

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBE 28 of 2020

Instant Holdings Limited

Applicant

v

Sanjay Singh Verma

Respondent

Counsel : Mr V. Kumar for the applicant

Mr Kunal Singh for the respondent

Date of hearing : 23<sup>rd</sup> October, 2021

Date of Judgment: 3<sup>rd</sup> March, 2021

### **Judgment**

1. This is an application to set aside a statutory demand of 22<sup>nd</sup> April, 2020, issued to the applicant company, (applicant) by the respondent for a sum of \$ 34,200.00 and \$500.00 costs, on the ground that there is a genuine dispute on the amount claimed.

2. Ravi Nand, sole Director of the applicant in his supporting affidavit states that in late 2016, he sought two separate loans from the respondent, in a sum of \$ 15,000.00 with interest totaling \$22,000.00 and a sum of \$ 10,000.00 with interest totaling \$ 12,000.00. He provided “ *two..security cheques*” bearing nos 370955 and 370956 in a sum of \$ 22,000.00 and \$12,000.00. He requested his Bank to stop payment on both cheques, as the respondent refused to return the cheques. The respondent was overpaid.
3. The applicant states that the loan was fully paid by the following cheques:
  - a. Cheque no 273763 of 23/12/2016 in a sum of \$ 8000.00
  - b. Cheque no 540950 of 10/02/2017 in a sum of \$ 5302.00
  - c. Cheque no 540974 of 10/3//2017 in a sum of \$ 7200.00
  - d. Cheque no 370980 of 23/05/2017 in a sum of \$ 7560.00
  - e. Cheque no 545424 of 05/06/2017 in a sum of \$ 6300.00
4. The respondent, in his affidavit in opposition states that two cheques, viz, b and c above were paid to him in respect of a loan taken earlier. He gave the applicant a further loan of \$34,200.00 on 22nd March,2017. The applicant had place a stop order on the cheques of 23<sup>rd</sup> April,2017, for \$ 22,000.00 and 2<sup>nd</sup> April,2017, for \$12,000.00 . Its bank statement depicts that it did not have sufficient funds to clear the two cheques. The cheques are attached to the respondent’s affidavit.
5. The applicant states that he sought the two loans in late 2016. But the two cheques it contends were given as security, are dated 23<sup>rd</sup> April,2017, and 2<sup>nd</sup> April,2017. I conclude that the two cheques were given in payment for the loan of \$34,200.00 taken by the applicant on 22nd March,2017.
6. In my view, the respondent had the right to present the two post dated cheques.
7. I need hardly state that the applicant represented that the cheques will, on presentation on or after the date specified in the cheques, be met.

8. Section 517 of the Companies Act states:
- 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*
  - 3) *If the substantiated amount is less than the statutory minimum amount for a Statutory Demand, the Court must, by order, set aside the demand.(emphasis added)*
9. This section requires the Court to ascertain if there is a genuine dispute and determine the amount of the debt on the evidence contained in the affidavits filed.
10. In *Chadwick Industries (South Coast) Pty Ltd v Condensing Vaporisers Pty Ltd* (1994) 12 ACSR 37 at 39, Lockhart J said :

*...what appears clearly enough from all the judgments is that a standard of satisfaction which a court requires is not a particularly high one...*

*Certainly the court will not examine the merits of the dispute other than to see if there is in fact a genuine dispute. The notion of a “genuine dispute” in this context suggests to me that the court must be satisfied that there is a dispute that is not plainly vexatious or frivolous. It must be satisfied that there is a claim that may have some substance.*

11. In the instant case, I do not find a genuine dispute as to the debt. The application to set aside the statutory demand fails.

12. **Orders**

- a. The application to set aside the statutory demand of 22<sup>nd</sup> April,2020, is declined.
- b. The applicant shall pay the respondent costs in a sum of \$ 1000.



*A.L.B. Brito-Mutunayagam*  
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JUDGE  
3<sup>rd</sup> March, 2021