

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Land Leases Act Case No 4 of 2012

BETWEEN: SILVER HOLDINGS LIMITED
Claimant

AND: THE DIRECTOR OF LANDS
First Defendant

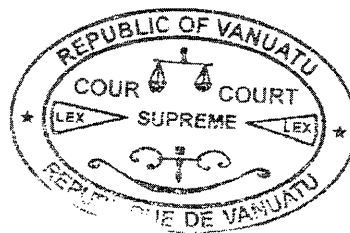
AND: ALLAN PAMA and TAHE PAMA
Second Defendants

AND: URELAPA LIMITED
Third Defendant

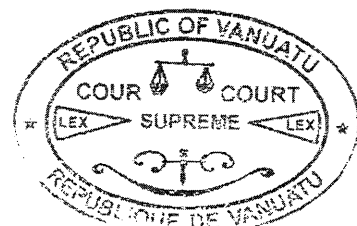
Hearing: June 28th, 2016.
Judgment: October 19th, 2016.
Before: Justice JP Geoghegan
Distribution: Nigel Morrison for the Claimant
Saktusa Kalsakau (SLO) on for the Director of Lands

RESERVE JUDGMENT

1. These proceedings involve a claim by the claimant which seeks relief pursuant to section 100 (1) of the Land Leases Act [Cap. 163] by way of the cancellation of lease title 04/2952/005 (lease "005") and reinstatement of lease title 04/020952/004 (lease "004").
2. The basis for the claim is an allegation that the registration of lease title 005 was obtained by fraud or mistake.
3. Although the proceedings were originally filed in March 2012 the claimant now seeks summary judgment.

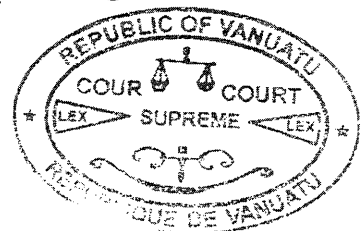


4. I am satisfied that the application for summary judgment has been served upon both the second and third defendants and that they have taken no steps to oppose the application. The first defendant not only does not oppose the application but accepts that lease 005 should never have been registered.
5. Although this hearing was held on June 28th, I had subsequently directed that the court receive confirmation of service of various documents on the Defendants. That proof of service was provided on August 22nd, 2016.
6. Neither the Pamas nor Urelapa Ltd had participated in these proceedings for a significant period. Mr Boar who was acting for the Pamas advised the Court in September 2013 that he was ceasing to act for them and that Mr Thornburgh was acting for both the Pamas and Urelapa Ltd. In December 2015, Ms Mahuk appearing for Mr Thornburgh advised that Mr Thornburgh had ceased to act for Urelapa Ltd and that was not acting for the Pamas. The Pamas have failed to appear or instruct counsel to appear in four conferences held since May 25th, 2015.
7. The broad background of the matter is that the land in dispute is the land comprising Urelapa Island in South Santo. There is no dispute that on November 10th 2006 the claimant acquired lease 004 which was a lease in respect of Urelapa Island, from the second defendants Allan and Tahe Pama (*"the Pamas"*). The claimants were then registered as the registered lessee of the lease.
8. In February 2010, in separate proceedings, Fatiaki J made an order restraining any dealings *"in any manner whatsoever"* in lease 04/2952/004. The proceedings presided over by Fatiaki J involved a dispute between the Directors of Silver Holdings Ltd in relation to the assets of the company. The defendants in those proceedings included the Director of Lands.
9. In 2010 the Pamas alleged breaches of lease 004 and sought forfeiture of the lease. In breach of the lease and specifically clause 7.1 of the lease which required any dispute or difference between the lessor and the lessee concerning any matter



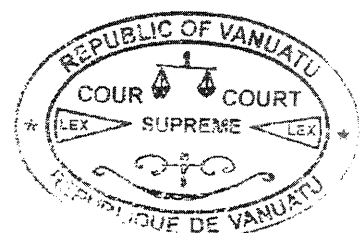
within the lease to be referred to the Valuer General, the Pamas applied to the Director of Lands for cancellation of lease 004 alleging that the claimant was a deregistered company. It was not. Lease 004 was cancelled by virtue of the registration of an instrument of cancellation on March 18th 2011. The evidence filed in these proceedings establishes clearly that the Director of Lands had notice of the earlier order preventing any dealings with lease title 004 and accepts in those circumstances that the lease should never have been cancelled.

10. Lease title 005 was subsequently issued and on April 19th 2011, the Pamas executed a commercial lease in favour of Urelapa Ltd in respect of the land. Lease 005 was lodged for registration on July 20th 2011 but the Director of Lands withheld registration leading to the Pamas and Urelapa Ltd issuing proceedings in Civil Case No. 34 of 2011 against the Director of Lands. On November 11th 2011, Saksak J issued a judgment in those proceedings requiring the Director to register lease title 005. It would appear clear from the decision of Saksak J, which has been produced in these proceedings, that he was not informed of, and therefore was unaware of, the previous order in the Supreme Court restricting any dealings with the land. That is of significant concern bearing in mind that the evidence filed in the current proceedings establishes that both the Pamas and their counsel Mr Boar had notice of the order.
11. In addition, it has been contended by the Pamas that at all material times the claimant was a deregistered company. That is clearly not the case. While it appears that the claimant had not paid necessary fees to the Registrar of Companies in 2010 and 2011 and was accordingly regarded as being "*not in good standing*", there has never been publication in the official gazette of a notice striking off or removing the company from the Companies Registry and therefore the company has at all material times been a duly registered entity. That is confirmed by a letter from the Registrar of Companies dated May 28th 2015 and produced in these proceedings.
12. Accordingly there is clear evidence that at all times the claimant was a company in good standing and there was an order of the Supreme Court preventing any dealings



with the land. In such circumstance the evidence establishes clearly that lease 004 should never have been cancelled and accordingly lease title 005 should never have been registered.

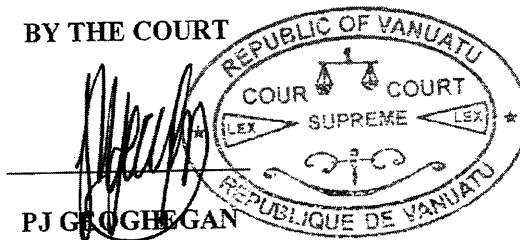
13. On April 18th 2013, the Court of Appeal consolidated Supreme Court proceedings 195/2006, 34/2011 and 04/2012. Proceedings 195/2006 involved a claim by a Mr Gilbert Dinh concerning an earlier lease in respect of Urelapa Island, leasehold title 04/2952/002. Mr Dinh's lease had been cancelled and cancellation of that lease was registered on June 14th 2006. In a reserved judgment issued on October 13th 2014, Harrop J held that the Valuer General's determination to forfeit the 002 lease was lawful and legitimate and that Silver Holdings Ltd who had subsequently acquired the 004 lease had acquired it as a bona fide purchaser for value without notice of any defect in title, fraud or mistake.
14. Civil Case No. 34/2011 is the case referred to paragraph 8, above. On appeal, the Court of Appeal stayed the orders made by Saksak J. The appeal was adjourned sine die and one would think that that was to await the outcome of these proceedings.
15. Mr Dinh's appeal in civil proceedings 195/2006 was dismissed by the Court of Appeal.
16. Given the evidence produced by the Claimant and the quite proper concession provided by the Director of Lands it is clear that the Defendants have no prospect of successfully defending this claim. Accordingly the entry of summary judgment together with orders reinstating lease 004 is entirely appropriate. There has been a clear mistake on the part of the Director of Lands in cancelling the lease when he was not entitled to do so and arguably fraud on the part of the Pamas in asserting that the Claimant had been struck off the Companies Register when it had not, and in circumstances where the Pamas knew, or ought to have known that that was the case.
17. For these reasons I make the following orders :



- (a) Summary judgment is granted in favour of the Claimant against the Defendants.
- (b) Lease 04/2952/005 is cancelled.
- (c) Lease 04/2952/004 is reinstated.
- (d) Standard costs are awarded in favour of the Claimant against the Second Defendants to be agreed within 21 days failing which they are to be taxed.
- (e) By agreement there shall be no costs against the First Defendant.
- (f) The proceedings are adjourned to a conference on Monday, December 12th, 2016 at 11 am to schedule a hearing for assessment and determination of damages,

Dated at Port Vila, this 19th day of October, 2016

BY THE COURT



PJ GROGHEGAN

Judge