

IN THE HIGH COURT OF FIJI AT SUVA
COMPANIES JURISDICTION

Civil Action No: HBE 40 of 2017

IN THE MATTER of a Statutory Demand dated 18 February 2017 taken out by ESALA MAU RAIDRUTA trading as KULA MATAGI (the Respondent) against AUTO WORLD TRADING (FIJI) LIMITED and MR RAVIN LAL (The Applicant) and served on the Applicant on 23 November 2017 at the Sales Office of the Debtor Company.

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

Coram : The Hon. Mr Justice David Alfred

Counsel : Ms. I. Lutu for the Applicant
Mr. V. Filipe for the Judgment Creditor

Date of Hearing : 24 September 2018
Date of Decision : 27 September 2018

DECISION

1. This is the Applicant's Originating Summons (O.S) applying for an Order that the Statutory Demand (Demand) dated 22 November 2017 be set aside or stayed. The application is made pursuant to sections 515 to 518 of the Companies Act (Act).
2. It is supported by the affidavit of Ravindra Lal (Lal) who deposed as follows:
 - (1) He is the managing director of the Applicant (Company).
 - (2) The Company did not receive a notice under s.515 of the Act at its registered office at 67 Rewa Street, Flagstaff, Suva. It was handed to the Company's sales agent at Viria Road, Vatuwaqa, Suva on 23 November 2017.
 - (3) He is advised that the sum claimed is from the judgment dated 29 December 2016 (judgment) wherein the Court ordered the Company to pay \$27,000 and 3% interest from the date of issuance of Writ and not \$34,202.79.
 - (4) He is advised and believes that the judgment is presently pending in the Court of Appeal where they have appealed the decision of the Judge declining the leave to appeal application.
3. The affidavit in answer is deposed by Esala Mau Raidruta (Esala) the Respondent who was the Plaintiff in the original Magistrates' Court Action, who says as follows:
 - (1) The amount stated in para 4 of Lal's affidavit - \$34,202.79 - is incorrect. The correct amount is \$35,228.88 what is the total sum of \$27,000 plus 3% interest from 12 November 2008 to 22 November 2017.
 - (2) The Applicant's Summons to Extend Time to seek leave to appeal out of time and Stay of Proceedings was dismissed on 21 March 2017, by Amaratunga J.
 - (3) The Applicant then filed an originating summons which was struck out on 2 June 2017 and the costs of \$1,000 has yet to be paid. The Applicant has filed an appeal against the judgment.
4. The hearing commenced with Ms Lutu submitting. She said she was applying to set aside the demand under s.516 of the Act. The Court of Appeal has not granted a stay of the Magistrates' Court judgment. She said the demand was not served on the Applicant's registered office at 67 Rewa Street. There was a dispute as to the amount of

the debt to which the demand relates. She is not disputing the Magistrates' Court Order as to the amount that is due.

5. Mr Filipe then submitted. He said the demand was served on 3 addresses of the Company including its registered office at 67 Rewa Street. The Magistrate's ruling was that the Company pay \$27,000 plus 3% interest from the date of issuance of the writ i.e. 12 November 2008. The Company did not raise any issue of a genuine dispute. There is no stay in any Court and no appeal against the judgment.
6. At the conclusion of the arguments I said I would take time for consideration. Having done so I now deliver my decision on the 2 issues before the Court.
7. The first issue is whether the demand has been properly served on the Company. Section 515(a) of the Act states that the demand is to be left by the creditor at "the Registered Office of the Company". The Annual Return of the Company (Annexure B to Lal's affidavit) states its registered office is 67 Rewa Street, Flagstaff, Suva.
8. A registered Bailiff, Jope Tikoisuva in para 7 of his affidavit of service deposes that he did on 22 November 2017 leave a copy of the Notice at 67 Rewa Street, Suva.
9. It is significant to note that Lal in his affidavit in reply has nowhere deposed that the demand was not left at the Company's registered office.
10. In the event I find and I so hold that the Statutory Demand was properly served on the Company.
11. I shall now turn to the second issue which is whether there is a genuine dispute between the Company and the Respondent about the existence or amount of a debt to which the demand relates – s.517(1)(a). The responsibility is then cast by the Legislature on the

Court, by s.517(2) to calculate the substantiated amount of the demand. The Court's calculation of this amount is appended below:

(1) Judgment sum - \$27,000.

(2) Interest on (1) at the rate of 3% p.a. from 12 November 2008 (date of issuance of writ) to 22 November 2017 (date of demand) - \$7,312.19

Total : \$34,312.19

12. Since the substantiated amount (\$34,312.19) is at least as great as the statutory minimum amount for a statutory demand (\$10,000) the Court makes an order under s.517(4)(a) and (b) varying the amount as specified here and declaring the demand to have had effect, as so varied as from when the demand was served on the company.
15. In the result, the Originating Summons filed on 11 December 2017 is hereby dismissed with costs summarily assessed at \$750 to be paid by the Applicant to the Respondent.

Delivered at Suva this 27th day of September 2018.



David Alfred

JUDGE

High Court of Fiji.