

(Civil Jurisdiction)

BETWEEN: Isleno Leasing Company Limited

Claimant

AND: Air Vanuatu (Operations) Limited

Defendant

Date: Wednesday, 5 September 2018

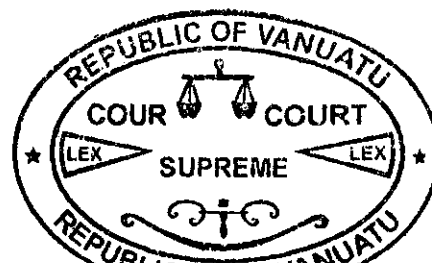
By: Justice G.A. Andrée Wiltens

Counsel: Mr R. Sugden for the Claimant

Mr E. Nalyal for the Defendant

JUDGMENT

1. Air Vanuatu (Operations) Limited ("AV") has filed an appeal against my judgment of 20 August 2018, as it is perfectly entitled to do. AV further seeks an order for suspension of enforcement, which is, perhaps not surprisingly opposed.
2. Mr Nalyal put his application solely on the basis that an appeal has been filed.
3. Mr Sugden relied on the commentary in relation to Rule 13.4 of the Supreme Court Rules in A.A. Jenshel's Civil Court Practice Vanuatu which makes it plain that suspension is not automatic in the circumstances of an appeal having been filed – something more needs to be established, such as:
 - a demonstrable desire to simply delay,
 - where enforcement could ruin the enforcement debtor,
 - the possibility that any funds paid over might be able to be recouped if the appeal is successful, or



- that the appeal would be rendered nugatory if suspension were not granted.

4. In reply, Mr Nalyal submitted his client was entitled to appeal, and there was no suggestion of simply delaying.
5. I asked Mr Nalyal if there was something in his grounds of appeal he could point to which could demonstrate likely success – some error, misdirection or omission. He responded by submitting there was no need for him to deal with this as that would be the province of the Court of Appeal.
6. I agree with the jurisdiction and final resolution points, but I was looking for something more than the mere fact of an appeal having been filed which would, so far as his client was concerned, helpfully influence the decision as to whether or not to order suspension.
7. In the end, there was nothing else.
8. The application must be declined. This case is very old. The claimant is entitled to the fruits of judgment. There is no valid basis to suspend enforcement.

Dated at Port Vila this 5th day of September 2018

BY THE COURT

