

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

Civil Case No. 33 of 2012

BETWEEN: CLUB DE SANMA LIMITED

Claimant

AND: CLUB AQUA LIMITED

First Defendant

**AND: HONOURABLE MINISTER OF
FINANCE & ECONOMIC
DEVELOPMENT**

Second Defendant

AND: REPUBLIC OF VANUATU

Third Defendant

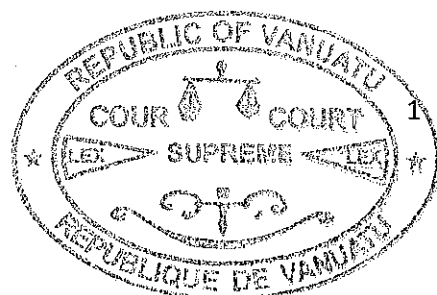
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Saling N. Stephens for the Claimant
Mr. Ronald Warsal for the First Defendant
Ms. Christine Lahua for the Second and Third Defendant*

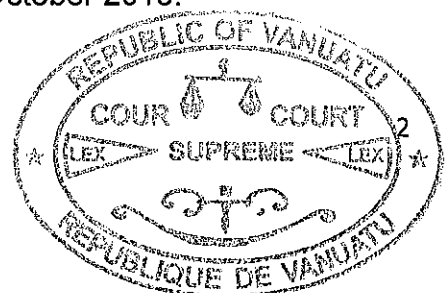
Date of Hearing: *3rd October 2013*
Date of Decision: *15th October 2013*

DECISION

1. The Claimant filed their claims on 27th July 2012 claiming damages for breach of contract and sought the following reliefs –
 - (a) A permanent injunction to stop the second defendant from issuing a gaming or poker machine license to the first defendant.



- (b) Alternatively, if the gaming or poker machine license has been issued, that the first defendant, its agents and/or servants be enjoined from operating on the said gaming or poker machine license.
- (c) An order enjoining the first and second defendant to cause a legislation to be passed to amend and/or repeal the current Gaming (control) Act.
- (d) Damages to be assessed by the Court.
- (e) Costs of and incidental to this action; and
- (f) Further or other orders deemed fit by the Court.
2. On 31st July 2012, the Claimant filed an urgent application for injunctive orders seeking the same reliefs in paragraph (a), (b) and (c) of their claims. They filed an undertaking as to damages on the same date.
3. The Claimants relied on the evidence by sworn statements of Kirby Abel sworn and dated 12th February 2012 and 23rd July 2012 and of George Sokomanu sworn and dated 17th April 2012 in support of the grounds of the application.
4. Mr. Warsal filed a defence on 4th September 2012 but no sworn statement has yet been filed.
5. The State has not filed any defence and/or evidence by sworn statement to the substantive claim pending the outcome of the Claimant's application.
6. The State filed written submissions in response to the Claimant's urgent application on 23rd November 2012. Mr. Warsal relied on his written submissions dated 7th August 2013.
7. Mr. Stephens filed written submissions only on 2nd October 2013.

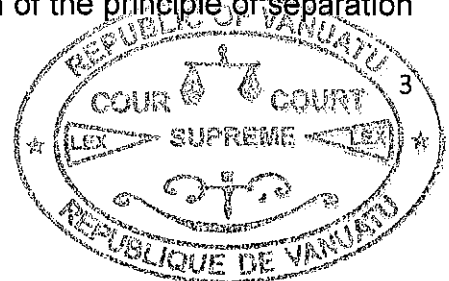


8. At the hearing of submissions on 3rd October 2013, Mr. Warsal argued that the issues are legal issues which required no factual evidence. Counsel indicated however that he would produce a copy of the First Defendant's license and Mr. Stephens agreed that there is no need for it to be disclosed in a sworn statement. The license was received under cover of Mr. Warsal's letter dated 7th October 2013 together with a copy of the defence filed on 4th September 2012.
9. Also at the hearing on 3rd October 2013, Mr. Stephens indicated to the Court that he was not pursuing the relief sought in paragraph (a) of the application as it was spent. But he was pursuing the relief sought in paragraph (b). And as for the relief under (c) it was in the discretion of the Court.
10. For the Claimant to succeed on their application, they had to produce the license they assert was issued to them. Section 7 of the Casino Act requires that a license issued by the Minister under Section 2 shall be in the prescribed form and shall specify among other things –
 - (a) The date of its issue; and
 - (b) The date of its expiration.

The evidence of Mr. Abel and Mr. Sokomanu do not disclose a copy of that license.

That is enough to decline the relief sought by the claimant and applicant. The Court accepts the submissions by Mr. Warsal and the Solicitor General in relation to that issue. I therefore decline the order sought in paragraph (a) of the application and the claim.

11. In relation to whether or not the claimant is entitled to a mandatory order directing the State and Parliament to pass legislations or amend and/or repeal the Gaming (control) Act, I accept the arguments and submissions by the Solicitor General and Mr. Warsal that to do so would be to allow the Court to encroach upon the independency of Parliament and would be in breach of the principle of separation



of powers. I therefore decline the order sought in paragraph (c) of the application and of the claim.

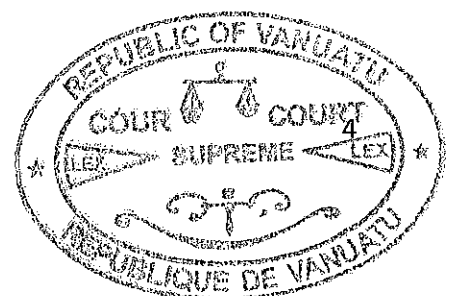
12. Both the State and Mr. Warsal submitted that –

- (a) The claimant as applicant did not have a serious question to be tried; and
- (b) The claimant as applicant did not disclose any cause of action to initiate a substantive claim.

13. The answer lies in sections 2 and 7 of the Act. To rely simply on a verbal approval of a Minister which did not eventually transpire into a formal license in the prescribed form as required by section 7, the claimant would have difficulty in establishing that there was a contract upon which they can sue for damages as they have done.

14. For those reasons, I accept the submissions by the State and Mr. Warsal and in view of the overriding objective of the Civil Procedure Rules, in order to avoid further unnecessary costs and time to the parties and counsel, I am of the clear view that the claims of the claimant should be dismissed in its entirety. And I so rule.

15. Mr. Stephens makes references to Mr. Sokomanu's evidence of illegal operations by the First Defendant. But I agree with Mr. Warsal that perhaps that is a matter which could be reviewed by way of a judicial review. But the Court also notes that Gaming License No. 02/2012 was issued for the period only from 4th June to 31st December 2012. There is no license for the period from January to December 2013. Without such a license the inference by the Court is that the First Defendant may be operating illegally. This is a matter that needs to be investigated by appropriate authorities and appropriate action ought to be taken to remedy the situation.



16. The end result is that the application by the claimant is dismissed. The consequential effect of the dismissal is that the claims filed by the claimant on 27th July 2012 are also hereby dismissed.

17. Under the circumstances of both the claimant the first defendant which on the clear evidence of Mr. Sokomanu appears to be operating illegally, costs must lie where they fall and each party must meet their own costs.

DATED at Luganville this 15th day of October 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

