

BETWEEN: Robert Edgar Sugden

Claimant

AND: Ascension Limited

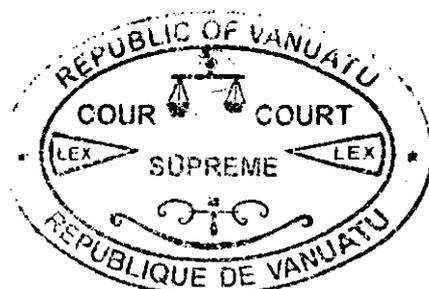
Defendant

Date of Hearing : 17th day of August, 2017 at 2:00 PM
Date of Decision: 21st August 2017
Before: Justice Oliver Saksak
In Attendance: Robert Sugden for himself as Claimant
No appearance for Defendant (Struck off)
John Malcolm for Iririki Island Holdings Limited (Non- Party)
Edward Nalyal for Christiane Brunet (Non-Party)

DECISION

Introduction and Background

1. The Claimant's application for contempt was filed on 19th July 2017.
2. The charges of contempt were laid against Iririki Island Holdings Limited and its Directors namely Shane Adam Pettiona, Darren Pettiona, Peter Stockley and Stephane Jose Frichot on 18th July 2017. Subsequently on 21st July 2017 summonses were issued to the Directors to attend Court on 8th August 2017.



Facts

3. In September 2016 Wellington Lodge Holdings Propriety Limited (“WLHPL”) transferred lease title 11/0C22/009 (Lease 009) to the claimant who had it registered on 15th September 2016.

4. On 21st November 2016 the Claimant obtained default Judgment granting him the mortgagee power of sale of Lease 009. Paragraph 2 of the said orders reads-

“ An Order that the claimant or a suitable person such as a real estate agent on his behalf is empowered to sell and transfer by a transfer signed by him as mortgagee, registered leasehold title 11/0C22/009”

5. On 30th June 2017 the Claimant entered into a contract for sale of Lease 009 to Ifira Trustees Limited (ITL). The contract or Agreement is annexed as “C” to the sworn statement of Robert Sugden filed on 19th July 2017.

6. On 7th July 2017 the Claimant became aware of a caution registered on 10th May 2017 in favour of Iririki Island Holdings Limited pursuant to section 92 of the Land Leases Act CAP.163. The caution is annexure “A” to the Robert Sugden’s sworn statement. It states-

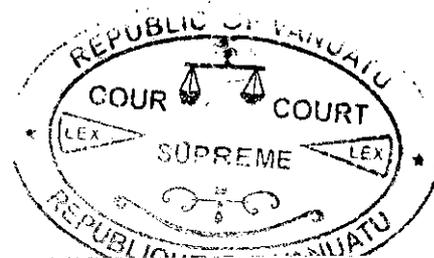
Title No. 11/0C22/009

TO: Director of Land Records

TAKE NOTICE that

WE, IRIRIKI ISLAND HOLDINGS Limited by its Solicitor’s Geoffrey

Gee & Partners of PO Box 782, Port Vila.



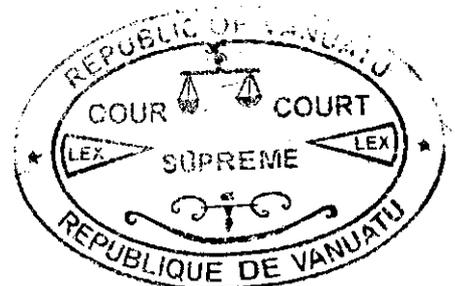
*Claiming in respect of the above mentioned residue of the above title.
The right of access for the benefit of the cautioner and its business on
Iririki Island as ratified and agreed in clause 11 of the original
Agreement for Sale and Purchase as attached.*

*HEREBY FORBID the registration without our written consent of any
person as transferee of any dealing or instrument affecting that
interest unless the conditions in the Schedule hereto have been
fulfilled, until the caution is withdrawn by us or is otherwise removed
or lapses in accordance with the Act.....”.*

7. The Agreement for Sale and Purchase is attached to the caution as part of Annexure A and is dated 14th October 2005. Clause 11 reads-

“ At completion the Vendor will provide a Title clear of all encumbrances therefor: excepting the right of access maintained under Caution in favour of Iririki Holdings Limited which the Purchaser acknowledges and is accepted by it provided that the Vendor shall at completion hand over the Consent of Iririki Holdings Limited as a Cautioner to the registration of the Transfer of Lease to the Purchaser.”

8. As a result of the caution the Claimant as mortgagee is now unable to sell and transfer the Lease 009 pursuant to Order 2 of the Default Judgment. And he brings a charge of contempt against Iririki Island Holdings Limited and its Directors.



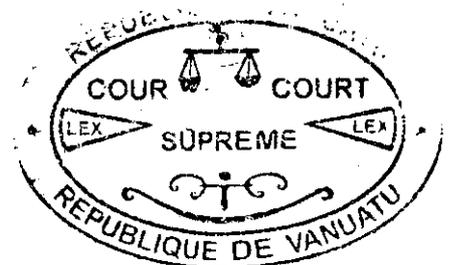
The Issue

9. Is there Contempt committed by the Company and its directors?

Discussion

10. Mr Malcolm conceded to the facts not being disputed, however he argued and submitted the Company and its directors have not committed any contempt. Counsel relies on the following-

- a) The history of the initial purchase made back on 2nd July 1987 when Ballande Vanuatu Limited sold the property to Iririki Island Resort Limited. And the purpose of it was for boat access.
- b) On 7th December 2006 when the property was sold to Ascension Limited pursuant to a Sale and Purchase Agreement clause 4.4 and clause 11 of the Mainland Agreement.
- c) The views of the Court of Appeal concerning Clause 4.4 of the Sale and Purchase Agreement of 14th October 2005 expressed at paragraphs 30 and 31 of its judgment dated 30th April 2010 in the case of Ascension Limited v Iririki Holdings Limited [2010] VUCA 8, CAC 20 of 2009.
- d) The caution issued on 2nd May 2017 and registered on 10th May 2017 protected Iririki Island Holdings Limited's unregistered license to the access way.

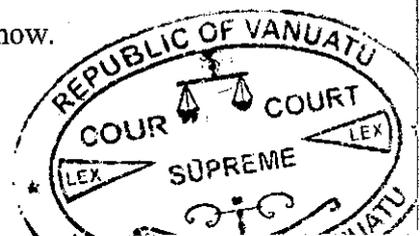


- e) Iririki Island Holdings Limited (IIHL) are not directly affected by the order in the sense of being ordered to do something.
- f) By attempting to sell the property pursuant to a mortgagee sale order but avoiding claims by other creditors of Ascension Limited, Mr Sugden the claimant, has acted in the most unfair manner and as such he is the person acting in contempt.
- g) The contract for sale between Ifira Trustees Limited and Mr Sugden dated 30th June 2017 was signed 2 months after the caution was issued and registered on 10th May 2017.
- h) The application for contempt is an abuse of process and should be dismissed with costs.

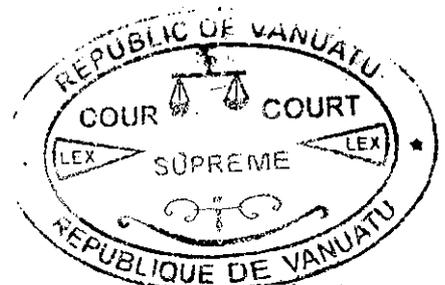
11. Mr Sugden however argued and submitted that had IIHL lodged a caution before the mortgage was registered to WLHL, it might have been able to make sure the mortgage was subject to that interest. As it did not occur, the mortgage was taken free of any interest claimed by them.

12. Mr Sugden relied on his evidence contained in his sworn statement dated 17th August 2017. At paragraph 9 Mr Sugden deposes that he obtained the orders of sale on 21st November 2016 and an approach was made to the directors of IIHL who made an offer but which offer was rejected. The offer is annexed as "B".

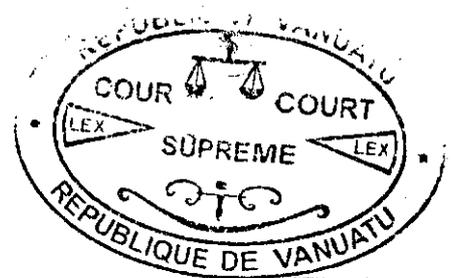
13. At paragraph 10 Mr Sugden deposes to the fact IIHL made no attempts to challenge either WLHL's registered mortgage or his registered transfer of mortgage or his orders for sale since November 2007 until now.



14. At paragraph 11 Mr Sugden says the caution lodged by IIHL on 2nd May 2017 was made 9 ½ years after registration of the WLHL mortgage and the registration of his transfer and of the orders for possession and sale.
15. I accept these are Mr Sugden's strong and valid arguments in support of the contempt charge. Mr Sugden argued the views of the Court of Appeal were wrong and were simply orbiter. I do not accept that argument. That judgment is final and Mr Sugden cannot change that. However the judgment was delivered in April 2010. IIHL has not produced any evidence to show what action and steps they took from the date of that judgment to ensure their equitable interest as acknowledged was protected. They did nothing to challenge the registered mortgage in favour of WLHL back in November 2007. IIHL slept on their equitable interest for more than 9 years since 2007. They did not register any caution then but lodged one in May 2017 only after Mr Sugden had obtained Mortgagee sale orders in November 2016. That was some 6 months later. Under those circumstances. I am satisfied the action of IIHL and its directors are a direct interference with the course of justice and thus I am satisfied IIHL and its directors have committed and are guilty of contempt of Court.
16. Of particular and serious concern is the action of director Stephane Jose Frichot described by Chief Alick Pakoa at paragraph 5 of his evidence by sworn statement dated 10 August 2017. To refuse service of a Court document may be excusable, but to throw a court document in a dust bin is an insult to the Court and in my view amounts to contempt in the face of my Court.

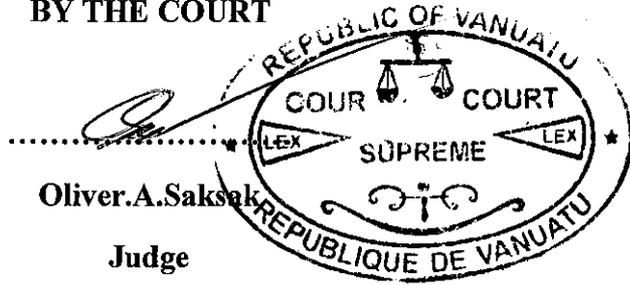


17. IIHL is not a party to this proceeding. Their equitable interests as acknowledged by the Court of Appeal in 2010 placed an obligation on them to apply to be joined as a party to the proceeding. Clearly they have failed to do that. And now they are seeking to protect that interest albeit very late in time without being a party. IIHL could have applied to be a party so that they could either apply to have the Orders of November 2016 set aside or appealed against it. But they have not done that, yet they have seen fit to lodge a caution. That, according to Re Earle [1938] IR 485 and Gore Booth v. Gore Booth 96 ILTR 32 and Attorney General v. Times News paper [1992] 1 Ch 191 is an act openly defying the authority of this Court. And the Court has inherent jurisdiction to punish that contempt.
18. The application by the claimant is therefore allowed. I find Iririki Island Holdings Limited and its directors guilty of contempt of Court orders. The named directors are Stephane Jose Frichot, Shane Adam Pettiona, Darren Pettiona and Peter Stockley.
19. Unless this contempt is purged by the Company and its named Directors within 7 days from today by filing an application to remove their caution of 10th May 2017, summonses for imprisonment will issue. Stephane Jose Frichot shall purge his contempt by making an apology personally to the Court on Thursday 24th August 2017 at 0815 hours. The Court will meet in Chambers with Counsels present also.
20. IIHL shall pay the Claimants costs of this application on the standard basis as agreed or taxed.



DATED at Port Vila this 21st day of August, 2017

BY THE COURT



Oliver.A.Saksak

Judge