

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

**Enforcement**  
**Case No. 20/990 SC/CIVL**

**BETWEEN: South Pacific Electrics**  
Applicant/Judgment Creditor

**AND: Pascal Iauko as personal  
representative of the Estate of the late  
Iaris Harry Iauko**  
First Respondent/Judgment Debtor

**AND: Rachel Vatarul**  
Second Respondent

*Date of Conference:* 27 April 2021  
*Before:* Justice V.M. Trief  
*In Attendance:* Applicant – Mr M. Fleming  
First Respondent – no appearance (Mr A. Bal)  
Second Respondent – no appearance (in person)

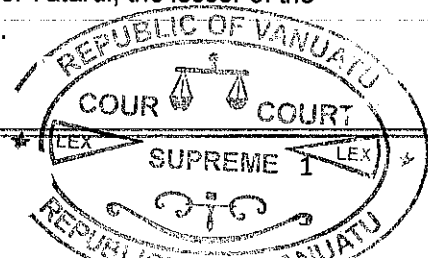
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**DECISION AS TO LESSOR'S CONSENT**

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A. Introduction

1. The First Respondent and Judgment Debtor Pascal Iauko as personal representative of the estate of the late Iaris Harry Iauko is the registered owner of leasehold title 04/3034/009 (the 'lease'), situated in Santo. Glen Craig of Pacific Advisory was appointed as Receiver of the lease. He is empowered to sell the lease interest and has entered into a contract for its sale.
2. From the Receiver's Report filed on 25 March 2021, the Applicant and Judgment Creditor South Pacific Electrics' ('SPE') position is that Rachel Vatarul, the lessor of the lease is unreasonably withholding her consent to its transfer.



3. I added Ms Vatarul as a party to this proceeding (as Second Respondent) and ordered that an Application be filed in relation to the lessor's consent. This was served on Mr Iauko's counsel on 1 April 2021 and on Ms Vatarul on 13 April 2021. By the Application, they were given notice of the Conference at which the Application would be heard. No opposition has been filed nor did the Respondents attend the Conference. I heard the Application and now set out my decision.

B. The Law

4. Section 41(h) of the *Land Leases Act* [CAP. 163] (the 'Act') provides:

41. *Save as otherwise expressly provided in the lease and subject to any written law, there shall be implied in every lease the following agreements by the lessee with the lessor binding the lessee –*

...  
(h) *not to dispose of the leased land or any part thereof or interest comprised therein without the previous written consent of the lessor but such consent shall not be unreasonably withheld;*

5. Section 41A(1)(b) of the Act provides:

41A. (1) *Notwithstanding any provision to the contrary that may be contained in this Act or in any other law, there shall be implied –*

(a) ...

(b) *in every registered lease created on or after the relevant date, the following agreement between the lessee and the lessor –*

*Notwithstanding any provision to the contrary contained in the lease, with effect from the relevant date, not to dispose of the leased land or part thereof or interest comprised therewith by the lessee without the previous written consent of the lessor, and not to withhold such consent by the lessor unreasonably.*

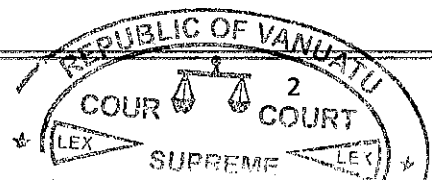
(2) *For the purposes of this section 'relevant date' means the date on which this section comes into force [29 December 1989].*

[my addition of the date on which s. 41A came into force]

6. There is no question that the Court has jurisdiction to determine an application that the lessor's consent has been unreasonably withheld.
7. It is for the Applicant to prove on the standard of probabilities that Ms Vatarul's withholding of consent is unreasonable: see para. 20 of Spear J's judgment in *Colmar v Rad* [2013] VUSC 223.

C. The Application

8. By its Application, SPE seeks an order for specific performance of sections 41(h) and 41A(1)(b) of the Act in that Ms Vatarul gives written consent to the transfer of the lease interest, and other orders in the event that she fails to do so.



D. Evidence

9. On 3 November 2020, Ms Vatarul's son John Tavuti walked into the offices of Pacific Advisory after hearing that Mr Craig was selling the property (the lease) and subsequently sent Pacific Advisory his letter of authority from Ms Vatarul and the Certificate of Registered Interest in Land (green certificate).
10. On 24 December 2020, a Sale and Purchase Agreement in respect of the lease was signed. After this, Mr Tavuti was contacted and advised that VT450,000 was the calculated lessor benefit/consent fee.
11. On or about 28 January 2021 after numerous attempts to contact Mr Tavuti, he came to Mr Craig's office to discuss the consent that Ms Vatarul was required to give. He was given a draft lessor fee letter and the consent to transfer form to take to Ms Vatarul for signing. Mr Tavuti requested 14 days to consider the consent with Ms Vatarul.
12. After 20 days, Mr Craig had heard nothing so he contacted Mr Tavuti by mobile phone. Mr Tavuti said that the family had concerns about the lease itself.
13. On 15 March 2021, Mr Tavuti again came to see Mr Craig at his office. In a last attempt to avoid ongoing delays to the matter, Mr Craig offered him VT5,000,000 to give consent. Mr Craig has withdrawn that offer so any lessor fee will now be paid in accordance with the Act.
14. Ms Vatarul has still not given consent.
15. The purchaser of the lease interest has consented to an extension of time to settle on the contract until 14 days after the lessor's consent is obtained.

E. Findings

16. I accept that Mr Craig has asked Ms Vatarul to give written consent to the transfer of the lease interest. Mr Craig and his staff have made efforts since November 2020 to obtain her consent.
17. An Agreement for the Sale and Purchase of the lease interest was signed on 24 December 2020 and that is still on foot. The purchaser of the lease interest has consented to an extension of time to settle on the contract until 14 days after the lessor's consent is obtained.
18. Consent continues to be withheld. The reason given by Mr Tavuti, on behalf of Ms Vatarul, for the withholding of consent is that the family had concerns about the lease itself.
19. The reason given has nothing to do with the question as to how the subject land would be used or occupied, or to protect the subject land from being used by an undesirable tenant or assignee. I agree therefore with Mr Fleming's submission that there is nothing



to remotely establish that the withholding of consent is being done "to protect the lessor from having his premises used or occupied in an undesirable way or by an undesirable tenant or assignee": para. 20, *Colmar v Rad*.

20. The reason given also has "nothing to do with the relationship of landlord and tenant in regard to the subject matter of the lease: para. 20, *Colmar v Rad*. Ms Vatarul will therefore need to pursue separately any grievance as to the lease itself but any such concern cannot hinder the transfer of the lease. When Ms Vatarul granted the lease, she subjected herself to the provisions of the Act which enable a lessee (or in this case, judgment debtor and Receiver) to sell the interest in the lease to a third person subject only to her consent which of course may not be unreasonably withheld.
21. In the circumstances, I consider that SPE has proved on the balance of probabilities that Ms Vatarul has withheld her consent unreasonably.
- F. Result and Decision
22. I accordingly grant the Applicant's Application filed on 1 April 2021 and make an order for specific performance directing the Second Respondent to provide to the Applicant (through the Receiver Glen Craig of Pacific Advisory) a written consent to the transfer of the lease within 7 days of the service of this Decision together with the form of consent.
23. In the event that the Second Respondent fails to give the written consent as ordered, the Chief Registrar of the Supreme Court is upon production to execute the documentation needed to satisfy the requirements of the *Land Leases Act* [CAP. 163] for the Director of Lands to register the transfer of leasehold title 04/3034/009 from the First Respondent/judgment debtor to a purchaser as determined by the Receiver Mr Craig under the powers granted him on 17 September 2020 and 31 March 2021 by Order of the Supreme Court.
24. The Second Respondent is entitled to lessor benefit/consent fee in accordance with the Act.
25. The Second Respondent is to pay the Applicant's costs of the Application which are summarily assessed at VT75,000, to be paid within 28 days.

DATED at Port Vila this 29<sup>th</sup> day of April 2021  
BY THE COURT

  
Viran Molisa Trief  
Judge

