

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 383 of 2019

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

Gurbachan Singh's Tyre Centre and Industries Ltd

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 was not served at the registered office of the Applicant and has been signed by Messrs. Solanki lawyers. Their letter of authority has not been produced.

3. The alleged debt relates to the following six invoices from July, 2015, to 27th June,2017, attached to the affidavit:

(i)	No 00070202	: clearance charges	\$ 300.00
(ii)	No 00070642	: clearance charges	3547.97
(iii)	No 00072532	: external charges	1299.83
(iv)	No 000078310	: storage charge/delivery	1006.65
(v)	No 000080837	: storage charges	5493.60
(vi)	No 000081901	: storage charges	3180.00

4. The Applicant states that the payment for the first invoice was reduced and it paid \$ 1151.92.

5. Payment was made for the second invoice by two cheques. Copies are attached.

6. The affidavit continues to state that there are no monies owing on the third invoice.

7. As regards the remaining invoices, there was a verbal agreement with John Chen, a former Director of the Respondent that storage charges will not be levied.

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

9. 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

10. The Applicant complains that the Statutory Demand was not served at its registered office.

11. In my view, no injustice has been caused to the Applicant. It had due notice of the Statutory Demand and filed its opposition within the stipulated time period.

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

13. 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...*

14. The Applicant contends that there is a genuine dispute on the amount due.

15. The Applicant has produced evidence to support its contention that payments were made by two cheques, as regards one of the invoices.

16. The affidavit in support further states that it “*paid . some monies*”, but does not have the records. The Respondent admits that “*only some invoices were partly paid*”.

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

18. 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)

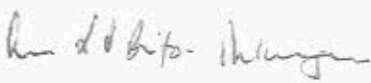
19. In the result, the Statutory demand served on the Applicant is set aside.

20. 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.

21. *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
Judge
10th July, 2020