

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

Civil Appeal
Case No. 22/1327 COA/CIVA

IN THE MATTER OF: **AN APPEAL BY FPF COMPANY LIMITED IN
THE SUPREME COURT OF THE REPUBLIC
OF VANUATU**

BETWEEN: **FPF COMPANY LIMITED**
Appellant

AND: **LOU WEI & ZHOU WEI**
Respondent

Date of Hearing: *10 May 2023*

Coram: *Hon Chief Justice Lunabek
Hon Justice J Mansfield
Hon Justice R Young
Hon Justice D Aru
Hon Justice V Trief
Hon Justice E Goldsbrough*

Counsel: *Mr N Morrison for the Appellant
Mr S Hakwa for the Respondent*

Date of hearing: *10 May 2023*

JUDGMENT OF THE COURT

Introduction

1. FPF Company Limited (FPF) agreed to build a detached villa with a swimming pool for a total price US\$310,790.00 for Lou Wei and Zhou Wei (the Weis).
2. Although the Weis paid the purchase price to FPF for the house, the house was never built. The contract was cancelled. FPF reimbursed the Weis for US\$5000, but despite demand, did not repay the remaining US\$305,790. And so, the first cause of action by the Weis against FPF in the Supreme Court, was seeking reimbursement of the US\$305,790.
3. FPF transferred the lease of the land, on which the house was to be built, to the Weis for VT2,000,000. This sum was paid to FPF and the transfer of the leasehold interest to the Weis



affected. In the second cause of action in the Supreme Court, the Weis sought the cancellation of the lease and return of their VT2,000,000. They alleged the lease was invalid; registration was procured by mistake; and the consent to the lease was invalid.

4. Finally, the Weis sought liquidated damages against FPF. They said the liquidated damages arose from the breach of contract by FPF. The total claim was VT11,761,000.
5. In the Supreme Court, the Judge gave damages to the Weis of US\$305,790 for the breach of contract and liquidated damages of VT11,761,000. The Judge did not consider the claim for cancellation of the lease and the return of the VT2,000,000. Although interest had been claimed on all the damages sought, the Judge gave no interest on either of the sums awarded and gave no reasons for not making such an order.

The Appeals

6. FPF, after leave was granted, filed an appeal. The appeal does not challenge the award of the US\$305,790. It does challenge the Judge's decision to award liquidated damages of VT11,761,000. FPF says there was no evidence called to support this liquidated damages claim and so it was not a live issue at trial.
7. The Weis cross-appealed leave being given on 6 December 2022. The leave order made by the trial Judge was in the following terms:

"Leave be granted to the claimants to file a cross-appeal in relation to interest."

8. The cross-appeal filed in the Supreme Court, alleged the Judge erred in; not setting aside the transfer of the lease; not ordering reimbursement of the purchase price of VT2,000,000; failing to make any award of interest on the judgement sums.

Liquidated Damages Award

9. The Weis accepted in their submissions and at the hearing before this Court, that they did not call any or sufficient evidence at trial to support their liquidated damages claim and so did not oppose this court setting aside the liquidated damages award.
10. The appeal against the liquidated damages award is therefore allowed and judgement for those damages set aside.

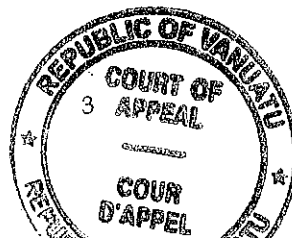
Cross Appeal

11. The Supreme Court order of 16 December 2022, granting the Weis leave to cross appeal provided as relevant at paragraph three:



"Leave be granted the claimant to file a cross appeal in relation to interest"

12. The Weis therefore were not given leave to appeal any issues relating to the lease, its cancellation or reimbursement of the lease purchase price. When the Judge gave leave in December 2022, the Weis had an opportunity to challenge the limitation in the order granting the cross appeal. When this court pointed out the limitations of the leave given by the Court, counsel for the Weis accepted that part of the appeal could not be pursued. That part of the cross appeal will be dismissed
13. The final issue to be resolved by this Court is the challenge by the Weis to the Judge's failure to award any interest on the judgement sum of US\$305,790. The Wei's sought interest in this sum in their pleadings. The Judge made no mention of interest whether appropriately ordered or otherwise in the judgement.
14. The Weis submit in support of their claim to interest, that they paid US\$310,790, the full contract price by July 2017 for the house. The house and pool were due to be completed by February 2018. FPF had received all of the contract price but did not construct a house or a pool. The Supreme Court claim was filed on 11 September 2018. From that date until today and ongoing, the Weis have not been able to use the sum of US\$305,790.
15. FPF in their written submissions said that when the Judge entered judgement, the fact he did not mention interest, illustrates that he did not intend to award interest.
16. The Judge did not illustrate in his reasons for judgement, that he had addressed the question of interest on the damages awarded. The Judge should have done so. The parties were entitled to know why interest was or was not being ordered. We do not consider his silence can be taken as refusal.
17. In the ordinary course of events, particularly in a case such as this, where as a commercial contract where one party has paid for a service that has never been provided, there is a strong presumption that interest will be ordered. There is nothing in this case that indicates that this Court should not order interest on the judgement sum.
18. The appeal on the question of interest on the judgement sum of USD \$305,790 is allowed. We order simple interest from the date of filing of these proceedings, being 11 September 2018, at 5% per annum until the date of judgement in the Supreme Court, the amount to be calculated by the parties and if they are unable to agree by the Registrar of the Supreme Court.
19. In summary the appeal against the order for liquidated damages is allowed and the liquidated damages award set aside.
20. The appeal against the leasehold interest and the consequential damages claim were without jurisdiction and are dismissed

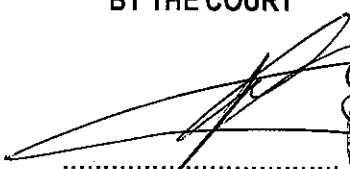


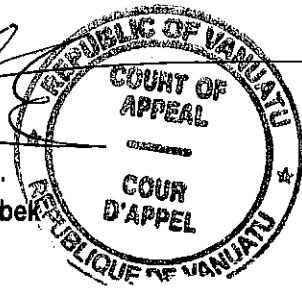
Costs

21. Both parties have had some limited success. In those circumstances we make no order as to costs.

DATED at Port Vila, this 19th day of May 2023

BY THE COURT


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Hon. Chief Justice V Lunabe



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REBLIQUE DE VANUATU" at the bottom. In the center, it reads "COURT OF APPEAL" and "COUR D'APPEL" separated by a horizontal line. There is a small star on the right side of the seal.