

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

Civil
Case No. 19/1010 SC/CIVIL

BETWEEN: **BCD Limited**
Claimant

AND: **Elizabeth Moli**
First Defendant

Sung Eun Joo
Second Defendant

Date: 16 April 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr N. Morrison for the Claimants
Mr L. Tevi for the Defendants (absent)

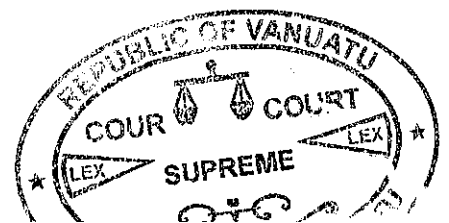
JUDGMENT

A. Introduction

1. The matter proceeding today was an application for Summary Judgment, advanced on the basis that there was no prospect of defending the Claim.
2. The only step taken by the Defendants to date in relation to the Claim was to file a Response on behalf of both Defendants on 23 May 2019. No formal Defence has been subsequently filed.

B. Evidence

3. The Claimant has a number of lease titles located in Luganville, Espiritu Santo, registered in its name. They were created by a sub-division of Lease Title 04/3024/072, with the separate titles



registered by the Claimant on 16 October 2018. Evidence establishing this, and the following matters, comes from the sworn statements of Mr L Bernier and Ms L. Naliupis.

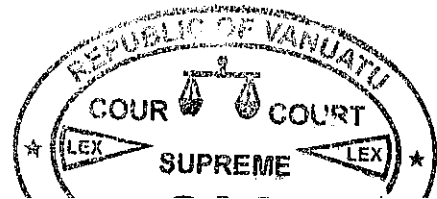
4. In particular the Claimant refers to Lease Titles 04/3024/089 and 04/3014/090, which lie adjacent to each other within the subdivision. The Claimant alleges that the Second Defendant has built a dwelling across those two titles, ostensibly on the authority of the First Defendant who claims to be the custom owner of the land.
5. The Claimant has produced in evidence a plan of the subdivision, as well as copies of the particular lease titles in its name. It has also produced photographs of the dwelling built by the Second Defendant across the two titles mentioned. The Claimant has sought, by way of a lawyer's letter of demand dated 14 March 2019, that the Second Defendant vacate the land in question. The Second Defendant has failed to respond, but has seen fit to drive Mr Albert Bue, a Registered Surveyor who was working for the Claimant, away from the property – that has led to a Police complaint.
6. The Claimant has also produced a copy of Consent Orders in Civil Case No. 08/96. The Orders restrain the First Defendant, her associates and/or any other person claiming through her from, *inter alia*, entering upon Lease Title 04/3024/072 and from further building a house on the land. The First Defendant was legally represented at the time.
7. The final evidential matters arise from a sworn statement filed by the First Defendant in response to an earlier application by the Claimant for restraining orders, and application now abandoned. It is there that she claims to be the custom owner of the land and indicates she authorised the Second Defendant to build on the land.

C. Claim

8. The Claim seeks eviction of the Second Defendant and the assessment of damages.

D. Discussion

9. The Civil Procedure Rules at Rule 9.6(7) enable the Court to deal with this matter by way of Summary Judgment, where there is no prospect of the Defendants defending the Claim.
10. In this instance, there is clear evidence of the Claimant's legal entitlement to the land. If the First defendant wishes to challenge that, she is able to do so pursuant to the provisions of the Land Leases Act – there is no such application currently on foot.
11. There is also clear evidence that the Second Defendant occupies a dwelling on the Claimant's land, and that he is unwilling to vacate the property.
12. The Second Defendant's legal ability to occupy the land stems from the First Defendant's claim to be the custom owner. However, the Consent Order the First Defendant's legal counsel signed on her behalf in April 2018 very much undermines any such claim. In the absence of a Land Leases Act challenge to the legality of the registered leases in the name of the Claimant, I see no prospect of a successful defence to the relief the Claimant seeks of eviction of the Second Defendant. I note that the Second Defendant is even further removed from challenging the validity of the registered lease titles.



13. There is accordingly, in my view, on the material currently before this Court, no prospect of the Claimant's Claim failing. To put it another way, there is no viable defence apparent.

E. Result

14. The application for Summary Judgment is granted.

15. The Second Defendant is to vacate the dwelling on Lease Titles 04/3024/089 and 04/3014/090 within 28 days from the date of service of this decision.

16. There is no evidence as to quantum of damages. Accordingly, the assessment of damages is deferred to enable Mr Morrison to take further instructions and file evidence in support of that aspect, if it is to be pursued.

17. For that to be dealt with, I hereby schedule a further Conference at 8am on 10 June 2020.

Dated at Port Vila this 16th day of April 2020

BY THE COURT

Gardie Wiltens
Justice G.A. Andrée Wiltens

