

IN THE HIGH COURT OF FIJI
AT SUVA

Civil Action No: HBE 6 of 2017

IN THE MATTER of a Statutory Demand dated 18 February 2017 taken out by ESALA MAU RAIDRUTA trading as KULA MATAGI (the Respondent) against AUTO WORLD TRADING (FIJI) LIMITED and MR RAVIN LAL (The Applicant) and served on the Applicant on 14 February 2017 at the Sales Office of the Debtor Company.

AND

IN THE MATTER of an application by the Applicant for an Order setting aside the Statutory Demand pursuant to Section 516 of the Companies Act 2015

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr. S. Singh for the Applicant
Mr. V. Felipe for the Respondent

Date of Hearing : 12 September 2017
Date of Judgment : 20 November 2017

JUDGMENT

1. This is the Applicant's Summons for an Order that the Statutory Demand Notice dated 18 February 2017 (sic) be set aside or stayed.
2. It is supported by the affidavit of Vijay Kumar, a Senior Legal clerk of the Applicant, the debtor company. He depones that the Applicant did not receive a notice under s.515 of the Companies Act 2015 (the Act) at its registered office at 67, Rewa Street, Suva. The sum claimed is \$34,202.79 whereas from the judgment dated 29 December 2016, the sum is \$27,000 with 3% interest from the issuance of the writ. The Applicant has filed an application for extension of time to appeal that judgment.
3. The Respondent, the Plaintiff in the original civil action, in his affidavit in answer depones that the statutory notice was served on the Applicant at Viria Road, Suva. The notice was issued pursuant to a judgment delivered on 29 December 2016 and the amount of \$34,202.79 therein is the \$27,000 plus interest thereon at 3% p.a. from 12 November 2008 to 12 February 2017. The applicant's summons to extend time to seek leave to appeal was dismissed on 2 June 2017.
4. At the hearing of the summons, the Counsel for the Applicant submitted that the statutory demand was served at the business office and not at the registered office as required by s.515(a) of the Companies Act 2015. There was also a genuine dispute as to the debt.
5. Counsel for the Respondent submitted that both applications to the High Court against the decision of the Magistrate's Court were dismissed. The Applicant has not shown there is a genuine dispute and there is no basis for a stay.
6. At the conclusion of the arguments I said I would take time for consideration. Having done so I now deliver my decision. The issue here, is the service of the statutory demand. S.515 (a) of the Act requires a creditor to serve on the company, the statutory demand, "by leaving it at the Registered Office of the Company."

7. Nowhere in the Respondent's affidavit nor in its Counsel's oral and written submissions has the Respondent contended that the statutory demand was served on the Applicant at its registered office. Indeed the said affidavit and the said written submission both confirm the notice was served at Viria Road, Suva and neither states that this is the registered office of the Applicant.
8. The Applicant's affidavit in support annexes (B) its annual return wherein its registered office is stated to be 67 Rewa Street, Flagstaff, Suva.
9. In the absence of any evidence to the contrary the Court is constrained to find and so hold that the Statutory Demand has not been served on the Applicant at its registered office as required by s. 515(a) of the Act.
10. In the result, the Statutory Demand is set aside under s.516 with costs to be paid by the Respondent to the Applicant under s. 521, summarily assessed at \$250.

Delivered at Suva this 20th day of November 2017.



David Alfred
JUDGE
High Court of Fiji