

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

**Civil**  
**Case No. 13/36 SC/CIVL**

**BETWEEN: Jeffrey Moses & Kiel Wilson**  
Claimants

**AND: Sophie Holdings Limited**  
First Defendant

**AND: Simone Traniet Dinh as Administrator  
of the Estate of Gilbert Dinh  
(deceased)**  
Second Defendant

*Date:* 11 September 2023  
*Before:* Justice V.M. Trief  
*Counsel:* Claimants – Mr D. Yawha  
Defendants – Mrs M.N. Ferrieux Patterson

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**DECISION AS TO FIRST DEFENDANT'S APPLICATION TO STRIKE OUT THE CLAIM OR  
TO BE REMOVED FROM THE CLAIM**

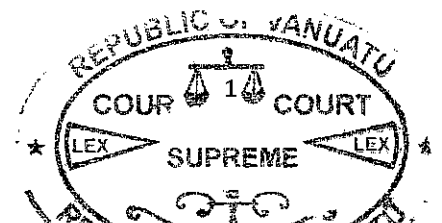
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A. Introduction

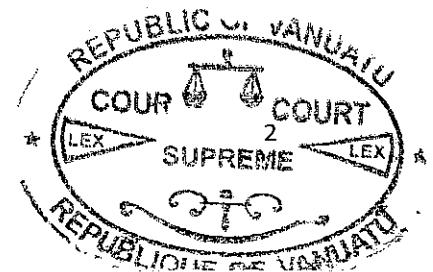
1. This was a contested application to strike out the Claim or for the First Defendant Sophie Holdings Limited ('Sophie Holdings') to be removed as a party.
2. There was a second application – for leave to amend the First Defendant's Defence.

B. The Claim

3. By the Amended Claim filed on 24 September 2013, the Claimants Jeffrey Moses and Kiel Wilson allege breach of contract and seek an order for specific performance (the 'Claim'). They allege that under a Sublease Agreement that they and the Second Defendant Gilbert Dinh (deceased) entered into on 27 September 2009, they have fulfilled their part of the contract to sublease title no. 14/2234/020 to Mr Dinh but that he has not done his part to transfer lease title no. 11/OJ24/010 to them.



4. The Claim is disputed.
- C. The Application and Submissions
5. On 17 July 2023, the First Defendant filed the following:
  - a. Application to Strike out the claim or to be Removed from the Claim (the 'Application'); and
  - b. Sworn statement of Sophie Dinh in support.
6. The orders sought are that the Claim be struck out against Sophie Holdings or in the alternative, to be removed as a party. In addition, indemnity costs against the Claimants' lawyer or the Claimants.
7. The grounds of the Application are that Sophie Holdings was mentioned in the Sublease Agreement as "Subtenant" but was not actually party to the agreement; the agreement was in fact signed by Mr Dinh on behalf of another company Dinh Trading Ltd. Subsequently, the sublease was registered with Mr Dinh personally as the sublessee. Further, that at all material times Sophie Holdings is not and has never been the proprietor of lease title no. 11/OJ24/010; SMET Limited is and was at all material times the proprietor of that lease yet it was not part of the Sublease Agreement nor of the Sublease in respect of lease title no. 14/2234/020. Finally, that there is no cause of action against Sophie Holdings yet it is having to incur unnecessary legal costs to defend itself in this matter.
8. It was also advanced that Mr Yawha should personally pay Sophie Holdings' costs as the Claim has no prospect of success against it and a reasonably competent lawyer would have advised the Claimants not to bring this proceeding against Sophie Holdings.
9. On 14 June 2023, the Claimants filed submissions in response. Strike-out of the entire Claim was opposed but Mr Yawha conceded that Sophie Holdings be removed as a party or be substituted with SMET Limited as its director Mr Dinh agreed to transfer that company's lease title no. 11/OJ24/010 to the Claimants in consideration of their transferring a 3 hectare commercial sublease title no. 14/2234/020 which has already been registered in Mr Dinh's personal name.
10. On 16 August 2023, Sophie Holdings filed submissions in reply. It noted that the Claimants had conceded to its removal as a party. It was submitted that the Sublease Agreement cannot be a binding contract and is unenforceable due to numerous mutual mistakes of fact including that the parties mistakenly included as consideration a lease belonging to SMET Limited when that company is not a party. Further, indemnity costs are sought against the Claimants on their lawyer who should have proceeded with all the required checks on the lease titles before proceeding with the Claim.



D. Consideration

11. The opening paragraph of the Sublease Agreement states that it is made between Kiel Wilson and Jeffery Moses) as "Sublessors" and Sophie Holdings as "Subtenant" [Annexure "JM2" to the Sworn statement of Jeffrey Moses filed on 27 May 2013].
12. The Sublease Agreement contains obligations on the part of the Sublessors and other obligations on the part of the Subtenant including to pay annual rent and to not assign the sublease or sublet the leased property without the Sublessors' or the landlord's prior written consent.
13. Clause 4 provided that any notice given in connection with the agreement was to be given to the Sublessors care of Mr Yawha, and for the Subtenant, to Dinh Gilbert. A signature (presumably Mr Dinh's) appeared above his name and next to it was placed the stamp of another company, Dinh Trading Ltd.
14. Subsequently, the Claimants' sublease of lease title no. 14/2234/020 to Mr Dinh in his personal name was registered.
15. Mrs Ferrieux Patterson submitted that even though the Sublease Agreement shows Sophie Holdings as the subtenant, it is in fact signed by Mr Dinh on behalf of another company Dinh Trading Ltd and the sublease was subsequently registered with Mr Dinh personally as the sublessee. The implication being that this was an agreement with Mr Dinh personally or another company altogether but not Sophie Holdings.
16. I consider that it is for Mr Dinh to explain why Sophie Holdings was named as "Subtenant" in the Sublease Agreement yet he signed the agreement with reference to another company "Dinh Trading Ltd". It is also for Mr Dinh to explain why the sublease title no. 12/2234/020 was registered in his personal name and not in Sophie Holdings' name. Both of those matters go to the issue of whether or not Sophie Holdings was party to the Sublease Agreement. That is a triable issue therefore even with Mr Yawha's concession, I should not on an interlocutory application accept the contentions that Sophie Holdings was not a party but must determine that issue after trial.
17. Mrs Ferrieux Patterson also submitted that Sophie Holdings is not and has never been the proprietor of lease title no. 11/OJ24/010; that SMET Limited has been the registered proprietor at all times. Therefore Sophie Holdings did not even own nor have an interest in lease title no. 11/OJ24/010 such that it could have transferred that lease to the Claimants as they are seeking. This evidence goes to the issue of whether or not this was an enforceable contract. I consider that this issue also should be determined after trial.
18. In the circumstances, I am of the view that Sophie Holdings must remain as a party as its presence is necessary to enable the Court to make a decision fairly and

effectively in this matter. Accordingly, the Application must be declined and dismissed.

19. Also on 17 July 2023, the First Defendant filed Application for Leave to Amend the Defence to better put its individual case as its interests are different from Mr Dinh's. I accept that the Defendants' interests are different. Accordingly, this application must be granted.

E. Result and Decision

20. For the reasons given, the First Defendant's Application to Strike out the Claim or to be Removed from the Claim filed on 17 July 2023 is **declined and dismissed**.
21. The First Defendant's Application for Leave to Amend the Defence filed on 17 July 2023 is **granted**. The First Defendant is to file and serve Amended Defence **by 4pm on 2 October 2023**.
22. The costs of both Applications are reserved.
23. Mr Yawha had foreshadowed that depending on the outcome of the Applications, that his clients would be filing an Application for an order to add SMET Ltd as a party. The Claimants are to file and serve Application for addition of party or parties **by 4pm on 4 October 2023**.
24. The Defendants are to file and serve submissions in response **by 4pm on 25 October 2023**.
25. The Court will determine that application on the papers after that.

DATED at Port Vila this 11<sup>th</sup> day of September 2023  
BY THE COURT

  
Justice Viran Molisa Trief

