

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

Civil
Case No. 19/1001 SC/CIVIL

BETWEEN: Sand and Salt Limited
Claimant

AND: Bill Kalpoi and Others
Defendants

Date: 3 September 2020
By: Justice G.A. Andrée Wiltens
Counsel: Ms S. Motuliki with Mr J. Malcolm for the Claimant
No appearance by or for the Defendants

JUDGMENT

A. Introduction

1. This matter involves an application for eviction from land.

B. Procedural Background

2. No Defendant has appeared at any time that this matter has been scheduled for hearings. One counsel has written into the Court and asked to be permitted to inspect the file on behalf of one or more of the defendants, which application was granted. However, counsel has not filed a Notice of Commencing to Act, a Response to the Claim, nor a Defence to the Claim.
3. Despite that, the Court has continued to advise counsel of all the attendances scheduled to advance this matter, so as to afford the Defendants every opportunity to be present and/or represented and to put their views before the Court.
4. The long and short is that the Defendants have taken no formal steps to dispute this Claim. Accordingly an application for Default Judgment was filed, but it was declined on the basis that the subject matter of the Claim was not amenable to the Default Judgment procedure. Instead

the matter was set down for formal proof with a view to granting judgment pursuant to Rule 12.9(1)(c) of the Civil Procedure Rules 2003.

C. The Claim

5. Sand and Salt Limited ("SSL") is the registered leaseholder of Leases 12/0844/224 ("224"), 12/0844/225 ("225"), 12/0844/227("227"), and 12/0844/228("228"). These properties are located on Efate Island, near to Pango Village. SSL purchased leases 224 and 225 in May 2008, and leases 227 and 228 in December 2009. SSL intended to develop the land as a residential marine subdivision.
6. Since 26 March 2013 the Defendants have occupied the land. They appear to have done so following the transfer of Lease 228 from the alleged custom owner Mr Kalkot Kaltabang to Mr Ronnie Lele. When SSL discovered this fact they set about having the title rectified. By consent orders made on 21 May 2013 in Civil Case No 13/45, the title to Lease 228 was rectified and returned to the name of SSL on the basis of an acceptance that the transfer Kaltabang to Lele had been fraudulent.
7. However, despite that, the Defendants have steadfastly refused to vacate the property, also ignoring numerous written demands by solicitors acting for SSL.
8. Accordingly, SSL filed this present action seeking:
 - (i) An order that the Defendants, their representatives, relatives and agents forthwith vacate Leases 224, 225, 227, and 228, taking with them all their property located on the land, including any buildings and/or garden produce;
 - (ii) An indefinite injunction against the Defendants, their representatives, relatives and agents from blocking access to Leases 224, 225, 227, and 228, and from occupying, farming, and/or building on the said leases, or otherwise doing anything that interferes with SSL's peaceful occupation and use of the said leases;
 - (iii) Damages, to be assessed; and
 - (iv) costs.
9. Mr Michael Thompson, a Director of SSL, attended and gave evidence, confirming as true and correct his sworn statement dated 19 October 2018 – subject to some amendments made to paragraph 8 of the statement. That unchallenged statement establishes the core facts set out above. I accept that evidence, and the Court has nothing to contradict any of those assertions.
10. Mr Thompson abandoned the applications for damages and costs.

D. Result

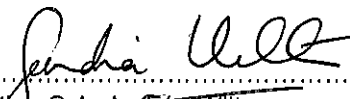
11. Judgment is issued in favour of SSL.

12. The following orders are made accordingly:

(i) The Defendants, their representatives, relatives and agents are to vacate Leases 12/0844/224, 12/0844/225, 12/0844/227, and 12/0844/228, taking with them all their property located on the land, including any buildings and/or garden produce within 28 days of the date of this decision;

(ii) The Defendants, their representatives, relatives and agents are hereby restrained from blocking access to Leases 12/0844/224, 12/0844/225, 12/0844/227, and 12/0844/228, and from occupying, farming, and/or building on the said leases, or otherwise conducting themselves directly or indirectly in any manner that interferes with SSL's peaceful occupation and use of the said leases;

**Dated at Port Vila this 3rd day of September 2020
BY THE COURT**


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Justice G.A. Andrée Wiltens

