

IN THE MAGISTRATE'S COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil
Case No. 20/2111 MC/CIVL

BETWEEN: JACK IAPA
Claimant

AND: WOO-RIN MOTORS LTD
First Defendant

SONIA LENGKONE
Second Defendant

JOHNNY TAKANA
Third Defendant

Date of Hearing & Oral Decision 26th November, 2020.

Date of Written Decision: 7th December, 2020.

Before: FSam

In Attendance: Mr Nalwan_J for the Claimant, Mrs Harrison_T for the First
Defendant, 2nd and 3rd Defendant appearing on their own.

Copy: Yawha & Associates, Molbaleh & Taiva Lawyers, Second Defendant,
Third Defendant.

DECISION



Introduction:

1. The Claimant initially filed a claim dated the 8th of August, 2020, and I did notice the court copy of this claim not signed by the claimant counsel, and there is no filing date on the court document as well. The first defendant filed his defence through his counsel Mrs Harrison on the 8th of September, 2020. The first defendant mostly denies each facts in the claim and stated that he did not receive the deposit of VT600, 000, and also sought to be removed from this proceeding.
2. While the claimant was seeking refund of the deposit in question against all the defendants jointly or severally, on the basis of vicarious liability against the first defendant, and fraud and misrepresentation against the second and third defendants. These were not properly pleaded in his initial claim, and so the court had ordered the claimant to file an amended claim in this regard.
3. The First defendant in response to the amended claim, maintained his position in his initial defence and denies vicarious liability.
4. The 2nd and 3rd defendants had been appearing on their own, both stating their difficulty financially to afford legal representation. This court discussed with counsels and 2nd and 3rd defendants, and then directed that given their situation, it would be proper for the 2nd and 3rd defendant to appear and present their submissions orally in response to the claimant and the first defendant, as this would also avoid further costs that would be incurred by these two defendants if this matter was to proceed to Trial. The matter was then listed for hearing of submissions accordingly.

Brief Summary of Facts:

Summary of Claimant's Claim:



5. The claimant in his amended claim says he relied on the first defendant representing himself through the second and third defendant, as the seller of Hyundai bus, and relying on this representation, he effected the deposit with an agreement to pay the balance on exchange of the bus.

6. That the 2nd and 3rd defendants after receiving the deposit, had failed to deliver the bus to him to date, and this led to the claimant demanding refund of the deposit from the defendants.

7. The claimant says he is at lose due to the defendants blaming each other on who is to take responsibility to refund him, because the first defendant says he did not receive the deposit in its business account and is alleging theft against the second and third defendant over the deposit. On the other hand the 2nd and 3rd defendants are denying the allegation of theft and say the company was accounted for the deposit in its business account, and the first defendant should refund the claimant.

8. The claimant claims that he suffered loss due to the on-going blaming of each other by the defendants as to who is to refund the claimant of his deposit.

Summary of First, 2nd and 3rd defendants' Defences:

9. The First defendant through his counsel Mrs Harrison, claims he is unaware of the deposit that he did not receive the deposit and there is no record of the deposit being made into the company's business account. That he was that he was away overseas on the 31st of December, 2012, and does not know of the deposit. However, when the court enquired into supporting documented evidence in respect of his travelling, he submitted through his counsel that he wishes to withdraw the earlier facts to his defence, and says that he was in Vila, but he was unaware of the deposit. Whether or not this varying defences is due to miscommunication because of difficulty in communicating instruction between the First defendant and his counsel, I do accept the fact there are Chinese or Korean nationals doing businesses in Vila, who have come to court, engaging local private lawyers, and there is always the language barrier in place where counsels are finding it difficult to communicate with their clients especially when there is no interpreter readily available to assist with such cases before the courts, and the counsels have to endeavor at their own costs to get an interpreter to assist them in such a situation as the case



before us. Having so considered, I accept the first defendant was in country, and did not travel overseas, when the deposit was paid.

10. The 2nd defendant says she did receive the VT600.000 deposit from the claimant, and receipted it and put it away to be collected by the First defendant at the end of the day's business hours. On the allegation of theft by the claimant and First defendant, she denies taking or stealing the money.

11. The 3rd defendant says he only made negotiations with the claimant in respect of the sale. That he must consult the First defendant before signing the sales document with the claimant. He further says on the 31st of December, 2012, the first defendant did not travel overseas, but was attending to his other job at the Sky Gardens, where he contacted him before proceeding with signing the sales document with the claimant. Again on the allegation of theft, he denies this.

Issues:

12. I heard submissions from the claimant, First, 2nd and 3rd Defendants respectively. Both Claimant Counsel and Defence Counsel for the First defendant, also provided some case authorities for this court's consideration. I now set out the following as the main issues that I need to consider and determine:

12.1 Whether or not the 2nd and 3rd Defendants received the deposit as employees of Woo-rin Motors Ltd?

12.2 Whether or not the 2nd and 3rd defendants took the deposit for their own use and without the authorization of the first defendant?

12.3 Whether or not the 1st Defendant is vicariously liable for the 2nd and 3rd defendants' misappropriation or theft?

Findings



13. According to the evidence presented before me, I make the following findings:

Issue 1: Whether or not the 2nd and 3rd defendants received the deposit as employees of Woo-rin Motors Ltd.

13.1 Mr Iapa must prove this issue on the balance of probabilities.

13.2. There is evidence by the 2nd defendant that she did receive the deposit from the claimant, as is her usual work procedure, and she receipted the money and put it away to be collected by the First defendant.

13.3. There is also evidence by the 3rd Defendant that he makes the negotiation in respect of the sale with the claimant, and the sales document signed between himself and the claimant is the standard sales document. That he always gets the authorization of the First defendant first before signing the sales document, as he did in this case.

13.4. While the First Defendant's counsel submitted that the act of receiving the deposit was done by the 2nd and 3rd defendants outside the scope of their employment, I disagree with this submission, firstly, because the only evidence before me is that it was the 2nd defendant who received the money and she did so in her capacity as the company secretary and it is her usual work routine. Also, before the deposit is made, it is the 3rd defendant who negotiates for this arrangement before a sales agreement is signed accordingly. That both the 2nd and 3rd defendants were employees of the first defendant when the deposit was paid. Therefore I answer this issue in the affirmative (with a 'Yes').

Issue 2: Whether or not the 2nd and 3rd defendants took the deposit for their own use and without the authorization of the first defendant?

13.5 The 2nd Defendant was the last person who received the money. According to her evidence, she put the deposit away to be collected by the First Defendant.



13.6 There is no other evidence presented, except on the allegations by the claimant and First defendant, to satisfy me on the balance of probabilities that the 2nd and 3rd defendants took the deposit for their own use, without the authorization of the first defendant. Therefore I must answer this with a negative (“No”).

Issue 3: Whether or not the First Defendant is vicariously liable for the misappropriation or theft of the 2nd and 3rd Defendants?

13.7 I repeat my findings in Issue 2 above. There is no evidence that the 2nd and 3rd defendants committed theft or misappropriation of the deposit in question. I take note of the criminal case cited by Mrs Harrison, of *PP v Johnny Takana* in respect of the 3rd defendant in this case, and while the 3rd defendant was found not guilty because the essential elements of obtaining money by false pretense against him were not proven beyond a reasonable doubt, I find it does not help the first defendant’s case here to the extent of supporting his allegation of misappropriation or theft against the 3rd defendant.

13.8 I am guided by the cases of *Dali v Mavuti [2020] VUSC 64*; and *Lloyed v Grace, Smith & Co. [1912] AC 716*, submitted by claimant counsel, and find that the 2nd and 3rd Defendants did conduct the sale of vehicle and the signing of sale contract in the course of their employment for the First Defendant, Woo-rin Motors. The 3rd defendant negotiated the sale on behalf of the First Defendant, and payment was made to the First defendant company through the 2nd defendant. Accordingly, the First Defendant should be vicariously liable for the 2nd and 3rd defendants’ conduct. I therefore answer this issue in the affirmative (“Yes”).

Result

14. Accordingly, I enter Judgment for the Claimant.

15. The First Defendant shall pay to the claimant the sum of VT600, 000.



16. The First Defendant shall pay to the claimant 5% interest of the above sum from the 31st of December 2012 until the sum is paid in full.

17. Costs to be paid by the First defendant at a standard rate as agreed, or taxed failing agreement.

DATED at Port Vila, this 7th day of December, 2020.

BY THE COURT



Magistrate

