

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

Civil
Case No. 20/3167 SC/CIVL

BETWEEN: Ifira Trustees Limited
Claimants

AND: Less Napuati
Defendant

**AND: Malapoa Peninsula
Development Company Limited**
Third Party

Date: 13 September 2021
Before: Justice V.M. Trief
In Attendance: Claimant – Mrs C. Hamer
Defendant – Mr A. Bal
Third Party – in person

DECISION AS TO THIRD PARTY NOTICE

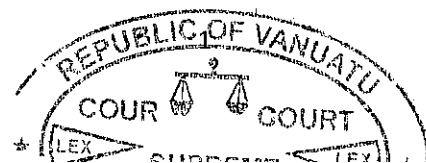
A. Introduction

1. This is a decision determining whether or not a Third Party Notice has been proved.

B. Background

2. The Claimant Ifira Trustees Limited ('ITL') is suing for recovery of debt. The Defendant Less John Napuati accepted liability and judgment was entered against him.

3. Mr Napuati had previously (on 7 December 2020) filed a Third Party Notice claiming that the Third Party Malapoa Peninsula Development Company Limited ('MPDCL') undertake to settle the whole of his debt to ITL.



4. On 8 March 2021, Mr Nalyal commenced to act for MPDCL. Subsequently, Ms La'au of Mr Nalyal's firm took over carriage of this matter.
5. On 25 March 2021 and 18 May 2021, MPDCL was ordered to file sworn statements. It did not do so. It had similarly not complied with the Orders dated 25 February 2021 to file a Response or Defence to the Third Party Notice.
6. On 23 August 2021, Ms La'au filed Notice of Ceasing to Act.
7. On 1 September 2021, Mr Napuati filed his Defence acknowledging his indebtedness to ITL and setting out that he and MPDCL have a verbal agreement that the latter will pay off his debt to ITL. Mr Bal confirmed that liability was accepted.
8. On 1 September 2021, having heard counsel and having considered the filed documents, I stated that I was satisfied that MPDCL's involvement does not relate to Mr Napuati's liability to ITL on the Claim filed: *Meyer v Whitesands Resort & Country Club* [2008] VUSC 601. Accordingly, I held that the Third Party Notice should not stand in the way of the Court granting judgment to ITL against Mr Napuati. I entered judgment for ITL against Mr Napuati.
9. I then gave Mr Napuati the opportunity to file any further evidence in relation to proving its Third Party Notice, including confirmation from the Third Party that despite the provisions of the *Limitation Act*, that the debt remains due.
10. I would then decide on the papers whether or not the Third Party Notice had been proved. That is, whether or not MPDCL had agreed to settle Mr Napuati's debt to ITL.

C. Evidence

11. James Natonga evidenced in his sworn statement filed on 27 January 2021 that he worked with Mr Napuati at Ronald Kay Warsal & Co. law firm. Further, that he was told by MPDCL Chairman Yoan Kalsakau to serve the Third Party Notice on MPDCL's lawyers Edward Nalyal & Partners. Accordingly on 7 December 2020, Mr Natonga served the Third Party Notice on Edward Nalyal & Partners.
12. Mr Napuati evidenced in his sworn statement filed on 25 March 2021 that he did a lot of work for Family Kalsakau in Civil Case No. 44 of 2010 therefore they had agreed that as soon as they sold their Malapoa Peninsula property that they would settle Mr Napuati's debt with ITL.
13. By his sworn statements filed on 4 June 2021 and 2 September 2021, MPDCL Chairman Mr Yoan Kalsakau confirmed that he wrote a letter dated 8 September 2020 to Chris Kaltapang, Executive Manager of ITL that MPDCL would pay the whole of Mr Napuati's debt to ITL as Mr Napuati worked for MPDCL on Civil Case No. 44 of 2010. Mr Kalsakau evidenced in his second sworn statement that his letter dated 8 September 2020 should have referred to ITL, not Ifira Land Trust, and attached the corrected letter.



14. Mr Kalsakau confirmed that MPDCL owes Mr Napuati over VT17 million which debt remains due and owing. Further, that MPDCL had not filed a Defence but only his 4 June 2021 sworn statement confirming MPDCL and Mr Napuati's verbal agreement that MPDCL would pay all Mr Napuati's debts with ITL.

D. Discussion

15. By the Third Party Notice, Mr Napuati claimed that MPDCL undertake to settle the whole of his debt to ITL.

16. I am satisfied on the evidence that MPDCL and Mr Napuati have a verbal agreement in which MPDCL has undertaken to settle the whole of Mr Napuati's debt to ITL. In the circumstances, I consider that Mr Napuati has proved his Third Party Notice on the balance of probabilities.

E. Result and Decision

17. The Defendant has proved his Third Party Notice on the balance of probabilities. The Third Party is liable for the Defendant's debt to the Claimant.

18. Costs follow the event. The Third Party is to pay costs to the Claimant as agreed or taxed by the Master. Once set, the costs are to be paid within 21 days.

F. Enforcement

19. As previously ordered, this matter is listed for Conference **at 8.45am on 24 September 2021** for the Defendant and Third Party to advise the Court: (i) that they have paid the judgment sum and the costs awarded, or (ii) to explain how they intend to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.

**DATED at Port Vila this 13th day of September 2021
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

