

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

Civil

Case No. 20/523 SC/CIVL

BETWEEN: **Astrid L. Kersten, Mohammed
H. Sidky, Julia A. Knecht, Turan
Y. Sidky**, lessees c/- Helle Bonke,
representative, of P.O. Box 3179,
Port Vila

Claimants

AND: **Ifira Land Corporation Limited**

First Defendant

AND: **Ifira Trustees Limited**

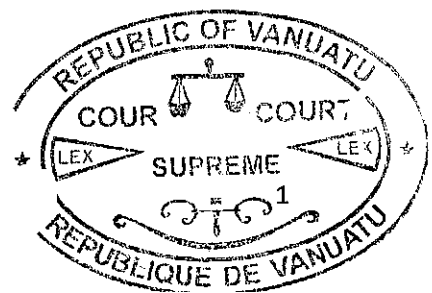
Second Defendant

Date of Trial: 7 September 2020
Before: Justice V.M. Trief
In Attendance: Claimants – represented by Ms Helle Bonke
Defendants – Mr S.T. Joel
Date of Decision: 21 October 2020

JUDGMENT

A. Introduction

1. The Claimants Astrid L. Kersten, Mohammed H. Sidky, Julia A. Knecht and Turan Y. Sidky applied for an extension of their lease. They allege that the lessor has unreasonably withheld its consent to such extension.
2. This judgment determines the Claim.



B. Preliminary matters

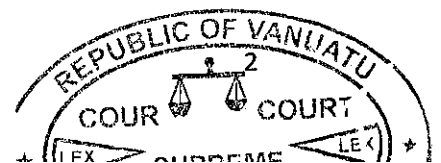
3. After the trial, the Claimants filed the sworn statements of Astrid Levina Kersten and Menzies Samuel.
4. They did so without the leave of the Court.
5. I therefore declare those documents ineffectual pursuant to r. 18.10(2)(c) of the *Civil Procedure Rules* and the Court's inherent jurisdiction. I have not considered them for this judgment.
6. The parties filed sworn statements in support of their case. In the next section I set out the factual background that I distilled from the evidence and that I have had regard to.

C. Background

7. The Claimants are the lessees of and the Second Defendant Ifira Trustees Limited ('ITL') the lessor of leasehold title no. 12/0911/021 (the 'lease').
8. The First Defendant Ifira Land Corporation Limited was initially the sole defendant until the Claimants applied to have ITL joined as a party.
9. The original lessee of the lease was Tretham (Vanuatu) Limited. The lease later transferred to Lotus Holding Limited and then on 6 November 2015, to the Claimants.
10. The 50-year term of the lease ends on 30 July 2030.
11. In August 2017, the Claimants applied for a 25-year extension of the lease in accordance with clause 3.1 of the Schedule to the lease.
12. The parties have not been able to agree the premium to extend the lease. ITL proposed a premium of VT2,500,000 (agreed at its Board meeting on 17 October 2018, ["**Exhibit D3**"]) plus VT280,000 costs. The Claimants sought a valuation from the Office of the Valuer General. By report dated 8 February 2019, the Office of the Valuer General determined the premium payable for a 25-year extension to be VT1,500,000 ["**Exhibit D4**"].

D. The Claim

13. The Claimants alleged that they have a right to a 25-year extension of the lease pursuant to clause 3.1 of the Schedule to the lease. Further, they alleged that the Valuer General in accordance with clause 3.1, determined that VT1,500,000 was the total premium to be paid for the extension of lease. The Claimants alleged that the lessor has unreasonably withheld its consent to extension of the lease.
14. The Claimants therefore seek an Order that ITL immediately sign the consent and the variation of lease, for the extension of the lease up to a total of 75 years, until 30 July



2055, for a total payment of VT1,500,000 inclusive of fees and administration costs. Other orders sought are for costs and any other order deemed fit by the Court.

E. Discussion

15. This case turns on the interpretation of clause 3.1 of the Schedule to the lease which provides that:

3. *The Lessor and the Lessee mutually agree as follows:*

3.1 ON the expiration of the term of this Lease the Lessee shall have the right to obtain a new Lease of the leased land for a further term of twenty-five (25) years subject to the same agreements and conditions as this Lease but excluding the right to renew for any further term as provided in this clause at a rent to be determined by agreement between the Lessor and Lessee and failing agreement by a valuation of the unimproved value of the leased land undertaken by the Referee in the manner provided by the Land Leases Act 1983.

(my emphasis)

16. The *Valuation of Land Act* No. 22 of 2002 repealed the *Land Referee Act* [CAP. 148]. It is now the Valuer General who is to act as a land referee in disputes regarding rentals and land values – see para. 3(c) of the *Valuation of Land Act* and s. 39 of the *Land Leases Act* [CAP. 163] (the 'Act').
17. Clause 3.1 provides that the Lessee has the right to obtain a new Lease of the leased land for a further term of 25 years "at a rent to be determined by agreement between the Lessor and Lessee and failing agreement by a valuation of the unimproved value of the leased land undertaken by the Referee in the manner provided by the *Land Leases Act*."
18. Clause 3.1 therefore provides that where the lessor and lessee fail to agree the amount of rent for the further 25-year term of the lease, that the Valuer General will undertake a valuation of the unimproved value of the leased land. This applies only where the parties have failed to agree the amount of the rent. It does not apply where the parties have failed to agree the amount of premium payable.
19. Accordingly, the Valuer General's valuation by report dated 8 February 2019 ["**Exhibit D4**"] was not made in accordance with clause 3.1 of the Schedule to the lease. There is therefore no merit in the Claimants' allegation that the Valuer General determined that VT1,500,000 was the total premium to be paid for the extension of lease in accordance with clause 3.1 of the Schedule to the lease. There has not been any breach of clause 3.1. That aspect of the Claim fails.
20. The Claimants also alleged that the lessor unreasonably withheld its consent to extension of the lease. An extension of the lease is not a disposition of the lease by the lessee that requires the lessor's consent – see s. 36 of the Act. Rather, it is for the lessor and the Claimants to agree the extension of the lease at a premium that both agree to. Subsections 32B(3) and (4) of the Act provide for the way a premium is to be determined for leases of public land – see subs. 32A(1) of the Act. The Claimants' lease is not a lease of public land; the lessor is ITL, not the Minister of

Lands. Accordingly, there is no merit to the allegation that ITL unreasonably withheld its consent to extension of the lease. It too fails.

21. The Claim must therefore be declined and dismissed.
22. The Defendants pleaded in their Defences that the Claimants' application for an extension of lease in August 2017 was in breach of clause 3.1 of the Schedule to the lease.
23. Subsection 47(1) of the *Land Leases Act* [CAP. 163] (the 'Act') provides:

47. (1) *Subject to the provisions of this Act and any other written law, the agreements and conditions contained or implied in any registered lease may be varied, negated or added to, by an instrument in the prescribed form executed by the lessor and lessee for the time being and registered before the expiration of the current term of the lease.*

(my emphasis)

24. Subsection 47(1) of the Act provides that an agreement in a lease may be varied by an instrument in the prescribed form executed by the lessor and lessee registered before the expiration of the current term of the lease. Any extension of the lease must therefore be made by an instrument in the prescribed form executed by the lessor and lessee and registered before the expiration of the current term of the lease.
25. It follows that a lease may not be extended after the expiration of the current term of the lease. Therefore the Claimants' application in August 2017 for an extension of the lease before the expiration of the current term of the lease is in accordance with both the lease and subs. 47(1) of the Act and cannot be held to be a breach of the lease.
26. However, just because the Claimants have applied for an extension of the lease does not mean they will get such extension. This is dependent on the lessor and the Claimants agreeing the premium payable.

F. Decision

27. The Claim is declined and dismissed.
28. Costs follow the event. The Claimants are to pay costs to the Defendants as agreed or taxed by the Master. Once set, the costs are to be paid within 21 days.

**DATED at Port Vila this 21st day of October 2020
BY THE COURT**

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UMTrief
Viran Molisa Trief
Judge

