

In the High Court of Fiji at Suva

HBC No. 06 of 2017

Between

China Railway First Group (Fiji) Co. Ltd

Plaintiff

And

Sikeli Wise trading as Site-Safe Consultancy

Defendant

COUNSEL: Ms S. Devan for the plaintiff  
Mr V. Filipe for the defendant

Date of hearing: 27<sup>th</sup> June, 2017

Date of Ruling: 31<sup>st</sup> August,2017

**Ruling**

1. The plaintiff seeks leave to appeal my interlocutory decision of 6 April,2017,declining its application for an order restraining the defendant from issuing and advertising a petition for winding up of the plaintiff company. The defendant had served a statutory winding up notice on the plaintiff company in terms of section 515 of the Companies Act,2015, for payment of a sum of \$51,000 in terms of a judgment obtained after formal proof in Magistrate Court case no. 47 of 2016.
2. Wand Gang, Deputy General Manager of the plaintiff company in an affidavit in support states that the plaintiff has “*clear merits*” in its appeal and there is a strong probability that it will succeed in its appeal. The defendant will not suffer any real prejudice, since he has not obtained a judgment on merits. The plaintiff’s application to set aside the judgment of the Magistrates’ Court will be an exercise in futility, if the defendant is not restrained from enforcing its judgment. The affidavit concludes that the plaintiff currently employs more than 245 workers in its operations in Fiji and if a stay is not granted, its operations and all its projects will be seriously jeopardized.
3. The affidavit in answer of the defendant states that he gave oral evidence in the lower court and judgment was delivered on a consideration of the oral and documentary evidence. He will be prejudiced, if payment is not made for a debt incurred in 2012.

***The determination***

4. The plaintiff seeks leave to appeal from my Ruling declining to restrain the defendant from issuing and advertising a petition for winding up of the plaintiff company.
  
5. The proposed grounds of appeal of the plaintiff reads as follows:
  - (i) *The Learned Presiding Judge erred and/or misdirected himself in law and in fact in refusing to grant an Order restraining the Respondent from issuing or advertising a petition for winding up against the Appellant Company.*
  - (ii) *The Learned Presiding Judge erred and or misdirected himself in law in holding that the Appellant ought to have applied to set aside the statutory demand dated 15 December 2016 under Section 517 (1) (a) of the Companies Act of Fiji, 2015 rather than seeking equitable relief when the High Court of Fiji as a Court of equity has inherent discretion to grant a quia timet injunction.*
  - (iii) *The Learned Presiding Judge erred and or misdirected himself in law by failing to consider that the statutory remedy for an order setting aside Section 516 of the Companies Act of Fiji does not have the effect of abrogating general law or equitable remedies.*
  - (iv) *The Learned Presiding Judge erred and or misdirected himself in law in failing to consider that under Section 516 of Section 516 of the Companies Act of Fiji, 2015, there is no remedy available for a Company to apply for stay or restraining order against winding up proceedings.*
  - (v) *The Learned Presiding Judge erred and misdirected himself in law in holding that it was for the Appellant to seek leave of the High Court to oppose the application for winding up under Section 529 (1) (a) of the Companies Act of Fiji, 2015.*
    - (a) *When an application for winding up had not been presented by the Respondent.*
    - (b) *And thereby the provisions of Section 529 of the Companies Act did not apply in the given circumstances.*
  - (vi) *The Learned Presiding Judge erred and or misdirected himself in law and in fact in holding that the substantive relief claimed by the Appellant for a declaratory order that it was not liable for monies claimed is an issue to be decided by the Magistrate Court.*
  - (vii) *The Learned Presiding Judge erred in law in holding that the Appellant's Statement of Claim disclosed no reasonable cause of action and was an abuse of court process.*
  - (viii) *The Learned Presiding Judge erred in law and in fact in not taking into account that the Appellant had demonstrated good grounds to a grant of injunction.*
  - (ix) *The Learned Presiding Judge's decision is wrong and erroneous and tantamounts to a wrongful exercise of discretion having regard to all the facts and circumstances of the case and evidence on the whole.*

6. The proposed grounds of appeal contends that I erred in holding that it ought to have applied to set aside the statutory demand under section 517(1)(a) of the Companies Act, 2015, since the High Court has inherent discretion to grant a *qua timet* injunction and the Companies Act does not provide a remedy to apply for a stay or restraining order against winding up proceedings.

It is also contended that I erred in holding that the plaintiff should have sought leave to oppose the application for winding up under section 529 (1) (a) of the Companies Act.

7. Ms Devan, counsel for the plaintiff argued that section 517(1)(a) provides for the setting aside of a statutory demand, while the plaintiff sought an order to restrain the presentation of a winding up application until a judgment is obtained on the merits in the Magistrates Court.

The Companies Act does not abrogate the Court's power to grant interim relief. Next, she contended that section 529 contemplates a situation where a winding up application has been filed. The present case has not progressed so far.

8. Mr Filipe, counsel for the defendant submitted that there are no exceptional circumstances in the present case for the grant of leave to appeal. The writ does not disclose a cause of action.

The same application is before the Magistrates Court. An injunction cannot be issued without a pre existing cause of action.

9. In my view, the proposed grounds of appeal raise significant issues to be considered by the Court of Appeal, in particular the interpretation of section 517(1)(a) of the Companies Act and if the writ discloses a cause of action.

I therefore grant leave to appeal. I do not find real prejudice caused to the defendant. The defendant had obtained a judgment on formal proof in the Magistrates' Court.

10. *Orders*

- (a) The application for leave to appeal is allowed.
- (b) I make no order as to costs.



**A.L.B.Brito-Mutunayagam**  
**Judge**  
**31<sup>st</sup> August, 2017**