

BETWEEN: Iririki Island Holding Limited
Appellant

AND: Robert Edgar Sugden
First Respondent

AND: Ascension Ltd
Second Respondent

Coram: **Hon. Chief Justice Vincent Lunabek**
 Hon. Justice John von Doussa
 Hon. Justice Daniel Fatiaki
 Hon. Justice Ronald Young
 Hon. Justice Dudley Aru
 Hon. Justice David Chetwynd
 Hon. Justice Paul Geoghegan

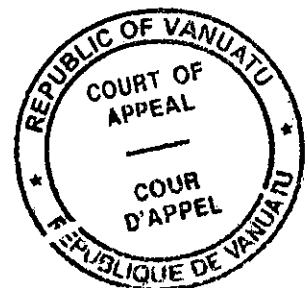
Counsel: **Mr. John Malcolm the Appellant**
 Mr. Robert Sugden in person

Date of Hearing: **6th November 2017**

Date of Judgment: **17th November 2017**

JUDGMENT

1. The appellant appeals a decision of the Court below essentially on a finding of contempt and the consequential orders for punishment if the contempt was not purged by Iririki Island Holdings Ltd (IIHL). IIHL was not a party to the proceedings in the Court below.

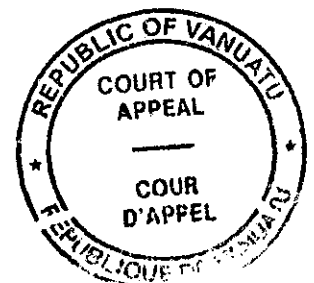


Background

2. The subject matter at the heart of the dispute is lease title No. 11/OC22/009 (the 009 lease). This very same lease has been the subject of several cases before this Court and the Court below. It is a piece of vacant waterfront land adjacent to the Grand Hotel which IIHL has been using as a landing stage for its customers and guests going to Iririki island and coming back.
3. For the purposes of this appeal, we are only concerned with the decision in relation to contempt. The brief background giving rise to the decision under appeal is that through various dealings involving the 009 lease, Wellington Lodge Holdings Pty Ltd (WLHPL) held a registered mortgage over the title. It then transferred the mortgage to the respondent sometime in September 2016. On the 21 September the same year a default judgement was entered in favour of the respondent in **Robert Sugden v Ascension Ltd** Civil Case 3346 of 2016(CC 3346 of 16). Order 2 gave the respondent power to sell the 009 lease.

"2.An order that the claimant or a suitable person such as a real estate agent on his behalf is empowered to sell and transfer by a transfer signed by him as mortgagee, registered leasehold title 11/OC22/009."

4. On 10 May 2017, IIHL pursuant to section 93 of the land Leases Act [CAP 163] registered a caution against the 009 lease. The effect of the caution was to forbid registration of any dealing or instrument affecting the 009 lease. On 30 June 2017 the respondent pursuant to the power of sale orders granted to him entered into a contract of sale and purchase of the 009 lease with Ifira Trustees Ltd (ITL). Subsequent to that on the 7 July he became aware of the caution. He then wrote to IIHL on 10 July giving them 14 days to remove the caution or face contempt proceedings. As Geoffery Gee & Partners were appointed by IIHL to receive notices on its behalf in respect of the caution, they responded to the effect that the caution will only be removed if the respondent agrees to the registration of an easement over the lease. This was obviously refused as the respondent on 19 July filed an urgent application for contempt with the following charge:-



"Robert Edgar Sugden hereby charges IIHL with contempt of the Supreme Court on or about 13 July 2017 in that on that date it refused to cease acting in contravention of Order 2 of a Default Judgment granted in favour of Robert Edgar Sugden (the claimant) in this proceeding on the 21 December 2016.

Particulars

1. The claimants default judgment provided at Order No 2 thereof that:"the claimant.....is empowered to sell and transfer by a transfer signed by him as mortgagee, registered leasehold title 11/0C22/009".

2. On or about 02 May 2017, the respondent Iririki Island Holdings Limited lodged a caution against the registered title 11/0C22/009 and the caution was registered preventing any dealing with 11/0C22/009 without the respondent's consent .

3.The caution prevented Order No 2 of the default judgment from being carried out .

4.The default judgment was served on the respondent at the registered office at 15.31hours on 10July 2017 together with a letter requiring the caution to be removed in compliance with the judgement .

5.By a letter dated 13 July 2017 the respondent refused to remove the caution and claimed a right to have the caution remain in place unless the claimant complied with what the respondent wanted .

6. The respondent's refusal to remove the caution and claim to the right to have it remain in place is in contempt of Order No 2 of the claimant's default judgment".

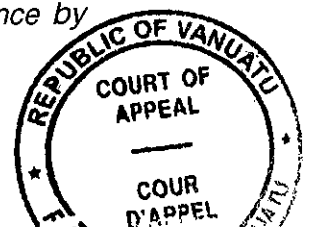
Judgment under appeal

5. The application on the charge for contempt was heard and granted on 21 August 2017. Referring to the earlier decision of this Court in **Ascension Ltd v Iririki Island Holdings Ltd** [2010] VUCA 8, the primary judge said:

"IIHL slept on their equitable interest for more than 9 years since 2007. They did not register any caution then but lodged one in May 2017 only after Mr Sugden had obtained Mortgagee sale orders in November 2016. That was some 6 months later. Under those circumstances, I am satisfied the action of IIHL and its directors are a direct interference with the course of justice and thus I am satisfied IIHL and its directors have committed and are guilty of contempt of Court".

6. When referring to the actions of the directors of IIHL he said:-

"Of particular and serious concern is the action of director Stephane Jose Frichot described by Chief Alick Pakoa at paragraph 5 of his evidence by



~~sworn statement dated 10 August 2017. To refuse service of a Court document may be excusable, but to throw a court document in a dust bin is an insult to the Court and in my view amounts to contempt in the face of my Court."~~

7. And added in relation to the caution that:-

"IIHL is not a party to this proceeding. Their equitable interests as acknowledged by the Court of Appeal in 2010 placed an obligation on them to apply to be joined as a party to the proceeding. Clearly they have failed to do that. And now they are seeking to protect that interest albeit very late in time without being a party. IIHL could have applied to be a party so that they could either apply to have the Orders of November 2016 set aside or appealed against it. But they have not done that, yet they have seen fit to lodge a caution

8. This was the basis for the primary judge's findings and orders:-

"I find Iririki Island Holdings Limited and its directors guilty of contempt of Court orders. The named directors are Stephane Jose Frichot, Shane Adam Pettiona, Darren Pettiona and Peter Stockley.

Unless this contempt is purged by the Company and its named Directors within 7 days from today by filing an application to remove their caution of 10th May 2017, summonses for imprisonment will issue. Stephane Jose Frichot shall purge his contempt by making an apology personally to the Court on Thursday 24th August 2017 at 0815 hours. The Court will meet in Chambers with Counsels present also.

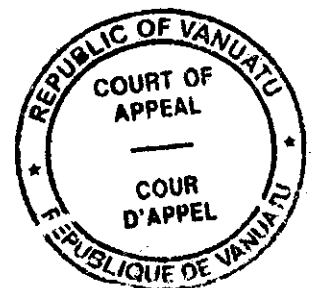
IIHL shall pay the Claimants costs of this application on the standard basis as agreed or taxed."

9. On 24 August 2017 the parties appeared in court again for the purposes of purging their contempt .Following that conference the primary judge issued a minute stating:-

"I am satisfied the company and Mr Frichot have purged their contempt and accordingly I hereby discharge them of the contempt."

Appeal

10. The appeal is pursued by IIHL on a number of grounds which are summarized as follows:-

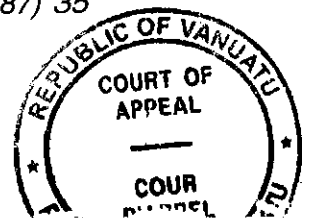


- 1) the primary judge was wrong in finding a non-party guilty of contempt of the orders issued in CC 3346 of 16;
 - 2) the primary judge was wrong in finding that the registration of a caution was a contempt in part of the orders issued in CC 3346 of 16;
 - 3) At all times the Appellant had a license to access Iririki island through the 009 lease and any Sale or Purchase Agreement and the order drafted by Mr Sugden ought to have reflected the same;
 - 4) On re-registration of the Mortgage and or the company, the existing charges and licenses ought to have been re-registered as well;
 - 5) It is accepted that refusing to attend at Court on service of a summons may well be a contempt, but throwing a document into a bin is not;
 - 6) An individual does not need to be a party to a case to file a caution over land in which he claims an interest;
 - 7) Mr Sugden is not entitled to costs whilst acting for himself.
11. For obvious reasons, ground 1) was withdrawn by the appellant in their written submissions. The main ground pursued by the appellant in its appeal is that despite the fact that the contempt was purged, the finding by the primary judge must be set aside. Secondly, on the issue of costs, Mr Sugden was representing himself and therefore was not entitled to seek costs. Grounds 2) to 6) are dealt with together.

Discussion

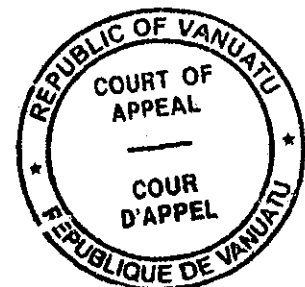
12. The general principles of what constitutes contempt of Court were discussed by this Court **In re Civil Contempt of Court, De Robillard** [1997] VUCA 1 and it accepted that *"the basic law was correctly summarised by the Acting Chief Justice in his reasons for the order made on 27 March 1997 when he said:-*

"A contempt of court is an act or omission calculated to interfere with the due administration of justice: see Bowen LJ in Helmore v Smith (1887) 35



~~Ch. D 436 and 455. It is a Civil Contempt of Court to refuse or neglect to do an act required by a judgment or order, or to disobey a judgment or order requiring a person to abstain from doing a specified act, on the faith of which the court sanctions a particular course of action or inaction (see Hinchliffe J. P.N.G. LR (1987) 227).~~

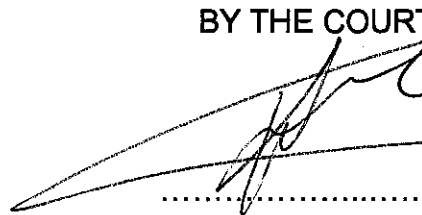
13. Rule 18.14 of the Civil Procedure Rules (CPR) provides the basis for the Court below to deal with contempt *"where a person fails to comply with an order of the court or an undertaking given to the court during or at the end of a proceeding"*. In such instances another party may apply for an order that the first person be punished for contempt.
14. The subject of the contempt alleged by the respondent in the court below was the fact that he was given the power to sell the 009 lease and IIHL registered a caution preventing registration of any dealing or instrument in respect of the same title and refused to remove the caution following the signing of the Sale and Purchase Agreement with ITL and after being requested.
15. Section 93 of the Land Lease Act allows any person who claims an interest in land under an unregistered instrument or licence in respect of a registered interest to lodge a caution if desired to protect their interest. Any person adversely affected by the registration of such caution may apply to the Director for its removal (s 97). There was no such application made by the respondent nor was there any proceedings filed to have the caution removed. We do not accept that filing the caution amounted to contempt of the Court orders of 21 November 2016.
16. First, the Land Leases Act permits the filing of cautions and the process for removing them. Secondly, the caution was registered before the Sale and Purchase agreement was entered into between the respondent and ITL. Before the sale the respondent was aware that IIHL had always had a right of access on the 009 lease. We are satisfied that there was no basis for a finding of contempt and those findings although purged are set aside.



17. On the question of costs, rule 15.4 of the CPR requires that self-represented parties in any proceeding may only recover disbursements but are not entitled to recover costs. The respondent was self-represented therefore there was no basis for the primary judge to order costs against IHL. The respondent was only entitled to recover disbursements. The orders for payment of costs are also set aside.
18. The appeal is therefore allowed and the appellant is entitled to costs to be agreed or taxed.

DATED at Port Vila this 17th day of November, 2017

BY THE COURT



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Hon Vincent Lunabek

Chief Justice

