

IN THE HIGH COURT OF FIJI
AT SUVA
COMPANIES JURISDICTION

ACTION NO.: HBE 32 of 2017

BETWEEN : FOOD PROCESSORS (FIJI) LIMITED
APPLICANT

AND : KOHINOOR GROCERY LIMITED
RESPONDENT

APPEARANCES/REPRESENTATION

APPLICANT : Mr R Naidu [Naidu Law]
RESPONDENT : No Appearance [Not Represented]
JUDGMENT OF : Acting Master Ms Vandhana Lal
DELIVERED ON : 07 March 2019

JUDGMENT

[An Application to Set Aside Statutory Demand Notice]

1. Sometimes on 23 August 2017, Kohinoor Grocery Limited [Respondent] caused a statutory demand dated 16 August 2017 to be served on Food Processors Fiji Limited [Applicant].
2. It is the said statutory demand that Food Processors now seeks to have set aside.

The grounds outlined in the originating summons are:

- i. There is a genuine dispute between the Applicant and the Respondent about the debt to which the statutory demand relates; and
- ii. The amount is less than the statutory minimum amount for the statutory demand.

The application is made pursuant to Section 516 and 517 of the Companies Act.

The Applicant has filed an Affidavit of one Krupali Ben in Support of their application.

3. When the matter was first called on 12 October, Messrs Neel Shivam Lawyers appeared for the Respondent. The Counsel appearing on the day informed Court the Respondent was opposing the application.

The Respondent was directed to file and serve its Affidavit in Opposition in 21 days.

On 30 November 2017 further time was allowed for Respondent to file its Affidavit.

On 20 March 2018 Messrs Neel Shivam filed an application to withdraw as Counsel.

An Affidavit of Service was filed on 23 May 2018 stating that the Application for withdrawal as counsel was sent to the Respondent via registered courier on 02 May 2018.

As per annexure "B" the parcel was received by one Kais Attaullah on 12 May 2018.

A scanned copy of the Motion and Affidavit was also sent to Mr Kais Attaullah a director of the Respondent on 24 April 2018. Mr Kais Attaullah had acknowledged receipt of the email.

4. Despite service the Respondent have neither engaged another Counsel nor appeared in court.
5. Messrs Neel Shivam Lawyers were granted leave to withdraw as Counsel on the ground of lack of instruction enabling the firm to act as solicitors for the Respondent.
6. The Applicant was heard on their application on an undefended basis.
7. The Applicant is engaged in the business of general merchants, importers, exporters and manufacturers.

The Respondent is a company operating from Surrey BC, Canada.

The Applicant and Respondent have been trading for more than two (2) decades. The Respondent has been purchasing goods such as canned duruka, breadfruit, frozen cassava and dalo from the Applicant.

Sometimes in February 2015, the Respondent requested the Applicant to sell its SSF brand of tin fish (the fish) in Fiji on its behalf on a consignment basis. The Respondent exported the Fish to the Applicant. The unsold fish (if any) was to be returned to the Respondent.

It was mutually agreed that the food were on consignment hence all expenses/chargers relating to the Fiji were to be offset from sales the Applicant would do on behalf of the Respondent.

There was no written agreement.

A shipment of Fish arrived in Fiji by sea freight around April 2015. Upon its arrival the container was held at the Fiji Port by the Shipper as the Respondent had not paid the ocean freight. The Respondent had also provided its commercial invoice in Fijian Dollars whilst it should have been in Canadian Dollars. The container was in storage. The Applicant informed the Respondent of this.

The Respondent paid the freight charges and sent an amended commercial invoice in Canadian Dollars to the Applicant.

The Applicant informed the Respondent of necessary duty, storage and clearance charges which the Respondent was required to pay prior to the release of the container. The total was \$18,011.57.

The Respondent informed to get the container released and cost will be discussed and settled when the Director of the Respondent comes to Fiji.

Relying on the assurance and representation made by the Respondent, the Applicant paid the storage charges, duty and clearance. The container was cleared and released to the Applicant.

When the Applicant received and opened the consignment of Fish it noticed that:

- The quantity of Fish received by the Applicant did not match the commercial invoice and the quality of Fish received was not satisfactory as the stock was dented and damaged. This was not suitable to be placed on market for retails;
- The Fish had one year shelf life before it expired as opposed to 5 years shelf life;
- The labelling on the tin did not match the Fiji Food Safety standard hence the applicant had to do additions to the existing labels incurring additional expenses.

During the process of the sale of the Fish the Applicant kept the Respondent informed of the following:

- The sale of Fish was slow;
- Due to one year shelf life, the Applicant had to sell the Fish on a discounted price;
- Before the expiring period some of the tins started to bulge and blow as a result of which some fish had to be disposed after obtaining condemnation certificated from Ministry of Health;
- In September 2016, the Applicant provided the Respondent with reconciliation and informed the Respondent of the sale proceeds it was entitled to after deducting all expenses incurred and paid by the Applicant;
- The Applicant asked the Respondent on how the Respondent preferred the funds (\$5,288.01) to be utilized and/or sent to the Respondent;

- There was Duty and Clearance charge not fully added which now is \$18,011.57. The Sale proceeds value is \$27,489.07. The revised figure owing is \$4,300.42.

8. Section 516 and 517 of the Companies Act allows a company to *"apply to the Court for an order setting aside a Statutory Demand served on the Company"*.

Application is to be made within 21 days after the demand is so served.

Within the 21 days an Affidavit Supporting the application is filed with the Court and copy of the application and affidavit is served on the person who served the demand or the company.

9. The Statutory Demand was issued by Neel Shiva, Lawyers and was served on 23 August 2017 to the Applicant.

The said application for setting aside the Statutory Demand was filed on 12 September 2017 within the 21 days period of service.

10. Messrs Neel Shivam has entered application for the Respondent and have not disputed service but had sought time to file/serve its Affidavit in Opposition.

11. The Applicant has outlined the dispute in the claim under the statutory demand.

This has not been opposed by the Respondent.

According to the Applicant it only owes the Respondent \$4,300.42.

12. Pursuant to Section 515 of the Companies Act the debt sum should be exceeding \$10,000.

13. Since the sum admitted owing is less than the statutory minimum amount for a statutory demand, I exercise powers under Section 517 (3) of the Companies Act and order that the statutory demand dated 16 August 2017 be set aside.

14. Further orders are that the Respondent pay cost to Applicant summarily assessed at \$1,000 in 14 days.




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Vandhana Lal [Ms]
Acting Master
At Suva.