

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 382 of 2019

In the matter of an application to set aside a Statutory Demand

Gurbachan Singh's Steel Mills Limited

Applicant

v

Export Freight Services (Fiji) Limited

Respondent

Counsel : Mr Akshay Singh for the Applicant

Mr B. Solanki for the Respondent

Date of hearing: 26th February, 2020

Date of Judgment: 10th July, 2020

Judgment

1. The Applicant seeks to set aside the Statutory Demand dated 24th October, 2019, served on it by the Respondent.
2. The supporting affidavit of the Managing Director of the Applicant states that the Statutory Demand has been signed by Messrs. Solanki lawyers and a letter of authority has not been produced.

3. The alleged debt relates to the following five invoices from 15th November,2016, to 27th June,2017, attached to the affidavit, viz:

i)	No 00079353 of 15/11/2016 : container detention charges:	\$ 800.00
ii)	No 00079388 of 16/11/2016 : clearance charges	:\$ 190.11
iii)	No 00081397 of 30/04/2017 : storage charges	:\$ 11995.45
iv)	No 000081395 of 02/05/2017 : storage charges	:\$ 31281.04
v)	No 000081908 of 27/06/2017 : storage charges	:\$ 11007.25

4. The affidavit disputes the first invoice and states that they are not aware of the facts concerning the container detention charges. It has a large warehouse at Nabua and there was no need to hold the container for more than 14 days. He believes it was the Respondents' fault for not collecting the container from their place of business or delivering it to the shipping company.

5. The Applicant paid \$1151.92 for the second invoice, as the payment was reduced. There was an arrangement that cash will be paid on delivery. This issue and the matter relating storage charges were resolved with John Chen, a former Director of the Respondent verbally. The respondent is in the business of customs clearance of goods imported. There was an agreement between the parties that the Applicant will give business to the Respondent, which will waive or not raise storage charges, if such charges arise.

6. The affidavit finally states that the Applicant made payments after demand notices were sent by the Respondent.

7. The Respondent, in the affidavit in opposition filed on its behalf states that the payment of the invoices remains outstanding. There is no documentary evidence to support the claim that storage charges would be waived or not raised. John Chen was one of the Directors of the Respondent. He resigned on 16th January,2017. The Respondent admits some invoices were partly paid.

The determination

8. Section 516 states that a Company may apply to Court for an order setting aside a Statutory Demand served on a Company.

9. Section 517 provides that:

- 1) *...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...*

10. The Applicant contends that there is a genuine dispute on the amount due, but has not provided any documentary evidence in support of its contentions on the invoices raised by the Respondent.

11. Be that as it may, the Applicant states that it “paid some monies”, but does not have the records. The Respondent admits that “only some invoices were partly paid, however.. is unable to allocate that payment as the Applicant has not provided us the cheque numbers”.

12. In my view, it is evident that there is a “genuine dispute” within the meaning of section 517, as to the amount claimed.

13. Barrett J in *CGI Information Systems and Management Consultants Pty Ltd v APRA Consulting Pty Limited*, [2003] NSWSC 728; (2003) stated:

..the task faced by the company challenging a statutory demand on the genuine dispute grounds is by no means at all a difficult or demanding one. A company will fail in that task only if it is found, upon the hearing of its section 459G application, that the contentions upon which it seeks to rely in mounting its challenge are so devoid of substance that no further investigation is warranted. Once the company shows even one issue has a sufficient degree of cogency to be arguable, a finding of genuine dispute must follow. The Court does not engage in any form of balancing exercise between the strengths of competing contentions. If it sees any factor that on rational grounds indicates an arguable case on the part of the company, it must find that a genuine dispute exists, even where any case apparently available to be advanced against the company seems stronger.(emphasis added)

14. In the result, the Statutory Demand served on the Applicant is set aside.

15. Section 517 (2) requires the Court to calculate the substantiated amount of the demand. I am not in a position to do so, as the parties have not provided any information of monies paid and received.

16. *Orders*

- a. I set aside the statutory demand dated 24th October, 2019.
- b. The Respondent shall pay the Applicant \$2000.00, as costs summarily assessed.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
Judge
10th July, 2020