

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBE 09 of 2024**

BETWEEN : **HONG YUAN DEVELOPMENT PTE LIMITED** a limited liability Company having its registered office at 77 Vanua Arcade, Victoria Parade, Suva

APPLICANT

AND : **MIAO CO PTE LTD** a duly registered company having its registered Office situated at Taliya, Ba

RESPONDENT

Coram : **Banuve, J**

Counsels : **Kumar Legal for the Applicant**
Nambiar Lawyers for the Respondent

Date of Hearing : **19th October 2024**

Date of Ruling : **31st July 2025**

RULING

A. Introduction

1. The Applicant filed an Originating Summons on 26 February 2024 seeking the following orders;
 1. *An order be granted that the statutory demand notice dated 5 February 2024 received by the Applicant on 5 February 2024 issued by the Respondent against the Applicant be unconditionally set aside forthwith;*
 2. *An order that the statutory demand notice in the sum of \$60,000 issued and served on the Applicant on 5 February 2024 at the registered office be stayed until further directions of the Honorable Court forthwith:*
 3. *An order that the Respondent pay the costs of this application;*
 4. *Such other relief that the Court finds just and expedient in the circumstance.*
2. The Applicant seeks to have the Statutory Demand dated 5 February 2024 set aside on the following grounds;
 - 2.1 There is a genuine dispute between the Applicant and the Respondent about the existence of the alleged loan agreement and debt of \$60,000 to which the Statutory Demand dated of 5 February 2024 relates.
3. On 5 February 2024 the Respondent issued a statutory notice pursuant to section 515 of the *Companies Act 2015* against the Applicant demanding payment of a sum of FJD\$60,000 within three (3) weeks from the date of the Notice failing which, it would be entitled to regard the company as unable to pay its debt, and for that purpose may rely on section 515 of the Act.
4. The Applicant filed an Origination Summons (Application for Setting Aside Statutory Demand) with an Affidavit in Support deposed by its Managing Director, Yuan Gao.

5. On 20 June 2024, the Respondent filed an Affidavit in Opposition deposed by its Company Director.
6. The Applicant filed an Affidavit in Reply to the Affidavit in Opposition on 10 July 2024.
7. The parties have filed written submissions which the Court finds useful in understanding their respective positions.

B. The Applicant's Position

Genuine Dispute

8. In summary the Applicant¹ states;
 - (i) The Court needs to determine whether there is a genuine dispute between the Applicant and the Respondent on the subsistence of the alleged debt of \$60,000, on which the statutory demand issued by the Respondent is premised, and which the Applicant has sought to set aside by filing the Originating Summons of 26 February 2024.
 - (ii) Section 517(1)(a) of the *Companies Act* 2015 states that a genuine dispute can relate to either the existence or the amount of debt.
 - (iii) A court is not required to embark on an exploration of the merits of the case, nevertheless, in ascertaining what consists a genuine dispute, tests to be applied include “plausible contention requiring investigation”, “real and not spurious, hypothetical, illusory or misconceived” and “perception of genuineness (or lack of it).
 - (iv) In the context of summary procedure, where the court will not embark on an extended enquiry, the task faced by a company challenging a statutory demand on the “genuine dispute” ground is not a difficult, or demanding one.

¹ The Applicant relies on the case *Fitness First Australia Pty Ltd v Dubow* [2011] NSWSC 531

(v) The court does not engage in any form of balancing exercise between the strengths of competing contentions. If it sees any factor that, on rational grounds, indicates an arguable case on the part of the company, it must find that a genuine dispute exists, even where any case apparently available to be advanced against the company seems stronger.

(vi) Applying these tests to the facts the Applicant states;

a. The Applicant entered into an Investment Cooperation Agreement, on or about, 24 October 2019, valid for 6 years to expire on 23 October 2025. By issuing a notice dated 5 February 2024, in respect of the said Investment Agreement, the Respondent has pre-emptively sought to terminate the Agreement. The Investment Agreement is still in existence, so the Respondent is restrained, from issuing the Statutory Demand Notice. There is no genuine debt in existence.

b. The Respondent relies on the subsistence of a Loan Agreement, dated 3 October 2019, which the Applicant denies executing, nor does it agree with a condition of the loan that the Applicant had provided a guarantee in the form of a vehicle with Registration No. FX 283.

c. The Applicant has not indicated what steps it took to remedy the breach of the Agreement

d. There are serious issues relating to the statutory Demand issued by the Respondent, such as defective acknowledgment of service, erroneous address of the Applicant and scant evidence of the transfer of the sum of \$60,000

9. The Court is not a debt collection forum. The Applicant disputes the alleged debt of \$60,000, and the Respondent ought to have first obtained judgment before invoking the enforcement regime under the Companies Act.

In summary, the Applicant asserts that there is a genuine dispute around the issue of the subsistence of the debt in terms of s 517(1)(a) of the *Companies Act* 2015, that warrants the Statutory Demand issued by the Respondent on 26 February 2024, be set aside.

C. The Respondent's Position

No Genuine Dispute or Off-Setting Claim

10. The Respondent asserts in response that the Applicant has not demonstrated a genuine dispute, as required under section 517 (1)(a) of the *Companies Act* 2015. Merely stating that the statutory demand notice, lacks particulars, without presenting supporting evidence, or grounds, to dispute the debt is not sufficient to establish a genuine dispute, despite the low threshold for doing so- *Creative Distributors Pte Ltd v Autocare (Fiji) Pte Ltd* [2022] FJHC 566

(i) Ex Debito Justitiae

The right of the Petition Creditor where he has established any of the grounds for winding up in the *Companies Act* is said to be *ex debito justitiae*, (that he should have a winding up order).² The Applicant took a loan of \$60,000 in 2019, and after 5 years, the debt remains unpaid, contrary to the terms of the Loan Agreement, and despite demands being made for payment. It is reasonable to assume that the Applicant is insolvent.

(ii) Guarantee

The Applicant's failure to repay the loan, coupled with the inability to recover the collateral security (vehicle), leaves the Respondent with no recourse but to pursue legal action

D. The Law³

11. Sections 515(a), 516 and 517 of the *Companies Act* 2015, state;

Definition of inability to pay debts

515. Unless the contrary can be proven to the satisfaction of the Court a Company must

² *Re Concrete Pipe and Cement Products Ltd* [1925] Argus Law Rep 95

³ The Court is indebted to the guidance provided by Heath JA in *Biju Investment Pte Ltd v Transfield Building Solutions (Fiji) Ltd* –Civil Appeal ABU 014 of 2021

be deemed to be unable to pay its debts-

- (a) *If a creditor by assignment or otherwise, to whom the Company is indebted in a sum exceeding \$10,000 or such other Prescribed Amount then due has served on the Company by leaving it at the Registered Office of the Company, a demand requiring the Company, a demand requiring the Company to pay the sum so due ("Statutory Demand") and the Company has not paid the sum or secured or compounded for it to the reasonable satisfaction of the Creditor within 3 weeks of the date of the notice; or*

Division 3-Application to Set Aside a Statutory Demand

Company may apply

516. (1) *A Company may apply to the Court for an order setting aside a Statutory Demand served by 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 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 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) verifying 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 was satisfied that-*
- (1) because of a defect in the demand substantial injustice will be caused unless the demand is set aside; or*
 - (2) there is some other reason why the demand should be set aside.*

E. Analysis

12. The Applicant maintains that a bona fide dispute exists, in that it does not acknowledge the subsistence of a debt of \$60,000, or, that it owes such a sum to the Respondent, under the Investment Cooperation Agreement which it entered with the Respondent, on 24 October 2019. By issuing a demand notice on 5 February 2024, for the payment of the alleged debt, the Respondent has sought to prematurely terminate the Agreement, before its expiry date of 23 October 2025. There is no genuine debt in this case.
13. The Applicant acknowledges entering into an Investment Cooperation Agreement, with the Respondent, but it denies that the Agreement authorizes a subsidiary lending relationship. It asserts in paragraphs 5 and 6 of the 'Affidavit in Support' of the Originating Summons filed on 26 February 2024, that;
- 5. The Applicant has no dealing with Miao Co Pte Ltd which purports to be the Creditor pursuant to the Notice.'*
 - 6. The Notice fails to underline and provide particulars of the sum of \$60,000 as the Applicant has no knowledge of this*
14. The Applicant therefore, denies entering into a separate lending Agreement with the Respondent on 3 October 2019, through which it is alleged to have been lent an interest free sum of \$60,000, to be repaid by 31 December 2019.
15. The Court finds the position advanced by the Applicant difficult to reconcile. On one hand, it relies on a technical/legal position that a debt cannot exist, because it is not contemplated under the Investment Cooperation Agreement, on the other

hand, it denies owing the amount of \$60,000 because it has not executed the separate Loan Agreement of 3 October 2019

16. The Applicant asserts that there is a genuine dispute revolving around the existence of the alleged debt in terms of section 517(1)(a) of the *Companies Act 2015*, that warrants the statutory demand notice dated 5 February 2024, be set aside forthwith.

F. Is there a Genuine Dispute?

17. As the Applicant asserts that there is genuine dispute over the subsistence of the alleged debt of \$60,000, the Court has reviewed the terms of the Originating Summons [Expedited Form], and the evidence adduced by the Applicant in the Affidavit in Support, filed on 26 February 2024, and in the Affidavit in Reply filed on 10 July 2024.
18. There is no acknowledgment of the subsistence of the Loan Agreement in either the Summons, or the affidavits filed by the Applicant. Rather, the Applicant asserts that it had no knowledge of the subsistence of the debt of \$60,000, until it received the Statutory Demand Notice of 3 February 2024, which did not underline and particularize the sum owed, and which it had no knowledge of.⁴
19. No evidence is proffered by the Applicant though to support its contention that it did not owe such a sum to the Respondent. It acknowledges that it had entered into a contractual arrangement only under the Investment Cooperation Agreement with the Respondent on 24 October 2019, which still subsists.
20. It is clear that the Loan Agreement was entered into on 3 October 2019, prior to the Investment Cooperation Agreement coming into force on 24 October 2019, which seems to lend support to the Applicant's position.
21. The Court however, notes the terms of Article (II)(4) of the Investment Cooperation Agreement, which the Applicant acknowledges it is bound by.

⁴ Paragraph 6 of the Affidavit in Support.

21.1 Article (II)(4) states;

4“During the pre-operation period of the cooperative project, Investor is responsible for raising the temporary working capital. Company borrows this money from the Investor, and Company shall return the borrowed money within the agreed period”

21.2 Article (II)(4) of the ‘Investment Cooperation Agreement’ contemplates that contractual relations may have been entered into by the parties *before* 24 October 2019, *prior to* the cooperative project commencing, under the Investment Cooperation Agreement

21.3 Article (II)(4) contemplates that the Investor (*Miao Co Pte Ltd*), may raise *temporary working capital*, during the *pre-operation period* which the Company, (*Hong Yuan Development Pte Ltd*), can borrow and *return (to the Investor)(Miao Co Pte Ltd)*, *within the agreed period*.

21.4 Temporary working capital was in fact raised and borrowed during the pre-operation period as envisaged in Article (II)(4), and evident in the subsistence of the Loan Agreement, entered into by the parties, on 3 October 2019.⁵

21.5 The Loan Agreement is introduced into this proceeding by the Respondent in the Affidavit in Opposition filed on 20 June 2024. No disclosure was made by the Applicant of the Loan Agreement.

22. The Court further notes the terms of the Loan Agreement of 3 October 2019;

This Agreement dated 3rd October 2019 serving a notice between the Miao Co PTE Ltd, TIN Number 5057327 and Hong Yuan Development PTE Ltd TIN Number 50-57826-01

Whereby Miao Co Ltd loans out to Hong Yuan Development PTE Ltd the amount of \$60,000 (Sixty Thousand Dollars only)

The agreed amount is to be paid back to Miao PTE Ltd by 31/12/2019 without any

⁵ Annexure ‘HM-2’ of the Affidavit in Opposition of He Miao filed on 20 June 2024

accumulated interest.

The vehicle number FX 283 owned by Hong Yuan Development PTE Ltd will serve as a guarantee to this loan.

Both parties agree that the loan will be paid back to Miao Co PTE Ltd no later date than the 31st December 2019.

Failure to do so the Miao Co PTE Ltd has the full right to seize the vehicle Number FX 283 owned by Hong Yuan Development PTE Ltd.

23. No off-setting claim is made by the Applicant.
24. The Court finds the dicta in *Creative Distributors PTE Ltd v Autocare (Fiji) PTE Ltd-Companies Action No HBE 60 of 2021*, helpful;

“ As I understand the authorities cited above, a statutory demand should be set aside where there appears to be actual evidence that may require further inquiry to establish the truth of the matter. I bear in mind that mere disagreement with a statutory demand without particulars, or a mere assertion of a legal argument unsupported by evidence, cannot be counted as a genuine dispute”⁶

25. After a perusal of material available, the Court finds that the position advanced by the Applicant as tantamount to what was said in the *Creative Distributors PTE Ltd* case, a mere disagreement with a statutory demand, without particulars, or unsupported by evidence, and cannot be counted as a genuine dispute on the following grounds;

- (i) No evidence is tendered by the Applicant in either the Affidavit in Support filed on 28 February 2024, or in the Affidavit in Reply filed on 10 July 2024, to substantiate the assertion that it did not owe any obligation to the Respondent, other than through the Investment Cooperation Agreement. Nor is any substantive evidence adduced to dispute the subsistence of the debt of \$60,000, owed to the Respondent. The Court does not view evidence sought to be introduced through written submissions as cogent, or material in its determination. Evidence must be deposited in an affidavit

⁶ Paragraph 20 of Ruling of NanayakKara, J

- (ii) Balanced against the lack of evidence, from the Applicant, is the subsistence and effect of Article (II)(4) of the Investment Cooperation Agreement, which contrary to what the Applicant asserts, confirms that contractual relations were contemplated in the *pre-operation* phase, prior to the commencement of the Cooperation Agreement. The clearest evidence that pre-operation funding was sourced by the Respondent, and lent to the Applicant, lies in the subsistence of the Loan Agreement of 3 October 2019.

Misconstruing Article (II)(4), allows the Applicant to take the position that it is not bound by the Loan Agreement, a bare technical position, adopted without substantiation, given that the *pre-operation* lending arrangements are contemplated in the Investment Cooperation Agreement and were in fact implemented, as evident by the Loan Agreement of 3 October 2019.

- (iii) Contrary to the assertion of the lack of particulars, made by the Applicant, the Court cannot ignore the subsistence of Loan Agreement of 3 October 2019, whose terms have been laid out in paragraph 21 herein. No evidence has been deposited by the Applicant to dispute the existence of this Agreement.

26. In summary, therefore, the Court concurs with the position advanced by the Respondent⁷ that there is no genuine dispute on the existence of the debt of \$60,000, to justify the setting aside of the Statutory Demand, as sought in the Originating Summons, filed on 26 February 2024;

- (i) When a debt is disputed, it must be on substantial grounds (on evidence deposited in an affidavit), as opposed to a mere frivolous assertion - *Re Matapule Investments Ltd* [2009] FJHC 249; HBF005.2009 (3 November 2009);
- (ii) The evidence clearly demonstrates the existence and execution of the Loan Agreement of 3 October 2019. This Agreement was divulged only by the Respondent, through the Affidavit in Response, filed on 20 June 2024. It was duly signed and executed with the company seal. A statement of account was provided by the Respondent's Director showing that a Debit transaction of \$60,000 was made from the Bred Bank Account of Miao Co Pte Ltd on 8

⁷ Page 11-15 of the Written Submissions filed on 18 October 2025,

October 2019, which matches the amount lent to the Applicant under the Loan Agreement.

(iii) The Loan Agreement of 3 October 2019 was signed and sealed by both parties.⁸

Further, the Court notes sections 53(3) and 54 of the *Companies Act 2015* which state;

53(3) *This section does not limit the ways in which a company may execute a document, including a deed;*

54-(1) *A person is entitled to make the following assumptions in relation to dealing with a company –*

(a) ...

(b) ...

(c) *A person may assume that any person who is held out by the company to be an officer or agent of the Company-*

(i) *has been duly appointed and*

(ii) *has authority to exercise the powers and perform the duties customarily exercised or performed by the kind of officer or agent of a similar company;*

(d) *A person may assume that the officers and agents of the company properly perform their duties to the company.*

27. The Court of Appeal has clarified the position in this jurisdiction in *R.B Patel Group Ltd v Central Board of Health & Others* –Civil Appeal ABU0032 of 2022;

*“...sections 53 and 54 must be read together, dealing as they do with the execution of company documents. Section 54 sets out the assumptions in law in a person’s dealing’s with a company. Of particular relevance to this case is the **assumption of authority on behalf of the company by persons under section 54(1)(c) and (d)**”.*

⁸ *The Creative Company Pte Ltd, In re* [2024] FJHC 457; HBE. 34 of 2023 (24 July 2024), per Amaratunga, J at paragraph [152]

Based on the position, as clarified in the *R.B. Patel* case, the Court assumes on the basis outlined in sections 53(3) and 54 of the *Companies Act 2015*, that the Loan Agreement has been duly signed and executed by an officer or agent of the Applicant (or indeed the Respondent) company.

No evidence has been offered by the Applicant that could rebut this assumption.

G. Off-Setting Claim/ Utility of Guarantee.

28. There is no valid off-setting claim established by evidence, of the Applicant in terms of section 517 (1)(b) of the *Companies Act 2015*. The Loan Agreement complements the Investment Cooperation Agreement, in it governing the financial relationship of the parties in the '*pre-operation*' period. The obligations in the Loan Agreement cannot be offset against that in the Investment Cooperation Agreement, in that regard, or vice-versa.

29. In relation to the guarantee, the Court finds the Respondent's submissions cogent is asserting that the existence of the security does not deprive the creditor of the right to pursue insolvency remedies if there are concerns about the debtor's solvency.⁹

Alternately, the guarantee, in this instance, was provided by the Applicant, the borrower under the Loan Agreement and not by an independent surety. The guarantee is not provided in a recognizable security document, like a mortgage, but mentioned in passages in the Loan Agreement, so prima-facie, it is unenforceable as it does not comply with sections 50(1),(2) and (4) of the *Consumer Credit Act- No 15 of 1999*.

Form of Guarantee

50-(1) A guarantee of a credit contract must be in writing signed by the Guarantor.

(2) It is sufficient compliance with subsection (1) if the guarantee is contained in a mortgage signed by the guarantor.

(3).....

(4) A guarantee is not enforceable unless it complies with this section and any relevant regulations

⁹ *Salford Estates (No 2) Ltd v Altomart Ltd* [2014] EWCA Civ 1575

30. The Court finds that the Applicant has failed to provide any evidence to establish a dispute on substantial grounds. Further, there is no substantive evidence before the Court to indicate that the company is solvent or is able to pay its debts.

ORDERS:

1. The order sought in paragraph 1 of the Originating Summons [Expedited Form] filed on 26 February 2024 that the statutory demand notice dated 5 February 2024 received by the Applicant on 5 February 2024 issued by the Respondent against the Applicant be unconditionally set aside, is refused and dismissed.
2. The order sought in paragraph 2 of the Originating Summons [Expedited Form] filed on 26 February 2024 that the statutory demand notice in the sum of \$60,000 issued and served on the Applicant on 5 February 2024 at its registered office be stayed until further directions on the Court, is refused and dismissed.
3. Costs to the Respondent summarily assessed at \$1,500.00 to be paid within 7 days of this Ruling.



Savenaca Banuve
Savenaca Banuve
Judge

Dated at Suva this 31st day of July, 2025.