



## SETTING ASIDE STATUTORY DEMANDS: OFF-SETTING CLAIMS

Master Sanderson in *Complete Hire and Sales Pty Ltd v Terra Firma Constructions Pty Ltd [2018] WASC 138* has outlined, with a nice turn of phrase, what is required to show an off-setting claim sufficient to justify setting aside a statutory demand.

In short:

1. The initial affidavit accompanying the set-aside application must "peg out an area" of controversy, and subsequent affidavits can "sketch in the detail within that area" but cannot stray outside its boundaries.
2. It may not be necessary to detail the off-setting claim down to every last dollar and cent, but there must be enough to show a claim to a sum which, despite some uncertainty as to details of calculation, can be seen to be, in any event, greater than the statutory demand amount.
3. Overall, although fine detail of all matters is not necessarily needed, there must be enough "flesh on the bone" to establish the basis of an off-setting claim. Vague and uncertain allegations are not enough.

If you receive a statutory demand, get advice immediately. Time is limited, failure to comply is serious (presumption of insolvency), and the affidavit in support of a set-aside application must be prepared carefully (albeit quickly) as it sets the boundaries.

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