

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

Civil
Case No. 20/1780 CVLA

BETWEEN: FR8 Logistics Limited

Claimant

AND: Vanuatu Waikee Group
International Industrial Co Ltd

Defendant

Date: 12 October 2021
Before: Justice G.A. Andrée Wittens
Counsel: Mr J. Boe for the Claimant
No appearance by or for the Defendant

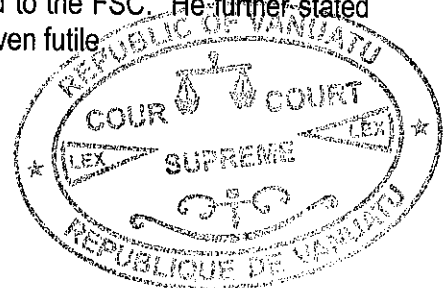
Judgment

A. Introduction

1. On 22 December 2020, I closed this file due to lack of service within the time required by the Civil procedure Rules.

B. Application

2. On 30 September 2021, Mr Boe filed an application for renewal of the Claim, together with a sworn statement by Mr Kernot in support.
3. The application is based on alleged refusal to accept service by the Defendant and the Defendant allegedly avoiding providing the Claimant with its true address so that service could be effected. It is alleged there is a significant debt still owing to the Claimant company. Mr Kernot's sworn statement deposes that the Claim was not served due to the Defendant company not carrying on business at the address provided to the FSC. He further stated that attempts to contact the company by telephone had proven futile.

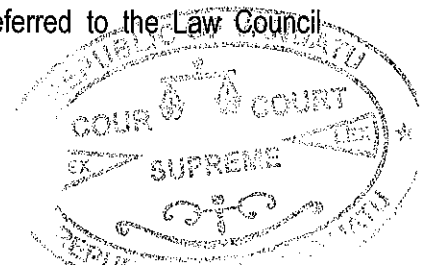


C. Response

4. The application was apparently served on the defendant, which has resulted in the General Manager of the Defendant company, Ms Carmen Liu, responding with a sworn statement of her own, which attaches a number of e-mail correspondences with Mr Kernot and others at the Claimant company.
5. What is patently clear, is that the alleged debt is disputed and had been continuously disputed in all the correspondence. The Defendant maintains it did not employ the services of the Claimant nor it's overseas agent to ship the container of goods to Vanuatu. The Defendant has continually suggested that the Claimant pursue the individual who did employ the Claimant's agent in China – the person it alleges owes the debt.
6. More pertinently, in respect to this particular application, Ms Liu states that she has indicated to Mr Kernot in correspondence that she would accept service if he intended to pursue the Claim, and that she provided her address to him. She appended a copy of the e-mail evidencing the same.
7. The allegation that the Defendant company has been avoiding service and not providing it's true address is challenged as being entirely untrue.
8. Further, in her sworn statement, Ms Liu mentions that Mr Kernot had indicated that he was prepared to discontinue the Claim. She appended that e-mail also to her sworn statement. As a result, she was unsurprised to be notified the file was closed. She opposed the granting of the application based on that statement by Mr Kernot.

D. Result

9. The application to renew the Claim is dismissed.
10. Any application before the Court must be made entirely on a truthful factual basis. Not only what is deposed, but also what is not deposed. The information given in support of the application is not only based on untruths, but what has been omitted is of compelling relevance to whether the application should be granted or not.
11. On that basis alone, the application is dismissed out of hand as an abuse of process,
12. However, as well, the application lacks merit. There is no explanation why Mr Kernot has seemingly changed his mind from at one point discontinuing his Claim and then subsequently seeking to renew it. I note that the delay between the closing of the file and the filing of this application is also unexplained.
13. In the circumstances, FR8 Logistics Limited is to pay costs to Vanuatu Waikere Group of VT 50,000 within 21 days.
14. Mr Boe, as an officer of the Court of many years standing, should know better than to file applications of this nature. Mr Kernot should not be filing sworn statements which are untrue and which omit highly relevant material. Mr Boe will be referred to the Law Council



Disciplinary Committee. Mr Kernot must now accept that all future matters in which he is a deponent will involve a careful examination of his evidence as to whether it is accurate and complete.

Dated at Port Vila this 12th day of October 2021
BY THE COURT

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Andrée Wiltens
Justice G.A. Andrée Wiltens

