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

CIVIL CASE No.25 OF 2010

BETWEEN:

GENE WONG AND GIOVANNA SOLDATSCHI

Claimant

AND:

GILLES DANIEL

First Defendant

AND:

PATRICE RIVIERE

Second Defendant

Mr Garry Blake for the Claimants - present Mr George Boar for the Defendants - present

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RULING ON REFUSAL FOR LEAVE TO APPEAL AND STAY

This is an application by Mr George Boar, on behalf of the First and Second Applicants (Defendants) seeking leave of the Court to appeal and stay the Summary Judgment made by this Court on 5 August 2010. It is filed on 18 August 2010 with a sworn statement of Mr Gilles Daniel in support of it and filed on the same date.

I heard, read and considered the written submissions of Mr Boar and Mr Blake on behalf of their respective clients.

I consider first, leave to appeal. The Judgment made by this Court on 5th August 2010, is a final judgment. It is not an interlocutory judgment.

Therefore, there is no need for leave of the Court for the First and Second Defendants to appeal the Judgment of 5 August 2010. If the First and Second Defendants are unsatisfied with the Judgment, it is part of their right to appeal it within the appeal time requirement.

The next aspect is whether stay is required. In the present case, there is no need for an order for stay to be considered because no appeal is filed. In any event, the lodging of an appeal does not automatically give right to a stay of execution of the

judgment appealed from. A stay of execution can only be granted if there are good reasons for doing so. One of such reasons is that if a stay is not granted the Appellants' rights of appeal would be rendered nugatory.

Is the present case, such a case? A stay will not be granted save in very exceptional circumstances—such as where execution of the judgment will destroy the subject matter of the action or deprive the appellants of the means of prosecuting the appeal. In this case, if the First and Second Appellants file a notice of appeal and if successful, they could re-enter the land, the subject matter of this action.

There is no evidence of any detriment shown in the sworn statement of Mr Gilles Daniel. The land the subject of this proceeding was transferred and registered jointly in the names of the Claimants on 27 November 2008. It was unlawfully sold and transferred by the Sheriff of the Supreme Court on 8 May 2009. It was again registered in the Claimants' names by the Director of Lands on 14 October 2009.

The Respondents (Claimants) are entitled to enjoy the fruits of their Judgment while the Defendants have a right to appeal the Judgment if they wish. However, the appeal (if any) is not going to be rendered nugatory as the subject-matter land will still be there and the Defendants, if successful in their appeal, could always re-enter the land.

Finally, the Court is informed by Mr Blake, counsel for the Respondents (Claimants) that the Applicants (Defendants) have settled and compromised by a payment, the claim to damages arising from their unlawful occupation.

This is also confirmed by the Notice of Discontinuance (of Damages Claim) filed 17 April 2010 by Mr Blake on behalf of the Claimants (Respondents here) that they have discontinued their claim for damages against the Firs Defendant, Mr Gilles Daniel and the Second Defendant, Mr Patrice Riviere.

It is difficult to see how a right of appeal can be maintained when the First and Second Defendants have acknowledged their liability to damages.

For the reasons set out above, there is no need for leave to appeal and this is not such a case warranting for a stay. I make the following orders:

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ORDERS

- 1. There is no need for leave to appeal. The Summary Judgment of 5 August 2010 is a final Judgment but not an interlocutory one.
- 2. Stay is refused.
- 3. The Respondents (Claimants) are entitled to their costs assessed at Vatu 80,000 against the First and Second Applicants (Defendants). Such costs of VT80,000 shall be paid by the Applicants (Defendants) within 21 days from today's date i.e. by Monday 27 September 2010.

