

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

COMPANIES ACTION NO. HBM 47 OF 2020

IN THE MATTER of a Statutory Demand dated 22 September 2020, taken out by **PACIFIC ENERGY (SOUTH WEST PACIFIC) LIMITED** (“the respondent”) against **ISLAND HOPPERS PTE LIMITED** (“the applicant”) and served on the applicant on 23 September 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 2015**.

BETWEEN : **ISLAND HOPPERS PTE LIMITED** a limited liability company registered under the Companies Act of Fiji, having its registered office at Bradfield Drive, Nadi Airport.

APPLICANT

AND : **PACIFIC ENERGY (SOUTH WEST PACIFIC) LIMITED** a limited liability company having its registered office at Level 7, Vanua House, Suva.

RESPONDENT

Appearances : Ms S. Devi for the applicant
Ms P. Low for the respondent
Date of Hearing : 28 October 2020
Date of Ruling : 28 October 2020

R U L I N G

[on preliminary issue]

[01] This ruling concerns preliminary issues raised by the respondent.

[02] The application to set aside a statutory demand came on for hearing today (28 October 2020), when Ms Low counsel appearing for the respondent raised two preliminary issues namely:

1. *The application was not served within 21 days although they had filed it within 21 days.*
2. *The application was not served to the person who served the statutory demand.*

[03] In response, Ms Devi counsel for the applicant submits that the application was served on the city agent of the solicitor, Howards Lawyers (Suva) who served the statutory demand. The application was so served on 14 October 2020. The statutory demand was served on 23 September 2020. Therefore, 21 days expire on 14 October 2020. The time period of 21 days should to be calculated from 24 September 2020, which is after service of the statutory demand on 23 September 2020.

[04] As regards application to set aside a statutory demand, section 516 of the Companies Act 2015 sets out that:

"[COM 516] 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.” [Emphasis supplied]

- [05] It is noteworthy that section 516 (1) specifically states that: *“an application may only be made within 21 days after the demand is so served.”* That section does not simply say ‘within 21 days’ or within 21 days of the service of a statutory demand’ but *‘within 21 days after the demand is so served’*. By stating that ‘within 21 days after the demand is so served’ the section expressly suggests that when calculating the 21 days the date on which the demand was served should not be counted. Otherwise, there will be no meaning to the word ‘after’.
- [06] In term of section 516, it is crystal clear that the date on which the demand should be excluded in counting the 21 days because the section clearly says *‘within 21 days after the demand is so served.’*
- [07] In the present case, the application to set aside the statutory demand has been made on 13 October 2020. Undoubtedly, it has been filed within 21 days after service of the demand. There was no dispute about it.
- [08] However, a copy of the application, and a copy of the supporting affidavit were served on Gordon & Company, the city agent of the solicitor (Howards Lawyers) who served the demand on 14 October 2020.
- [09] Ms Low argues that service of the application on 14 October 2020 exceeds 21 days; therefore this application should be struck out as it was not in compliance with the mandatory section of 516. She appears to have included the date on which the demand was served.

- [10] By section 516, the application to set aside a statutory demand is to be filed and served within 21 days after the demand is so served. The applicant served the application on the city agent of the solicitor (who served the demand) on 14 October 2020. The demand was served on the applicant on 23 September 2020. When you calculate 21 days after the service of the demand (excluding the date on which it was served), 21 days expires on 14 October 2020, not on 13 October as Ms Low argued. Since the 21day-timelimit expired on 14 October, the service of the application on the city agent (of the solicitor who served the demand) on 14 October is within 21 days after the service of the demand as required by section 516 (3) (b). This translates that the applicant has complied with the requirement of section 516 (3) (b).
- [11] Another issue raised by the respondent is that the applicant has failed to serve the application on the person who served the demand.
- [12] Indeed, Howards Lawyers, Suva served the demand on the applicant. Gordon & Company is Howards Lawyers' city agent in Lautoka. The applicant has served the application on the city agent of Howards Lawyers. The city agent has accepted the service on behalf of Howards Lawyers. I do not see anything wrong in the service of the application on the city agent of the solicitor who served the demand. It should be taken as service on the solicitor who served the demand. I find the service on the city agent of the solicitor who served the demand is a valid service. Again, the applicant has complied with the requirement of section 516 (3) (b).

[13] Having carefully considered the preliminary objections raised by the respondent and having considered the submissions put forward by both counsel, I conclude that the statutory demand was served on the respondent company on 23 September 2020, 21 days are to be calculated from 24 September 2020, which is the date after the service of the statutory demand. The application for setting aside the statutory demand was served on the city agent of the solicitor on 14 October 2020, which is within 21 days after the service of the demand. Moreover, the service on the city agent of the solicitor who served the demand is a valid service. Accordingly, I would reject both preliminary issues raised by the respondent. The matter is now fixed for hearing at 9.30am on 3 December 2020.

Result:

Preliminary objections overruled.

M.H. Mohamed Ajmeer
28/10/20

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M.H. Mohamed Ajmeer

JUDGE



At Lautoka

28 October 2020

Solicitors:

Faiz Khan Lawyers, Barristers & Solicitors for the applicant
Howards Lawyers, Barristers & Solicitors for the respondent