

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
[COMPANY JURISDICTION]

HBM Companies Action No. 18 of 2024

IN THE MATTER of a Statutory Demand dated 29 May 2024 taken out by **AIRPORTS FIJI PTE LIMITED** a company incorporated in Fiji having its registered office at AFL Headquarters, AFL Property, Nadi Airport, Nadi, against **SUNFLOWER AVIATION PTE LIMITED** a Limited liability company having its registered office at CAAF Compound, London Avenue, Namaka, Nadi, Fiji and served on 06 June 2024.

AND

IN THE MATTER of an Application by **SUNFLOWER AVIATION PTE LIMITED** a limited liability company having its registered office at CAAF Compound, London Avenue, Namaka, Nadi, Fiji for an order setting aside the Statutory Demand pursuant to Section 516 of the Companies Act 2015.

BETWEEN : **SUNFLOWER AVIATION PTE LIMITED** a limited liability company having its registered office at CAAF Compound, London Avenue, Namaka, Nadi, Fiji.

APPLICANT

AND : **AIRPORTS FIJI PTE LIMITED** a company incorporated in Fiji having its registered office at AFL Headquarters, AFL Property, Nadi Airport, Nadi.

RESPONDENT

BEFORE : A.M. Mohamed Mackie-J

COUNSEL: Ms. P. Kumar, A. K. Lawyers, for the Applicant.
Mr. F. Haniff, Haniff Tuitoga Lawyers, for the Respondent.

HEARING: 5th May 2025.

WRITTEN SUBMISSIONS : Filed on 5th May 2025, by the Applicant.
Filed on 5th May 2025, by the Respondent.

DATE OF RULING : 25th July 2025.

RULING

A. INTRODUCTION:

1. The Applicant, SUNFLOWER AVIATION PTE LIMITED (“SAL”) , on 26th June 2024 filed this Application by way of its Notice of Originating Motion seeking the following Orders; -
 1. *An order setting aside the Statutory Demand dated 29th May 2024, insofar, that the debt in the sum of \$105,235.45 (One Hundred Five Thousand Two Hundred and Thirty-Five Dollars and forty-five cents only) is disputed and as such incapable of being relied upon pursuant to Section 515 of the Companies Act 2015 and that the Statutory Demand is an abuse of process.*
 2. *That the Respondent shall not file any Application for a Winding Up order under the said Statutory Demand pending the hearing and determination of this Originating Motion.*
 3. *Such further or other relief as may seem fit.*
 4. *Costs, including indemnity costs, be awarded to the Applicant.*
2. The Application states that the Applicant intends to read the Affidavit in Support Sworn by **Timothy John Joyce** and filed herein, at the hearing of this Application. The Affidavit in support accompanies with it the following documents marked as from “TJ-1” to “TJ-4”;
 - a. *The Sub-Lease No 846020 registered on 16th June 2017 given by the Respondent to the applicant. (TJ-1)*
 - b. *Statutory demand letter dated 29th May 2024 (TJ-2)*
 - c. *Letter dated 30th June 2-20 by Timothy Joyce addressed to the Hon. minister of Civil Aviation (TJ-3)*
 - d. *A Fiji times newspaper Article dated 3rd June 2020 (TJ-4)*
3. This Application also states that it is made pursuant to Section 516 and 517 (1) (a) and 517 (5) (b) of the Companies Act 2015, of the High Court Rules 1988 as amended, and the Inherent Jurisdiction of this Court.
4. The Respondent, AIRPORTS FIJI PTE LIMITED (AFL), opposes the Application by filing its Affidavit in Opposition sworn by one **VINEET NAIDU**, the Financial Controller of the AFL, together with the following annexures marked as “VN-1” to “VN-4”
 - a. *Authority from AFL to swear the affidavit (VN-1).*
 - b. *Letter dated 30th March 2023 from JOYCE AVIATION GROUP (Fiji) PTE LIMITED to Mr. Rowan Chalmers, Chief Executive Officer of Fiji Airports Ltd (VN-2)*

c. Letter dated 22nd February 2023 from FIJI AIRPORTS to Mr. TIM JOYCE (VN-3)

d. Letter dated 25th March 2024 from FIJI AIRPORTS to Mr. TIM JOYCE (VN-4)

5. The Applicant on 24th February 2025 filed its Affidavit in reply sworn by the said TIMOTHY JOHN JOYCE, with the authority annexed thereto marked as (“TJJ-1”).

B. HISTORY IN BRIEF:

6. Both parties are duly Registered Companies under the Companies Act 2015 of Fiji.
7. The Respondent AFL is the sub-Lessor of Crown Lease No- 3460 and the Applicant SAL is the sub-Lessee of the property as per the Sub-Lease Agreement marked as “TJ-1”.
8. The Applicant SAL and the Respondent AFL on 16th June 2017 entered into the said Sub-Lease Agreement for renting the Land Comprised in Crown Lease No- 3469 Lot-1 on DP 9807 ND4444, having an Area of 2.302 m² unto the Applicant SAL for a period of 15 years from the said date at the rate of monthly rental of \$7,694.44 payable by the Applicant SAL to the Respondent AFL on the 1st day of every month. The total agreed rental for a year was \$92,333.22.
9. As per the Sub-Lease Agreement marked as “TJ-1”, the Applicant SAL was allowed to use the sub-leased land and building (subject property) to operate an aircraft hangar for its own and general aircraft handling and parking charters and engineering workshops, office spaces, aviation training and other services incidental to aviation, but related to the operation of the Applicant SAL and its existing business and services.
10. The Respondent AFL on 6th June 2024 caused its then Solicitors, Messrs Siddiq Koya Lawyers, to serve on the Applicant a Statutory Demand Notice dated 29th May 2024, demanding a sum of \$105,235.45, being the alleged arrears of lease rental, to be paid within 21 days, and thereby put them on notice that the failure of it to do so will lead to the Respondent filing a petition for winding -up of the Applicant Company.

The Applicant’s Contention (Grounds for disputes):

11. The Applicant state, *inter alia*, **that** it has a genuine dispute in relation to the sum demanded by the Respondent. The Applicant denies being indebted to the Respondent for the said sum claimed in the Demand Notice. The Applicant also states that it is solvent and the Application for winding up will be futile.
12. **That** when there was an industrial strike by the Air Traffic Control unit of the AFL, during which period the Respondent had completely shut down the operation of **Tandem Skydive Fiji** and **Pacific Flying School**. The Applicant Company had been raising issues with regard to the possibility for Pacific Flying School to have reasonable access to Nadi Airport during the said period.

13. The Applicant Company raises another issue that the 100% Rental Discount/ freeze announced on 3rd June 2020, as per "TJ-4" News Paper article, as a relief on account of Covid-19 pandemic, was applicable to it, and despite the rental freeze, it continued to pay 25% of the rent to the Respondent in good faith and this is unaccounted for in the debt claimed by the Respondent.
14. The Applicant also complains about levying additional charges of \$500.00 per hour by the Respondent for night flying operations during the Covid-19 pandemic, on account of which it claims to have paid \$70,500.00 to the Respondent.
15. The Applicant alleges that during the said Covid 19 pandemic, the Respondent had restricted the Applicant's full enjoyment of the sub-lease premises by restricting the Applicant from operating its business for which the premises was sub-leased.
16. The Applicant believes that it has a genuine dispute on the sum claimed in the Statutory Demand on the grounds stated above. The Applicant Company also states that it is solvent, it can pay its debts and any Application for winding up will be futile.

The Respondent's Stance

17. The Respondent in its Affidavit in opposition took up the followings;
 - a. That the industrial action by the Air Traffic Control (ATC) did not absolve the Applicant from paying rent under sub-lease Agreement. In any event the industrial action by the ATC was only for a total number of 8 days.
 - b. That the night flying charges of \$500.00 per hour were additional costs incurred during night operations as the airport was shut down due to nil commercial operations. Fiji Airport was billing the training schools retrospectively based on the actual flights. The Applicant was passing these costs to the student Pilots.
 - c. That the Current arrears relate to the Land Lease Payments and are not related to the night flying charges, which were fully paid.
 - d. That the 100% discount on the rentals was given for all the businesses operated at its premises because of the lack of commercial flights. The businesses that were provided discount included **duty free, specialty retails, food and beverages outlets, large foreign exchange and banking services, phone and data services, inbound tour operators, Rental Car companies, Airline lounges, Sales office in International Lounge and Departures and all Taxi operators.**
 - e. That during the Covid 19 pandemic, the Applicant, being a company running a Commercial Flying school, which was not running a business in the Commercial precincts of the Nadi international Airport, experienced significant increase in its operations, capitalized on the reduced commercial flight activity that allowed more training time to the Applicant.

- f. That the Applicant was granted a 100% rental discount from May to September 2021, followed by a 30% discount until the end of 2021.

C. ISSUES FOR DETERMINATION:

18. The Questions for determination before this court are-

- a. *“Whether there is a genuine dispute between the Applicant and the Respondent in terms of the amount of the debt of \$ 105,235.45 to which the Respondent’s Statutory Demand relates? And/or*
- b. *Whether the Statutory Demand dated 29th May 2024 served on the Applicant on 6th June 2024 alleging the debt in a sum of \$105,235.45 should be set aside?*

D. THE LAW :

19. The relevant Law with regard to Setting Aside Statutory Demand are set out in Sections 516, 517 and 524 of the Companies Act 2015.

Section 516 states that: “A Company may apply to the Court for an order Setting Aside a Statutory Demand served on the Company.”

Section 517 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.

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.

E. DETERMINATION:

20. The Respondent on 6th June 2024 served the Statutory Demand notice in question on the Applicant, and sought for the outstanding lease rental payment of \$ 105, 235.45. The Applicant states that it genuinely disputes the claim and moves this Court to set aside the said Demand Notice dated 29th May 2024.

21. The said claim, according to the Respondent, relates to the balance of an outstanding lease rental, allegedly, due in terms of the sub- lease Agreement for the time period material to the strike by the Air Traffic Control (ATC), and Covid 19 pandemic that,

undisputedly, plagued the operation of the Respondent. The Respondent does not deny the fact that the ATC went on strike for some time in 2019.

22. The Respondent also does not take up a stern position that the Applicant continued with all its usual operations uninterrupted, while the Airport was closed. The position taken up by the Respondent that the Applicant had increased operations during the Respondent's non or less operation period is also disputed by the Applicant. It is an issue that calls for detailed evidence in an appropriate action.
23. It is observed, as alluded to in paragraph 3 of the Applicant's Affidavit in reply, that some material averments in the Applicant's Affidavit in support (ie. paragraphs 13 to 17), have not been disputed or duly responded by the Affidavit in opposition of the Respondent. The deponent has chosen to respond only to paragraphs 12, 18 and 21 of the Affidavit in support.
24. However, I find that the issues complained of in paragraphs 12,18 and 21 of the Affidavit in support, along with the rest of the issues averred in the other paragraphs thereof, all of which appear to be **not connected** with the rent reassessment, could have been the subject of Arbitration between the parties as stipulated in paragraph 48 of the Sub-Lease Agreement, which reads as follows;

"Disputes

48. *All disputes or differences (other than in connection with Rent Reassessment in terms of clauses 15-17 above) between AFL and SAL on operation or construction of any of the provisions of this sub-lease or on the right or liabilities of either party hereunder **shall be determined** by arbitration in accordance with the provisions of the Arbitration Act of Fiji" (emphasis mine)*

25. For reason/s best known to the parties, they have not resorted for arbitration, which process could possibly have resolved the issues amicably, without having to proceed for Statutory Demand Notice and Winding Up, which may become unwarranted at the end, particularly, when the Respondent had opted not to dispute the contents of paragraph 10 of the Affidavit in support, wherein the Applicant states that it is solvent and any application for winding up will be futile.
26. An opportunity for the Applicant to undergo the process of Arbitration, in terms of paragraph 48 of the Sub-Lease Agreement, has been denied.
27. The Applicant's averment as per paragraph 19 of its Affidavit in support, wherein it claims that the total sum of \$70,500.00 charged at the rate of \$500.00 per night flying hour must be credited against the demanded lease rental amount, has not been responded by the Respondent in its affidavit in opposition. However, the Applicant has not made any off-setting claim in its Application under Section 17 (b) of the companies Act.

28. Evidence before Court, as per paragraph 21 of the Affidavit in support and the “TJ-4” Newspaper publication annexed thereto, is that the Respondent had announced a 100% rental discount / freeze for all businesses operating from Airport premises.
29. Further, the evidence as per paragraph 22 of the Affidavit in support that they had paid 25% of the scheduled rental in good faith, while the rental discount had been announced, and the allegation that Respondent has unfairly calculated and accumulated the debt sum, have not been adequately responded by the Affidavit in opposition.
30. The Respondent in paragraph 7 of its Affidavit in opposition takes up a position that the rental discount was given for all the businesses at its premises because of lack of commercial activity and goes on to name such businesses in paragraph 8 of its Affidavit in opposition, which does not include and recognise the Applicant’s activities at the Airport as commercial activity. It is observed that the News Article covers, not only the businesses that operate at or in the Airport premises, but also includes the businesses that operate around the Airport premises like freight forwarding etc.
31. Then, a question arises as to how and who decided that the Applicant was not engaged in any activity within the Airport premises? And its activities were non-commercial. However, contrary to the above position that the Applicant was not entitled for rental discount, the Respondent concedes that it had in fact granted the Applicant rental discount for certain period at certain percentage. Hence, another issue that arises is, whether the time period and the percentage taken into consideration for the assessment of such grant to the Applicant was reasonable in par with the other beneficiaries? This shows, in my view, that there is a genuine dispute with regard to the amount. This could have been referred for arbitration as provided by the paragraph 48 of the Agreement.
32. This Court, at this stage, will only ascertain whether there is a genuine dispute as averred by the Applicant, and it will not engage in adjudication of any such dispute, which has to be performed through a different action or arbitrated as per the provision in the Agreement.
33. Reference is made to the case of ***Ragwan Construction Co Ltd v MY Group Ltd (trading as Metromix Concrete (Fiji) [2019] FJHC 29; HBC 333.2018*** (31 January 2019).

“Winding up proceedings are not recovery proceedings. The court, before making the winding up order must also be satisfied that the company is unable to pay the statutory minimum which is \$10,000.00. In the instant matter, from the affidavits filed it shows that the Applicant company refusing to pay the amount claimed by the Respondent company not because it does not have means to pay amount claimed, but because it challenges the amount claimed by the respondent.”
34. Time and again the Courts in their various Judgments and Decisions have said that –

“Winding up Proceedings are not a debt recovery action and Courts do not see it as such. What winding up proceedings are directed towards are when a company is insolvent and cannot pay its debts as and when it arises.”

35. The Applicant company is refusing to pay the amount claimed by the Respondent company, not because it does not have means to pay the amount claimed, but because it challenges the amount claimed by the Respondent. The averment in the Applicant’s Affidavit in support that it is solvent has not been disputed by the Respondent in its Affidavit in opposition.
36. The Applicant is a prominent and substantial company and has been in active business for several years running the Flying School, Inland Air Transport for various purposes and offering related services. It must have substantial assets and it has not challenged or disputed the rental that is presently being paid. It has limited its dispute only to a particular period in past. Clearly, at this stage of proceedings, it appears that it is not insolvent and is undoubtedly must be in a position to pay all its legitimate debts.
37. There are triable issues on the genuine dispute raised by the Applicant and therefore, it seeks for the setting aside of the Statutory Demand Notice served on it. Accordingly, I uphold the argument on the evidence of the Applicant that there is a genuine dispute as to the sum claimed on the Statutory Demand.
38. Undoubtedly, issuing a Statutory Demand Notice and proceeding to winding up is not a panacea for all types of disputes that crop up in the arena of commercial and business activities.
39. If the Respondent has any strong evidence to establish the amount of the debt, and in the event the arbitration process in the Agreement fails to yield fruit, then the Respondent should proceed by way of a civil proceedings to recover its civil debt in terms of the existing laws accordingly.
40. I stand convinced that there is a Genuine Dispute as to the amount of the debt to which the demand relates and for aforesaid rational, I proceed to Set Aside the Statutory Demand dated 29th May 2024 issued by the Respondent’s Solicitors and served on the Applicant on 6th June 2024 accordingly.

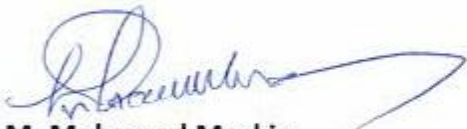

F. COSTS

41. The matter proceeded to full hearing, and parties to the proceedings filed their respective written submissions and affidavit evidence. However, considering the circumstances, I decide not to grant any costs, and order the parties to bear their own costs.

G. FINAL ORDERS:

- a. The Application by the Applicant, SUNFLOWER AVATION PTE LIMITED, filed on 26th June 2024 to set aside the Statutory Demand Notice succeeds.
- b. The Statutory Demand Notice dated 29th May 2024 from the Respondent, and served on the Applicant on 6th June 2024, is hereby set aside.
- c. No Costs ordered and the parties shall bear their own Costs.




A.M. Mohamed Mackie
Judge


At the High Court of Lautoka on this 28th day of July, 2025.

SOLICITORS:

For the Plaintiff:

Messrs. A.K. Lawyers – Barristers & Solicitors.

For the Defendant

Messrs. Haniff Tuitoga – Barristers & Solicitors.