

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

Civil Case No. 79 of 2015

BETWEEN : CHEN JINQIU

Claimant

AND: LUONG FONG dit TCHONG HUYA

First Defendant

AND: ARNOLD PRASAD, PAUL TELUKLUK
BARTHELEMY and RUIHUA YAO

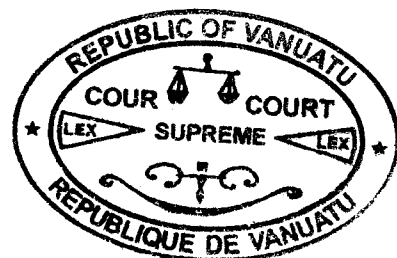
Second Defendants

Coram: Justice Aru

Counsel: Mr. M. Hurley for the Claimant
Mrs. M. Vire for the First Defendant (no-appearance)
Mr. K. Loughman for the Second Defendants (no-appearance)

RULING

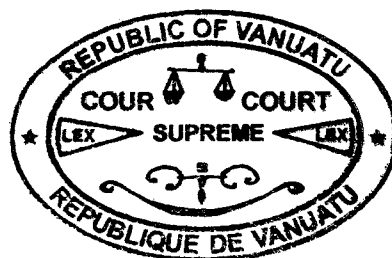
1. The Claimant who is the registered proprietor of lease title 03/0183/071 (071 lease) filed an Application to set aside the Stay Orders issued on 9 September 2015 (the Stay Orders). The Application was filed on 20 November 2015 and is supported by a sworn statement deposed by Abel Kalmet also filed at the same time.



2. The Application was listed for 7 December 2015. On that date Mr. Hurley appeared on behalf of the Claimant. As there was no appearance by Ms. Vire and Mr. Loughman on behalf of the First and Second Defendants, the matter was then adjourned to 9.00 am on 11 December 2015 for the hearing of the Claimant's Application.

3. At this morning's hearing there was no appearance from both defence counsels. Mr. Hurley appeared and proceeded with his Application on basis that adequate notice was given to the defendants. The main order sought is for the Stay Orders to be discharged. In essence, the grounds advanced in support are that the claim in Civil Case No. 142 of 2015 *Ly Nu Loung & Ors v. Loung Fong & Ors* (CC 142 of 2015) which is before Fatiaki J has been amended. And the amended claim no longer seeks rectification of the 071 lease, the only relief sought are damages. In addition, Mr. Hurley submits that his client is no longer a party in CC142 of 2015. It was submitted that the Stay Orders were obtained on 9 September 2015 because of the claim for rectification in CC 142 of 2015. And now that rectification is no longer sought, the Stay Orders should be discharged.

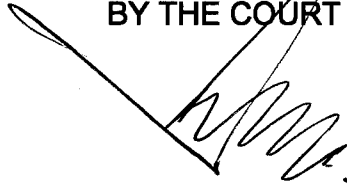
4. It was further submitted that the circumstances have changed given the amendment to the claim in CC142 of 2015 therefore the court should grant the Application. On this point, I was referred to *Harrison Partners Construction Pty Ltd v Jevena Pty Lt* [2005] NSWSC 1225 and *Biseja Pty Ltd v NSI group Pty Ltd* [2007] NSWSC 294. I accept the principles as set out in these cases on the basis that the facts have changed as mentioned above and I can reconsider the Stay Orders on the basis of the Application before me. Having heard Mr. Hurley and considering the papers filed I make the following orders:-



- (1) The Claimant's Application is granted and the stay orders of 9 September 2015 are hereby discharged;
- (2) The Claimant has 14 days to file and serve any further sworn statements by 31 December 2015;
- (3) The Defendants have 28 days to file and serve any further sworn statements in response by 29 January 2016;
- (4) A pre-trial conference is listed for 10.00am on 5 February 2016.
- (5) Costs are reserved.

DATED at Port Vila, this 11 day of December, 2015

BY THE COURT



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D. Aru
Judge

