

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

**Civil  
Case No. 18/882 SC/CIVL**

**BETWEEN: Union Electrique Du Vanuatu Limited T/as Unleco  
Engie**  
**Claimant/Respondent**

**AND: Christiane Brunet T/as Tana Russet Plaza**  
**Defendant/ Applicant**

*Date of Hearing:* 10<sup>th</sup> December 2020  
*Date of Decision:* 16<sup>th</sup> February 2021  
*Before:* Justice Oliver Saksak  
*In Attendance:* Mr Mark Hurley for the Claimant/ respondent  
Mr Nigel Morrison for Defendant/ applicant

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**DECISION**

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1. Following a mention on 10<sup>th</sup> December 2020 the Court was advised the only remaining issue was costs claimed by the defendant.
2. Mr Morrison informed he would file submissions by 18<sup>th</sup> December 2020. Counsel filed submissions on 17<sup>th</sup> December seeking costs to be awarded on an indemnity basis.
3. Mr Hurley filed responding submissions on 26<sup>th</sup> January 2021 opposing the application for costs on an indemnity basis. Counsel submitted costs should be awarded only on the standard basis.
4. This decision is made having considered those submissions.
5. Mr Morrison submitted that due to the defendant's "without prejudice" offer made by letter dated 19<sup>th</sup> May 2020 which was rejected by the claimant, the defendant was entitled to and that she should be awarded indemnity costs.
6. Mr Morrison relied on the cases of Sharmim v QBE Insurance ( Vanuatu) Limited [2017] VUSC 59 and the Australian cases of Colgate Palmolive Pty Ltd v Cussons

Pty Ltd v Australian Builders Labourers Federation Union of Workers Western Australian Branch and Fountain Selected Meds ( Sales) Pty Limited v International Produce Merchants Pty Ltd.

7. Mr Morrison submitted in light of the above case authorities that the claimant's rejection of the defendant's offer amounted to "an imprudent refusal of an offer of compromise" warranting an award of indemnity costs.
8. Mr Hurley submitted to the contrary that this case does not fall into the category of the cases cited by Mr Morrison. I am inclined to agree with Mr Hurley's submissions.
9. For an offer of compromise to be unreasonably rejected the onus is on the defendant or applicant to show the claimant has no real chance of success at all. In this case the defendant's submissions filed on 6<sup>th</sup> August 2020 in paragraph 6 appears to me to be an admission of her liability to the one month adjustment, which is the basis of her offer.
10. In the circumstances the claimant's refusal to accept the offer was not an imprudent refusal.
11. Costs are at the discretion of the Court. These are well settled in Wass v Knox [2010] VUCA 24 and Iririki Holdings Limited v Oakdale Pty Ltd [2019] VUCA 30.
12. I therefore exercise my discretion to award costs to the defendant in this proceeding on the standard basis.
13. I order the defendant to submit her Bill of costs within 21 days from the date hereof to be taxed, if not agreed

**DATD at Port Vila this 16<sup>th</sup> day of February 2021**

**BY THE COURT**

**OLIVER.A.SAKSAK**

**Judge**