

IN THE HIGH COURT OF FIJI AT LAUTOKA

CIVIL JURISDICTION

Companies Action No. HBM 01 of 2023

IN THE MATTER of a Statutory Demand dated 17th December 2022 taken out by
BLUEOAK CONSTRUCTION PTE LIMITED (“the Respondent”) against
SUNRISE GROUP PTE LIMITED (“the Applicant”) served on
the applicant on 15th December 2022.

AND

IN THE MATTER of and application by the Applicant for an order setting aside
the Statutory Demand pursuant to section 516 of the
Companies Act 2015.

BETWEEN

SUNRISE GROUP PTE LIMITED a limited liability company having
its registered office at Nadi Town Council Arcade,
Main Street, Nadi, Fiji.

APPLICANT

AND

BLUEOAK CONSTRUCTION PTE LIMITED a limited liability company

having its registered office at Level 1 Ram Narayan Building,

Main Street, Ba, Fiji.

RESPONDENT

Counsel : Mr. Siwan K. for the applicant
Mr. Charan R. for the respondent

Date of Hearing : 17th March 2023

Date of Ruling : 18th April 2023

RULING

(On an Application to set aside a Statutory Demand)

[1] The applicant filed this application seeking the following orders:

1. That the Statutory Demand dated 15th day of December, 2022 and taken out by the respondent against the applicant be set aside.
2. That stay be granted against any winding up application pending determination of this application.
3. That the respondent pays the costs of and incidental to this application on an indemnity basis.

[2] The respondent served the statutory demand on the applicant claiming \$129,361.99.

[3] Section 517 of the Companies Act 2015 provides –

- (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.
- [4] In considering an application for setting aside a statutory demand, under section 517 of the Companies Act 2015 the court is required to consider the grounds set out in subsection (1) of section 517, they are; whether there is a genuine dispute between the parties and/or whether the company has an offsetting claim. The question whether the company is solvent would be decided in the winding up proceedings.
- [5] Applicant Company entered into a construction contract with the respondent company to construct a 3 storey commercial outlet within 14 months. The contract sum was \$1,300,000.00 (without Aluminium and Joinery work). The applicant was entitled under the agreement to retain \$73,000.00 which was subsequently reduced to \$65,000.00 payable after two months from the completion of work.
- [6] The applicant disputes the amount claimed by the respondent on the following grounds:

- a) Leakages in the building which caused disruptions to the tenants at the building and remedial has not yet been done.
- b) The principal debt cannot be \$118,971.79 since the final payment was for \$73,500.00 as per the contract which was reduced to \$65,000.00.
- c) The contract contained joinery and aluminium work as well, however, the applicant company had to hire another contractor to conduct the said joinery and aluminium works.

[7] It is also the position of the applicant that the respondent was expected to complete the work by 01st July 2020 but building was completed only in December 2021 and the delay in completion of the work resulted in loss of rental income.

[8] At the hearing of the application learned counsel for the respondent raised a preliminary objection that the application of the applicant is out of time.

[9] Section 516 of the Companies Act 2015 provides;

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


[9] The statutory demand was served on the applicant of 15th December 2022 and the application to have the statutory demand set aside was filed on 03rd January 2023 and it was served on the respondent on 5th January 2023 which is the 21st day. The date of service of the statutory demand cannot be taken in to account in calculating the 21 days within which the application for setting aside should be filed and served.

- [10] When this matter was mentioned on 11th January 2023 the court ordered the respondent to file the affidavit in opposition within 21 days but the affidavit in opposition was filed only on 20th February 2023 and the affidavit in reply was filed on 16th March 2023 which the day before the hearing without seeking leave of the court. Hence the affidavit in opposition filed by the respondent will not be considered in this ruling.
- [11] One of the issues raised by the applicant is that the joinery and aluminium work were also part of the contract but it had to hire another contractor to do the aluminium and joinery work. The response of the respondent to this allegation is that out of the contract sum \$170,000.00 deducted for aluminium and joinery work.
- [12] The applicant states that the respondent was expected to complete the work by 01st July 2020 so that it could have been given on rent from September 2020. However, the work was completed only in December 2021 causing loss of rent to the applicant. The applicant also alleges that there are leakages in the building which have not yet been remedied. These issues cannot be resolved summarily. They have to be resolved in a writ action.
- [13] It is clear from the above that there are disputes between the parties which cannot be resolved in winding up proceedings. Therefore, the court is of the view that the statutory demand must be set aside.

ORDERS

1. The statutory demand dated 15th December 2022 is set aside.
2. The respondent is ordered to pay \$2000.00 as costs to the applicant.




Lyone Seneviratne

JUDGE