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

**Civil**
**Case No. 25/2312 SC/CIVL**

**BETWEEN: SILVER HOLDINGS LIMITED**

Applicant

**AND: FAMILY VUTINASUPE represented by MOLI SUPEATATMATA, JOE HALILI ROPO, LIVO ROPO, RAUMOLI ROPO, SAVANA ROPO, ROPO LIVO, VUTINASUOE JOHN KETTING ROPO and TACO ROPO**

Respondents

***Before:*** *Justice Oliver A. Saksak*

***Counsel:*** *Corrine Hamer for the Applicant*
*Julian Wells as Authorised Representative of the Respondents*

***Date of Hearing:*** *15th September 2025*
***Date of Judgment:*** *25th September 2025*

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# JUDGMENT

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1. By an application filed on 7 August 2025 Silver Holdings Ltd, applicant seeks an order for specific performance that: -

   (a) The Respondent be directed to sign the consent to transfer Leasehold Title 04/2933/001 to the Applicant.
   (b) Costs be paid to the Applicant.

2. The application was filed pursuant to Rule 7.5 of the Civil Procedure Rules. It is an application seeking interlocutory orders before a proceeding is started.

3. The grounds in support of the application are that:

(a) The applicant has a serious question to be tried; and
(b) The applicant would be seriously disadvantaged if the order sought is not made.

4. The applicant claims they are the registered proprietor of Lease 001. That in 2007 Beach Club Ltd (BCL) purchased Lease 001 from the then Lessor, Jackson Livo for VT 3 million. That BCL was beneficially owned by Silver Holdings Ltd at the time. That Lease 001 was granted for a term of 75 years. That on 25 July 2009 the transfer of Lease 001 to the Applicant was registered and the beneficial owners remained the same. That on 3 October 2017 the lease register was rectified into the name of the Respondents. That on 1 April 2025 the Applicant signed a sale and purchase agreement which was conditioned upon the Applicant obtaining consent to transfer from the Respondents within 90 days from that date. That consent by the Respondents have been unreasonably withheld, which warranted the filing of the application for specific performance.

5. The Respondents oppose the application. At the hearing I heard Mr Wells orally in response in strong opposition against the grant of the order sought. Mr Wells relied on his written submissions filed on 12 September 2025.

6. Mrs Hamer made oral submissions but sought an opportunity to take instructions and to file written submissions in view of late service of the submissions on her. I allowed time to Mrs Hamer to file and serve written submissions in reply by 11.00am on Friday 19 September 2025. This date line was not met. Submissions were filed late on 22 September 2025 at 4.30pm. Those submissions raise issues of substance which require evidence and trial.

7. Mrs Hamer verbally argued and submitted the Applicant has indefeasible title as a bonafide purchaser for the last 18 years. That the lease was approved by the Attorney General and that there are no reasons to without consent. That an allegation of fraud is not evidence and does not affect the Applicant's right to have the lease in its possession.

8. Mr Wells on the other hand argued and submitted that the application does not meet the threshold of Rule 7.5(1(a) and 7.5(3)(a) of the Rules. That the relief sought is final and that it eradicates the need for a substantive claim contrary to Rules 7.5 (1) (a), (2) (a), (2) (b), (3) (a) and (4). That the Applicant is not entitled to final remedies such as specific performance through interlocutory means. That the balance of convenience favors the

Respondents given that compelling consent now would result in final and irreversible prejudice to their substantive rights and pending claim. That the Applicant has come to Court within unclean hands and is not entitled to the reliefs sought because they have benefited from a fraudulent or mistaken registration of Lease 001 and having provided no compensation to the Respondents to date. That the Respondents are justified in withholding consent pursuant to section 41 (h) of the Land Leases Act.

9. In support of the serious question issue Mr Wells relied on the cases of Valele Family v Touru [2002] VUCA 3 and Mystery Island Tourism Holdings Ltd v Aneityum Trustees Ltd [2025] VUSC and Section 41 (h) of the Land Leases Act.

10. For the final relief sought through interlocutory areas, Mr Wells relied on Masson De Morfontaine Ltd v Hughes [2025] VUCA 11 where the Court of Appeal held that interlocutory applications are inappropriate where they attempt to resolve substantive rights prior to trial.

11. For the unclean hands issue Mr Wells relied on Vatoko v Tamata [2021] VUSC 1168 and Mahe v Poilapa [2020] VUSC.

12. Finally, Mr Wells argued that the Respondents have reasonable grounds of withholding consent to transfer because registration of Lease 001 was done without the Respondents consent, without their knowledge and without any compensation paid to them in the last 15 years.

13. Finally, Mr Wells submitted the Application is misconceived and procedurally defective and should be dismissed with disbursements costs of VT30,000. Alternatively, Mr Wells submitted the proceeding be stayed pending the determination of CC 25/2391.

14. In reply Ms Hamer argued that VT30,000 is excessive as costs are not particularized.

15. I am impressed and persuaded by the abled submissions and arguments by Mr Wells to accept that the Application seeking specific performance is misconceived and procedurally defective. It does not meet the threshold of Rule 7.5 of the Civil Procedure Rules.

16. The strongest and most persuasive case authority is that of Masson De Morfontaine Ltd v Hughes. It is obvious by the application that final remedy is being sought through an interlocutory process which is clearly

inappropriate. It denies the Respondents their right to do proper pleadings through a defence and/or counter-claim. A proper Supreme Court Claim should have been filed instead of an application for all that to occur. It probably explains why the Respondents have filed a separate proceeding as CC 25/2391 to challenge the validity of Lease 001 on the basis of fraud and/or mistake.

17. The Respondents have raised the issues of non-payment of compensation, lack of consent given for the grant and registration of Lease 001 and lack of knowledge. These are matters to be raised in a defence requiring supporting evidence and a trial. These have been by-passed by the process adopted by the Applicant which is misconceived and procedurally flawed.

18. The Lease Register relied on by the Applicant showing the change of names from the original named lessor into the Respondent's names is questionable in light of the Respondents denying consent and knowledge, and warrants supporting evidence that requires a trial.

19. The allegation of non-payment of compensation for the last 15 years giving rise to the argument about coming to Court with unclean hands. Again, evidence is needed to substantiate the allegation but it is clear in my view that had a proper claim been filed instead of an application, the Respondents would have had an opportunity to put up proper defences. That did not occur, resulting in the balance of convenience shifting in favour of the Respondents.

20. For those reasons, the application must fail and is hereby dismissed. The Respondents are entitled to their disbursement costs which in my view should be reduced to VT15,000, to be paid by the Applicant within 14 days from the date hereof.

**DATED at Port Vila this 25th day of September, 2025.**

**BY THE COURT**

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**Justice Oliver A. Saksak**

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