

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
COMPANIES JURISDICTION

CIVIL ACTION NO. HBM 22 OF 2020

IN THE MATTER of a Statutory Demand dated 6 May 2020 taken out by **ASAS CONSULTING PTE LIMITED** ('the Respondent') against **NILA INTERNATIONAL PTE LIMITED** ('the Applicant') and served on the Applicant on 6 May 2020.

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.**

BETWEEN : **NILA INTERNATIONAL PTE LIMITED** a Private Company incorporated in Fiji and having its registered office at Lot 2 Vuda Point Road, Lautoka.

APPLICANT

AND : **ASAS CONSULTING PTE LIMITED** a Private Company incorporated in Fiji and having its registered place of business at Nadi Fiji.

RESPONDENT

Appearances : Mr D. S. Naidu for the applicant
Ms D. Pratap and Mr N. Nambiar for the respondent

Date of Hearing : 17 July 2020

Date of Ruling : 02 September 2020

RULING

[*setting aside a statutory demand*]

Introduction

- [01] This is an application for setting aside a statutory demand.
- [02] By its application supported with the affidavit of Mohan Chinnuswamy, the Director of the applicant company, the applicant seeks to set aside the statutory demand notice ("*statutory demand*") issued against it demanding payment of \$139,000.00.
- [03] Opposing the application, the respondent company has filed the affidavit of Selvin Kirpal, the Director of the respondent company, the applicant company has filed an affidavit in reply.
- [04] At the hearing, both parties orally argued the matter, and only the respondent company had filed written submission within the time limit allowed by the court.

Background

- [05] On 20 December 2019, Nila International Pte Limited ("*the applicant company*" or "*NIPL*") obtained a loan of \$100,000.00 upon execution of loan agreement dated 20 December 2019 ("*the agreement*"). The relevant part of the agreement reads:

Loan Amount: F\$100,000/- (*One Hundred Thousand Dollars Only*)

Interest Rate: 15% per month fixed equivalent to \$15,000/- (*Fifteen Thousand Dollars Only*) per month

Repayment:

Due on the 23rd January 2019 by one bullet payment of F\$100,000/- (One Hundred Thousand Dollars Only), however interest continued to be paid until principal debts repaid in full.

Payment Due Date:

Interest to be paid 23rd of every month until principal debts repaid in full."

- [06] On 6 May 2020, NIPL served the applicant company with a statutory demand under section 515 of the Companies Act 2015 ("Com Act") demanding repayment of the loan. The applicant company did not make the payment demanded under the statutory demand.
- [07] Instead, on 26 May 2020, the applicant company filed an application for an order setting aside the statutory demand under section 516 of the Com Act.

Legal framework

- [08] Section 516 of the Com Act provides:

"Company may apply

516 (1) A company may apply to the court for an order setting aside a statutory demand served on the company.

(2) An application may only be made within 21 days after the demand is so served.

(3) An application is made in accordance with this section only if, within those 21 days—

(a) an affidavit supporting the application is filed with the court; and

(b) a copy of the application, and a copy of the supporting affidavit, are served on the person who served the demand on the company."

- [09] Section 517 of the Com Act states:

"Determination of application where there is a dispute or offsetting claim

517 (1) This section applies where, on an application to set aside a statutory demand, the court is satisfied of either or both of the following—

(a) that there is a genuine dispute between the company and the respondent about the existence or amount of a debt to which the demand relates;

(b) that the company has an offsetting claim.

- (2) *The court must calculate the substantiated amount of the demand.*
- (3) *If the substantiated amount is less than the statutory minimum amount for a statutory demand, the court must, by order, set aside the demand.*
- (4) *If the substantiated amount is at least as great as the statutory minimum amount for a statutory demand, the court may make an order—*
- (a) varying the demand as specified in the order; and*
 - (b) declaring the demand to have had effect, as so varied, as from when the demand was served on the company.*
- (5) *The court may also order that a demand be set aside if it is satisfied that—*
- (a) because of a defect in the demand, substantial injustice will be caused unless the demand is set aside; or*
 - (b) there is some other reason why the demand should be set aside.” [Emphasis supplied]*

Discussion

- [10] The court, under section 517 of the Com Act, is empowered to set aside a statutory demand served on the company if it is satisfied either or both of 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.
- [11] On inquiry by the court, counsel appearing for the applicant company confirmed to the court that the applicant company obtained a sum of \$100,000.00 from the respondent company. It follows that there is no genuine dispute between the applicant company and the respondent as to the existence of the debt.
- [12] The dispute appears to be about the amount of the debt to which the demand relates, especially the amount of interest.
- [13] It is notable that there is no offsetting claim made by the respondent against the applicant.
- [14] The application for setting aside is made on the grounds that: (a) the loan agreement violates the Consumer Credit Act 1999 and the Moneylenders Act and (b) the applicant is a solvent company.

- [15] On an application to set aside a statutory demand, the applicant must satisfy the court either or both of that there is a genuine dispute between the company and the respondent about the existence or amount of a debt to which the demand relates.
- [16] According to the loan agreement (which the applicant had admitted), the applicant agrees to pay interest at the rate of 15% per month, which is equivalent of \$15,000.00 until the entire principal amount of \$100,000.00 is repaid in full, one bullet payment by 23 January 2019.
- [17] It was agreed between the applicant and the respondent that the interest rate would be 15% per month. Therefore, the applicant is not entitled to challenge the interest rate on the ground of harsh.
- [18] The loan agreement was made on or about 20 December 2019. Its repayment clause states that the repayment is due on **23 January 2019**. The parties had intended the repayment date to be **23 January 2020**. However, it is printed as 23 January 2019. There appears to be a typographical error in printing the due date for repayment of the loan. The repayment date should be read as 23 January 2020.
- [19] The loan agreement appears to be for a short term, being a month. This is obvious by the due date for repayment. The agreement was made on 20 December 2019, and the repayment date was 23 January 2019[20]. This makes the intention of the parties clear that they had intended a short term loan, i.e. a month.
- [20] Section 7 (1) of the Consumer Credit Act does not apply to the provision of credit limited by the contract to a total period not exceeding 62 days. The loan agreement limits the total period to be a month. It therefore does not attract the Consumer Credit Act. Moreover, it is a business loan and not one for a domestic or household purpose.
- [21] There is no evidence to demonstrate the respondent company is a moneylender. Moneylender is a person whose business is that of money lending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than lending of money and

whether or not that person carries on the business as a principal or as an agent (see s.2 of the Moneylenders Act). I would accordingly reject the contention that the loan agreement violates the Moneylenders Act.

[22] The applicant did not dispute obtaining a loan of \$100,000.00 from the respondent with the promise that it would pay it back with the interest at the rate of 15% per month. Therefore, the respondent company was entitled to issue a statutory demand under section 515 of the Com Act.

Conclusion

[23] For the reasons given, I conclude that the debt with an interest of \$15,000.00 a month from the repayment date of 23 January 2020 is not in dispute. This follows that the applicant did not satisfy me that there is either a dispute about the existence of the amount of the debt to which the statutory demand relates. I would, therefore, dismiss the application with summarily assessed costs of \$1,000.00 payable by the applicant to the respondent.

Result:

1. Application to set aside the statutory demand is dismissed.
2. Applicant shall pay summarily assessed costs of \$1,000.00 to the respondent.

M.H. Mohamed Ajmeer
2/9/20

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
2 September 2020

Solicitors

Pillai Naidu & Associates, Barristers & Solicitors for the applicant
Gosai & Nambiar Lawyers for the respondent