

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

Civil Case No. 149 of 2007

**BETWEEN: WALA CULTURAL TOURS
ASSOCIATION**

Claimant

AND: THE SOUTH SEAS SHIPPING LIMIED
Defendant

Counsel: Mr. Jerry Boe for the Claimant
Mr. Nigel Morrison for the Defendant

Date of Hearing: 16 October 2009
20 October 2009

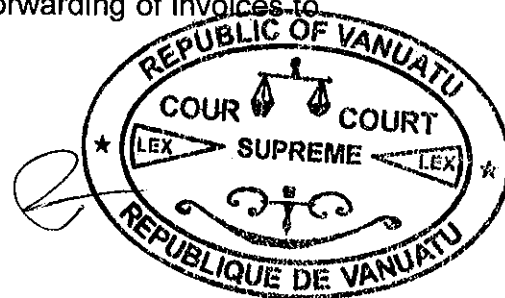
Date of Decision: 27 October 2009

DECISION

The Claimant brings proceedings against the Defendant, South Seas Shipping Limited. Earlier P & O Cruises of Sydney Australia, Second Defendant were shown as being the Second Defendant but a notice of discontinuance was filed against that named Second Defendant.

I choose those words with care because the description of the Second Defendant lacks considerable particularity.

The statement of claim dated 18th September 2007 has not been amended. It alleges 10 cruises liner visits on the dates identified in paragraph 4. There are allegations that VT5 million (paragraph 5) were the costs per cruise liner. It claims in paragraph 6 that on the dates identified in paragraph 4 no other person or groups performed for the tourists except the Claimants performers. It alleges in paragraph 7 by allowing its tourists to be entertained by the Claimant's members the Second Defendant accepted the service (entertainment provided by the Claimant). There are further allegations as to the forwarding of invoices to



the First Defendant and on the basis pleaded allegations as to the Second Defendant providing funds to the First Defendant and the First Defendant not paying. There are further allegations that in fact VT600,000 has been paid during July and August 2007 by the First and Second Defendants to the Claimant.

The Claimant claims VT5 million together with interest.

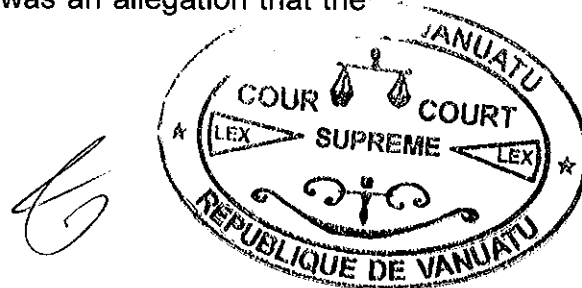
The defence of the First Defendant is that in general terms it denies each and every allegation. It admits invoices it admits that it is a local Vanuatu agent for cruise shipping. It admits receiving demands for payment. It admits funds have not been paid direct to the Claimant and admits the payments that have in fact been made. Of particular interest in the claim in paragraph 6 *"The First Defendant says that there are continuing competing claims for payment 'entertainment' monies by the First Defendant and whilst these remain unresolved. It continues to inappropriate to pay monies as claimed to the Claimants."*

I record that the sworn statement of Malcet and Gary Naror and Emile Lelectei of 2nd June 2008 and 3 June 2008 are not evidence in the proceeding.

It was disturbing to see the genuine claims from witnesses that they have not received payment for the services they have rendered.

I endeavoured to make it clear to the witnesses through the good offices of the translator that I was required to deal with the matter in a legal way on the pleadings before me and the evidence filed in support of it. I did not have the power to redress any real or perceived wrongs that went beyond that.

I indicated to counsel that I believed there would be considerable criticism of the position of the Second Defendant (not represented in the proceedings) if there was a release of any decision to the media that there was an allegation that the



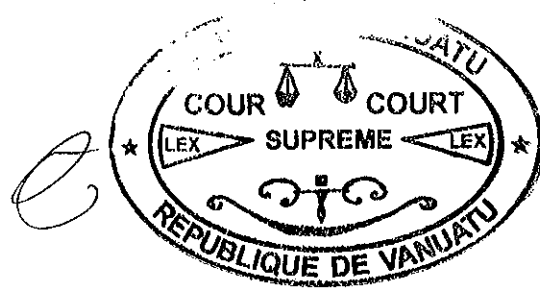
performers on Wala Island had not been paid for their services for the period of time in which the cruise ships had visited the island. I am unable properly in my view to make any comment on what inferences I can draw concerning P & O Cruises because they are not a party to the proceedings and have not had the opportunity to be heard. I record that I make no comments adverse to P & O Cruises.

It is possible to meticulously dissect the Claimant's claim and that of the reply of the Defendant. I have not overlooked (although it is not evidence before me) that counsel for the Defendant at a conference before Justice Tuohy indicated there was money available but that the Defendant did not know to whom it should be paid. I am obliged to deal with the matter in accordance with the law that I believe is applicable. On the evidence adduced before me I am not satisfied on the balance of probabilities that the Claimant has established their claim.

It is difficult from a reading of the statement of claim to ascertain what was claimed at the hearing that is that there was a contract indicated by activity correspondence and alleged payments or non-payments. The pleadings do not make it clear whether a contract is alleged or whether the Claimant is suing for services provided. Quite clearly on the basis of services provided, Wala Cultural Tours Association did not provide those services rather in my view it pleads a negative.

The people of Wala Island deserve considerably better that has been achieved here. There is a considerable background of political activity for control of funds and steps taken in other jurisdictions in an endeavour to resolve the difficulties.

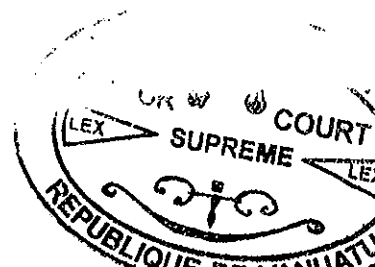
Of necessity this is a brief decision that the Claimant fail in their claim. I decide and rule that costs should lie where they fall.



I wish to record also there is no justified criticism of Mr. Morrison. An issue was taken as to his firm's prior engagement with the Claimant. On the evidence adduced before me there was no evident conflict and it could not be said that any prior involvement reflected adversely against the claimant.

Because of my expressed concerns I order a re-hearing. This is on the basis that the thrust of the following suggestions are put in place and acted upon.

- (1) That the Claimant or Claimants are properly joined or identified.
- (2) That the claimed Defendants are identified and joined to the proceedings.
- (3) That a pleaded claim identifies the cause or causes of actions and pleads the applicable facts from which any contract might be identified.
- (4) If a contract was pleaded how it was created and who were the parties to the contract.
- (5) If relying on services supplied who was the person who ordered the services and who was the person that was responsible for payment, who was the person to provide the services.
- (6) It would be necessary to identify the past payment of funds and its distribution. It would be necessary to trace the funds to the persons and clarify why it was that they were paid.
- (7) Such recipients should be joined to the proceedings.
- (8) The interlocutory procedures available in this Court should be used to obtain list of documents, bank statements, receipts issued and any other matters of relevance tracing the funds and the creation of contracts.



(9) This list is not exhaustive.

I rely on Rule 1.2 (1) of the Civil Procedure Rules in making this decision. In addition this claim was clearly not ready for trial.

I believe that having read the sworn statement of Kathryn Nako and perusing the flow chart that she provided that there is considerable expertise available to any Claimant to commence or amend proceedings for their claims on the basis and with the assistance of the suggestions I have made above.

This proceeding is adjourned for a conference before the Chief Register on 10th November 2009.

DATED at Port Vila this 27th day October 2009

