

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

Civil  
Case No. 21/3027 SC/CIVL

**BETWEEN:** GS Finance Limited (in  
liquidation)

Claimant

**AND:** Gil Jang Yoon

Defendant

*Date:* 7 September 2023

*Before:* Justice V.M. Trief

*Counsel:* Claimant – Mr J. Malcolm

Defendant – Mr R. Sugden

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**DECISION AS TO DEFENDANT'S APPLICATION BROUGHT IN THE INHERENT  
JURISDICTION**

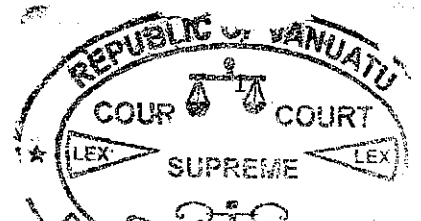
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A. Introduction

1. This was an application to strike out the Claim. The parties were given the opportunity to file submissions then the Court would determine the application on the papers after that.
2. This is the decision.

B. The Claim

3. The Claimant GS Finance Ltd (in Liquidation) ('GS Finance') on 15 September 2021 filed the Claim alleging that the Defendant Gil Jang Yoon ('Mr Gil') had care and control of the entire business of GS Finance between July 2018 and 13 May 2020 and misappropriated a total sum of money of VT29,027,140. Despite demand, he has not returned that sum of money. The causes of action pleaded are A) Theft/conversion [para. 11]; B) Money had and received [paras 12-14]; and C) Conversion [para. 15] as follows:



8. *Whilst the Defendant had care and control of the entire business of the Claimant between July 2018 and 13 May 2020, he misappropriated a total sum of money in the amount of VT29,027,140 (the company property).*
9. *Despite demand on various occasions, the Defendant has refused, neglected or declined to return the company property.*

**CAUSES OF ACTION**

10. *The Defendant's removal of funds between July 2018 and May 2020 have caused loss to the company and were wrongful actions going to the below claims.*

**A. THEFT/CONVERSION**

11. *The actions reverred and averred above were a theft or conversion of company property by the Defendant in the sum of vT29,027,140.*

**B. MONEY HAD AND RECEIVED**

12. *By taking cash in the manner it was done was a receipt of money had and received by the Defendant.*
13. *By making unauthorised expenses is taking, having and receiving company funds wrongfully.*
14. *The actions of the Defendant in taking funds of the company in the sum of VT29,027,140 was to have and receive the company funds in such sum.*

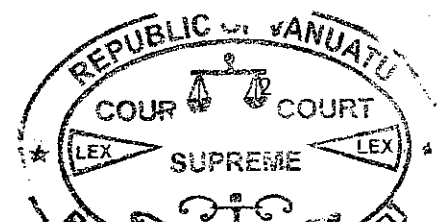
**C. CONVERSION**

15. *The Defendant has converted the company property for his own use in the sum of VT29.027,140.*

4. The Claim is opposed.

C. The Application and Submissions

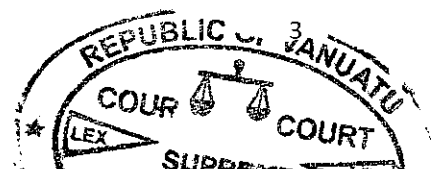
5. On 12 July 2023, Mr Gil filed Defendant's Application brought in the Inherent Jurisdiction (the 'Application').
6. By the Application, Mr Gil seeks orders that the Claim be struck out and indemnity costs. The grounds of the Application are that the only cause of action in the Claim is that Mr Gil has misappropriated or stolen GS Finance's money and seeks repayment of it but GS Finance does not have or never has had the evidence necessary to prove misappropriation or stealing on the Mr Gil's part in that it does not have evidence tending to show how he dealt with the money the subject of the allegation. Further, that Mr Gil is aware of this having admitted it through his lawyer. Finally, it is an abuse of the processes of the Court to knowingly commence a hopeless case and in order to protect its processes, the Court has power in its inherent jurisdiction to strike out hopeless proceedings as it should in this matter.
7. GS Finance's submissions in response were filed on 16 August 2023. Mr Malcolm submitted that the Application was an entirely new application which did not respond to GS Finance's submissions as to an earlier application to strike out for failure to provide particulars.



8. Mr Gil's submissions in reply were filed on 6 September 2023. Mr Sugden submitted that misappropriation is a criminal offence and to prove misappropriation of money it is necessary to prove the purpose for which the alleged offender spent the money in order to prove that it is a different purpose than that for which the money was entrusted to him. Further, that proof of this requires evidence and GS Finance needs evidence tending to prove the purpose of each of the unspecified number of disbursements making up the total VT29,027,140. In addition, GS Finance has no evidence to prove the purpose of any of the alleged disbursements as admitted in the documents signed by counsel Mr Malcolm and filed in this matter. Accordingly, the proceeding on the alleged misappropriation should be stopped.
9. Mr Sugden submitted that as for the allegations of theft, that too is a criminal offence. However, a disbursement cannot be both stealing and misappropriation. To prove theft of the company's money, GS Finance must prove that in respect of each of the unspecified disbursements, that Mr Gil disbursed the money without GS Finance's permission and that when he disbursed it, he intended to permanently deprive the company of that money. Further, to prove the intention to permanently deprive the company of the money, GS Finance must have evidence to prove what Mr Gil did with the money but GS Finance has openly admitted that it has never had such evidence. Accordingly, the proceeding should be stopped in both of its causes of action namely misappropriation and theft.
10. Finally, Mr Sugden submitted that as previously noted in the Court's Minute, Mr Gil was deported from Vanuatu. His deportation has been held to be illegal by the Supreme Court but Mr Gil has not yet been able to return to Vanuatu because of further barriers that have been raised and that he is contesting. He submitted that Mr Gil's forced absence from Vanuatu makes it extremely difficult for him to access the information relevant to his defence and emphasizes the need for detailed knowledge of how GS Finance intends to prove any charges against him in order to enliven his memory which is his only resource in the circumstances in which he finds himself.

D. Discussion

11. As set out above, misappropriation was mentioned in para. 8 of the Claim but was not pleaded as a cause of action in the causes of action set out at paras 10-15 of the Claim. The Application has therefore been made on a misapprehension that misappropriation is a cause of action in the Claim.
12. As for theft, Mr Sugden submitted that GS Finance must prove that in respect of each of the unspecified disbursements, that Mr Gil disbursed the money without GS Finance's permission and that when he disbursed it, he intended to permanently deprive the company of that money.
13. It is pleaded in the Claim that by various activities, Mr Gil removed the only other Director Sang Woo Seo from the company office and premises and took sole control of the company from July 2018 to May 2020. Further, that while he had the sole care and control of the entire business, he misappropriated VT29,027,140. I understand the effect of pleading



those matters to be that Mr Gil engineered the removal of his fellow director Mr Sang then as sole director controlling the business, he disbursed the company funds without the company's permission as he did so on his own without requisite authority. As to intention to permanently deprive the company of that money, that is covered by the pleading that despite various demands, Mr Gil has refused, neglected or declined to return the money.

E. Result and Decision

14. For the reasons given, the Defendant's Application brought in the Inherent Jurisdiction filed on 12 July 2023 is **declined and dismissed**.
15. The Defendant is to pay the Claimant's costs of the Application as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.

DATED at Port Vila this 7<sup>th</sup> day of September 2023  
BY THE COURT

  
Justice Viran Molisa Trief

