

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

Civil
Case No. 13/36 SC/CIVL

BETWEEN: Jeffrey Moses & Kiel Wilson
Claimants

AND: Sophie Holdings Limited
First Defendant

AND: Simone Traniet Dinh as Administrator
of the Estate of Gilbert Dinh
(deceased)
Second Defendant

Date: 27 October 2023
Before: Justice V.M. Trief
Counsel: Claimants – Mr D. Yawha
Defendants – Mrs M.N. Ferrieux Patterson

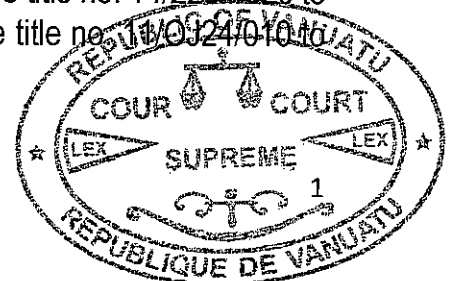
**DECISION AS TO SECOND DEFENDANT'S APPLICATION TO AMEND THE SECOND
DEFENDANT'S DEFENCE**

A. Introduction

1. This was a contested application by the Second Defendant Simone Traniet Dinh as Administrator of the Estate of Gilbert Dinh (deceased)'s application to amend the Second Defendant's Defence.

B. The Claim

2. By the Amended Claim filed on 24 September 2013, the Claimants Jeffrey Moses and Kiel Wilson allege breach of contract and are seeking an order for specific performance (the 'Claim'). They allege that under a Sublease Agreement that they and the Second Defendant Gilbert Dinh (deceased) entered into on 27 September 2009, they have fulfilled their part of the contract to sublease title no. 14/2234/020 to Mr Dinh but that he has not done his part to transfer lease title no. 14/2234/020 to them.



3. The Claim is disputed: Defendants' Defence filed on 16 October 2013.
4. On 17 July 2023, the First Defendant Sophie Holdings Limited ('SHL') filed Application to Strike out the claim or to be Removed from the Claim. The Sworn statement of Sophie Dinh, director of SHL, filed on 17 July 2023 in support of this Application attached a copy of the lease register of lease title no. 11/OJ24/010 showing that Societe Melanesienne d'Enterprises et des Travaux et Ardiment Benedetti Limited ('SMET Limited') is the registered proprietor of lease title no. 11/OJ24/010.
5. By Decision dated 11 September 2023, that Application was declined and dismissed, and SHL granted leave to file an Amended Defence: *Moses v Sophie Holdings Ltd* [2023] VUSC 173.

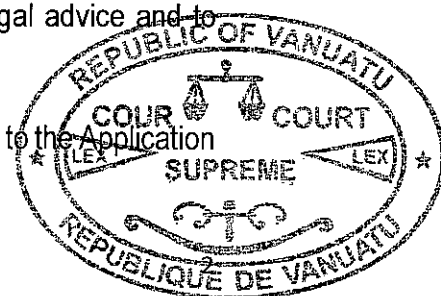
6. On 2 October 2023, SHL filed its Amended Defence.

C. The Application and Submissions

7. On 2 October 2023, the Second Defendant filed Application for leave to Amend its Defence on the grounds that such amendment is needed to better identify the issues between the parties and to provide better facts about each issue as the First and Second Defendants' case is different on the facts stated in the Claim (the 'Application'). A draft amended Defence was attached to the Application.
8. On 6 October 2023, the Claimants filed submissions in response. Mr Yawha submitted that Ms Dinh as administrator of Mr Dinh's Estate (Second Defendant) was not privy to any discussion or sale and purchase contract therefore should not be given leave to amend the Defence but must adopt the Defence already filed. Further, that any amended Defence which differs from the one filed in 2013 can be treated as an act of perjury and to defeat the course of justice.

D. Consideration

9. I understand perjury to apply to a witness who has wilfully told an untruth in his or her evidence given under oath. I do not see how a party perjures itself or is acting to defeat the course of justice in stating its case or its pleadings otherwise in its defence. Accordingly, I put that submission to one side.
10. There is no principle of law or rule in the *Civil Procedure Rules* cited to support the submission that Ms Dinh as administrator of Mr Dinh's Estate must adopt the Defence filed in 2013. On the contrary, I consider that now that Ms Dinh is responsible to administer that Estate, she is entitled to obtain legal advice and to defend the Estate as she chooses in this matter.
11. For the reasons given, I consider that the submissions in opposition to the Application lack legal merit and **grant** the Application.



E. Result and Decision

12. The Second Defendant's Application for Leave to Amend its Defence filed on 2 October 2023 is **granted**.
13. The Second Defendant is to file and serve Amended Defence **by 4pm on 10 November 2023**.
14. The costs of the Application are reserved.

DATED at Port Vila this 27th day of October 2023
BY THE COURT


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Justice Viran Molisa Trief

