

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 Sunil Kumar for the applicant
Mr Kunal Singh for the respondent

Date of hearing: 4th August, 2020

Date of Ruling : 4th August, 2020

Ruling

1. The applicant, in its originating summons seeks to set aside the statutory demand issued by the respondent on the ground that there is a genuine dispute on the amount claimed.
2. The supporting affidavit states that the applicant fully paid the loan taken from the respondent by five cheques. The applicant filed a supplementary affidavit.
3. The respondent, in his affidavit in opposition states that two of the five cheques were duly paid to him.

4. By ex parte summons made inter partes,(summons) filed on 10 June,2020, the applicant sought an order that Home Finance Company Ltd, Suva and Bank of Baroda, Suva be ordered to produce the “*used cheque leaves*” of the five cheques . The application was made under Or24,r 12 and 13.
5. The respondent, in his opposition to this summons stated that the cheques are not in his possession.
6. At the hearing of the summons, Mr Kumar, counsel for the applicant submitted that the applicant seeks to dispute the debt and prove that it has paid the money claimed. The respondent contends that the cheques were given for another loan. Mr Kumar concluded that the interests of justice require the cheques to be produced.
7. Mr Singh, counsel for the respondent said that he had no objection to the order sought in the summons. He commented that the accounts and banks are not stated therein. A blanket order is sought.
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. In my view, 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. I would refer to a decision of the Australian courts interpreting the similar section in their Corporations Law.

11. 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

12. Or 24, r1(1) as relied on by Mr Kumar is concerned with the discovery and inspection of documents "in an action begun by writ".

13. For the aforesaid reasons, I declined the applicant's inter partes summons with no order as to costs.



A.L.B. Brito-Mutunayagam

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JUDGE

4th August, 2020