

IN THE HIGH COURT OF FIJI
AT SUVA

Civil Action No: HBE 18 of 2016S

IN THE MATTER of a Statutory Demand dated 18 July 2016 taken out by **Carpenters (Fiji) Limited** ("The Respondent") against **Bankside Investments Limited** ("The Applicant") and served on the Applicant on 26 August 2016 by Registered Mail

AND

IN THE MATTER of an application by the Applicant for an Order setting aside the Statutory Demand pursuant to Section 516 of the Companies Act 2015

BETWEEN : **BANKSIDE INVESTMENTS LIMITED**
Applicant

AND : **CARPENTERS (FIJI) LIMITED**
Respondent

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr. R. A Singh for the Applicant
Mr. K. Singh and Mr. E. Narayan for the Respondent

Date of Hearing : 8 February 2017

Date of Judgment : 14 February 2017

JUDGMENT

1. This is an Application for setting aside a statutory demand (demand) made under the provisions of s. 515 of the Companies Act 2015 (the Act).
2. The Application is supported by the affidavit of Rohit Kishore (Kishore) the Managing Director of the Applicant. In it, Kishore deposes that the service of the demand is improper because it was sent by registered mail. He also says the debt is disputed, inter alia, for the reason that the sum claimed by the Respondent includes monies allegedly owed by Waffles (Fiji) Limited (Waffles).
3. The Respondent replied to the above by the affidavit of Asitha Sunnadaniya (Asitha) the financial controller of Morris Hedstrom, a trading arm of the Respondent. He deposes that the demand was rightfully issued.
4. Kishore in his affidavit in reply essentially repeats his earlier contention that the service of the demand was not in accordance with the requirements of s. 515 of the Act.
5. When the Application came up for hearing before the Court, Counsel for the Applicant submitted that the Applicant was only seeking to set aside the latest demand dated 18 July 2016. He had two grounds for this:
 - (i) The first was the demand was not effected as required by the Act. It was served by registered mail. The only permissible way is by personal service at the Applicant's registered office as per s. 515 (a) of the Act. He also relied on the judgment of the Court of Appeal, Fiji in : *Ontime Printing Limited AND National MBF Finance (Fiji) Limited*: Civil Appeal No. ABU 0063/97 (Ontime).
 - (ii) The second ground was that the debt was disputed. There was a discrepancy between the amount stated in the demand which is \$122,515.21 and that in the Respondent's

Solicitor's letter which is \$102,515.12. There was also some goods which had been ordered by Waffles.

6. He concluded his submission by saying the Respondent's failure to provide the particulars requested, prejudices the Applicant in responding to the demand.
7. Counsel for the Respondent submitted service by registered post is good service. In any event this objection should be raised at the winding up petition stage and not now. Even if there was a dispute the sum is still above \$10,000.
8. Counsel for the Applicant replied that the objection should be raised at this stage because they did not know the amount actually owing and to prevent harm to the Applicant if the petition were to be advertised.
9. At the conclusion of the arguments, I said I would take time to consider my decision but because of the urgency would give priority to its delivery. I proceed to do so now. I shall deal with the issue of service of the demand. S. 515(a) of the Act requires the statutory demand to be served "by leaving it at the Registered Office of the Company". The Company here is the Applicant. "Leave" according to the Oxford Dictionary means "hand over before going away". This connotes personal service.
10. The Ontime decision also makes this clear. This decision was regarding s. 221 of the previous Companies Act, the relevant part of which is in pari materia with s. 515 (a) of the Act. The Court of Appeal said "We are satisfied that the respondent's attempt to prove service of the notice under s. 221 by registered post does not satisfy the requirement of that section, that it be left at the registered office of the company. This direction is quite specific and does not allow for any other method".
11. On this ground I find and I so hold the Applicant is entitled to apply to the Court under s. 516 (1) of the Act to have the Statutory Demand dated 18 July 2016 set aside. In the

event it is unnecessary to consider the second ground for the Application that relating to a dispute as to the debt.

12. I hereby order that the Demand be set aside with costs which I summarily assess at \$500 to be paid by the Respondent to the Applicant.

Delivered at Suva this 14th day of February, 2017.



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David Alfred
JUDGE of the High Court of Fiji.