

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

**Civil**  
**Case No. 20/155 SC/CIVL**

**BETWEEN: Maria Reid**  
First Claimant

**AND: Xtreme Holdings Corp (Vanuatu  
Company No. 33947)**  
Second Claimant

**AND: Jive Holdings Limited (Vanuatu  
Company No. 31445)**  
Defendant

**AND: Mark Hurley**  
Third Defendant to Counter Claim

*Date of Hearing:* 22 June 2022

*Before:* Justice V.M. Trief

*In Attendance:* Claimants – Mr M. Hurley  
Defendant – Mr A. Bai  
Third Defendant to Counter Claim – in person

*Date of Decision:* 11 July 2022

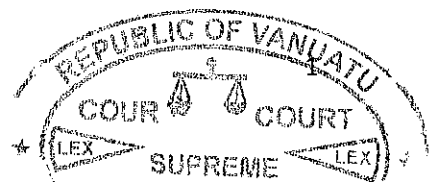
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**DECISION AS TO DEFENDANT'S APPLICATION THAT THE FREEZING ORDER  
BE SET ASIDE**

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A. Introduction

1. This was an Application by the Defendant Jive Holdings Limited ('Jive') for orders that the injunction granted on 12 August 2021 freezing its assets be set aside (the 'Application').
2. Jive also sought an order that the statutory demand of 22 December 2021 be set aside. That aspect of the Application was abandoned.



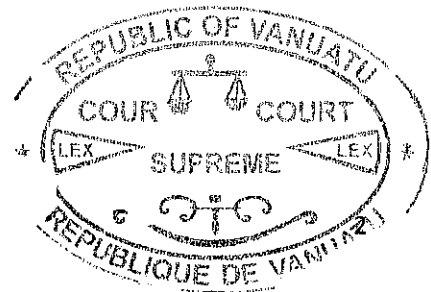
B. The Application

3. The grounds of the Application are that at the time of the Orders, Jive did not beneficially own lots in the Strata Plans SP 0045, SP 0052 and SP 0089, which it alleges had been sold to Milai Immigration Services Limited by agreement dated 23 June 2021.
4. The second ground relates to criticisms of the Claimants' evidence before the Court in support of their application and that the Court could not be satisfied with the matters in rule 7.8(4)(b) of the *Civil Procedure Rules* (the 'Rules').
5. Jive relied on the Sworn statements of the following in support of the Application:
  - a. Robert John Herd sworn on 5 January 2022 and filed on 15 February 2022;
  - b. Robert John Herd sworn on 15 March 2022 and filed on 16 March 2022; and
  - c. Trevor Herd filed on 22 June 2022.
6. The Claimants Marie Reid ('Ms Reid') and Xtreme Holdings Corp ('Xtreme') opposed the Application and relied on the Sworn statements of Ms Reid filed on 9 July 2021 and Gregory Morton filed on 17 January 2022. Mr Hurley submitted that given Jive's refusal on 22 June 2022 to provide a written undertaking and its lack of disclosure about its assets, the Court exercised its discretion correctly to make the freezing order. Further, that if Jive was dissatisfied with any of the Court's findings as to the matters in rule 7.8 of the Rules, it should have appealed.
7. Mr Hurley submitted that if judgment was entered for either one of the Claimant's favour for in excess of AUD 1.5 million, that would be equivalent to over VT120 million therefore the Court may consider it is appropriate to vary the orders but not set them aside.

C. Discussion

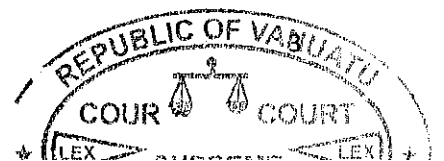
8. The Court may set aside or vary a freezing order: rule 7.8(9) of the Rules.
9. The freezing order of 12 August 2021 was made without any material in response.
10. It is open to the Court to revisit its conclusions upon further evidence and hearing submissions from both parties: rule 7.8(9) of the Rules and the Court's inherent jurisdiction.
11. Accordingly, I do not accept that Jive should have appealed if it was dissatisfied with any of the Court's findings as to the matters in rule 7.8 of the Rules. I agree with that submission by Mr Bal.
12. Rule 7.8(4)(b) of the Rules provides:

7.8 (4) *The court may make the order only if:*  
(a) ....



- (b) *the court is satisfied that:*
- (i) *the applicant has a good and arguable case; and*
  - (ii) *a judgment or order in the matter, or its enforcement, is likely to involve the assets; and*
  - (iii) *the assets are likely to be removed from Vanuatu, or dealing with them should be restrained.*

13. I am satisfied that the Claimants have a good and arguable case: rule 7.8(4)(b)(i). By Minute and Orders dated 2 December 2020, I granted Ms Reid leave to amend the Claim to add Xtreme as a second claimant. Jive's appeal against the joinder of Xtreme was dismissed: *Jive Holdings Ltd v Reid* [2021] VUCA 28. The way the Amended Claim was framed would result in either Ms Reid or Xtreme being found to be the lender, on the basis of the evidence produced at trial. Whether or not any of the Claim was untrue will be determined at trial.
14. I am also satisfied that a judgment or order in this matter, or its enforcement, is likely to involve the assets: rule 7.8(4)(b)(ii). Jive is in the business of real estate development. It operates based on its dealings in land. Accordingly, any judgment or order in this matter, or its enforcement, is likely to involve the assets restrained, that is, the strata lots registered in its name in SP 0089 and other assets controlled by it from time to time.
15. On 22 June 2021, Jive refused to provide a written undertaking to the Claimants resulting in the Claimant filing its application for freezing orders. The Claimants' apprehension evidenced in Ms Reid's statement of 9 July 2021 was that if the orders were not made, the Claimants were vulnerable to Jive selling or otherwise encumbering its strata lots in SP 0089 or any of its other assets which would make the Claimants' prospects of recovering an anticipated judgment problematic.
16. Jive did not disclose till January 2022 that on 23 June 2021, it entered into a contract for sale of the lots in SP 0089 and in relation to specified lots in SP 0045 and SP 0052. I accept Mr Hurley's submission that the Claimant's apprehension has been vindicated by Jive's entry into a contract for sale on 23 June 2021 (the day after it refused to provide a written undertaking) and the orders should not be set aside. Given Jive's lack of good faith and failure to give frank disclosure regarding its assets, I am satisfied that dealing with the assets should be restrained: rule 7.8(4)(b)(iii).
17. The Claimants did not describe the value of Jive's assets. However, given the matters set out above, I accept Mr Hurley's submission that the failure to describe the value of Jive's assets was at worst an "irregularity" and would not lead to the orders being set aside. I consider that the steps taken including the freezing order made were effectual pursuant to rule 18.10 of the Rules.
18. For the reasons given, I decline to set aside the freezing order.
19. Finally, Mr Hurley submitted that if judgment was entered for either one of the Claimants for in excess of AUD 1.5 million, that would be equivalent to over VT120 million (the figure stated at para. 23 of his submissions was incorrectly stated as "VT12 million" and



should be “VT120 million”) therefore the Court may consider it is appropriate to vary the orders but not set them aside. I agree.

20. Jive has complained that the freezing order has prevented it conducting any business since August 2021 and will likely commit acts of insolvency. However, I note that Jive did not ever seek variation of the Court’s orders to enable it to continue to conduct its business. It instead sought that the orders be set aside, and took until January 2022 to give notice of such application.
21. However, it is accepted that there should be variation of the orders as set out at ground 2(b)(ii)(3) of the Application to ensure that Jive avoids committing acts of insolvency.
22. In the circumstances, the freezing order will be varied.

D. Discussion

23. The Defendant’s Application filed on 15 February 2022 for orders that the injunction granted on 12 August 2021 freezing its assets be set aside is **declined and dismissed**.
24. The Orders for injunctive relief dated 12 August 2021 are **varied** by adding at the end of them the following words:
  - b. Notwithstanding the terms of these orders, the operation of them does not prevent the Defendant:
    - i. paying any liabilities including day to day expenses and repayments of secured loans;
    - ii. meeting any other financial obligations (including statutory payments);
    - iii. conducting its day to day business, which involves the development and sale of land; and
    - iv. settling any costs orders quantified in the Claimants’ favour.
25. Given the outcome, there is no order as to costs.

**DATED at Port Vila this 11<sup>th</sup> day of July 2022  
BY THE COURT**

  
Justice V.M. Trief

