

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**COMPANIES JURISDICTION**

Civil Action No. HBE 09 of 2023

**IN THE MATTER** of a Statutory Demand dated 8 February 2023 taken out by **SHANICK BUILDING CONTRACTORS PTE LTD** against **HYBRID AUTO CENTRE PTE LTD** and served on the Applicant on 9 February 2023 at its Registered Office.

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:** **HYBRID AUTO CENTRE PTE LIMITED** a limited liability company whose registered office is located at Lot 3 Ratu Dovi Road, Lee's Trading Complex, Suva in the Republic of Fiji.

**APPLICANT**

**AND:** **SHANICK BUILDING CONTRACTORS PTE LTD** a limited liability company whose registered office is located at Shop 3 Lees Trading Complex, Centrepont, Suva in the Republic of Fiji.

**RESPONDENT**

**Counsel** : Applicant: Ms. Jackson L

Respondent: Ms. Kant S

**Date of Hearing** : 19.4.2023

**Date of Judgment** : 02.6.2023

**JUDGMENT**

**INTRODUCTION**

1. Applicant (Plaintiff) instituted this action by way of originating summons to set aside statutory demand issued for winding up, for its failure to make a payment to Respondent (Defendant). Parties had agreed to engage Defendant to build a spare part outlet/warehouse. The building materials were to be supplied by Plaintiff and Defendant to

engage labour for the building according to the design and plan and land provided by Plaintiff. The initial quotation for the project was estimated \$110,000 and to be paid in two installments. The contract of engagement was signed by Defendant but not Plaintiff. There were deviations from initially submitted designs and plans and for these additional variation cost were submitted by Defendant. Defendant submitted invoices and Plaintiff made payments for invoices issued by Defendant, till 30.11.2022, where Plaintiff failed to pay the full amount according to Defendant. The invoice dated 11.01.2022 for a sum of \$31,594.00, which was also, basis of the statutory demand for winding up was not paid. It is admitted fact that Plaintiff had paid a total of sum of \$107,000 to date including payments for variations. Defendant sought winding up of Plaintiff for refusal for payment of its two invoices annexed as G and F to the affidavit in opposition. There was no admittance of said debt or invoices. Statutory demand is set aside.

### **FACTS AND ANALYSIS**

2. Originating summons sought setting aside of statutory demand issued 8.2.2023 for a sum of \$37,539.00.
3. According to Defendant the abovementioned sum consisted of its invoice issued on 11.1.2023 for \$31,594.00 which was named as “Final Claim for the warehouse construction works” under Invoice No 0751 and short payment of earlier invoice No 0746 for a sum of \$5,594.00.
4. According to Plaintiff Invoice 0746 was fully paid and their invoice 0746 shows a value of \$20,000 which was fully paid, whereas Defendant had annexed Invoice 0746 for \$25,594. Defendant also admitted that Plaintiff had made a payment of \$20,000 for invoice 0746 issued on 30.11.2022.
5. There is a dispute as to which invoice is the correct invoice as both parties are relying on same numbered invoice but the values differ. This can be resolved through further evidence, which were not available at this hearing.
6. Invoice 0746 dated 30.11.2022 was for Payment 4 which consisted payments for seven variations to the initial design. There is no merits in the Plaintiff’s statement that they did not agree to the variations as they have already made payments for all seven variations submitted in Payment 4, but the amount remains disputed due to two invoices with same number and content and date but different values. It is also noted one invoice contains a stamp which is an unusual feature when rest of the invoices have no such stamps.
7. Section 516 of the Companies Act 2015 allows the Court to set aside a statutory demand and Section 517 of Companies Act 2015 deals with the scope of such application and Section 518 of Companies Act 2015 deals with the effect of setting aside order. They are as follows;

“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.

Determination of application where there is a dispute or offsetting claim

517.—(1)This section applies 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.

(4)If the substantiated amount is at least as great as the statutory minimum amount for a Statutory Demand, the Court may make an order—

(a) varying the demand as specified in the order; and

(b) declaring the demand to have had effect, as so varied, as from when the demand was served on the Company.

(5)The Court may also order that a demand be set aside if it is satisfied that—

(a) because of a defect in the demand, substantial injustice will be caused unless the demand is set aside; or

(b) there is some other reason why the demand should be set aside.

Effect of order setting aside Statutory Demand

518.A Statutory Demand has no effect while there is in force an order setting aside the demand.”

8. In terms of Section 516(2) of Companies Act 2015, an application for setting aside a statutory demand can only be made within 21 days after demand was served.
9. In the affidavit in support Plaintiff stated that statutory demand was served on to them on 1.3.2023, which is within 21 day period as statutory demand is dated on 8.2.2023 and served on the same date. Section 516(3)(b) of Companies Act 2015 also makes imperative not only to file this application but also to serve the same to Defendant, which was complied.
10. *Re Caybridge Shipping Co SA* [1997]1 BCLC 572 Oliver LJ held that unwilling debtor can state that the facts are disputed, hence that winding up process is not suitable. It is the creditor who should establish a debt when it is not admitted by the debtor company.
11. A debtor without a genuine dispute as to debt can refuse payment and such disputes may be due to financial reasons, mala fide, due to animosity between parties or any other reason. So it is the court that should determine whether there the dispute or refusal to pay is genuine.
12. Legislation had used word 'genuine' for a purpose, hence meaning should be given to that, word. So the mere dispute cannot be accepted once the debt is established.
13. In *Re Great Britain Mutual Life Assurance Society* [1880] UK LawRpCh 276; (1880) 16 Ch D 246 it was held that mere assertion of dispute is not sufficient to prevent winding up, but prima facie case is needed.
14. It is not disputed that construction of the warehouse/spare part shop was not completed though the Invoice No 0751 of 11.1.2023 for \$31,594.00 was made as 'Final claim for the warehouse Construction Works'. Said invoice stated 95% completion of wall cladding indicating 5% reminder to be completed. So this cannot be 'final payment' unless 5% of cladding is done free. It is clear some dispute had arisen before this invoice as stated in paragraph 9 of affidavit in opposition. Defendant had admitted that Plaintiff had engaged other parties to the site of construction and when inquired told that they were his friends who wanted to see the warehouse.
15. Plaintiff in their letter of solicitor of Defendant had raised some issues including quality of the workmanship. I cannot decide the genuineness of the dispute raised in the said letter as there were obvious admitted facts such as admittance of variations and prices for that which were disputed, but before I consider the said letter of 19.1.2023 the debt is required to be established, to the Defendant to issue a statutory demand.
16. There is no documentary evidence that Invoice no 0751 for \$31,594 .00 issued on 11.1.2023, was admitted by Plaintiff. Defendant in its affidavit in opposition stated that

there was a meeting on or around 11.1.2023 where Defendant was told they will be 'attended'. This cannot be considered as admission of the debt as stated in the invoice no 075 for \$31,594.

17. By the same token Defendant had not shown evidence that this amount was due to them under initial construction contract for which \$110,000 was agreed and also variations submitted.
18. When Plaintiff refuses to pay, court cannot decide that there was a 'debt' owed by Plaintiff for \$31,594.00 or any lesser sum upon the perusal of documents before the court due to the nature of the services agreement between the parties and the documents submitted at this hearing
19. So the dispute regarding invoices for \$31,594.00 and \$5,594.00 are genuine, as here is no proof of debt merely on the invoices no 0751 and 0746. These need to be established by evidence to prove the debt.
20. Plaintiff had admitted a debt of \$7,500 as reminder of invoice no 747 at paragraph 51 of affidavit in support, but this amount is below the threshold value to issue a statutory demand.

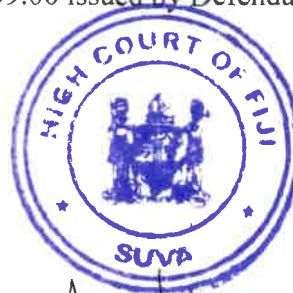
#### CONCLUSION

21. As there are genuine dispute on paper of the two invoices that consisted alleged debt of \$37,539.00 the statutory demand is set aside. Considering the circumstances of the case no costs awarded.

#### FINAL ORDERS

- a. Statutory demand dated 8.2.2023 for a sum of \$37,539.00 issued by Defendant to Plaintiff is set aside.
- b. No costs.

DATED this 2<sup>nd</sup> day of June 2023.



*Amunni*  
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**Justice Deepthi Amaratunga**  
**Judge High Court, Suva**