

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

Civil Case No.29 of 2008

BETWEEN: JACK SPAULDING
Claimant

AND: KAKULA ISLAND RESORTS LIMITED
Defendant

Coram: *Justice John von Doussa*

Counsel: *Mr. Robert Sugden for the Claimant
Mr. John Malcolm for the Defendant*

Date of Hearing: 15 September 2008

Date of Decision: 15 September 2008

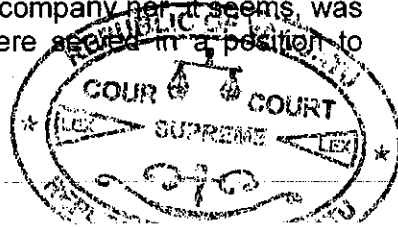
REASONS FOR JUDGMENT

These reasons for judgment concern an application to set aside a default judgment.

The application to set aside the default judgment came before me on 23rd July 2008. At that time it appeared an entirely straight forward application based on the fact that the default judgment had been entered through an administrative oversight within the Registry of the Court. However, as there was a substantial sum of money involved, and as I was informed by Mr. Malcolm, counsel for the Defendant, that these proceedings were part of a much wider dispute I thought it necessary in the interest of justice to give notice of the application to the Claimant personally as there was no appearance on his behalf, and his former solicitors had filed a notice that they were no longer acting for him.

There is affidavit material on the file indicating that notice has been given to the Claimant as directed.

The circumstances that appeared on the earlier occasion, and still appear, to justify setting aside the default judgment are simply these. The proceedings were commenced on 17th of March 2008. The proceedings were purportedly served on the 18th of March 2008 (through it now appears the service was irregular because the writ was not served at the registered office of the company nor, it seems, was the former director upon whom the proceedings were served in a position to



accept service for the company). The proceedings otherwise came to the attention of solicitors who acted for the Defendant. On 3rd April 2008 they filed a notice of acting and a defence to the proceedings. The defence denied liability. Regrettably those documents did not find their way to the Claimant's solicitors until 11th April 2008. In the meantime on 8th April 2008 the Claimant made application for a default judgment, filing an affidavit which asserted due service of the proceedings. With surprising speed the matter came before a judge on 10th April 2008 who was satisfied that the default judgment should be entered. It is clear that the judge was unaware that a defence had been filed. The Court's filing system seems to have failed on this occasion. Judgment was duly sealed and the present application to set that judgment aside was made on 21st April 2008.

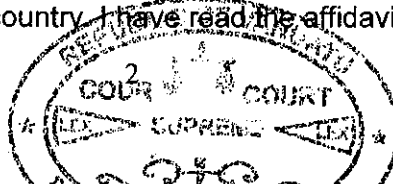
Shortly thereafter the judge assigned to deal with the case unexpectedly resigned and certain delays occurred. It was not until the matter came before me on 23rd July 2008 that it received further attention. Given the facts that I have outlined, this was plainly a case where the default judgment should be set aside. Today the justification for doing so has been reinforced by a document signed by the Claimant, Mr. Spaulding, which consents to the judgment being set aside. The judgment will therefore be set aside.

There has been some suggestion that I should also make an order staying the proceedings pending the outcome of other litigation elsewhere. I do not propose to make such an order as I have no formal application seeking a stay. Further, I do not think it is necessary that such an order be made because the future of the proceedings lies entirely in the hands of the Claimant. If he takes no action to proceed further with the matter it is unlikely that anything further will be done. Should the matter be relisted at the request of the Defendant then there may be some need to consider a stay application, although Mr. Malcolm has indicated that he is not proposing to do anything of that nature at the moment.

In ordinary circumstances it would not have been necessary to publish reasons for the decision to set aside the default judgment. However in this case, for reasons that I am about to give, I thought it necessary to deliver formal reasons so that they are available to any other court that may have occasion to wonder what has occurred in the proceedings here.

Late on 12 September 2008 an extremely long affidavit was filed by Mr. Robert Sugden who was the solicitor acting for the Claimant when the proceedings were issued, who ceased to act on or about 6th May 2008, and who filed a further notice of acting on the 12th September 2008. The last mentioned notice makes it clear that Mr. Sugden appeared for a very limited purpose, namely to appear this morning to give the Court an account of circumstances in which the Claimant signed the consent order in favour of setting aside the default judgment. That explanation simply confirms that it is appropriate for the Court to set aside the judgment.

Regrettably the long affidavit by Mr. Sugden makes a number of allegations of a very substantial nature including allegations of misconduct by a number of people including a judge of a foreign country. I have read the affidavit. In some respects I



find it bizarre, and in other respects it is scandalous. In my opinion it is appropriate that an order be made to prevent the further publication of that document which would otherwise be an open document on a court file capable of being examined by other people who have no immediate interest in the proceedings. I propose therefore to order that the document be sealed up in an envelope but retained on the court file. The envelope will be marked "*not to be opened except on the order of a Supreme Court judge*".

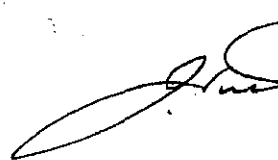
No application has been made for costs by the defendant. In those circumstances there will be no order as to costs, including no order in respect of time that was no doubt spent by counsel for the defendant in perusing the long affidavit received from Mr. Sugden.

For these reasons the formal orders of the court will be:-

1. Default judgment entered on 10th April 2008 set aside.
2. No order as to costs.
3. Order that the affidavit of Robert Edgar Sugden sworn and filed on 12 September 2008 is to be sealed in an enclosed envelope but to remain upon the Court file. The envelope is to be endorsed "*not to be opened except on the order of a Supreme Court judge*".
4. That further publication of the affidavit Robert Edgar Sugden be prohibited save as required by law or the legal process.

DATED at Port Vila, this 15th day of September, 2008.

BY THE COURT


John von Doussa
Judge.

