

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

Civil Case No. 95 of 2009

BETWEEN : SNOOPY'S STATIONERY
Claimant

AND: MULTICLEAN LIMITED
Second Claimant

AND: QBE INSURANCE (VANUATU) LTD
Defendant

Date of Hearing: 20th June 2011

Coram: Justice J. Weir

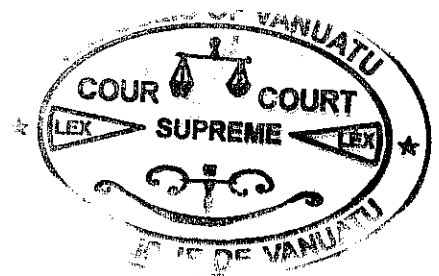
Counsel: Mr. M. Hurly for the Defendant (Present)

JUDGMENT

1. The history of the development of this case is set out in the various conference notes, minutes and orders dating back to September 2009.
2. There are 2 applications before me today:
 - I. An application by the Defendants for dismissal of the proceedings pursuant to Rule 15.22(2) and Rule 18.11;
 - II. An urgent application by the Claimant for variation of the Court order dated 24th May 2011.

BACKGROUND TO THE PRESENT APPLICATIONS

3. In order to deal with the 2 current applications, it is necessary to traverse in some detail the history of this claim.
4. The two Claimants are companies owned by Raymond and Lily Michel and the claim relates to stock and products owned by the companies destroyed in a fire on or about the 1st October 2007. The Defendant is an insurance company which

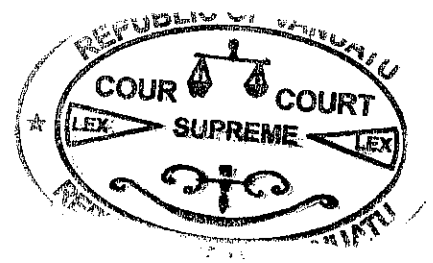


had provided cover to the Claimants, although one of the matters at issue is whether the Claimants insurance policy had lapsed.

5. As a result of the fire, the Defendants employed various experts to investigate the claim who, after a thorough investigation, made the following findings.
 - i. That the fire had deliberately been set;
 - ii. A large amount of the Claimants stock was undamaged as a result of the fire;
 - iii. That the Claimants stock levels were not substantial at the time of examination of the scene in the immediate post fire period;
 - iv. That the Claimants had made false or exaggerated claims in respect of their alleged loss and damage.
6. As a result of these investigations, the insurer declined cover and proceedings were issued by the Claimants against the defendant company for approximately VT 45,000,000 in October 2009.
7. As a result of sworn statements filed by the Claimant, the defendant was given leave to file an amended defence on the 16th May 2011.
8. That document refers to a number of issues regarding non compliance with requirements to disclose not only the financial position of the Claimants, but also the position of the two owners of the company, Raymond and Lily Michel.
9. The amended statement of defence, apart from the matters referred to above also raises as a general defence failure to mitigate loss, and non disclosure of material facts.
10. As a result of the non compliance of the Claimant, or more particularly Mr. Michel and his wife, the Minute and Orders were made on the 24th May 2011.

THE CURENT APPLICATIONS

- i. The application by Mr. Michel to vary the Court order date 24th May. Mr. Michel in the application and sworn statements filed by himself in support of the application, confirmed that his lawyer had ceased to act for him and asked for more time to get another lawyer.




He also confirmed that he and his wife had refused to disclose their own personal financial position because the claim was in respect of the companies owned by them, which is a different entity from them.

He indicated that he could assist the Court as to how he could meet the costs personally and asked for that opportunity

- Notwithstanding his non compliance with the orders of the 24th May and the matters referred to above, he has not even bothered to appear today.
 - ii. The defendants Application to dismiss the proceedings The Defendants rely on Rule 15.22 (c). There is no doubt that the Claimants have failed to comply with orders made on 24th May. The security for costs has not been paid and I have power to dismiss the proceedings.
11. In deciding whether to exercise that discretion today, or to give Mr. Michael further time, I have carefully reviewed the history of this claim. I have reconsidered the Defendants submissions in support of the security for costs application dated 23th May 2011 particularly those outlined at paragraph's 4.1 to 4.12 inclusive.
12. I am conscious of the reverse onus which applies to the defendant in cases such as this. However in my view, if this matter went to trial, on the basis of the evidence available for the defendant, combined with the minimal evidence available for the Claimant, the Defendant would have little difficulty in discharging this onus.
13. It follows therefore that Claimants application is refused. The Defendants application is granted. The proceedings are dismissed.
14. Costs are awarded to the Defendants. If agreement cannot be reached on those costs, then they will need to be taxed accordingly.

DATED at Port Vila this 23rd day of June, 2011.

BY THE COURT


J. WEIR
Judge

