

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

HBC 281 of 2019

IN THE MATTER OF A  
STATUTORY DEMAND UNDER  
SECTION 515 OF THE  
COMPANIES ACT 2015 AND AN  
APPLICATION FOR SETTING  
ASIDE THE STATUTORY  
DEMAND UNDER SECTION 516  
THEREOF

---

**BETWEEN** : EVEREADY TAXIS & TOURS PTE LIMITED

**PLAINITFF**

**AND** : SUNIL PRAKASH

**DEFENDANT**

**BEFORE** : M. Javed Mansoor, J

**COUNSEL** : Mr. S. Gosai for the plaintiff  
Mr. E. Narayan for the defendant

**Date of Hearing** : 14 September 2020

**Date of Judgment** : 31 October 2022

# JUDGMENT

COMPANY LAW

*Statutory demand – Application to set aside statutory demand and for injunctive relief – Delay in filing application – Application to strike out – Sections 515 & 516 of the Companies Act 2015 – Order 18 rule 18 (1) of the High Court Rules 1988*

---

1. The defendant applied to strike out the plaintiff's originating summons, by which orders were sought to set aside a statutory demand dated 19 July 2019 served by the defendant on the plaintiff under section 515 of the Companies Act 2015.
2. The plaintiff filed originating summons on 22 August 2019 seeking the following orders:
  - a. "An injunction against the defendant restraining the defendant by itself or its servants or agents or howsoever from advertising the threatened winding up petition demanding a disputed sum of \$24,000.00 as demanded in a Statutory Demand dated 19 July 2019 from the plaintiff herein or a petition or any such other petition for the winding up of the plaintiff company until further orders of this Court;
  - b. An injunction restraining the defendant either by himself or his servants and/or agents from proceeding to levy distress for rent against the plaintiff;
  - c. An order setting aside a Statutory Demand dated 19 July 2019 served by the defendant upon the plaintiff demanding the payment of \$24,000.00 from the plaintiff company;
  - d. A declaration that the amount of \$11,000.00 already paid by the plaintiff to the defendant as rent is the correct sum;
  - e. A declaration that the sum of \$38,061.57 spent on the development of the defendant's property is an overpayment;
  - f. An order that the defendant do pay the plaintiff's costs on a full indemnity basis".

3. Nilesh Salendra Ram, a director of the plaintiff filed an affidavit in support of the plaintiff's originating summons. The defendant served the plaintiff a statutory demand under section 515 of the Companies Act to recover a debt of \$24,000.00 on 20 July 2019. Mr. Ram deposed that his solicitors replied the statutory demand by letter dated 24 July 2019 disputing the debt. The plaintiff's letter was replied by Patel Sharma Lawyers on 13 August 2019 stating they needed to obtain full instructions from their client, and that the statutory demand remains in full force. Mr. Ram said the defendant's solicitors did not write back to the plaintiff's lawyers, having indicated they would; this assertion – as will be seen below – is incorrect as the defendant's lawyers did communicate thereafter by letter dated 22 August 2019.
4. The dispute stems from a commercial lease agreement between the plaintiff and the defendant which was executed on 7 March 2018. In terms of the agreement, the plaintiff agreed to take on rent the defendant's premises located at Lot 5 Nakasi Road, Nausori. Mr. Ram said that an associate company, Yamato Cars and Spares Private Ltd, spent its own funds in making various additions to the premises owned by the defendant. These additions had cost a sum of \$38,061.57. The premises was developed in this way, he said, based on an oral agreement between the plaintiff and the defendant. The letter dated 24 July 2019 sent by the plaintiff's solicitors referred to this development work. The amount spent on such development, he said, was to be subsequently offset from future rent.
5. Mr. Ram said that the agreed rental for the premises was \$1,000.00, which was the price excluding value added tax (VEP). He provided a copy of the commercial lease agreement said to have been signed by the parties in proof of his contention. On this basis, he paid a sum of \$11,000.00 as rent between August 2018 and June 2019. Rent receipts were also tendered in proof of his claim. Mr. Ram said that the defendant owed the plaintiff a sum of \$5,453.04 given as a loan to be paid to the Nausori Town Council, as application fees for converting the lease from residential to commercial. The rent monies from March 2018 to July 2018, he said, were offset from the amount that was paid in terms of their verbal agreement.

6. After payment of rent for the month of June 2019, Mr. Ram said he was informed by the defendant that the monthly rental would be increased from \$1,000.00 to \$1,500.00. The plaintiff sent the defendant a letter dated 28 June 2019 stating its disagreement with the increase and saying that as a result he would have to vacate the premises. In the same letter, the plaintiff called on the defendant to refund the loan of \$5,454.04 by September 2019. There was no reply to the letter, but the plaintiff received a statutory demand dated 19 July 2019, which was served at its registered office on the following day. The plaintiff also received a notice of distress in the sum of \$25,200.00 as arrears of rent and other charges from a registered bailiff authorised by the defendant.
7. The defendant, Mr. Sunil Prakash, filed an affidavit in opposition on 7 October 2019. On the same day the defendant filed summons seeking an order for the plaintiff's "statement of claim" to be struck out and/or stayed. The application was made pursuant to order 18 rule 18(1) (a) (b) (c) and (d) of the High Court Rules.
8. Mr. Prakash averred that he is the proprietor of the subject premises bearing crown lease number 573722, jointly with his daughter. He said that the plaintiff and the defendant entered into a commercial lease agreement on 7 March 2018 at a rental of \$2,000.00 (VEP), and not \$1,000.00 (VEP) as claimed by the plaintiff. He, too, tendered a copy of the commercial lease agreement, which stated the rent as \$2,000.00. He said that although the plaintiff was required to have paid a sum of \$34,000.00 for a period of 17 months between 7 March 2018 and 31 July 2019, the plaintiff paid only \$11,000.00, and gave a breakdown of the monthly rental payments that were received. Mr. Prakash said that he issued the plaintiff a statutory demand seeking a sum of \$24,000.00 in respect of the balance outstanding rental payments for the period 7 March 2018 to 31 July 2019.
9. The defendant said that when the plaintiff disputed the statutory demand, the defendant's solicitors sent the plaintiff a preliminary reply by their letter dated 13 August 2019, and, thereafter, by letter dated 22 August 2019, they denied the allegations in the plaintiff's letter dated 24 July 2019, and requested documentary

evidence to substantiate the plaintiff's claim. The defendant's letter shows that a copy of the commercial lease agreement was requested from the plaintiff. Mr. Prakash says that although the plaintiff wrote back by letter dated 23 August 2019, they did not provide documentary evidence in support of their claim. He said that the plaintiff did not pay rent for August and September 2019, amounting to an additional \$4,000.00.

10. The defendant averred that the plaintiff had wrongfully changed the contents of the rental agreement. He stated that any purported development of the property done by Yamato Cars and Spare Parts Ltd and by the plaintiff was in relation to the requirements imposed by the Nausori Town Council and the Land Transport Authority concerning the plaintiff's business. The defendant denied that the plaintiff spent a sum of \$38,061.57 to develop the property, and said that there was no agreement between the parties to carry out such development work. The defendant said that as the plaintiff has paid a sum of \$11,000.00, there was a balance sum of \$23,000.00 remaining to be paid to the defendant. The statutory demand mentions a sum of \$24,000.00. This discrepancy, by itself, is not fatal to the statutory demand. The reduced debt mentioned in Mr. Prakash's affidavit in opposition remains a liquidated sum. The plaintiff did not refer to the difference in amounts. Mr. Prakash also said the plaintiff paid the defendant \$5,453.04 as a bond, which covered the bond value for Yamato Cars and Spares Private Ltd as well.
11. In his affidavit in reply filed on 22 October 2019, Mr. Nilesh Ram insisted that the rent for the premises was \$1,000 (VEP) and said that the agreement tendered by the defendant was fabricated. Mr. Ram admitted to not paying the rent for August and September 2019, saying that payment was not made as legal proceedings were on foot. He proposed that the outstanding rent could be offset from the loan of \$5,453.04 given to the defendant.
12. Mr. Nilesh Ram also filed a supplementary affidavit in response to the defendant's summons for striking out, filed pursuant to Order 18 rule 18 (1) (a), (b), (c) & (d). He said that the summons is defective as it asks for an order for a statement of claim to be struck out, and that the defendant had failed to amend

the summons having obtained leave to do so. This is not correct. The defendant filed a further summons on 6 November 2019 seeking an order to strike out the originating summons and affidavit in support filed on 22 August 2019.

13. At the hearing, the plaintiff submitted that the amounts claimed by the defendant were settled and possession of the property was handed over to the defendant on 31 December 2020. The plaintiff also submitted that it deposited a sum of \$4,546.96 to the defendant's bank account on 7 January 2020. The plaintiff submitted that it has complied with the requirements of the statutory demand.
14. In response, the defendant submitted that the statutory demand was served on the plaintiff on 20 July 2019, and that an application to set aside a statutory demand is required to be filed within 21 days of its service. The defendant submitted that the plaintiff's application was filed out of time, on 22 August 2019, and, therefore, the plaintiff was not entitled to ask the court to set aside the statutory demand.
15. There are a number of matters in dispute between the parties. Crucial among the differences is the monthly rent payable for the premises that was occupied by the plaintiff. The plaintiff says the agreed monthly rent was \$1,000.00. The defendant contradicts by saying the rent was agreed at \$2,000.00. Each party has produced its own lease agreement – with differing rental amounts – and accused the other of fabrication. These are serious charges. The defendant says that he has made a police complaint on the matter to the Nakasi police station.
16. The next dispute concerns the plaintiff's claim that its associate company incurred expenses of \$38,061.57 to develop the defendant's premises to operate its business. The plaintiff says this was done with the defendant's verbal agreement, which the defendant denies. The plaintiff and the defendant were also at variance over the sum of \$5,403.04 given to the defendant by the plaintiff. The defendant's position is that this was payment of a bond covering the plaintiff and its associate, Yamato Cars & Spares Pte. Limited. The plaintiff denies this contention and calls it a loan given to the defendant, and has asked for its return.

17. On the face of it there seem to be matters on which the statutory demand could be questioned. The evidence of the parties on these matters will need careful consideration to adjudicate the issues. However, the court is constrained by the plaintiff's failure to apply within the time period specified by the Companies Act to set aside the statutory demand.
18. Section 515 of the Companies Act says that unless the contrary can be proven to the satisfaction of the court, a company must be deemed to be unable to pay its debts if a creditor has served on the company by leaving it at the registered office of the company, a demand requiring the company to pay the sum so due (statutory demand), and the company has not paid the sum or secured or compounded for it to the reasonable satisfaction of the creditor within 3 weeks of the date of the notice. The other situations in which a company is deemed by that provision to be unable to pay its debts are not necessary to be stated here.
19. Section 516 of the Companies Act 2015 states:
  - (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".
20. The plaintiff does not deny that it failed to apply for relief within the prescribed time. The plaintiff's counsel suggested that they were in discussions with the defendant's solicitors. Except in saying that, there is no explanation for the omission. This is not an acceptable excuse. The statutory demand itself clearly stated that payment must be made within 21 days, and that failure to do so would result in winding up proceedings against the plaintiff.

21. The language of section 516 of the 2015 Act in saying that an application may *only be made within 21 days* is compelling. Literally taken, the coercive effect of those words cannot be ignored by court. The word “only” would be redundant if the coercive purpose of that legislative proposition is to be disregarded. A contrary view, favouring the plaintiff, would render ineffective the statutory scheme that Parliament has devised to deal with companies that the law deems to be unable to pay their debts. The plaintiff clearly had its opportunity to oppose the statutory demand, but failed to do so within time. There is no reasonable explanation for this omission, upon which the court could indulge.
22. In these circumstances, the defendant’s application succeeds. This, however, does not mean the defendant is precluded from opposing an application for winding up with the leave of court and in the manner provided by the statute.
23. The plaintiff also submitted that there was a risk of the defendant advertising the company’s winding up unless an injunction was issued by court as prayed for in its originating summons. It was submitted that a winding up advertisement would be detrimental to the goodwill of the plaintiff. The plaintiff cited several authorities on injunctions, and submitted that there was a serious question to be tried necessitating the grant of an injunction in favour of the plaintiff.
24. The court does not agree. Granting an injunction, where the statute has prescribed method and time by which a demand could be set aside, may amount to nullifying the statutory provision. The circumstances in this case do not warrant the grant of an injunction.
25. A related company of the plaintiff, Yamato Cars and Spares Private Ltd, which operated its business from the same premises as the plaintiff, filed an originating summons on the same lines as in the present case. That will be dealt with in a separate ruling on the same day as this decision.



## ORDER

- A. The defendant's summons filed on 6 November 2019 to strike out the plaintiff's originating summons is allowed.
- B. The plaintiff is to pay the defendant costs summarily assessed in a sum of \$500.00 within 21 days of this judgment.

Delivered at **Suva** on this **31<sup>st</sup>** day of **October, 2022**



A handwritten signature in blue ink, appearing to read "M. Javed Mansoor".

M. Javed Mansoor  
Judge

Solicitors:

For the plaintiff: *Jiten Reddy Lawyers*

For the defendant: *Patel Sharma Lawyers*