How to serve a statutory demand

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In earlier articles, we highlighted the problems that arise when serving a Creditor's Statutory Demand by post: see You've been served! and It Serves You Right?.

This issue reared its head again two weeks ago in winding up proceedings in the Supreme Court of NSW in which we acted for the creditor. The Court was satisfied with all but one element of the evidence required to make the winding up order. The Court did not accept that the statutory demand had been properly posted (even though there was evidence of postage).

The statutory demand had been 'posted' by an Australia Post employee attending and collecting it from the office premises rather than the statutory demand being placed into a post box. The Court was not prepared to accept that the statutory demand had been posted because it was unfamiliar with this practice. The Court was more familiar with posting a statutory demand by placing the document into a post box or directly with an Australia Post outlet.

The proceedings were delayed to enable the Court to properly consider this issue, which necessarily resulted in an increase in legal costs. Fortunately, we were able to satisfy the Court that the statutory demand had in fact been posted with reference to recent cases that considered the same issues and affirmed this as a proper method of postage.

The lesson

This is again a timely reminder that the cheapest option at the start is not always the cheapest option in the end. Service by post might initially be the cheaper option but personal service provides certainty of service and can potentially saves costs in the future. Even when you expect there to be no opposition, you still need to prove your case (and service!).

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