

BETWEEN: 100% PUR FUN LIMITED (In Liquidation)
Claimant

**AND: STAGE FOUR LIMITED as trustees FOR THE
MONTREAL TRUST**
First Defendant

AND: BLUE GUM HOLDINGS LTD.
Second Defendant

AND: REPUBLIC OF VANUATU
Third Defendant

**AND: GRAND ISLE HOLDINGS LTD trading as
PACIFIC ADVISORY MANAGEMENT**
Fourth Defendant

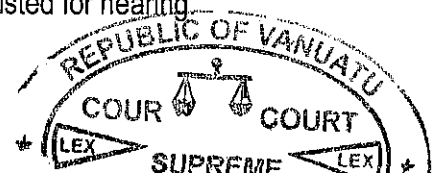
AND: BREAKAS HOLDINGS LIMITED
Fifth Defendant

Date of Hearing: 12 August 2022
Before: Justice V.M. Trief
In Attendance: Mr M. Hurley for the Claimant
Mr. N. Morrison for the 1st and 5th Defendants
No appearance for other parties
Date of Decision: 21 October 2022

**REASONS FOR DECISION AS TO FIRST AND FIFTH DEFENDANTS' APPLICATION TO
RELIST THE CLAIMANT'S APPLICATION FOR HEARING**

A. Introduction

1. On 12 July 2022, I reserved my decision as to the Claimant 100% Pur Fun Limited (in liquidation) ('100% Pur Fun')'s Application filed on 9 June 2022 seeking reinstatement of the Claim.
2. On 27 July 2022, the First Defendant Stage Four Limited (as trustee of the Montreal Trust) ('Stage Four') and the Fifth Defendant Breakas Holdings Limited ('Breakas') filed Application that the Claimant's Application to Re-instate Claim be relisted for hearing.



3. On 12 August 2022, I heard Stage Four and Breakas' Application. At the conclusion of the hearing, I declined and dismissed the Application. I now reduce it into writing with reasons.

B. Background

4. On 2 December 2019, Stage Four and Breakas filed Application seeking the following orders:

- a. That the Claim against them be struck out pursuant to rule 9.10 of the *Civil Procedure Rules* (the 'CPR');
- b. Judgment be entered against the Claimant in default of filing and serving a reply to the Counter Claim;
- c. Costs; and
- d. Any such other order that the Court deems appropriate.

5. On 16 March 2020, the Court struck out the Claim pursuant to rule 9.10 of the CPR, ordered that judgment be entered for the Stage Four and Breakas in default of filing and service of a Defence to the Counter Claim, and ordered costs in their favour to be taxed if not agreed.

6. On 9 June 2022, 100% Pur Fun filed Application seeking reinstatement of the Claim.

7. On 12 July 2022, I heard 100% Pur Fun's Application and reserved my decision.

8. On 27 July 2022, Stage Four and Breakas filed Application that the Claimant's Application to Re-instate Claim be relisted for hearing.

9. On 12 August 2022, I heard Stage Four and Breakas' Application and declined and dismissed it. The reasons for that decision are set out below.

C. Discussion

10. The First and Fifth Defendants' Application that Claimant's Application to Reinstate Action be Relisted for Hearing was made on the following grounds:

- a. That Stage Four and Breakas had filed further evidence of Mr Fielding (the liquidator of 100% Pur Fun);
- b. That 100% Pur Fun failed to make full and frank disclosure of all material facts within its knowledge relevant to the Court's exercise of its discretion; and
- c. That further material needed to be provided to the Court and submissions made to ensure that the Court is not misled and has before it all matters relevant to the Application.

11. The two supporting sworn statements (including the further evidence of Mr Fielding) were filed on 12 August 2022 just before the hearing commenced.

12. The matters raised in Mr Fielding's further evidence and expanded on in Mr Morrison's written submissions dated 12 August 2022 included the following:



- a. That Mr Winslett's sworn statement relied upon by 100% Pur Fun in its Claim had been retracted in its entirety and further, that 100% Pur Fun had received a copy of a statement by Mr Winslett withdrawing those allegations as false *prior* to the filing of the Claim but that 100% Pur Fun had not drawn this to the Court's attention;
 - b. That the "sworn statements" relied on by 100% Pur Fun were not sworn in the current proceedings but have been copied from other proceedings without leave being sought or that matter even being brought to the Court's attention. Accordingly, 100% Pur Fun's evidence was fundamentally flawed; and
 - c. That the Claimant via Mr Fielding had received a copy of the strike out order and correspondence relating to that order on 9 April 2021 but that correspondence was *not* brought to the Court's attention despite bringing to 100% Pur Fun's attention the significant problems with its case.
13. At the commencement of the hearing, both counsel agreed that I need only have regard to the two supporting sworn statements filed on 12 August 2022 if the Court were to agree to re-list 100% Pur Fun's application for hearing. In that event, 100% Pur Fun would need to be given the opportunity to respond to those sworn statements before 100% Pur Fun's Application was reheard. That disposed of the first ground of the Application.
 14. As to the remaining grounds of the Application, I did not agree that the matters now raised (including in Mr Morrison's written submissions dated 12 August 2022) were of material facts that 100% Pur Fun was required to make full and frank disclosure of prior to or at the hearing on 12 July 2022. They are matters as to the merits of the Claim which are matters for trial or for another interlocutory application yet to be filed. That disposed of the second and third grounds of the Application.
 15. In summary, the grounds for the Application lacked merit. The Application had to be declined and dismissed.

D. Result and Decision

16. The First and Fifth Defendants' Application that Claimant's Application to Reinstate Action be Relisted for Hearing was **declined and dismissed**.
17. Costs followed the event. The First and Fifth Defendants were to pay costs of VT50,000 to the Claimant **by 4pm on 12 September 2022**.

DATED at Port Vila this 21st day of October 2022
BY THE COURT


Justice Viran Molisa Trief

