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

Civil Case No. 270 of 2014

BETWEEN: DHL INTERNATIONAL GMBH
Claimant

AND: EXPRESS CUSTOMS SERVICES LIMITED
First Defendant

AND: ANTHONY MARK RYAN
Second Defendant

Coram: ***Justice Stephen Harrop***

Counsel: ***Garry Blake for the Claimant***
No appearance for the First Defendant
John Malcolm for the Second Defendant

Date of Hearing: ***10 December 2014***
Date of Judgment: ***28 January 2015***

RESERVED JUDGMENT

Introduction

1. In what circumstances may a judgment creditor which has obtained judgment by default in a foreign court against a defendant who has been served and resides in Vanuatu enforce that judgment in the Vanuatu Supreme Court?

2. This is the question which arises on DHL's application for summary judgment in this proceeding. It obtained a default judgment against each defendant in the New South Wales Supreme Court on 6 June 2014 in the sum of US$284,712.49 together with costs of AU$5628.

3. On 22 August 2014 DHL filed this claim seeking judgment for the same sums together with interest and costs.

4. Express Services Customs Limited, the first defendant ("the company") took no step to oppose the claim and on 7 October 2014 I granted DHL's

request for default judgment against it. The company is understood to be insolvent.

5. Mr Ryan filed a defence and this was amended on 8 October. He denies that the New South Wales Supreme Court had any jurisdiction over him and further denies that DHL had any basis for a claim against him.
6. On 28 October 2014, DHL applied for summary judgment against Mr Ryan on the basis that his amended defence did not disclose any reasonably arguable defence and that the claimant believed that Mr Ryan did not have any real prospect of defending the claim.

The facts in more detail

7. The company was formed by Mr Ryan and he describes himself as its owner. The company and DHL signed a Network Access Agreement which was effective from 1st January 2011. Mr Ryan signed the agreement on behalf of the company.

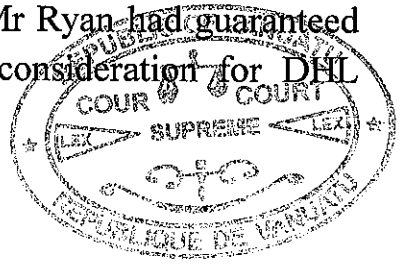
8. Clause 18 of the agreement was headed "GOVERNING LAW" and provided:

" *18.1 This agreement is governed by the law in force in New South Wales, Australia.*

18.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts of appeal from them."

9. Mr Ryan was not a party to the agreement and in particular did not sign any form of guarantee contemporaneously with it.

10. The company failed to pay to DHL various amounts due to it. On 9 April 2014, DHL issued a claim in Supreme Court of New South Wales against both the company and Mr Ryan seeking judgment for the oustanding sum. In relation to Mr Ryan it was pleaded that he was liable as a guarantor. It was alleged that on or about 12 November 2013 Mr Ryan had guaranteed the company's obligation to repay the debt in consideration for DHL



agreeing to further extend the deadline for a payment of the debt and for its forbearing its rights under the agreement.

11. It was pleaded as a particular to paragraph 16 of the statement of claim that the agreement to extend repayment and the guarantee were to be inferred from representations made by the parties in certain emails and letters which were said to be in the possession of DHL's solicitors and able to be inspected by prior appointment.

12. As is customary in New South Wales, the solicitor on the record has certified under section 347 of the Legal Profession Act 2004 that there were reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages had reasonable prospects of success.

13. Each defendant was served in Vanuatu on 17 April 2014. As a result Mr Ryan instructed his Vanuatu solicitors to write to the New South Wales solicitors for DHL on 29 April asserting there was no reciprocity between Vanuatu and Australia and accordingly, in the event that DHL obtained a judgment in Australia, it would not be registrable or enforceable in Vanuatu.

14. By letter in response, DHL solicitors pointed out that the deadline for the defendants to file and serve an appearance would be expiring the following day and put the Vanuatu solicitors on notice that if an appearance or defence were not filed, DHL would be seeking leave proceed against them including obtaining default judgment. They advised that at first the hearing had been set for 30 May 2014.

15. Apparently guided by his solicitor's view of the jurisdictional position, Mr Ryan took no step in the New South Wales proceedings.

16. The next step required to be taken by DHL was to file a notice of motion seeking leave to proceed against overseas defendants pursuant to Rule 11.4 of the Uniform Civil Procedure Rules 2005 (NSW) and a further order for default judgment in a liquidated claim. That motion was filed on 4 June

2014 and was accompanied by an affidavit from counsel for DHL Sharon Sadler. She deposed on the question of "forum" : " the plaintiff claims a debt due under a written agreement and a guarantee. Clause 18 of the Agreement provides that : ....."

17. She also deposed that she believed that the plaintiff had an arguable case and that the plaintiff's cause of action fell within the scope of Schedule 6 of the Rules (R.11.2)

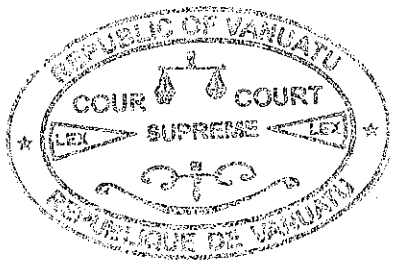
18. On 6 June 2014, the Court entered a default judgment against both the Company and Mr Ryan in the sums mentioned in paragraph 2 above.

19. In a second statement supporting the application for summary judgment Sally Scott, a partner of Hall &Wilcox, the solicitors for DHL, deposes, and I accept, that in issuing its judgment the Court must have earlier determined that it had jurisdiction to determine the claim i.e. granted the motion for leave under Rule 11.4. Ms Scott also deposes, and again I accept, that it is the standard practice for the Court in New South Wales not to provide any written reasons for determining applications for leave to proceed against a defendant served outside Australia if the defendant does not enter an appearance.

20. I proceed therefore on the basis that there is no doubt the New South Wales Supreme Court *believed* that it had jurisdiction to enter judgment against Mr Ryan. The issue in this case is whether in fact it did have such jurisdiction. Mr Blake submits that there was jurisdiction under the applicable rules of the Supreme Court in New South Wales and that I am not able to inquire into that matter. Mr Malcolm however submits that the New South Wales Supreme Court had no jurisdiction to deal with the claim against Mr Ryan because he did not submit to its jurisdiction.

Submissions in more detail

21. DHL, through Mr Blake, accepts that in order to obtain summary judgment it must satisfy the requirements of Rule 13.5 of the Civil Procedure Rules. This provides:



13.5 (1) A person who wishes to enforce a judgment of a foreign court in Vanuatu (a "foreign judgment") may file a claim in the Supreme Court under Part 2.

(2) The claim must set out the following:

(a) the foreign judgment is for a fixed amount; and

(b) the foreign court had jurisdiction over the person against whom the judgment was made; and

(c) the foreign judgment is final and conclusive; and

(d) the amount payable under the judgment that has not been paid; and

(e) regarding an appeal:

(i) the time for an appeal has ended and no appeal has been lodged; or

(ii) an appeal was lodged but it was unsuccessful.

(3) The claim must have with it a sworn statement that:

(a) supports the claim; and

(b) verifies the foreign judgment.

(4) The claim must also have with it a sworn statement by a lawyer practising in the foreign country that:

(a) sets out his or her qualifications to give evidence on the law of the foreign jurisdiction; and

(b) confirms the foreign judgment is valid, final and conclusive.

22. Mr Blake accepts that being a rule of procedure Rule 13.5 does not of itself confer jurisdiction on the Court but is rather a mechanical provision which regulates the procedure by which the Court exercises its power at common law to permit enforcement of a foreign judgment in Vanuatu. There is no Reciprocal Enforcement of Judgments Act in Vanuatu but a foreign judgment is to be regarded as creating a debt between the parties to it. A party seeking to enforce a foreign judgment in Vanuatu must, as DHL has done in this case, issue a fresh proceeding to recover the debt: A foreign judgment is not enforceable directly by execution without the requirements of rule 13.5 being established.

23. With one critical exception, there is no dispute by Mr Malcolm that the requirements of Rule 13.5 are all established here. It is therefore not necessarily necessary to go through them. The exception is the requirement under Rule 13.5 (2) (b) that the foreign Court had jurisdiction over Mr Ryan. DHL says the New South Wales Supreme Court did have jurisdiction over him: Mr Ryan says it did not.

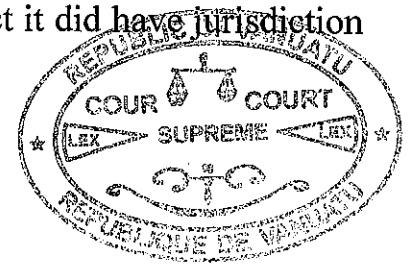
24. On the key question of jurisdiction, Mr Blake submits that the Supreme Court of New South Wales is the superior court in that state and has unlimited jurisdiction within that state in Civil matters. There can be no doubt about that.

25. He also submits that (and I have already accepted), there is no doubt that the Supreme Court must have granted leave pursuant to Rule 11.4 in order to enter the default judgment that it did.

26. The principles applicable to that Rule were summarised by Austin J in *Bulldogs Rugby League Club Limited* v *Williams* [2008] NSWSC 822 at [29] to [34]: *".... There are essentially four matters to consider in an application for leave under rule 11.4.*
The first matter is with the defendant whether the defendant has been properly served.... The second question ... is whether the claims..... fall within Sch 6 of the UCPR. ..... The third matter....is whether the plaintiff has an arguable case, in the sense that it would be sufficient to survive an ordinary application for summary judgment. .... The fourth matter ... is whether the local forum is 'clearly inappropriate' and there is some other forum which is more appropriate."

27. I accept Mr Blake's submission that by clear inference the Court must have been satisfied of each of these four matters when it decided to exercise its discretion and to grant leave to DHL to proceed to default judgment.

28. Mr Blake goes on to submit that pursuant to Schedule 6 of the UCPR, which dictates the circumstances in which originating processes may be served outside Australia, it is not necessary for a defendant to submit to the jurisdiction of the foreign Court in order to enliven the foreign Court's jurisdiction. It is sufficient he submits if the plaintiffs claim falls within one or more of the categories listed in the schedule. Accordingly he submits that by granting DHL leave to proceed and then entering default judgment the New South Wales Supreme Court had determined that it had jurisdiction over Mr Ryan. I accept that the Court so determined, but the question on this application is whether or not in fact it did have jurisdiction i.e. whether it was right so to determine.



29. Mr Malcolm had referred me to a relevant text on private international law, Dicey & Morris, in support of his submission that despite its purported jurisdiction to deal with Mr Ryan, in fact it did not have jurisdiction to do so.

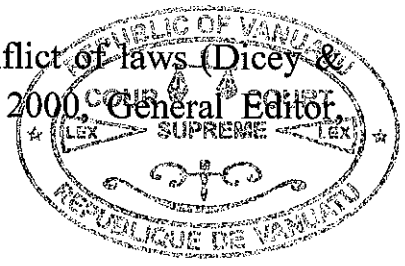
30. Both counsel referred to various case authorities which I will discuss to the extent appropriate below.

Discussion and decision

31. There is no doubt that where a foreign Court *has* jurisdiction over the parties then, with very limited exceptions, its judgment may be enforced in other countries. Mr Blake referred me to the judgment of Tipping J in *Kemp v Kemp* [1996] 2 NZLR 454 at 458 where His Honour said: *" it is a general principle of private international law that, subject to three exceptions, a judgment in personam of a foreign Court of competent jurisdiction, which is final and conclusive on the merits in the foreign country, is to be regarded as final and conclusive in New Zealand as between the same parties and their privies and as regards any issue which the judgment or order settles. Subject to the exceptions, such an overseas judgment is not impeachable or examinable on its merits whether for error of fact or of law. In proceedings on a foreign judgment the burden lies on the party who seeks to impeach it. The three exceptions which constitute to recognised grounds from impeachment are first that the judgment was obtain by fraud, secondly where its investment would be contrary to local public policy and thirdly that the proceedings in which the judgment was obtained were contrary to natural justice. For completeness it should also be noted that a foreign judgment is not generally enforceable if it relate to taxes or penalties."*

32. There is no suggestion from Mr Malcolm that any of those exceptions applies. His point is that DHL falls at an earlier hurdle namely that of lack of jurisdiction.

33. Mr Malcolm referred to the leading text on the conflict of laws (Dicey & Morris *The Conflict of Laws* 13th Edition London 2000, General Editor,



Lawrence Collins). At page 487 the learned authors set out their **Rule 36** which provides: " *Subject to Rules 37 to 39, a court of a foreign country outside the United Kingdom has jurisdiction to give a judgment in personam capable of enforcement or recognition in the following cases:* ***First Case*** *- If the judgment debtor was, at the time the proceedings were instituted, present in the foreign country.* ***Second case*** *- If the judgment debtor was claimant, or counterclaimed, in proceedings in the foreign court.* ***Third case*** *- If the judgment debtor, being a defendant in the foreign court, submitted to the jurisdiction of that Court by voluntarily appearing in the proceedings.* ***Fourth case*** *- If the judgment debtor, being a defendant in the original Court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court, or of the courts of that country."*

34. The applicability of these fundamental principles in Australia is confirmed by the learned author of *Conflict of Laws in Australia* (6th Edition, P E Nygh, Butterworths, 1995). At page 137 of that text it is stated: " *the first and foremost prerequisite for recognition is that the foreign court has exercised a jurisdiction which the forum will recognise. The term 'jurisdiction' here used* ***does not refer to the jurisdiction of the foreign Court under its own rules*** *but " jurisdiction in the international sense" by which is meant a competence which will be recognised under Australian conflictual rules"*(emphasis added).

35. At page 138 it is stated: *"the basic principle in relation to foreign judgments is that the foreign Court had jurisdiction over the person of the defendant at the time when the jurisdiction of the foreign court was invoked. Traditionally that jurisdiction can arise in one of two ways: by presence or residence of the defendant in the foreign jurisdiction, or by the voluntarily submission by the defendant to that jurisdiction. Additional and alternative bases of jurisdiction have been put forward from time to time but have not received much acceptance."*

36. In my view the first of this two quotations from *Nygh* resolves the competing arguments in this case; there is no doubt that the New South Wales Court had jurisdiction *under its own rules* but equally there is no

doubt that did *not* have jurisdiction in the "international sense" as set out in Dicey and Morris's Rule 36.

37. The question of whether there was jurisdiction at private international law is not to be determined by the internal civil procedure rules of the foreign Court. A judgment creditor in the position of DHL must establish that there was a basis, in terms of Dicey & Morris's Rule 36, for the New South Wales Supreme Court to have had jurisdiction to give judgment against Mr Ryan. On the facts there can be no suggestion that it did. Mr Ryan was not in Australia at the time the proceedings were instituted (or at least there was no evidence that he was) , he was not a claimant or a counterclaimant in the New South Wales proceedings, he did not submit to the jurisdiction of the New South Wales Court by voluntarily appearing in the proceedings and he did not prior to the commencement of the proceedings agree in respect of the subject matter of the proceedings to submit to the jurisdiction of the New South Wales or of Australian Courts.

38. I therefore come to the clear view that the application for summary judgment must fail and indeed, absent an amended claim, the proceeding must also fail.

39. In deference to the helpful submissions of counsel, I will refer to some of the authorities on which they relied.

40. Mr Blake relied on the *Kemp v Kemp* case cited earlier as indicating that this claim must succeed. However I am satisfied that the case is distinguishable on the facts. The petitioner Mrs Kemp had obtained an order against the respondent Mr Kemp in the York County Court in England. She was resident in England following a matrimonial separation, Mr Kemp had stayed in New Zealand. The order of the York County Court divided matrimonial property and addressed some financial matters between the parties. There was no suggestion that the order was outside its jurisdiction.

41. However, critically for present purposes, Justice Tipping noted at page 458: *"there is no need for me to discuss in any detail when Courts have jurisdiction in personam against people who are not resident or domiciled*

within their territorial jurisdiction. The reason why such discussion is unnecessary is that Courts always have jurisdiction if an overseas person submits to that jurisdiction. It might have been arguable whether Mr Kim submitted to the jurisdiction of the outset but it is clear beyond argument that he did submit by seeking ultimately to set aside the order. There was no suggestion to the contrary. Therefore for present purposes the York County Court must be regarded as a Court of competent jurisdiction."

42. Accordingly while the *Kemp* case is a clear and helpful authority upholding the enforceability of a foreign judgment where the foreign Court had jurisdiction, it does not assist on the primary question of whether or not it *did have* jurisdiction. It is the latter question which arises here, not the former.

43. To similar effect is the judgment of the then Acting Chief Justice, Justice Lunabek in *Bank of Montreal v Prescott* [2000] VUSC 53, which appears to be the only other Vanuatu judgment to have considered a similar question of jurisdiction. Like *Kemp v Kemp*, the facts of that case are distinguishable from the present. It is not clear from the judgment whether the defendants Mr and Mrs Prescott had engaged with the underlying claim in the Supreme Court of British Colombia by defending it but it does appear they appealed the decision against them, which in itself would clearly amount to a submission to jurisdiction. Some ten years later the bank applied to renew the judgment and the Prescotts filed a defence and counterclaim, so again they clearly submitted to the jurisdiction of the Canadian court.

44. Therefore there was no doubt, on the information before the learned Acting Chief Justice, that the Canadian court had had jurisdiction over the Prescotts. It was then merely a question of deciding whether any of the limited exceptions applied. It was held that none did and that the Canadian judgments were final and conclusive between the parties. In the result however the case was determined in favour of the Precotts on a limitation point.

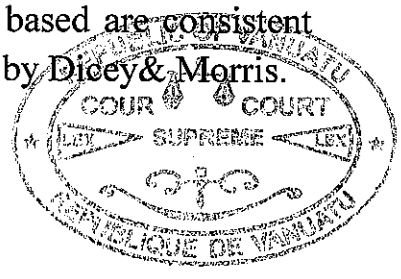
45. Mr Blake also referred to me to the long-established authority of *Godard v Gray* (1870) LR 6 QB 139. In particular he noted what Blackburn J said at page 150: " *the decisions of..... seem to us to leave it no longer open to*

contend, unless in a Court of error, that a foreign judgment can be impeached on the ground that it was erroneous on the merits; or to set up as a defence to an action on it, that the tribunal mistook either the facts or the law."

46. This judgment, and others which have relied on it, is authority for the principle that even where foreign Courts make a mistake about the application of the law which would have governed the dispute in the country in which enforcement is sought, that cannot be looked into. Given that that was a case of an English Court respecting the decision of a French Court which was erroneous in English law, the strength of the principle is readily apparent!

47. However, again, this speaks to the question of whether there is jurisdiction in the first place. *Godard v Gray* was a case where the French Court had jurisdiction over the parties. The present case is one where the New South Wales Court, despite it having jurisdiction under its local Rules, did not have jurisdiction over Mr Ryan at private international law.

48. Mr Malcolm referred me to another New Zealand decision *Sharps Commercials, Ltd v. Gas Turbines, Ltd* [1956] NZLR 819. This I accept is an example of the correct application of Dicey& Morris's Rule 36. The judgment creditor in that case sought leave to register in the Supreme Court of New Zealand a judgment of the Supreme Court of Judicature of England (Queen's Bench Division). The judgment debtor was a company incorporated in New Zealand and had not had at any time its principal place of business or any office or place of business in England. The judgment creditor was a company incorporated in England. The judgment debtor did not take any step in the proceedings in the English Court, nor did it submit to the jurisdiction of that Court, nor did it agree in respect of the subject matter of the proceedings to submit to the jurisdiction of that Court. It was held that the English judgment could not be enforced in New Zealand. Although that decision was made in terms of the Reciprocal Enforcement of Judgments Act 1934, the principles on which it is based are consistent with the private international law principles referred to by Dicey& Morris.



49. This is sufficient to determine the application for summary judgment against DHL but in case I am wrong I indicate that I would, if necessary, have been prepared to look into the New South Wales Supreme Court decision *to the extent that it related to the question of jurisdiction.*

50. I accept unreservedly, in accordance with the *Godard v. Gray* principle, that I am not permitted to look into the *merits* of the claim by DHL against Mr Ryan, i.e. whether or not he is liable under a guarantee to it. In passing though I observe that it does seem surprising that a guarantee could be founded on a series of emails. However I understand from the text *Contract Law in Australia* (4th Edition, JW Carter and DJ Harland, Butterworths, 2002) at [507] that in New South Wales it is not necessary for contracts of guarantee to be in writing or evidenced in writing. So indeed something less than an email may suffice and a clear email authored by the defendant certainly would. This is apparently by contrast with the rest of Australia except the Australian Capital Territory and South Australia.

51. On the question of jurisdiction however, I am, with respect, doubtful that the Registrar of the Supreme Court who entered judgment was correct to grant the motion for leave under Rule 11.4. I am of course not assisted by any reasoning but I note and accept Ms Scott's evidence that reasons are not usually given.

52. In order to obtain leave, DHL had to satisfy the Court that the claim came within Schedule 6 of the Uniform Civil Procedure Rules 2005 [NSW]. This provides:

UNIFORM CIVIL PROCEDURE RULES 2005 - SCHEDULE 6
SCHEDULE 6 – Proceedings in respect of which originating process may be served outside Australia

Originating process may be served outside Australia in relation to the following circumstances:
(a) if the proceedings are founded on a cause of action arising in New South Wales,
(b) if the proceedings are founded on a breach in New South Wales of a contract (wherever made), whether or not the breach is preceded or accompanied by a breach (wherever occurring) that renders impossible the performance of any part of the contract which ought to be performed in New South Wales,
(c) if the subject-matter of the proceedings is a contract and the contract

(i) is made in New South Wales, or

(ii) is made on behalf of the person to be served by or through an agent carrying on business or residing in New South Wales, or

(iii) is governed by the law of New South Wales, or

(iv) is one a breach of which was committed in New South Wales,

(d) if the proceedings are founded on a tort committed in New South Wales,

(e) if the proceedings, wholly or partly, are founded on, or are for the recovery of damages in respect of, damage suffered in New South Wales caused by a tortious act or omission wherever occurring,

(f) if the proceedings are for contribution or indemnity in respect of a liability enforceable by proceedings in the court,

(g) if the person to be served is domiciled or ordinarily resident in New South Wales,

(h) if the proceedings are proceedings in respect of which the person to be served has submitted or agreed to submit to the jurisdiction of the court,

(i) if the proceedings are properly commenced against a person served or to be served in New South Wales and the person to be served outside New South Wales is properly joined as a party to the proceedings,

(j) if the subject-matter of the proceedings, so far as concerns the person to be served, is property in New South Wales,

(k) if the proceedings are for the perpetuation of testimony relating to property in New South Wales,

(l) if the proceedings concern the construction, effect or enforcement of an Imperial Act or Commonwealth Act, or a regulation or other instrument having or purporting to have effect under such an Act, affecting property in New South Wales,

(m) if the proceedings are for the construction, rectification, setting aside or enforcement of a deed, will or other instrument or of a contract, obligation or liability, affecting property in New South Wales,

(n) if the proceedings are for an injunction as to anything to be done in New South Wales or against the doing of any act in New South Wales, whether damages are also sought or not,

(o) if the proceedings are for the administration of the estate of a person who dies domiciled in New South Wales, or are for relief which might be granted in proceedings for administration of such an estate,

(p) if the proceedings are for the execution of trusts which are governed by the law of New South Wales, or are for relief which might be granted in proceedings for the execution of such trusts,

(q) if the proceedings affect the person to be served in respect of his or her membership of a corporation incorporated in New South Wales, or of an association formed or carrying on any part of its affairs in New South Wales,

(r) if the proceedings concern the construction, effect or enforcement of an Act or a regulation or other instrument having or purporting to have effect under an Act,

(s) if the proceedings concern the effect or enforcement of an executive, ministerial or administrative act done or purporting to be done under an Act or regulation or other instrument having or purporting to have effect under an Act,

(t) if the proceedings:

(i) relate to an arbitration held in, or governed by the law of, New South Wales, or

(ii) are commenced to enforce in New South Wales an arbitral award wherever made, or

(iii) are for orders necessary or convenient for carrying into effect in New South Wales the whole or any part of an arbitral award wherever made,

(u) if the proceedings are commenced to enforce in New South Wales a judgment wherever given,

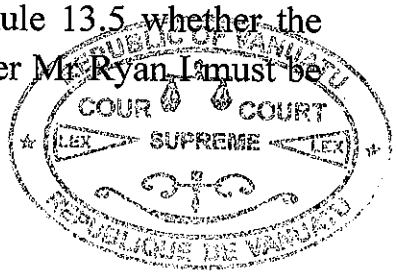
(v) if the proceedings are for relief relating to the custody, guardianship, protection or welfare of a minor, whether or not the minor is in New South Wales, which relief the court has, apart from service, jurisdiction to grant,

(w) if the proceedings, so far as concerns the person to be served, fall partly within one or more of the foregoing paragraphs and, as to the residue, within one or more of the others of the foregoing paragraphs.

53. For myself I am unable to see that any of the paragraphs mentioned in Schedule 6 applied to the claim against Mr Ryan.

54. With due respect to the Registrar who determined the matter, it may be that he/she was inadvertently misled by the sworn statement of Sharon Sadler in support (who I am sure had no intention of misleading the Court). When she referred to the claim as relating to "a debt due under a written agreement and a guarantee" and then immediately quoted clause 18 of the agreement, it may well have been assumed by the Registrar that *both* defendants had agreed to submit to the jurisdiction of the New South Wales Courts. In fact of course Mr Ryan was not a party to the agreement and there is no pleading or suggestion that he had in any manner agreed to submit to the jurisdiction of the New South Wales courts. I note too that in the statement of claim itself the alleged guarantee was not alleged to be related in any way to the earlier agreement between DHL and the Company. Rather it was simply said to be a guarantee of the company's obligation to repay the debt. It was not alleged to be a guarantee of the company's obligations under the Network Access Agreement which included the company's submission to jurisdiction.

55. I note that Mr Blake's submissions did not attempt to identify the paragraph in Schedule 6 which applied to this case: rather his submission was that I could not properly inquire into that matter so he saw no need to delve into that. My view is that in order to determine under Rule 13.5 whether the New South Wales Supreme Court had jurisdiction over Mr Ryan, I must be



entitled to investigate that Court's decision, so far as it relates to jurisdiction rather than the merits of the claim. Having done so, albeit without reasons from the Registrar or submissions from Mr Blake on this point, I am not satisfied that the motion for leave by which jurisdiction was determined to exist was properly granted. However I emphasise this is merely an alternative basis for my decision which primarily rests on the basis that even if the New South Wales Court did in terms of its own rules have jurisdiction over Mr Ryan, it did not in fact have jurisdiction over him at private international law.

Conclusion

56. To answer the question posed at the start of this judgment, a judgment creditor which has obtained a default judgment in a foreign Court against a defendant served and resident in Vanuatu may enforce the judgment in this Court on provision of proof that the foreign Court had jurisdiction over the defendant in accordance with the principles of private international law (and not merely its internal civil procedure rules), as set out in Dicey & Morris's Rule 36.

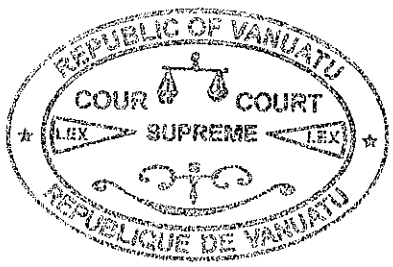
57. The application for summary judgment is dismissed.

58. Mr Ryan is entitled to costs against DHL on a standard basis, to be taxed if not agreed.

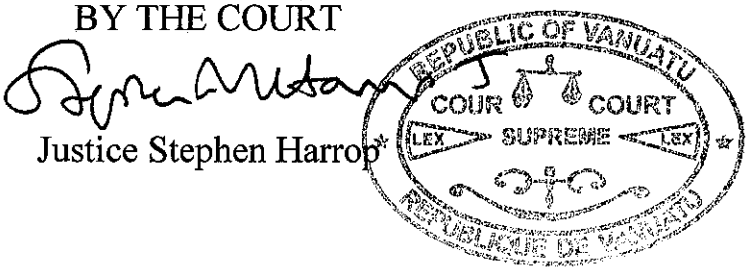
59. I expect that Mr Blake may now wish to file an amended claim by which DHL seeks afresh to prove its claim against Mr Ryan based on the alleged guarantee.

60. Any such amended claim is to be filed and served by 27 February 2015. If another course is proposed Mr Blake is by the same date to file and serve a memorandum outlining this.

DATED at Port Vila this 28th day of January 2015



BY THE COURT



Justice Stephen Harrop