

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

Civil
Case No. 19/2173 SC/CVL

BETWEEN: Ron Newman & Others
Claimant

AND: George Leung Ah Tong
First Defendant
Moumou Ah Tong
Second Defendant

Date: 27 November 2019
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr L. Napuati / Mr R. Tevi for the Claimant
Mr J. Malcolm for Ms S. Mahuk for the Defendants

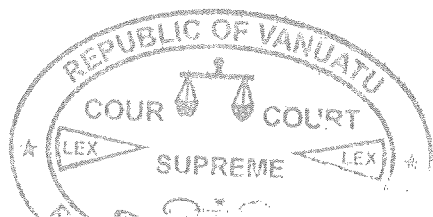
JUDGMENT

A. Introduction

1. This was an application to remove a stay issued in 2007, and an application for leave to amend the Claim. It was opposed, and this was the first conference.

B. Background

2. The Claim before Justice Tuohy in 2007 related to an alleged debt incurred in 1978. The Claimant conducted the matter in person, acting on behalf of the estate of the deceased alleged donor. Mr Malcolm, then acting for the Defendants, applied to strike out the Claim on the basis that (i) the Claimant had no standing, and (ii) the Claim was time-barred.
3. Justice Tuohy determined that the Claimant was perhaps able to perfect his status so that he had standing to bring the Claim. Secondly, although the debt was by then over 20 years old, there had been a partial payment towards the debt of VT 50,000 in August 2005. The effect of that payment was to extend the time within which a Claim for breach of contract could be commenced.



4. Accordingly, taking both matters into account Justice Tuohy dismissed the application to strike out the Claim and stayed the proceedings until further order of the Court. He further indicated that an amended Claim was required clearly stipulating when the cause of action arose.

C. The Application

5. Mr Napuati applied to remove the Stay and for leave to Amend the Claim. There was no attempt to explain away the delay. The sworn statement in support is also silent as to that, and makes mention of quite irrelevant issues to do with probate of the deceased's estate. The Court has no understanding why this matter has again surfaced at this time.
6. Mr Napuati appeared simply to withdraw – he was given leave. Mr Tevi had instructions to act for the Claimant.

D. Discussion

7. No steps appear to have been taken to perfect the Claimant's position such that he can be properly said to have standing to bring this Claim. There is no explanation as to why this has not occurred. Accordingly, I agree with Justice Tuohy, that while the Claimant's position might be perfected, that has yet to be attended to. At present Mr Newman has no standing.
8. The extension of time within which it was possible to bring a Claim for a breach of contract was as from August 2005. The time limitation period expired in August 2011. This application is seeking to enable a 1978 contract to be re-agitated in the Courts in 2019 – a period of 31 years.
9. I agree the Stay should be set aside. It no longer serves any purpose.
10. The Claim, even if it were amended to allege the debt was incurred in August 2005, would still now be time-barred. Justice Tuohy gave the Claimant every opportunity to avail himself of the Court's processes, but no steps have been taken in the interim. There is simply no utility in permitting an amendment to the Claim to be filed in these circumstances.

E. Result

11. The Stay is set aside.
12. The application for leave to amend the Claim is dismissed.
13. There is no order as to costs – Mr Malcolm did not seek such.
14. This file is now closed.

Dated at Port Vila this 27th day of November 2019
BY THE COURT


Justice G.A. Andrée Wiltens

