

(Civil Jurisdiction)

**IN THE MATTER OF:** Vanuamadia Digitalmedia Limited  
**BETWEEN:** Vanuatu Broadcasting and Television Corporation  
Claimant  
**AND:** Vanuamadia Digitalmedia Limited  
Defendant

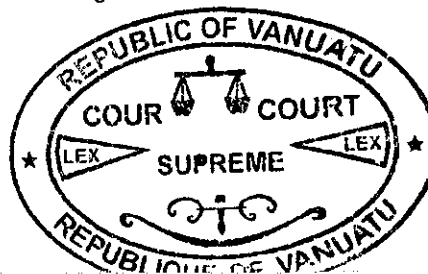
*Date of Conference:* Wednesday, 29 August 2018  
*Before:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr M. Hurley for Claimant  
Mr S. Hakwa for Defendant  
Mr E. Toka for Mr Zheng Wu Wei, Director of the Defendant

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**JUDGMENT**

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1. Following my decision of 6 August 2018, two matters have arisen which were called before me today for determination:
  - (i) Mr Hakwa has filed an Application for a Stay; and
  - (ii) Mr Hurley has filed an Application on behalf of the Liquidator.
- (i) The Application for Stay
2. Mr Hakwa has actually filed not only an Application for Stay; but he also filed, in the Court of Appeal, an Application for Leave to Appeal together with his Notice and Grounds of Appeal, and an Application for Leave to File Further Evidence. Mr Zheng Wu Wei has filed sworn statements in support of those further applications.



3. Mr Hakwa accepts he needs to file an Application for Leave to Appeal in the Supreme Court, and will do so in the near future.

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4. Mr Hakwa accepts also that the only issue that can be dealt with today is the Application for Stay. He relied on the grounds set out in his written application, which is to the effect that he has filed an appeal in attempt to set aside the entire judgment which placed the Defendant Company in liquidation. That appeal has yet to be heard – ergo, he seeks a stay.

5. Mr Hurley opposed the application.

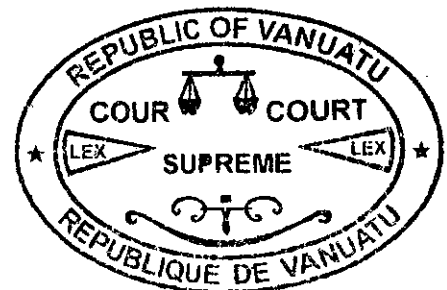
6. Mr Hurley relied on the case of *Yan v Mainzeal Property and Construction Limited (in receivership and liquidation)* [2014] NZCA 86 as authority for the proposition that the relief sought, in the circumstances the Defendant Company finds itself in, should be considered in light of the following considerations:

- (a) whether the appeal may be rendered nugatory by the lack of a stay;
- (b) the bona fides of the applicant as to the prosecution of the appeal;
- (c) whether the successful party will be injuriously affected by the stay;
- (d) the effect on third parties;
- (e) the novelty and importance of questions involved;
- (f) the public interest in the proceeding;
- (g) the overall balance of convenience; and
- (h) the apparent strength of the appeal.

7. Mr Hurley submitted that only consideration (a) can be seen to be supportive of the application – all the other factors militate against a stay. Mr Hakwa did not suggest otherwise.

8. In looking at the various considerations that need to be taken into account in determining this application, I make the following comments:

- Without a stay being issued, by the time this matter is heard in early November, the appeal may well be nugatory. However, this is off-set by the delays occasioned to date by the Defendant Company, and the overwhelming need to wind up a floundering entity with no legitimate commercial purpose as quickly as possible so that all the assets and legal liabilities are appropriately dealt with.
- The defendant company, through it's director Mr Zheng, has been tardy in dealing with this matter throughout. Even when warned of the need to be compliant with Court directions, documents were filed late.



- The defendant company has lost any commercial reason to remain in existence, and its affairs need to be regularised, not simply allowed to drift on unregulated and unmanaged. There are assets that need to be dealt with, and in my view if the Liquidator is not able to proceed forthwith, there is a real risk of wrongful dissipation of those assets – I note that there has already been an apparent attempt to issue shares contrary to the company's constitution.
- The whole area of digital television in Vanuatu needs certainty, and the end of the joint venture between the Defendant Company and the Vanuatu Broadcasting and Television Corporation ("VBTC") provides that for all other entities interested and operating in this field.
- The appeal filed raises no novel or important points of law – it can be properly described as evidencing a general disagreement with the decision and dissatisfaction with the end result.
- The balance of convenience falls in favour of declining the stay.
- In my view, the grounds of appeal are not such that demonstrate an obvious error in the judgment or compel the granting of a stay due to the strong likelihood of success.

9. For all the above reasons, the stay application is declined.

10. Costs will follow the event. If they cannot be agreed, they will need to be taxed.

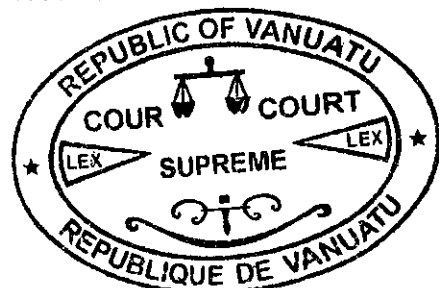
(ii) The Liquidator's Application

11. Mr MacGill made application for an order under section 30(1) of the Companies (Insolvency and Receivership) Act No. 3 of 2013 ("the Act") that the Director of the Defendant Company, Mr Zheng, comply with the liquidator's requirement to provide all details of the Defendant Company's property in his possession or under his control, and to make such property available for delivery within 48 hours.

12. Mr MacGill sought further orders under section 30(2) of the Act that Mr Zheng:

- Attend before the Court and be examined on oath or affirmation by the Court, or the legal practitioner acting on behalf of the liquidator, on any matter relating to the business, accounts, or affairs of the Defendant Company; and
- Produce any documents relating to the business, accounts, or affairs of the Defendant Company in his possession or under his control.

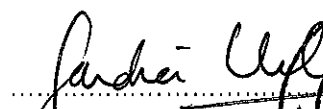
13. Mr Hakwa, although not acting in this matter, nevertheless raised two issues. He was concerned about Mr Hurley being conflicted, as counsel for both VBTC and the liquidator. He was also concerned about the entitling adopted – he suggested that the liquidator should be named as the applicant and the Defendant Company in Liquidation should be named as the defendant.



14. I failed to see any conflict between Mr Hurley's roles. Mr Hakwa was also unable to articulate what they might be. I see nothing in this aspect to cause Mr Hurley to step aside. As usual he is acting quite properly and within the rules of Court.
15. The entitling is not a matter of great moment. Technically Mr Hakwa may be correct in that the Liquidator should be named as the applicant. However, the Defendant Company need not be named as defendant – if anyone should, perhaps that should be Mr Zheng. In any event, Mr Hurley has simply used the entitling previously used in this matter – and this aspect is a following-on aspect that can properly be considered as part of the original case. I dismiss Mr Hakwa complaints as having no valid basis.
16. The basis for MR MacGill's application is borne out of frustration. He has repeatedly over the past 3 weeks asked Mr Zheng for the information he needs to be able to carry out his Court-appointed role properly. In his sworn statement accompanying the application, Mr MacGill has set out his attempts to obtain the necessary information and the responses received from Mr Zheng. Those responses can be described as (i) needing to see a copy of the Court's decision and getting instructions from overseas before being able to respond, (ii) needing to get instructions from overseas, which may or may not include an appeal, and (iii) an appeal has been filed and a stay will be sought.
17. Mr Tokau objected to the orders sought. He explained that Mr Zheng was locked out of the Defendant Company's premises and he was therefore unable to access any of the records stored there. When I asked him why this explanation was only now being given for the first time, he was unable to explain why that was so. Further, when I asked him what records were required to be accessed to provide the necessary information, Mr Tokau told me he had no instructions as to that. I noted that Mr Zheng sat silently next to his counsel while this was being discussed – there was no request for time to take instructions and no volunteering by Mr Zheng of helpful information to his counsel.
18. Mr Tokau could only do as instructed. But his instructions were yet another example of the delaying tactics seen throughout this proceeding from Mr Zheng. They demonstrated an obvious disregard for the Court orders and the Liquidator's powers, and highlighted Mr Zheng's determination to everything in his powers to delay and frustrate the legal process.
19. There was no legitimate basis on which the application could be opposed. Accordingly, I granted the orders in terms. I direct that Mr Zheng is to attend the Court at Dumba at 2pm on Monday 3 September 2018 with his records and to be ready to be examined appropriately. I note that he has sworn extensive documents in this case in English. If he needs language assistance in Court he is to advise the Court of that requirement by 3pm on 31 August 2018.

Dated at Port Vila this 29<sup>th</sup> day of August 2018

BY THE COURT

  
Justice G.A. Andrée Wiltens

