Article Information

Author: Joanne Hardwick
Service: Commercial Disputes, Dispute Resolution & Litigation, Restructuring & Insolvency
Sector: Financial Services, Private Clients

Dig deeper before you litigate – evidence lessons for liquidators

Entries in a company's management accounts and year end financials are often the starting point for a liquidator's claim. But without more, how strong is that evidence? Is it enough to sue someone to recover a debt?

The facts

In *Marsden, in the matter of Empire Consortium Group (in liq) v Nationwide Plant Hire* [2026] FCA 911, liquidators pursued Nationwide for a substantial debt allegedly owed to Empire—despite the MYOB ledger recording a **nil balance** between the parties at the appointment date.

The liquidators argued that two book entries made close to the appointment date—when Empire was clearly insolvent—were not legitimate transactions. These "Zero Entries" (credits of $795,450 and $842,253.84) wiped out Nationwide's indebtedness shortly before the appointment.

The outcome

Derrington J dismissed the claim. Despite the suspicious circumstances, the Court found there was **insufficient evidence**—beyond mere suspicion—that the transactions were not legitimate.

Critically, the Court held that a *Jones v Dunkel* inference could not be used to patch up deficiencies in the liquidators' evidence. The voidable transaction claims were also dismissed for the same reasons. The liquidators were ordered to pay Nationwide's costs.

Key takeaways

- Accounting entries attract *prima facie* evidentiary status under s 1305 of the Corporations Act—but that presumption cuts both ways. If the ledger shows nil, you need positive evidence to displace it.
- Suspicion is not proof. Suspicious timing and circumstances alone are not enough to establish that transactions were not genuine.
- *Jones v Dunkel* cannot fill evidentiary gaps. Where a plaintiff has access to evidence (such as source documents in MYOB) but chooses not to pursue and adduce that evidence, the Court will not allow adverse inferences to compensate for that forensic decision.
- Cost-driven forensic choices carry risk. The Court observed that the liquidators appeared to have made a forensic decision to advance a "relatively slim case", likely influenced by cost considerations—but that choice resulted in a paucity of evidence that could not be remedied.

A salutary reminder for liquidators – dig deeper before you litigate.