

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

Civil
Case No. 19/2587 SC/Civil

BETWEEN: **Migale Investment Limited**
First Claimant
Southwark Investment Limited
Second Claimant

AND: **Ratua Development Limited**
First Defendant
Matahau Holdings Limited
Second Defendant

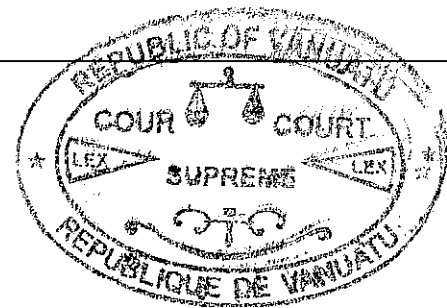
Date of Hearing: 25 January 2022
Before: Justice G.A. Andrée Wiltens
Counsel: Ms L. Raikatalau for the Claimants
Mr G. Blake for the First and Second Defendants
Date of decision: 31 January 2022

Judgment

A. Introduction

1. This pre-trial hearing involved three distinct matters:

- an application for leave to appeal an interlocutory decision of 1 December 2021 declining to issue a freezing order against the First Defendant;



- an application to vacate the scheduled trial dates and to defer the trial until post - 13 June 2022; and
- an application for further disclosure.

2. I will deal with each matter separately, in the above order.

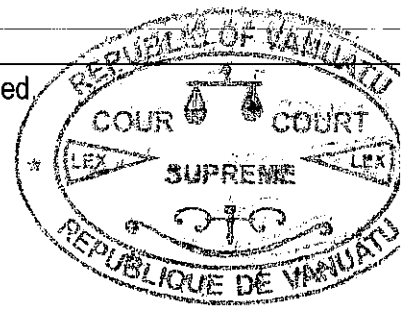
B. Leave to Appeal

3. Leave to appeal interlocutory issues is not automatically granted, and the circumstances justifying leave will be rare: *Hudson & Co v Greater Pacific Computers Ltd* [1997] VUCA 2.
4. Leave will not generally be granted unless there are reasonable prospects of success: *Ebbage v Ebbage* [2001] VUCA 7.
5. Hypothetical or academic questions will not attract leave being granted – there must be a point of some importance at issue: *Soalo v Berry* [2007] VUCA 2.
6. Having regard to those principles, I do not consider that the appellant has reasonable prospects of success in the proposed appeal. The proposed appeal would need to overcome the fact that declining the freezing order in December 2021 followed a previous similar application which was declined in December 2020, and not appealed.
7. The more recent information that has come to the Claimant's attention, which was suggested to enable or justify the further application to be made, does not in my view enhance the Claimant's case.
8. In the circumstances, leave to appeal is denied.
9. Mr Blake is entitled to costs in respect of this application, which I fix at VT 50,000. That is to be paid within 21 days.

C. Trial Date

10. When this application was made, the situation was different to the present. At that time, Ms Raikatalau was in difficulty due to a conflicting hearing. That is no longer the case, as I understand that Ms Muluane is able to handle the competing fixture. Further, the effects of Covid-19 dependent, it appears that Ms Ferrieux Patterson may well also be back in the jurisdiction in time to handle one of the two competing cases.
11. In any event, I direct that this case has priority, due to its age and the fact that it will occupy 3 days hearing time as opposed to only one day for the competing trial.

12. Accordingly, the current trial dates for this matter are maintained and confirmed.



D. Disclosure

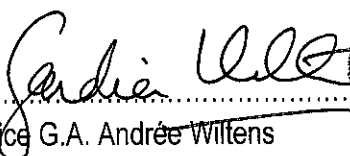
13. This litigation commenced in September 2019. The scheduled dates for trial are 28 February, 1 and 2 March 2022.
14. By application made on 24 January 2022, the Claimants sought an order that Matahau Development Limited disclose (i) a statement of assets and liabilities, and another in relation to income and expenditure since 18 July 2019, (ii) a further statement of all assets owned since incorporation, a list of current assets and their value, and details of when any assets were sold; (iii) produce a copy of the disclosure letter and disclosure bundle referred to in the sale and purchase agreement; and (iv) produce a copy of the sale of Ratua [sic] shares to Napier Farm Limited with a copy of the Power of Attorney.
15. The order sought was to be enforced by the Court striking out the Defendants' Defence if not complied with within 7 days.
16. In support, it was submitted that the Defendants well knew the Claimants alleged Matahau Development Limited was merely a shell company with no assets.
17. Counsel was unable to satisfactorily explain how the orders sought were relevant to the allegations in the Claim. Further, no explanation was provided for the belated timing of the application nor the imminent return date by which compliance was required.
18. There was also no explanation as to why the material disclosed at the time of the sale and purchase agreement being negotiated should be again disclosed.
19. It appeared that orders (iii) and (iv) above related not to Matahau Development Limited but to Ratua Development Limited.
20. The application is declined in all respects. I make no order as to cost in relation to this aspect.

E. Case Management

21. The Claimant is directed to file any further evidence intended to be relied on at trial by 4pm on 4 February 2022. If not filed by then, leave of the Court will be required.

Dated at Port Vila this 31st day of January 2022

BY THE COURT


Justice G.A. Andrée Wilfens

