

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

Civil
Case No. 19/2409 SC/CIVL

BETWEEN: Jesse Quinto as Administrator
of the Estates of Stephen
Quinto & Nicola Juliet Quinto
(deceased)

Claimant

AND: Nigel John Giltrap

Defendant

Date: 5 February 2024
Before: Justice V.M. Trief
Counsel: Claimant – Mrs M.N. Ferrieux Patterson
Defendant – in person

**DECISION AS TO DEFENDANT'S APPLICATION FOR PERMISSION TO
ASK CLAIMANT WRITTEN QUESTIONS**

A. Introduction

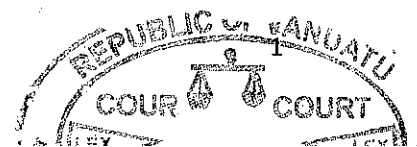
1. This was a contested application for leave to ask written questions (previously known as 'interrogatories').

B. The Claim

2. The Claimant Jesse Quinto as the Administrator of the estates of Stephen and Nicola Quinto (deceased) is claiming damages and compensation for personal injuries arising from the assault by the Defendant Nigel John Giltrap of the two deceased. The Claim is disputed.

C. The Application and Submissions

3. On 5 September 2023, Mr Giltrap filed Application for Permission to Ask Claimant Written Questions seeking the following orders (the 'Application'):



1. Pursuant to rule 8.19 of the Civil Procedure Rules (the 'CPR'), that the Defendant may ask the Claimant a set of questions attached to this Application as "A".
 2. In the event that the Court grants the Application, that the written questions are answered within 14 days of the questions being served on the Claimant.
 3. Such further or other orders as the Court may consider necessary.
4. Attachment "A" to the Application contains 19 written questions.
5. The grounds of the Application are that the overriding objective of the CPR is to enable courts to deal with cases justly and in ways that are proportionate to the amount of money involved and a large sum of money is at stake in the proceeding; to ensure that all parties are on an even footing and to save expense; to better identify the issues between the parties and to provide better facts; and that the questions relate to matters at issue between the parties.
6. On 4 October 2023, Mr Quinto filed submissions opposing the Application. Mr Quinto objected globally to the written questions as not being reasonably necessary to enable the court to decide the matters at issue between the parties, that there is likely to be a simpler and cheaper way available at trial to prove the matters asked about, and that the questions are vexatious and oppressive. He also made additional specific objections to each of the 19 written questions.

D. Discussion

7. Rules 8.19 and 8.20 of the CPR provide as follows:

8.19 *With the court's permission, a party may ask another party a set of written questions.*

8.20 (1) *A party may make an oral application for permission at a conference, telling the judge the matters the question will cover.*

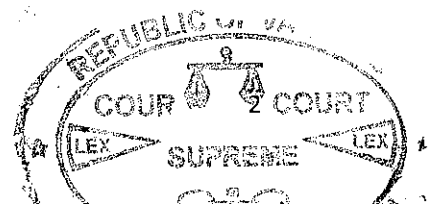
(2) *A party may make a written application only if it is not practicable to make an oral application at a conference.*

(3) *The questions must be attached to the written application.*

(4) *The written application must be filed and served on the other party at least 3 days before the hearing date.*

8. The annotation to rule 8.19 of the CPR in *Jenshel's Civil Court Practice* explains the function of written questions as follows:

Function of written questions *The original purpose of such questions (formerly known as "interrogatories" was to prove some material fact necessary to a cause of action or defence by tendering the question and the answer, so diminishing the burden of proof: A-G v Gaskill (1882) 20 Ch D 519 at 528; [1881-5] All ER 1702 at 1706; Kennedy v Dodson (1895) 1 Ch 334 at 341; [1895-9] All ER 2140 at 2144. The modern function of written questions is much wider and includes (1) obtaining admissions to support the case of the questioning party; (2) obtaining admissions which damage the case of the party to be questioned; (3) requesting further and better particulars of a claim or defence; and (4) seeking accounts from a fiduciary: See for example WA Pines v Bannerman (1979) 41 FLR 175 at 190; (1979) 30 ALR 559 at 574.*



9. The Court of Appeal stated in *Cyclamen Ltd v Port Vila Municipal Council* [2006] VUCA 20 at p. 7 as follows:

Whether the issues raised in a particular case make it appropriate to administer written questions before trial will vary from case to case, and depend on the nature of the proceedings, the issues of fact and law identified in the pleadings, and the extent to which facts necessary for determination of the claim have been admitted or denied.

10. Subrules 8.24(2) and (4) of the CPR provide as follows:

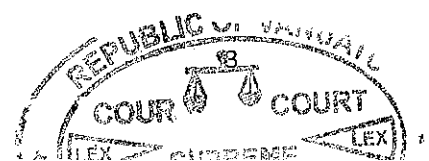
8.24 ...

- (2) A person may object to answering a written question only on the following grounds:
- (a) the question does not relate to a matter in issue, or likely to be at issue, between the parties; or
 - (b) the question is not reasonably necessary to enable the court to decide the matters at issue between the parties; or
 - (c) there is likely to be a simpler and cheaper way available at the trial to prove the matters asked about; or
 - (d) the question is vexatious or oppressive; or
 - (e) privilege.

...

- (4) If the judge agrees with the objection, the question need not be answered.

11. Mr Quinto's objections to the written questions include objections on the grounds set out in rule 8.24(2)(b)-(d) of the CPR.
12. Written questions 1, 3, 6 and 14 relate to the credibility of one or other witness. For example, question 6 asks, "Have you viewed the video of the assault and if so, would you agree that at para. 9 of the sworn statement of Nicola Quinto dated 21 July 2020 is a gross exaggeration?" Such questions are best asked in cross-examination, which is the simpler and cheaper way available at the trial to prove the matters asked about (rule 8.24(2)(c), CPR). I therefore agree with the objections made to these questions and they need not be answered.
13. Questions 5 and 12 refer to matters which if not already in evidence, must first be put into evidence and then questions either put to a witness in cross-examination or addressed in closing submissions. For example, question 12 sets out what is stated in a website. What is stated in the website needs to be put into evidence, and then questions be put in cross-examination or submissions made in closing. I therefore consider there are simpler and cheaper ways available at trial to prove the matters asked about and these questions need not be answered (rule 8.24(2)(c), CPR).
14. Question 7 asks, "Would you agree that the undated letter from Hope Wellness Centre named "SQ 36" lacks factual content and should be deemed as hearsay...?" This is a matter for either objection as to the admissibility of that evidence or for closing submissions. Accordingly, there are simpler and cheaper ways available at trial to



prove the matters asked about and these questions need not be answered (rule 8.24(2)(c), CPR).

15. The functions of written questions include to obtain admissions to support the case of the questioning party, or which damage the case of the party that is questioned. I consider that the effect of questions 2, 4, 8, 9-11, 13 and 15-18, however, would be to support the *questioned* party to prove his case. Any gaps or perceived deficiencies in Mr Quinto's evidence are a matter for Mr Giltrap to address in closing submissions. Accordingly, I consider that these questions are not reasonably necessary to enable the court to decide the issues between the parties and they need not be answered (rule 8.24(2)(b), CPR).
16. Question 19 refers to Mr Quinto's (deceased) obituary and asks what the complications that he died from were. This question does not relate to a matter in issue and need not be answered (rule 8.24(2)(a), CPR).
17. For the reasons given, none of the written questions need to be answered and the Application must therefore be declined and dismissed.

E. Result and Decision

18. The Defendant's Application for Permission to Ask Claimant Written Questions filed on 5 September 2023 is **declined and dismissed**.
19. The costs of the Application are reserved.

**DATED at Port Vila this 5th day of February 2024
BY THE COURT**

VM Trief

Justice Viran Molisa Trief

