

BETWEEN: COCONUT OIL PRODUCTION —
VANUATU LIMITED

Plaintiff

AND: DIRECTOR OF PORTS & MARINE

First Defendant

AND: MINISTER OF INFRASTRUCTURE &
PUBLIC UTILITIES

Second Defendant

AND: GOVERNMENT OF THE REPUBLIC
OF VANUATU

Third Defendant

AND: AZONE ABC (VANUATU) PTY LTD

Fourth Defendant

REASONS FOR ORDER

This was the hearing on 2 June at 2 p.m. of an application for interlocutory relief requested by way of summons filed on 31 May 2000. Mr Hurley appeared for the plaintiff and Mr Boar for the first, second and third defendants.

Mr Hurley stated that fourth defendant had been served by facsimile transmission to its offices in Luganville on 1 June at 12:50 p.m. All documents and a covering letter had been sent. The fax report was produced

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and he stated that the date mechanism on his facsimile transmitter read 2 June, when in fact it should have been 1st June.

Mr Hurley also stated that the registered office of the fourth defendant was served shortly before 11 a.m. on 2nd June and Mr. Low of Jonathan Low and Associates telephoned at 11:15 a.m. to say he would obtain instructions. There was no further communication from Mr Low, and when Mr Hurley telephoned at 1:30 p.m. he was not able to speak to Mr Low.

I am satisfied that all reasonable efforts have been made to serve the fourth defendant and that the fourth defendant has been served both by facsimile transmission and by lodging the documents at their registered office. The plaintiff is required to lodge an affidavit verifying service as set out above by Tuesday 13th June.

A facsimile transmission dated 2 June and timed 14:43 was received by the court via the offices of Mr Hurley. The proceedings were just drawing to a close as it was received. In any event had it been received before the commencement of the hearing an adjournment would not have been granted.

I have before me the "ex parte" summons, an undertaking as to damages and the affidavit of Graham Hack dated 31 May 2000.

On the face of those documents it would appear that the plaintiff had an agreement to occupy a copra shed in Luganville for five months to early May 2000. The Director of Ports and Marine, the Northern Islands Stevedoring Company Limited and the Vanuatu Commodities Marketing Board agreed this as the persons so entitled.

In late April a further five months period was granted. It would appear that on 1st February 2000 the second defendant leased the same shed to the fourth defendant for a period of ten years. Neither the plaintiff nor the fourth defendant apparently knew of the other's agreement until early May.

The fourth defendant required the plaintiff to leave and sought to exercise control over the shed. The plaintiffs say they have an agreement for five months from May. There is some 800 tons for shipment in June towards fulfilling an order. They say there has been damage to their business and the uncertainty has made it impossible to fulfil the order.

From the information before me, it would appear that the fourth defendants have no goods in the shed and don't propose to put any there, particularly of a perishable nature, in the near future. The first part of their contract would appear to envisage their demolishing the existing shed and erecting a new one. Any delay of a few weeks, or up to five months would put that contract back by that time.

If the plaintiffs are required to leave immediately then not only will the 800 tons of copra probably be lost, but their business further damaged.


It could be that the responsibility for these circumstances does not rest with either the plaintiff or fourth defendant. It might be that the least detriment would be caused if the fourth defendant's lease was to start in the next few months up to October 2000. It would be surprising if the fourth defendants were unaware of the plaintiff's presence in the shed at the time of their agreement in February.


I look at the balance of convenience and find that it falls in favour of making the order requested in paragraph 3 of the summons. I make it clear that that order runs unless and until I have heard argument on behalf of the fourth defendants when the order, as to length of time or in any other way, may be amended.

I will adjourn the hearing of paragraphs 1, 2, 4 and 5 to 13 June at 9 am. These Orders are to be served on the fourth defendants by fax at their Luganville Office and on their registered offices in Port Vila by 4:30pm on 2nd June 2000. Costs will be reserved. There will be liberty to apply on 48 hours notice.

Dated at Port Vila this 2nd Day of June 2000

BY ORDER OF THE COURT


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R. COVENTRY
Judge



The seal of the Republic of Vanuatu is circular, featuring a central emblem with a bird and a ship. The text 'REPUBLIC OF VANUATU' is written in an arc at the top, and 'REPUBLIQUE DE VANUATU' is written in an arc at the bottom. The word 'FOUNDED' is visible in the center of the seal.