

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

**Civil**  
**Case No. 16/2711 SC/CIVL**

**BETWEEN:** **Claire Dornic**  
Claimant

**AND:** **Trading Post Limited**  
First Defendant

**AND:** **Grand Isle Holdings Limited**  
Second Defendant

**AND:** **Glen Craig**  
Third Defendant

*Date of Hearing:* 21 June 2021  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr P. Fiuka  
Defendants – Mr N. Morrison  
*Date of Decision:* 29 June 2021

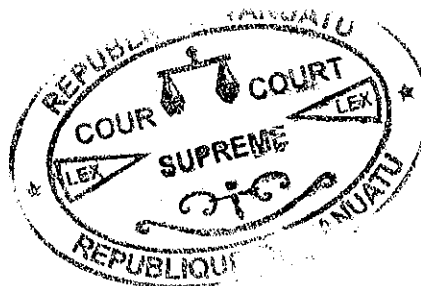
---

**DECISION AS TO STRIKE-OUT APPLICATION**

---

A. Introduction

1. The Claimant Claire Dornic is suing the Defendants for defamation. She alleges that their publication of the notice that receivers and managers had been appointed on 22 July 2016 for Claire Dornic T/A C.L Agencies was defamatory. The Defendants dispute that there was “libel” or “defamation” as the public notice was required by statutory/regulatory process. This is my decision on the Defendants’ application to strike out the Further Amended Claim.



B. Facts

2. Mrs Dornic traded as C.L. Agencies selling and marketing copra.
3. On or about 15 March 2010, Mrs Dornic and the ANZ Bank (Vanuatu) Limited entered into a General Services Agreement ('GSA').
4. On 18 January 2012, the ANZ Bank's security interest under the GSA was registered in the Personal Property Securities Registry.
5. On 22 July 2016, the Third Defendant Glen Craig was appointed as receiver and manager to Claire Dornic T/A C.L. Agencies.
6. Mr Craig is the sole director of the Second Defendant Grand Isle Holdings Limited, a local company trading as Pacific Advisory ('Pacific Advisory').
7. On 22 July 2016, Mr Craig and Pacific Advisory published the following notice in the First Defendant Trading Post Limited's Vanuatu Daily Post newspaper:

*"PACIFIC ADVISORY  
Claire Dornic T/A C.L. Agencies  
(Receivers and Managers appointed)  
Receivers and Managers were appointed to the company on 22 July 2016.  
If you believe you are a creditor of this company please contact us with a copy of your claim.  
Contact 2404 or email [info@pamadvisory.com](mailto:info@pamadvisory.com)"*

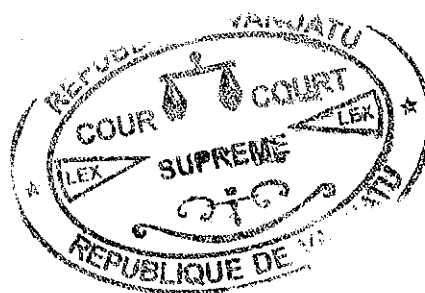
C. The Law

8. Section 59 of the *Companies (Insolvency and Receivership) Act No. 3 of 2013* (the 'Act') provides:

59. (1) *A receiver may be appointed in respect of the property of a person by, or in the exercise of a power conferred by, a document to which the person is a party.*
- (2) *The appointment of a receiver in the exercise of a power conferred by a document must be in writing.*
- (3) *The power conferred by subsection (1) is in addition to the power conferred on the Court to appoint a receiver.*

9. Section 61 of the Act provides:

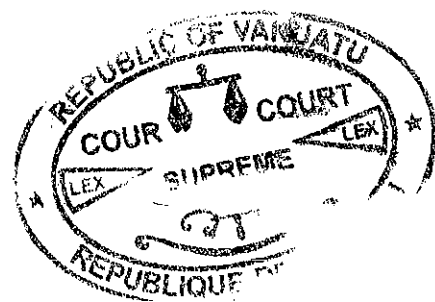
61. (1) *Not later than 5 working days after being appointed, a receiver must:*
  - (a) *give written notice of their appointment to the grantor; and*
  - (b) *give public notice of his or her appointment, including:*
    - (i) *the receiver's full name; and*
    - (ii) *the date of the appointment; and*



- (iii) *the receiver's office address; and*
  - (iv) *a brief description of the property in receivership.*
- (2) *The receiver must, within 5 working days after being appointed, send a copy of the public notice to the Registrar for registration.*
  - (3) *If the appointment of the receiver is in addition to a receiver who already holds office or is in place of a person who has vacated office as receiver, as the case may be, every notice under this section must state that fact.*
  - (4) *A receiver who fails to comply with this section commits an offence and is liable on conviction to a fine of VT25,000.*

D. Discussion

- 10. Under the GSA, Claire Dornic T/A C.L. Agencies (as 'Debtor') granted the ANZ Bank a security interest over all present and after acquired property (the 'Collateral' covered by the GSA) as security for the payment of the Secured Money being all monies payable to the Bank under the GSA.
- 11. On 18 January 2012, the ANZ Bank's Notice of Security Interest in relation to Claire Dornic T/A C.L. Agencies was registered in the Personal Property Securities Registry pursuant to the *Personal Property Securities Act 2008*.
- 12. Mr Fiuka submitted in opposition to the Defendants' Strike Out Application that the loan is unsecured and that Mrs Dornic is not bankrupt. I reject the submission that the loan is unsecured as it clearly was secured under the terms of the GSA that Mrs Dornic trading as C.L. Agencies entered into with the ANZ Bank. Whether or not Mrs Dornic is bankrupt is not relevant and is not a matter which I need determine for the purposes of this Application.
- 13. On 22 July 2016, Mr Craig was appointed as receiver and manager of the assets of Claire Dornic T/A C.L. Agencies charged by the GSA and in accordance with subsections 59(1) and (2) of the Act.
- 14. Subsections 61(1)(a) and (b) of the Act imposed the following duties on Mr Craig as receiver:
  - not later than 5 working days after being appointed, to give written notice of his appointment to Claire Dornic T/A C.L. Agencies (subsection 61(1)(a) of the Act); and
  - to give public notice of his appointment including his full name, the date of the appointment, his office address and a brief description of the property in receivership (subsection 61(1)(b) of the Act).
- 15. Mr Craig discharged his duties as follows:
  - By email dated 5 August 2016 to Mr Robert Sugden, then lawyer for Mrs Dornic, Mr Craig confirmed his appointment as receiver; and



- By the public notice published in the Vanuatu Daily Post before 6 August 2016.
16. The final matter Mr Fiuka submitted in opposition to the Defendants' Strike Out Application was that the notice did not identify the property in receivership. The notice stated that receivers and managers had been appointed to the company Claire Dornic T/A C.L. Agencies. It follows that the property in receivership must be the assets of Claire Dornic trading as C.L. Agencies. With respect, I do not agree that the notice did not identify the property in receivership.
  17. Mr Morrison submitted that the Defendants' publication of the public notice in the Vanuatu Daily Post did not constitute "libel" or "defamation" as the words complained of were no more than required by the Act. I agree. Mr Craig was required by subsection 61(1)(b) of the Act to give public notice of his appointment, which he did by way of the public notice published in the Vanuatu Daily Post. I note that if Mr Craig had failed to comply with this section, he would have committed a criminal offence pursuant to subsection 61(4) of the Act.
  18. In conclusion, I am satisfied that the Defendants published the public notice in the Vanuatu Daily Post pursuant to Mr Craig's duties, under subsections 61(1)(a) and (b) of the Act, as receiver to Claire Dornic T/A C.L. Agencies. Mr Craig's duty to communicate must be recognized as creating a privileged occasion for which the Defendants cannot be held liable for libel or defamation as alleged or at all.

E. Result and Decision

19. The Defendants' Application to Strike Out Further Amended Supreme Court Claim filed 18 March 2021 is **granted**.
20. The Further Amended Claim filed on 18 March 2021 is **struck out**.
21. The Defendants do not seek costs of the application or the proceeding. Accordingly there is no order for costs.
22. This proceeding is at an end. The file is now closed.

DATED at Port Vila this 29<sup>th</sup> day of June 2021  
BY THE COURT

  
Viran Molisa Trief  
Judge

