

**IN THE MAGISTRATES' COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Case No. 16/4001 MC/CIVIL

BETWEEN:

SALING STEPHENS
Claimant

AND:

HUANG XIAO LING
First Defendant

AND:

TONY CHEN
Second Defendant

Oral Decision delivered: 31st October, 2017.

Written Judgment dated: 01st November, 2017

Coram: Fsam (Magistrate)

*Appearances: Saling S for Claimant
Anna S for Defendant/Applicant*

JUDGMENT

Introduction

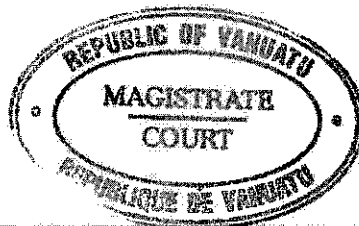
1. This is the written Judgment of decision of this Court delivered orally on the 31st October, 2017, in respect of the claim in this matter, and wherefrom Judgment was entered in favour of the Claimant.

The Claim

2. On 15th of December, 2016 the claimant had filed a Magistrate's Court claim claiming unpaid bill of costs in the sum of VT 311,943 jointly by the defendants, and sought the following reliefs,

- i) An order for the first and second defendants to pay the sum of VT 311, 943.
- ii) Interest of 6 % per annum from date of Judgment until date of full and final settlement.
- iii) Costs of and incidental to the action.

Factual Background



3. The facts are that the second defendant had approached the claimant in his Santo office sometime in April 2013, requesting on behalf of both first and second defendants for the claimant to file an appeal regarding the Judgment of the Supreme Court in Civil case 247 of 2011, wherefrom Claimant accepted request and prepared and filed a notice and grounds of appeal.

Allegations

4. The Claimant alleges that –

a) Upon finalizing the Notice and grounds of appeal, the second defendant paid the sum of VT 25, 000 being for appeal fees and the notice and grounds of the appeal were duly filed in the court registry.

b) After the determination of court of Appeal of the appeal, the claimant submitted its bill of costs totaling VT311,943 for work done and which the claimant submitted defendants have failed or refused to settled.

Defence

5. The Defendants through their Counsel, filed a Defence on 19th of April 2017, admitting they have not paid the bill of costs because they had made an oral agreement with the claimant not to pay the said bill of cost for the appeal case, and filed further defence to the claim on the 7th of July 2017, wherefrom they pleaded the following:

i) That the claim is without merit

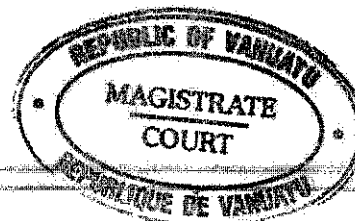
ii) The claim be dismissed with costs.

6. Further the Defendants state in their defence as well as supporting sworn statements, that they made the agreement after the defendants had paid VT 600,000 to the claimant in the form of two cheques that were signed by the first defendant while the second defendant was on a trip to china. That the first cheque was meant to be towards charge of VT50,000 for opening file and VT100,000 as an advanced deposit in the Supreme Court case 247 of 2011, **Huang Xiao Ling (Daming Store) v Milha & Betty Lenong**.

7. The Defendants alleged that, they got deceived and misled by the claimant into signing the cheque and he later filled in the amount of VT500, 000 which he withdrew from the cheque instead of the VT50,000.

8. Further in his sworn statement, the first defendant stated that they tried to get the extra VT450, 000 from the claimant but he always refused with excuses.

9. It was then that they approached the claimant to handle the **Huang Xiao Ling (Daming Store) v Milha & Betty Lenong (appeal case)**, where the defendants are alleging their entered



into a verbal agreement with the claimant that they (defendants) will not pay any legal fees in the appeal case as the VT450, 000 owing to them by claimant would go towards covering the legal fees in the appeal matter.

Evidence by Claimant

10. The Claimant adduced evidence through his sworn statements, filed 15th of December 2016 and 4th of May, 2017 respectively, and oral submissions in court in relation to his sworn statements.

Evidence by Defendants

11. The Defendants each filed their sworn statements in support of their defence, on the 19th and 26th April, 2017 respectively, as well they had filed a further sworn statement on the 26th of May in response to further sworn statement of Claimant filed 4th of May, 2017.

Submissions:

12. The Defendants in their written submission raised two issues for court's consideration and determination:

(i) Whether or not the Defendants should pay a sum of VT311, 943 to the Claimant for his legal service?

(ii) Whether or not the Claimant should make deduction from the VT450, 000 he got from the defendants and then refund the Defendants with VT138, 057?

13. The Claimants filed, written submissions on 26th of October, 2017 some three months later after Defendants' written submission had already been filed on the 20th of July, 2017.

14. There was some delay along the way in the proceeding, in the months between June and September, particularly on part of Claimant, with regards to attending court hearings and giving oral evidence or filing necessary court documents, as he had been reported sick and attending to medical treatment, as per medical reports filed in court.

Findings

15. Having considered all relevant evidence before me, I find in relation to issue (i) that the Defendants are entitled to pay the sum of VT311, 943 to the Claimant for his legal service.

16. And in relation to issue (ii), I find the answer in the negative.

Reasons

17. I give the following reasons for these findings.



18. From the Defendants' submission, Counsel on their behalf stated that they do not deny that the Claimant had been providing them legal service, however the defendants submit that the claimant owed them VT450,000 of which he took from them without their consent.

19. They further submitted that the VT 450,000 will go towards paying the sum of VT 311,943, in the **appeal case**, which is the subject matter of this claim, and the balance remaining, that is a sum of VT 138, 057 will return to the Defendants.

20. The Defendants relied on their sworn statements and an ANZ Bank Statement annexed as 'JA1', to show the 2 (two cheques) that were withdrawn by the claimant. These being Cheque No. 00001581 for VT 100, 000 and Cheque No. 00001582 for the supposed amount of VT 50,000 but from which VT 500,000 was withdrawn instead by the Claimant to their surprise. Money withdrawn from the two cheques were supposedly to cover for opening filing fee (VT 50,000) and advance deposit legal fees (VT100,000) for Supreme Court case No. 247 of 2011 **Milha & Betty Leong v Huang Xiao Ling (Daming Store)**.

21. According to the Defendants' sworn statements, the claimant had withdrawn an excess of VT450, 000 by withdrawing a total of VT600,000 following the altered Cheque No. 00001582 of VT500,000 instead of VT 50,000.

22. I find that while the two cheque numbers and amounts are confirmed in the bank statement, annexed to the Defendants' sworn statement as 'JA1', it still does not prove if the particular transaction made 21st of June 2007, was the same transaction made by the claimant as alleged by the Defendants. There is also no mention of a date or exact year on which the alleged agreement came about, or when the alleged payment of VT 600, 000 was made.

23. In their defence, the defence submitted that the agreement came **after** the defendants made a payment of VT600,000 to the Claimant in the form of two cheques.

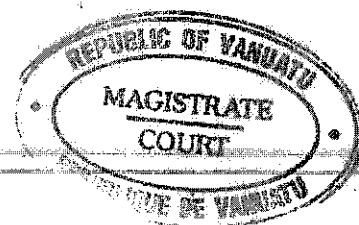
24. According to the evidence before me, it is clear that the defendants had approached the claimant for his legal assistance sometime about 2011 for the Supreme Court case No 247 of 2011, **Milha & Betty Leong v Huang Xiao Ling (Daming Store)**. And a few years later, about 2013, they approached the claimant again to file an appeal regarding above matter

25. Therefore, it would seem that the alleged agreement would have come about within the years between 2011 and 2013, as it would be around these periods that the alleged payment of VT 600,000 was made.

26. However, I find it difficult to see any relationship between the transactions made on the annexed bank statement regarding the alleged two cheques, with the evidence given by defendants in their submission.

27. Therefore I reject the defendants' submission.

28. The Claimant on the other hand, submitted that while the Defendants are not denying the bill of costs of VT 311,943 the Defendants had failed to specifically file a counter-claim from



which they can properly seek orders of the court for Claimant to refund the VT450, 000 or other reliefs they are seeking.

29. The Claimant further stated that the alleged VT 500,000 was paid to the claimant's bank account as advanced direct deposit towards the **Supreme Court case 247 of 2011**, and according to his sworn statement dated 4th of May 2017, the Defendants still have an outstanding sum of VT314, 543 owing him, per bill of cost of this particular case attached to his sworn statement and annexed and marked as 'A'. This was not disputed by the Defence counsel.

30. The Claimant also submitted that the Defendants had outstanding bill of costs as well in relation to other matters he had had carriage of on behalf of Defendants, that is, **Charlie Bunny Fung -v- Huang Xiao Ling** where the Defendants still owed the claimant VT 1,000, 000 which remained unpaid to date. Again this was not disputed by the Defence counsel.

31. He further stated that while there are various bill of costs against the Defendants for the legal assistance he had provided them over separate matters, he maintains he never made an agreement with the defendants for them not to pay the court of **appeal case Huang Xiao Ling (Daming Store) v Miha Betty Leong**, and the Defendants should focus on the main issue before the court which he says is for the Defendants to pay out the outstanding bill of costs of the appeal case as is the main claim in this matter.

32. The Claimant then referred to case *Lo v Sagan [2003] VUCA 16* where from it was quoted from the last paragraph of page 7 of the Judgment: "*It is fundamentally important in the system of pleading and procedure that governs the conduct of litigation in this Republic that Courts determine only the issues raised between the parties in the pleadings and at trial. ...*"

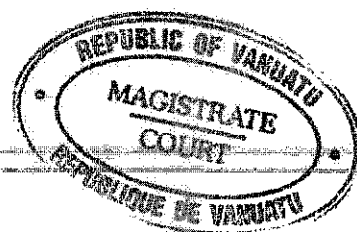
33. I accept the claimant's submission and legal authority cited above.

34. I find that while the Defendants had filed a defence to the Claim, on the 19th of April 2017, and a further defence on the 7th of July 2017, they generally stated events leading up to the two cheques and alleged oral agreement, with no specific relief sought concerning the cheques or VT450,000 still owing to them by the claimant.

35. They were entitled to prove this allegation, which they have not done so to my satisfaction on the balance of probabilities.

36. Had the Defendants pursued a claim against the claimant on issue of the two cheques, by way of a counter-claim, this issue would have been properly set out and properly dealt with by this court.

37. Even so, I am surprised that the Defendants are claiming the VT 450, 000 sum from the claimant, while they still have a significant outstanding sum of money owing to the claimant in relation to the separate matters stated by the claimant earlier, and which defendants have not denied or disputed.



38. I also find it interesting to note from the claimant in his oral submission making reference to his letter of complaint filed 17th of August, 2017, wherefrom he expressed his concern on the way the first defendant has been swearing court documents on behalf of himself and the second defendant while the second defendant had been out of jurisdiction since 2015, attending to medical treatment overseas.

39. The Claimant stated that the first defendant's sworn statement dated 26th of April, 2017, was admitted in open court by Defence Counsel that it was signed by the Defendant in China, scanned and emailed to Vanuatu, and brought to the commissioner of oaths in Santo by the second defendant, and signed and sealed by late Mandeng John in the absence of the first defendant (deponent).

40. The Claimant further submitted that such action taken by the second Defendant Mr Tony Chen and Late Mrs Mandeng John, amounts to fabrication of evidence in court, and I must agree with the Claimant.

Conclusion

41. And for the above reasons, I am satisfied from the evidence, on the balance of probabilities that the Claimant's claim must succeed.

Orders

42. I therefore make the following orders:

- i) That the Claimant is entitled to the sum of VT 311,943 to be paid jointly by the Defendants.
- ii) The Defendants are to pay an interest of 6% per annum from date of Judgment until date of full and final settlement
- iii) The Defendants are to pay costs of this proceeding as agreed or taxed failing agreement.

Dated this 01st day of November, 2017.

BY THE COURT

