits allowed by Harbour Construction.

[6] The contractual terms agreed between the parties are remarkably loose. It is not however disputed that the payment claims were all issued under the Construction Contracts Act 2002. It is also common ground that the construction contract between the parties did not contain express terms for progress payments, and that as a result the default provisions contained in the Act apply.

**The application**

[7] The application to set aside the statutory demand is made under s 290 of the Companies Act 1993. Relevantly it provides as follows:

> (1) The Court may, on the application of the company, set aside a statutory demand.
>
> …
>
> (4) The Court may grant an application to set aside a statutory demand if it is satisfied that—
>
> > (a) There is a substantial dispute whether or not the debt is owing or is due; or
> >
> > (b) The company appears to have a counterclaim, set-off, or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off, or cross-demand is less than the prescribed amount; or
> >
> > (c) The demand ought to be set aside on other grounds.
>
> …

[8] The general principles applicable to such applications are well established. They are noted in Brookers *Company and Securities Law*, Vol 1, para CA290.02(1) as follows:

> (a) The applicant must show there is arguably a genuine and substantial dispute as to the existence of the debt. The task for the Court is not to resolve the dispute but to determine whether there is a substantial dispute that the debt is due. …
>
> (b) The mere assertion that a dispute exists is not sufficient. Material, short of proof, is required to support the claim that the debt is disputed.

(c) If such material is available, the dispute should normally be resolved other than by means of proceedings in the company's court.

(d) An applicant must establish that any counterclaim or cross demand is reasonably arguable in all the circumstances. The obligation is not to prove the actual claim. …

(e) It is not usually possible to resolve disputed questions of fact on affidavit evidence alone, particularly when issues of credibility arise.

[9] In the present case, the position is complicated by the overlay of the Construction Contracts Act. I return to this below.

**Notice of application**

[10] In its notice of originating application, Greys Avenue sought to set aside the statutory demand on the following grounds:

a) that the sum claimed in the statutory demand is not due and owing;

b) that the sum claimed is pursuant to a payment claim made under the Construction Contracts Act, but that the payment claim was not served on Greys Avenue correctly as required by s 80 of the Act;

c) that Harbour Construction failed to credit an agreed sum of $309,375 against any amounts due and owing by Greys Avenue;

d) that Harbour Construction's charges are not at the agreed rate of cost plus 4.5%;

e) that there is a serious question to be tried that the sum claimed is not due and owing.

The originating application was supported by an affidavit from a Mr McNabb who is a director of Greys Avenue.

[11] Harbour Construction in its notice of opposition indicated that it intended to oppose the originating application on the following grounds:

a) that it issued the payment claims in accordance with s 80 of the Construction Contracts Act;

b) that Greys Avenue failed to respond with payment schedules pursuant to s 22 of the Act, and accordingly that the amount of each payment claim became a debt owing under s 23(2)(a)(i) of the Act;

c) pursuant to the Court of Appeal's decision in *Laywood v Holmes Construction Wellington Ltd* [2009] 2 NZLR 243, a statutory demand is a debt recovery proceeding, and s 79 of the Act applies. Greys Avenue is unable to raise any dispute, counterclaim, set off or cross demand; and

d) Greys Avenue does not have either judgment against Harbour Construction, or an undisputed counterclaim, set off or cross demand.

The notice of opposition was supported by an affidavit from a Mr Savage, who is a director and shareholder of Harbour Construction.

[12] Matters had advanced by the time of the hearing.

[13] First, the issue in relation to service was not advanced by Mr Ferguson for Greys Avenue. He responsibly accepted that he could not advance any submissions in this regard, given the evidence and the case law. This ground was withdrawn.

[14] Secondly, Mr Ferguson sought to advance three further challenges to the statutory demand. He submitted:

a) that payment claim number 6 was "provisional" and that therefore it was not a payment claim under the Act;

b) that Greys Avenue had issued a payment schedule in response to payment claims numbers 4 and 5; and

c) that Greys Avenue was solvent.

[15] These arguments were advanced on the basis of various assertions made in an affidavit in reply filed by Mr McNabb following the filing of the notice of opposition and the supporting affidavit from Mr Savage. Mr Ferguson accepted that the originating application and the initial affidavit in support by Mr McNabb had not brought all of Greys Avenue's arguments to bear on the matter, and that the issues detailed in [14] above had been raised for the first time in the affidavit in reply. He nevertheless submitted that the interests of justice required that these additional matters be considered by the Court.

[16] I do not accept that two of the three additional arguments are open to Greys Avenue. The arguments require an evidential foundation and that foundation is contained in Mr McNabb's affidavit in reply. The evidence given by Mr McNabb in relation to the issue noted in [14] b) above does respond to an assertion made in the notice of opposition. There can be no objection to this material or to any submissions based on it. The evidence in the affidavit in reply dealing with the issues noted in [14] a) and c) does not however respond to anything in the notice of opposition or in Mr Savage's affidavit.

[17] Rule 7.26 of the High Court Rules is clear. It provides that any affidavit in reply must be limited to new matters raised in the notice of opposition or in the affidavit filed by the respondent.

[18] Mr Ferguson invited me to deal with the additional material under r 1.5 of the High Court Rules. He acknowledged that there had been a failure to comply with r 7.26, but submitted that that failure simply should be treated as an irregularity, and that it should not nullify the proceeding.

[19] In my view r 1.5 does not assist. The failure to comply with r 7.26 is an irregularity – but it does not nullify the originating application seeking to set aside

the statutory demand. What is in question is what evidence is properly before the Court, and this in turn dictates what grounds Greys Avenue is able to advance at the hearing.

[20] In my view it would be inappropriate to allow Greys Avenue to raise the additional arguments noted in [14] a) and c). I have reached that view for the following reasons:

a) The additional arguments are founded on evidence contained in Mr McNabb's affidavit in reply. But for that evidence there is no foundation for them. The way in which the evidence has been adduced infringes r 7.26.

b) There is no explanation advanced by Greys Avenue for its failure to put the additional matters raised in the affidavit in reply in its initial application or supporting affidavit.

c) It is not clear to me that Greys Avenue will be prejudiced if it is not allowed to rely on the additional arguments. Neither is of great relevance in the context of an application under s 290(4) of the Companies Act. The argument noted in [14] a), has no obvious merit, and the issues as to solvency can be advanced if and when Harbour Construction proceeds to seek the liquidation of Greys Avenue.

d) Section 290 of the Companies Act 1993 provides that an application to aside a statutory demand must be made within 10 working days of the date of service of the demand. The section puts in place a strict time limit, and expressly provides that no extension of time may be given for making or serving an application to have a statutory demand set aside. In my view an applicant seeking to set aside a statutory demand should not be able to put in a bare bones affidavit, and then subsequently seek to introduce new grounds said to justify the setting aside in an affidavit in reply filed outside the 10 working day period. To hold otherwise would cut across the statutory scheme.

[21] Accordingly, I have not considered paragraphs 3 to 8 in Mr McNabb's affidavit in reply. Nor have I considered the second affidavit filed by Mr Savage in response to Mr McNabb's affidavit in reply.

**Substantial dispute as to whether debt due and owing**

[22] Whether there is a substantial dispute as to whether the debt detailed in the statutory demand is due and owing turns upon the terms of the construction contract between the parties. As I have already noted, the contractual arrangements are surprisingly loose.

[23] I start by observing that the onus is on Greys Avenue to show a fairly arguable basis upon which it is not liable for the amount claimed – see *Eastgate Real Estate Pty Ltd v Walker* (2001) 15 PRNZ 308.

[24] Mr McNabb deposed that no written contract was ever signed for the demolition work but that there was an oral agreement whereby that work was to be carried out at cost plus 6%. He said he negotiated this arrangement with a Mr Aaron Coupe, who at the time was employed by Harbour Construction as its manager. There was a further assertion made by Mr McNabb that a subsequent agreement was reached between his project manager, a Mr Marsh, and Mr Coupe on behalf of Harbour Construction, that if the defendant company was awarded the whole of the job, including construction, that all works would be at cost, plus 4.5%.

[25] Harbour Construction was awarded the whole of the job. Mr McNabb says that Greys Avenue does not owe the amounts said to be due and owing and by way of example he compares the labour component which has been charged to that which he says should have been charged – namely cost plus 4.5%.

[26] There are a number of difficulties with Mr McNabb's various assertions.

a) Mr McNabb's assertions are hearsay. He was not involved in negotiating or finalising the contract on which Greys Avenue now relies. Mr Marsh was. There is no affidavit from Mr Marsh.

b) Mr McNabb annexed to his affidavit an email from Mr Marsh to Mr Savage. The email does not detail the terms of the contract between the parties. Rather Mr Marsh sets out in his email what he believed "may" have been agreed based on advice he received from Mr Coupe. This is double hearsay. It is *prima facie* inadmissible – s 17 of the Evidence Act 2006, and there is nothing before me to suggest that any of the exceptions recognised in that Act apply.

c) Mr McNabb also annexed to his affidavit a declaration signed by Mr Coupe. That declaration is also hearsay. Again it is inadmissible. While it might be argued that the fact that a declaration has been made by Mr Coupe provides some assurance that the material contained in it is reliable, there was nothing before me to suggest that Mr Coupe was unavailable to swear an affidavit, or on which I could conclude that undue expense or delay would be caused if Mr Coupe were required to be a witness as required by s 18 of the Evidence Act. The declaration cannot be said to be business record under s 19. In any event, the declaration is loosely expressed and unhelpful. Mr Coupe records that he agreed with Mr McNabb that the demolition job would be carried at a cost plus 6% basis. He says that Mr Marsh then took over the day-to-day management of the project, and that he agreed with Mr Marsh as Mr McNabb's representative, that if Harbour Construction got the job for the whole building, that this would be reduced to cost plus 4.5%. It is not clear whether he means that the whole of the construction work was to be at cost plus 4.5% - or simply the demolition works.

d) I do not have copies of the progress payment claims before me in the admissible materials. I do not know what aspect of the works progress payment claims numbers 4, 5 and 6 relate to.

[27] Mr Savage accepts in his affidavit that there was an arrangement for the demolition works to be carried out at a cost plus 6% basis, but asserts that the balance of the works was to be priced in accordance with various rates. He says that

this is clear from detailed tenders which were provided by Harbour Construction to Greys Avenue on 26 September 2008 and on 2 October 2008. Those tenders were exhibited and they contain schedules of rates for various aspects of the work.

[28] The parties disagree on whether or not the scheduled rates were accepted and whether they constituted part of the contract.

[29] I cannot in the context of the present application determine this factual dispute, and I do not endeavour to do so. Rather I rely on the Construction Contracts Act.

[30] As noted above, the statutory demand is based on progress payment claims numbers 4, 5 and 6.

[31] Where a construction contract between parties does not provide a mechanism for progress payments, the Construction Contracts Act provides default provisions – s 15. Those default provisions apply in the present case. As a result, the progress payments became due and payable on the date occurring 20 working days after the progress payment claims were served under the Act – s 18. Greys Avenue as the payer could respond to the progress payment claims by providing payment schedules to Harbour Construction as the payee – s 21(1). Greys Avenue became liable to pay the claimed amounts on the due dates for the progress payments to which the payment claims related unless it provided a payment schedule or schedules to Harbour Construction 20 working days after the progress payment claims were served – s 22.

[32] Here progress payment claims numbers 4, 5 and 6 were served on Greys Avenue on the dates noted in [5] above. In his affidavit in reply, Mr McNabb asserts that Greys Avenue responded to progress payment claims numbers 4 and 5 by providing a payment schedule to Harbour Construction as the payee. He annexes to his affidavit a copy of the document he asserts is a payment schedule. It is headed "Claims Certificate Breakdown Summary". It is not dated, although in a chronology prepared by counsel for Harbour Construction, and accepted by counsel for Greys Avenue, it is noted that the "Claims Certificate Breakdown Summary" was provided

on 20 January 2009. It follows that the "Claims Certificate Breakdown Summary" was out of time in relation to progress payment claim number 4 – s 22(b). It was not out of time in relation to progress payment claim number 5, but in my view the "Claims Certificate Breakdown Summary" is not a payment schedule within the meaning of s 21 of the Construction Contracts Act. This is because:

a) The summary does not indicate the progress payment claims to which it relates. Rather it itemises all progress payment claims then made. It does refer to progress payment claims numbers 4 and 5 and notes that they are subject to review, but goes no further than that. On its face, it is simply a summary of all claims then made by Harbour Construction, a summary of payments certified, and a summary of the outstanding amounts claimed by Harbour Construction. The summary fails to comply with s 21(2)(b).

b) The summary does not indicate a scheduled amount, as required by s 21(2)(c). It simply states that some payments sought were subject to a review of costs.

c) The summary does not show the manner in which any scheduled amounts in relation to progress payment claims numbers 4 and 5 were calculated, as required by s 21(3)(a).

d) The summary does not detail Greys Avenue's reason or reasons for the difference between the scheduled amounts, and the claimed amounts. Rather it appears to show that the amounts certified exceeded the amounts claimed – at least in relation to progress payment claims numbers 1, 2 and 3.

e) Allowing the "Claims Certificate Breakdown Summary" to be treated as a payment schedule would defeat the purpose of the Construction Contracts Act. I return to this below – see [36].

[33] Mr McNabb in his first affidavit asserted that a payment schedule was provided to Harbour Construction in relation to progress payment claim number 6. He annexed a copy of the relevant schedule. It complies with the provisions of the Act. However, it is dated 24 March 2009. Progress payment claim number 6 was dated 20 January 2009, and the chronology records that it was served on Greys Avenue on 22 January 2009. The payment schedule was not issued within the required 20 working day period as required by s 22(b).

[34] It follows that no payment schedules were provided by Greys Avenue within the prescribed periods. As a consequence, Greys Avenue became liable to pay the claimed amounts – s 22. Harbour Construction as the payee can recover from Greys Avenue as the payer, as a debt due to it, in any Court, the unpaid portion of the claimed amounts, and its actual and reasonable costs of recovery – s 23(1) and (2).

[35] Mr McNabb asserts that Harbour Construction is trying to "extort payment using [the Act] as a device to do so." In my view there is no justification for this rhetoric.

[36] The Construction Contracts Act is in many respects draconian, but its focus is clear. The overall scheme of the Act, and in particular the payment and response process has been considered by the Courts on a number of occasions. I refer to the Court of Appeal's decision in *George Developments Limited v Canam Construction Limited* [2006] 1 NZLR 177, particularly at [41] and [55], to the judgment of Associate Judge Gendall in *10 Gilmer Limited v Tracer Interiors and Construction Limited* HC WN, CIV 2005-485-2009, 6 December 2005; Asher J in *Marsden Villa Limited v Building Construction Limited* [2007] 1 NZLR 807 at [16] and [17]; Allan J in *Welsh v Gunac South Auckland Limited* HC AK, CIV 2006-404-7877, 11 February 2008 at [11] and [12], and to my own judgments in *Suaniu v Hi-Qual Builders Limited* HC AK CIV 2008-404-001576, 26 June 2008 at [33] to [35], and *Berg v Franix Construction Limited* HC AK CIV 2008-404-003421, 24 September 2008.

[37] Greys Avenue has failed to take advantage of the various provisions in the Act permitting it to challenge Harbour Construction's claims. It must now suffer the statutory consequences. It is required to pay now, and to argue later.

**Set off**

[38] The factual assertions in relation to the alleged set off are convoluted, and again are inadequately documented.

[39] Mr McNabb says that following the Gisborne earthquake in December 2007, another of his companies – QED Construction Limited ("QED") – contracted to do remedial works to a property known as the Marina View Development. He states in December 2008 QED sold the rights to the contract to Harbour Construction. He annexed an unsigned agreement, and asserts that matters proceeded on its terms. That document provided that Harbour Construction would take over the Marina View Development repair job, in return for a consideration of $275,000 plus GST. It recorded that payment to QED was to be from the first payment due from the Body Corporate which owned the Marina View Development, and that QED was to be paid when Harbour Construction was paid on 10 December 2008. Mr McNabb then asserts that it was agreed that the amount due to be paid by Harbour Construction to QED for the assignment of the Marina View Development would be credited to Greys Avenue against sums due on the Greys Avenue project. In support of these assertions he annexed an email from a Mr Kay. Mr Kay apparently has some association with the company known as Kalmar Construction Limited. Mr McNabb asserts that Kalmar Construction Limited purchased Harbour Construction either in whole or in part in late October 2008.

[40] Mr Kay's involvement with the Greys Avenue project, and quite what authority he had to bind Harbour Construction, is not explained. Moreover the email is hearsay. There does not appear to have been any novation in favour of Greys Avenue, and legally it must be a moot point whether or not Greys Avenue has any right to claim directly from Harbour Construction in respect of the QED contract.

[41] Mr Savage for his part disputes that any monies are owing by Harbour Construction to QED, let alone to Greys Avenue. He asserts that there was no firm agreement, and the document annexed to Mr McNabb's affidavit simply reflected negotiations as at 2 December 2008. He points out that there are discrepancies in the amount of the set off claimed. The alleged agreement referred to by Mr McNabb refers to $275,000 plus GST – a total of $309,375. This is the amount referred to in the notice of originating application. The payment schedule exhibited by Mr McNabb and prepared in relation to progress claim number 6 (albeit out of time) asserted that Greys Avenue has not been credited $271,130 (exclusive of GST). The Claim Certificate Breakdown Summary annexed to Mr McNabb's affidavit in reply refers to $240,327.74. Mr Savage does not clarify Mr Kay's role, but rather asserts that his email was not an admission that Harbour Construction was to credit the monies (whatever they were) to Greys Avenue. He asserts that Harbour Construction had agreed that it would credit an amount over a period of time from QED to other projects which Harbour Construction was working on for Mr McNabb. He notes that there were other projects, and in particular refers to work which has been carried out for Mr and Mrs McNabb on a property at Lucerne Road. He says that Harbour Construction did not agree to credit any amount until it had received the majority of the payments due for both the Lucerne Road project and the work it had done on Greys Avenue. He asserts that Mr McNabb ought to have addressed this issue in a payment schedule if he believed he was entitled to be credited this amount immediately. He also asserts that it was part of the contractual arrangements between QED and Harbour Construction that QED would provide a number of facilities to Harbour Construction, and that many of them were not provided. He asserts that QED still owes Harbour Construction monies, and refers to Mr Kay's email in this regard.

[42] Once again, I cannot and do not determine the intricacies of this dispute in the present context. Rather I rely on s 79 of the Construction Contracts Act.

[43] Section 79 provides as follows:

> In any proceedings for the recovery of a debt under section 23 or section 24 or section 59, the court must not give effect to any counterclaim, set-off, or

> cross-demand raised by any party to those proceedings other than a set-off of a liquidated amount if—
>
> (a) judgment has been entered for that amount; or
>
> (b) there is not in fact any dispute between the parties in relation to the claim for that amount.

[44] Greys Avenue does not have judgment for the monies it says should be credited to it. Nor is the set off alleged for a liquidated amount. There is a dispute between the parties in relation to the same.

[45] Harbour Construction relies upon the provisions of s 79, and on the judgment of the Court of Appeal in *Laywood v Holmes Construction Wellington Ltd*. In particular, counsel referred me to the following paragraphs of the decision:

> [61] We emphasise at this point the distinction between an application to set aside a bankruptcy notice or a statutory demand on the one hand and an adjudication of bankruptcy or order to wind up a company on the other. The question we are asked to resolve concerns the former. In that context, we prefer the view expressed by Randerson J in *Volcanic Investments*. We find some assistance in the exceptions provided for in s 79. Under that section, a set-off may be taken into account in debt recovery proceedings (including the s 73 process) if it relates to a liquidated amount and either judgment has been entered for that amount or there is no dispute between the parties in relation to the claim for that amount. Absent that, a determination can be entered as a judgment under s 73 and enforcement proceedings taken through the District Court, and any counterclaim, set-off or cross-claim must be pursued through separate proceedings.
>
> [62] If that is the position in relation to the enforcement processes available through the District Court, or where there is a charging order under the CCA, there seems in principle to be no reason why it should not apply in respect of a bankruptcy notice under s 19(1)(d) of the Insolvency Act or a statutory demand under the Companies Act. It is true that such processes have an additional dimension to them, in the sense that ultimately they lead to a process which focuses on liquidity and asset worth. It is also true, as Associate Judge Doogue said, that bankruptcy and liquidation proceedings have a broader objective than simply ensuring that a particular creditor is paid. Despite that, bankruptcy notices and statutory demands are, in a practical sense, important enforcement mechanisms, as Randerson J recognised. And in the present case, the debt which Holmes Construction seeks to recover has the force of a court judgment behind it. This is not a case where a creditor has sought to use bankruptcy or liquidation proceedings to recover a small amount from a person or company which can plainly afford to pay it.
>
> [63] If the contrary view were to be adopted, the efficacy of the s 73 process would, in our view, be undermined. Parties to construction contracts could refuse to pay an amount ordered by an adjudicator, and resist

> bankruptcy notices or statutory demands in relation to the debt, on the basis that they had a counterclaim, set-off or cross-demand. The effect of this would simply be to recreate similar problems to those which led to the enactment of the CCA, albeit in a different context.

[46] I note that the Supreme Court declined leave to appeal this decision. It noted that it found the Court of Appeal's judgment compelling, and considered that the proposed appeal had no prospect of success – [2009] NZSC 44.

[47] Mr Ferguson endeavoured to persuade me that *Laywood* applies only to the enforcement of an adjudicator's determination as a judgment under s 73 of the Act. I do not consider that that assertion is correct. The Court of Appeal did not draw this narrow distinction. Nor does the statute. Section 79 expressly extends to proceedings for the recovery of a debt under ss 23, 24 or 59. Here Harbour Construction is relying on s 23. In my view *Laywood* is directly applicable in its terms. It follows that I must not give effect to the alleged set off, even were I to be satisfied on the evidence that there is in fact a *bona fide* counterclaim. Greys Avenue will have to proceed to enforce the alleged set off through separate proceedings.

**Summary**

[48] In summary, I am not satisfied that any of the grounds asserted by Greys Avenue in its notice of originating application are made out. On the limited materials made available to me, I am not persuaded that there is a substantial dispute that the amount claimed are not due and owing to Harbour Construction. I am also not persuaded on the limited materials available that Greys Avenue has a set off that can or should be taken into account. In any event, such arguments are precluded by the relevant provisions in the Construction Contracts Act.

[49] The application is dismissed. Harbour Construction is entitled to costs on a 2B basis, together with its reasonable disbursements.

[50] In the course of the hearing, Mr Ferguson on behalf of Greys Avenue sought that I should extend the time for compliance with the statutory demand. I can take

that step under s 290(3). Mr Robertson appearing for Harbour Construction agreed that this was sensible. In the circumstances, and by consent, the time for compliance with the statutory demand is extended for a period of 14 days as from the date of this judgment.

Wylie J