

ePaper:

Statutory Demands in Construction Disputes



RIDGEMONT

We are construction & real estate law Solicitors that simplify and resolve complex legal issues.

Providing you with the clarity and pragmatic advice you need to make informed commercial decisions.

Introduction

What is a Statutory Demand?

A statutory demand is a written demand to a person or a company for the payment of a debt within a fixed timescale. The demand must contain certain information and be served in the prescribed manner. If the demand is not paid, in some circumstances that can lead to the bankruptcy or winding-up of the debtor. It can be therefore a tool for resolving some construction disputes. It is important to know when to use this particular tool and explaining that is the purpose of this article.

This epaper does not constitute legal advice and therefore should not be relied on as such. The reader should always take legal advice based on the specific circumstances that it is facing.





Some basics

It must be a demand for a **debt** (see next heading). That debt must be at least £5,000 where the debtor is an individual and £750 where it is a company.

If the debtor fails to make payment within 3 weeks, it is deemed unable to pay its debts and is then at risk of bankruptcy / winding-up proceedings.

A debt

The source of the ability to serve a Statutory Demand (for company debt) is S.123(1)(a) Insolvency Act 1986 [highlighting added]:*

(1) A company is deemed unable to pay its debts—

*(a) if a creditor (by assignment or otherwise) to whom the company is **indebted** in a sum exceeding £750 **then due** has served on the company, by leaving it at the company's registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor*

Therefore, the sum owing must be a debt, ie a liquidated sum, meaning that there is no doubt that the sum is now due to the creditor. Liability is certain and fixed. The opposite is an unliquidated claim for damages, which is just a claim for recompense that has not yet been determined.

In the context of construction disputes, a debt will arise in so called “smash & grab” disputes, which are about alleged non-compliance with the payment regime contained in the amended Housing Grants, Construction & Regeneration Act 1996. That regime, no doubt familiar to you all, involves the service of payment applications, payment notices and pay less notices, for sums due for works done under the contract. Where such a sum of money has become a notified sum under that regime (ie stated in a valid payment or pay less notice) and then not paid, it is treated as a debt. Note that paragraph 4.11.7 of the 2016 JCT standard building contract for example states as much.

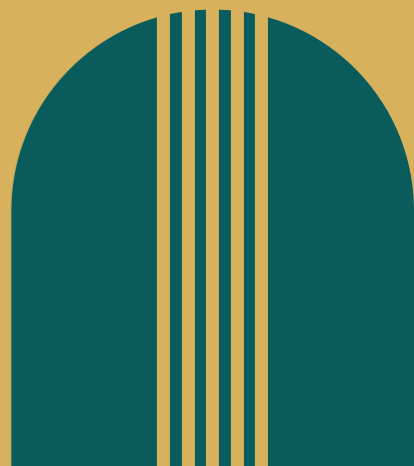
Genuine dispute or counterclaim

If the 3 weeks have passed and the debt has not been settled, the creditor must now consider whether to proceed to petition for bankruptcy / winding up. It should not do so though, if the debt is genuinely disputed on substantial (ie real not frivolous) grounds or the debtor has a genuine counterclaim against the creditor that reduces the debt to below the statutory threshold. The reasoning being that these things mean that there has not been the **neglect in payment** that is a requirement of S.186(1)(a) Insolvency Act (see previous page*).

If you proceed nonetheless, you risk the courts viewing this as an abuse of process and penalising you heavily in costs.

Is there some contradiction here though, in that if the sum is truly a debt under the Construction Act as explained above (ie the non-payment of a notified sum), how can it be disputed? The answer is best given by way of an example: if a pay less notice has been served, there may be an allegation that it is invalid, because it was given late. So you will need to be sure that there is no dispute or cross-claim, and hence the debt is agreed.

If you have any questions or need any advice relating to statutory demands please email us at tseal@ridgemont.co or call us on 0203 909 9590 / 07925 133605.





Sign up to our
newsletter full of
engaging free content!



Avoid missing out on the latest
news by following us on
LinkedIn!

Our offices

24 Greville Street, London, EC1N 8SS

St Nicholas House, 31-34 High St, Bristol, BS1 2AW (appointment only)

+44 (0) 203 909 9590

contactus@ridgemont.co

www.ridgemont.co



RIDGEMONT