

IN THE HIGH COURT OF FIJI AT SUVA
CENTRAL DIVISION

Civil Action No. 74 of 2018

BETWEEN : PACIFIC COLLECTION HOUSE LIMITED

PLAINTIFF

AND : BUSINESS MINDERS (FIJI) LIMITED

DEFENDANT

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr S. Nandan for the Plaintiff.
Mr V. Prasad for the Defendant.

Date of Hearing : 26 September 2018
Date of Decision : 13 November 2018

INTERLOCUTORY DECISION

1. This the Plaintiff's Notice of Motion applying for an Order that the Defendant be restrained from any taking any further steps to wind up the Plaintiff under the Statutory Demand (Demand) dated 15 February 2018.
2. It is supported by the affidavit of Abhi Ram Singh (Singh) who deposes as follows:
 - (1) He is a director of the Plaintiff (Pacific).
 - (2) He believes that the Demand has been issued to collect a debt owed by Uptown Wine and Dine (Uptown) from the Plaintiff.
 - (3) The Plaintiff gives an undertaking as to damages so that the amount claimed can be deposited into the trust account of the Plaintiff's solicitors until the determination of the matter.
3. The Defendant's director, Kirpa Sharma (Sharma) in the affidavit in opposition deposes as follows:
 - (1) The Defendant (Business) had properly issued the Demand for the debt of \$49,819.59 which remain due and owing by the Plaintiff to the Defendant, after the payments made by the Plaintiff.
 - (2) The audit confirmation request and the other documents etc. prove that the Plaintiff had itself bought the goods/stock.
4. The hearing commenced with Mr Nandan submitting. He said Uptown is a separate company and no money is owed by Pacific. There is a disputed debt.
5. Mr Prasad then submitted. He said the Court should not grant an injunction. Nowhere has Pacific produced any document to show that the goods were purchased for and on behalf of another entity. There is no evidence of any disputed claim. Business is out of pocket for \$49,819.59 owed to it by Pacific. Singh signed the audit confirmation request which is stamped one month later on 18 August 2017.

6. Mr Nandan in his reply said the Plaintiff will pay the money into Court if that is a condition for granting an injunction.
7. At the conclusion of the arguments I said I would take time for consideration. Having done so I now deliver my decision.
8. The pivotal issue is whether the Court should grant an injunction. This appears to be a case where Pacific is seeking an injunction to restrain Business from exercising its legal right to present a petition. It is most certainly not an injunction to restrain Business from violating a legal right of Pacific. I refer the decision of the Court of Appeal of England in : *Bryanston Finance v De Vries (No.2)* [1976] 1 Ch pg 80.
9. The Court needs go no further than to peruse Business's "Audit Confirmation Request" dated 30 June 2017. A stamp shows it was received on 13 July 2017. This Request is significant for its contents. First it requests "that you (Pacific) confirm certain information". Then it requests "for confirmation of the balances payable as at 30th June 2017 to Business Minders Fiji Limited. The sum as per the statement attached is \$75,005.81. If the balance agrees with your records, please sign.....and return the confirmation.....If the balance does not agree with your records, please write giving full details of the difference".
10. At the bottom is printed the words "THE BALANCE SHOWN ABOVE IS CORRECT". Below is written the date "18.8.17" and the signature is stated to be that of a 'DIRECTOR'. At the very bottom is stamped "Pacific Collection House Ltd".
11. The above clearly belies the averment in para 10 of Singh's affidavit in support that he signed the Request when it was presented to him by one Sharma, that he did not read the contents of the same and signed it and 'Sharma left with signed document". In actual fact, Pacific's director had 1 month to consider the Request and clearly signed it because the balance agreed with Pacific's records.

12. Further, what militates against Pacific's contention contained in para 8 of Singh's affidavit that "the Plaintiff has never bought goods from the Defendant" are Annexures 'K7' and 'K8' to Sharma's affidavit which are respectively:
- (i) 3 Cheques of Pacific in favour of Business for the sums of \$9426.60, \$5450.00 and \$5000.
 - (ii) Pacific's payment voucher dated 4.10.17 to Business for \$20,000.00 being "Payment for stock" and "ACCNT TO CHRG Pacific Collection".
13. The Oxford Dictionary of Law Ninth Edn defines "debt" as "The obligation to pay a sum of money owed". What Pacific was doing as stated in para 12 was precisely that – the payment of a debt it owed to Business. It is implausible to suggest that Pacific could be paying for any debt owed by Uptown.
14. In the face of a clearly unequivocal admission of a debt owed by Pacific to Business, Pacific's Motion cannot move any further, more so when the amount claimed in the Demand is much less than that acknowledged in the Request, because as Sharma deposed in para 6 of the affidavit in opposition, "the Plaintiff has made payments totaling \$131,779.04 in reduction of the total invoiced with \$49,819.59 (Debt/Debt Sum) remaining as the sum due and owing by the Plaintiff to the Defendant".
15. In this respect, I would refer to the decision of Madraiwiwi J in *Treasure Island Limited v Rups Industries Limited* [2001] 1 FLR 64. The learned Judge adopted the headnote to *Re a company* [1993] BCLC 131 which states:
- "Held – Injunction refused. The presentation of a petition to wind up a company based on an undisputed debt is not an abuse of the process of the court. Such a petition was not presented for an improper purpose, for example, to put pressure on the company to pay a debt which was disputed, but for a purpose which was entirely proper which was to put pressure on the company to pay a debt which was not disputed".

16. In the result, I hereby refuse to restrain the Defendant from taking steps to wind up the Plaintiff, dismiss the Notice of Motion filed on 27 March 2018 and order the Plaintiff to pay the Defendant costs summarily assessed at \$1,000.

Delivered at Suva this 13th day of November 2018.



David Alfred

JUDGE

High Court of Fiji