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

Civil
Case No. 25/1241 SC/CIVL

BETWEEN: EMANUELLE SCHUELER
Claimant

AND: JAMES REN
First Defendant

AND: BELLEVIEW DENTAL CENTER
Second Defendant

Before: Justice Oliver A. Saksak

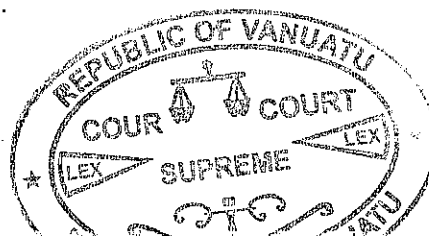
In Attendance: Andrew Bal for the Claimant as Respondent
Anita Cyrel for the Defendant as Applicant

Date of Hearing: 28th May 2025

DECISION

Introduction and Background

1. The Claimant filed his claims formally on 5 May 2025 claiming (a) damages for breach of agreement, (b) outstanding rentals, (c) an order for the defendants to vacate the property, (d) interest and (e) costs.
2. On the same date the Claimant sought interlocutory orders by way of an urgent application that –
 - (a) The Respondents be restrained from entering the property of the Claimant comprised in Lease Title No. 12/091201049, and
 - (b) They be restrained from using the property as a Dental Clinic.
3. The grounds relied upon were in the main –
 - (a) That the First Respondent had failed to ensure the building on the Lease Title in accordance with their Commercial Rental Agreement executed on 19 November 2023, and
 - (b) That the First Respondent allowed other persons on the Lease Title to use it as a Dental Clinic without the written permission of the Claimant and in breach of clause 6 of the Agreement.
 - (c) That despite the Respondents using the building and property of the Claimant they had failed to pay rentals to the sum of VT660,000.



Orders of 12 May 2025

4. The Court granted the Orders sought ex parte on 12 May 2025 and gave liberty to the Respondents to apply within 48 hours' notice.

Application to Set Aside

5. The Respondents filed their application on 19 May 2025 together with a sworn statement in support. This was some 7 days later.

The Complaints

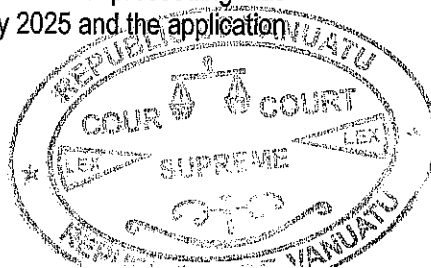
6. The Respondents complained that –
 - (a) They were completely unaware of any legal proceeding taken against them and were surprised at receiving the orders.
 - (b) They have an existing commercial lease agreement dated 19 November 2023 permitting them to occupy the building and property.
 - (c) No notice of termination of the Agreement has been served on them.
 - (d) They have operated a dental practice pursuant to the Agreement and the forced cessation of the business will result in a significant financial loss and damage to their reputation.

Relief Sought

7. The Respondents seek an order that the Orders of 12 May 2025 be vacated and that the Claimants provide full disclosure of all documents and information relied upon in obtaining the said Orders.

Oral Decision of the Court

8. I refused the application and dismissed it orally and I now provide my reasons as follows-
 - (a) Part 7 of the Civil Procedure Rules provide for interlocutory matters. The application by the Claimant was deemed to have been made under this part of the Rules – Rule 7.2 states that a party may apply for an interlocutory order at any stage of the proceeding. Rule 7.3 provides for service of applications which is mandatory unless the matter is so urgent the Court decides the application should be heard in the absence of the other party.
The Claimant's application was headed "Urgent Ex parte Application" The Court treated it as such. No service was required. That is the reason why a liberty clause was included in the Order of 12 May 2025 as (c) to afford the defendants an opportunity to be heard. As a result, the defendants filed their application. They were heard. There is therefore no room for complaints that they were unaware of the proceeding.
 - (b) Rule 7.5 provides for applications for Orders made before a proceeding has started. In this matter the claimant filed a claim on 5 May 2025 and the application



at the same time. The claim has not been listed for conference but the application has been heard first.

Technically the proceeding has not started.

Rule 7.5 (1) and (3) provides for the criteria for the judge to be satisfied that –

- (i) The applicant has a serious question to be tried.
- (ii) The applicant would be seriously disadvantaged if the order sought is not granted.

From the sworn statement of the Claimant filed on 5 May 2025 annexing the Rental Agreement of 19 November 2023 as “ES1”, the Agreement is only executed by Emmanuelle Schueler as Landlord and James Ren as Tenant. There is no reference anywhere in the Agreement to Bellevue Dental Centre.

- (c) Annexure “ES2” discloses a Business Meeting Minutes of 19 January 2025 recording the parties’ discussions/resolutions about building insurance, building works progress and outstanding rent payment of VT240, 000 as at July 2024. James Ren was present at the meeting therefore the issues now before the Court could not have been a surprise to him when he received the ex parte orders.
 - (d) Next Annexure “ES3” is an email of 23 March 2025 to James Ren. It records and Order from the Landlord to the tenant to “Stop all activities....and evacuate each and every person from the building, lock all doors, windows and the entrance gate and prevent re-entering of any person.....”
If this is not a Notice to the First Defendant to vacate, what else could it be?
 - (e) The defendants could have filed responses and defences but did not, to reinforce their asserted right to continue to occupy the Claimant’s property and use it for profit and financial gain, but neglecting his obligations under an agreement which appears to be valid and binding on the Claimant and First Defendant in all respects.
9. It is for those reasons the Court was satisfied the Claimant has a serious case to be tried and that if the orders he sought were not granted, the Claimant would be seriously disadvantaged.
10. The orders of 12 May 2025 were and are essential, and they will remain in force until the substance of the case is fully determined.

DATED at Port Vila this 30th day of May, 2025.

BY THE COURT


Hon. Oliver A. Saksak
Judge

