

Legal Weapons Cut Both Ways

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Last week I wrote about the relatively peaceful and productive world of property. This week I will look at the decidedly unpeaceful and often destructive world of legal disputes.

Be aware the legal armoury is a many-weaponed place. And in selecting your weapon, you want to make sure you don't look like the guy who came up against Crocodile Dundee in the knife scene.

But in almost every case you will be selecting a two-edged sword.

One such example is a thing called a statutory demand. This is a formal notice that you can serve on a company that owes you money (it has to be at least \$2,000). The company has 21 days to pay you the money or it is deemed to be insolvent UNLESS it makes an application to the court to set aside the demand – usually within that 21 day period.

But like every good two-edged sword, a statutory demand can cut both ways.

If there is actually a “genuine dispute” about the money owed, or the strict procedural requirements of the Corporations Act are not complied with, the court can set aside the demand. If it does so, the court will often order the party that issued the demand to pay the costs of the company against which the demand was issued.

This can be a very unpleasant experience.

Many lawyers love statutory demands. Okay, love may be too strong a term, but it is certainly a weapon often selected by lawyers when there is a claim for money owed by a company.

I agree that a statutory demand is a very powerful device. And it does work in the right circumstances. But if rolled out when the conditions are not conducive to it, or with limited preparation, then the scales of justice can easily fall against you.

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