

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

Civil Case No. 138 of 2010

BETWEEN: **JOSEPH TANGIS**
Claimant

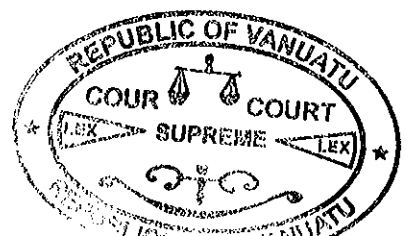
AND: THI THAM GOISET
Defendant

Hearing: **3 October 2012**
Before: **Justice Robert Spear**
Attendances: **Stephen Joel for the Claimant**
No appearance for the Defendant (Ronald Warsal/ Less John Napuati)

JUDGMENT

Spear J (3 October 2012)

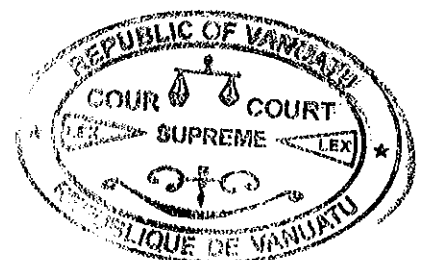
1. This claim was originally set down for hearing on 15 March 2012. The claimant was not ready at that time and by consent the trial fixture was vacated. At a conference on 23 July 2012, the case was set down for hearing commencing Friday 21 September 2012 at 9 am.
2. As it happened, that date became unavailable as a result of other commitments on my part and notice was given to the parties that the trial would indeed take place over 3 and 4 October 2012 commencing at 2 pm on 3 October 2012.
3. There has been no appearance today by or on behalf of the defendant and it is now 2:25 pm. It is clear that counsel for the defendant were aware of this fixture and, indeed, my



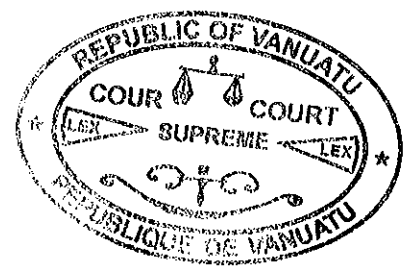
associate was in telephone conversation with Mr Napuati just this morning about the case. Mr Napuati indicated then that the case would be conducted by Mr Warsal.

4. A telephone message has just been received from Mr Napuati and been passed to me (2:25 pm 3 October 2012). It is to the effect that he (Mr Napuati) is currently in a meeting at the Scholarship Office and that Mr Warsal is on a plane heading back to Port Vila from Santo. The concluding remark on the message is that they (I take this to be Mr Napuati and Mr Warsal) were not aware of the trial: "*no save attendem trial*". However, that explanation is completely unacceptable for a variety of reasons.
 - a) On 12 September 2012, the Registrar distributed a notice in writing to counsel that the fixture date of 21 September 2012 had been vacated and that the trial would now start at 2.00pm on 3 October 2012;
 - b) That receipt book kept by the receptionist at the court office records that Mr Warsal personally uplifted that notice on 13 September 2012;
 - c) The fact that the trial did not start on 21 September 2012 must surely have put counsel on notice that another date either had been or would be arranged;
 - d) The weekly Court lists are published to all counsel and they could hardly have avoided seeing this case listed for today and tomorrow.
 - e) Mr Joel indicates that he had, indeed, given notice by letter to Mr Warsal's firm yesterday that he required the defendant to be present today for cross examination.
 - f) Sworn statements were filed for the defence as recently as 21 September 2012.

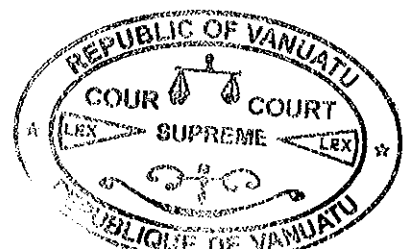
5. The Court is always reluctant to proceed in the absence of representation from both parties. However, in these circumstances, I am driven to conclude that the failure by and on the part of the defendant to attend court today cannot be accounted for by inadvertence or by oversight. Accordingly, the case will proceed notwithstanding that I will be left hearing from only the claimant. Account will, however, be taken of the evidence for the defence.



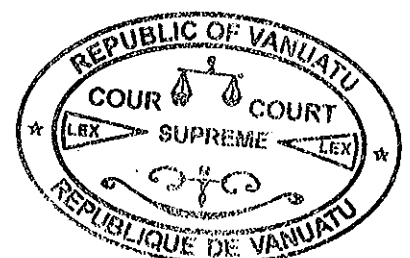
6. This is a claim for repayment of a loan of Vt 6 million made by the claimant to the defendant in April 2005. The evidence points to Joseph Tangis being introduced to Thi Tam Goiset by one Tom Tari (since deceased) who was Joseph Tangis's nephew. Tom Tari was involved in property development. Tom Tari was aware that Joseph Tangis had a substantial amount of savings from the sale of land.
7. The evidence from Joseph Tangis is that he was approached by Thi Tam Goiset and Tom Tari with an invitation to lend Vt 6 million to Thi Tam Goiset on the strength of her personal representation to him that she would provide him with a much better interest rate than the banks. She offered to pay him interest on the proposed loan of Vt 6 million at the rate of Vt 50,000 per month which broadly equates to an interest rate of 10% per annum; albeit, payable monthly.
8. I am satisfied on the evidence that Vt 6 million was accordingly lent by Joseph Tangis to Thi Tam Goiset on 7 April 2005 and on that basis as to payment of interest. Without more, it was a loan repayable on demand.
9. I am also satisfied that the only payments that have been made by Thi Tam Goiset on account of interest are those specified in paragraph 8 of the sworn statement of Joseph Tangis dated 21 November 2011 as having been made between November 2005 and November 2006 amounting in total to Vt 240,000.
10. The evidence that had been filed by the defendant is, of course, uncontested and that is because the defendant is not present to answer questions from Mr Joel.
11. Her evidence is that the loan was advanced by Joseph Tangis and Tom Tari jointly for a particular real estate investment at Blacksands and that she had repaid the loan directly to Tom Tari. There was then a shift of position, indeed more than one shift of position, to the point of assertions that various advances were made by her to certain people essentially at the direction of Tom Tari and on account of the repayment of the loan capital. This has all been completely rejected by Joseph Tangis who states emphatically that at no stage was the loan made by anyone other than himself.



12. Joseph Tangis further asserts that at no stage was this loan or moneys advanced for the purpose of an investment by him in a property at Blacksands or anywhere else as Thi Tham Goiset has asserted. It was a simple loan to her for an attractive interest rate.
13. The final development in this matter was a document claimed by Thi Tham Goiset as having been entered into between Joseph Tangis and herself on 1 March 2012 recording a settlement whereby Vt 1,500,000 was paid to Joseph Tangis in full and final settlement of his claim on the basis that he would thereupon discontinue with this proceeding. A copy of the document was produced by Thi Tham Goiset. It appears to be what she stated it to be. It appears to have been signed by both Joseph Tangis and Thi Tham Goiset with Joseph Tangis' signature witnessed by a Moise Kaloris.
14. Joseph Tangis emphatically denied that that this was his signature or that he ever agreed to settle with Thi Tham Goiset. Indeed, and this is of more than passing significance, Thi Tham Goiset states that this settlement was negotiated on Joseph Tangis's behalf by an intermediary.
15. Thi Tham Goiset also filed a sworn statement from this Moise Kaloris (also known as Kaloris Tales) who asserts that he was authorised by Joseph Tangis to negotiate such a settlement and which settlement payment was to be applied to settle a taxi debt of Vt 1.8 million that he claimed was owed to him by Joseph Tangis and Tom Tari for driving them around Port Vila. That again is completely denied by the defendant to the extent that he states that he was never driven around Port Vila by Moise Kaloris. He cannot discount the possibility that Tom Tari used this taxi.
16. There are other documents that appear at first sight to be supportive of the fact that such a settlement took place and which were supposedly signed by Joseph Tangis and witnessed by "his son Timothy". However, the clear evidence from Joseph Tangis is that he does not have a son named Timothy and, indeed, there is no male by the name of Timothy in his immediate family. There is evidence from a Sael Timothy which, to a large degree, relies upon hearsay but makes a somewhat surprising assertion.



17. In his sworn statement of 18 September 2012, Sael Timothy recounts Joseph Tangis did not want to travel to Port Vila without first obtaining, "*the advice of his lawyers*". However he (Sael Timothy) met on 1 March 2012 with Thi Tham Goiset, Ronald Warsal and Moise Kaloris Talais at which time Moise Kaloris Talis presented a small note authorising Sael Timothy to collect money on behalf of Joseph Tangis. However, even though the "deed" of settlement is dated 1 March 2012, Sael Timothy states that it was not signed that day and indeed it was not signed and executed until 19 March 2012. In this respect, reference is made to the second sworn statement of Sael Timothy asserting that Joseph Tangis executed the deed of settlement on 19 March 2012.
18. There are clear difficulties with the evidence from Thi Tham Goiset in respect of this deed of settlement. They present a very confusing and internally conflicting account of events. Against that there is the very clear evidence from Joseph Tangis that he never executed such a deed of release and settlement. The question can perhaps be posed, why would he compromise his claim to that significant degree?
19. Particularly given the contradictory evidence from the defence as against the firm and clear evidence from Joseph Tangis, I am not prepared to accept that there has been any accord and satisfaction arising by the document described as deed of release and settlement that appears to have its origins at some time in March 2012.
20. I am satisfied on the balance of probabilities, and particularly on the evidence of Joseph Tangis, that he made a loan to Thi Tham Goiset on 7 April 2005 at her request in the sum of Vt 6 million and on the basis that interest will be paid at the rate of Vt 50,000 per month. Clearly that was a loan repayable on demand. Demand has been made repeatedly but no repayment of the principal sum has been forthcoming.
21. Joseph Tangis is entitled to recovery of the principal sum of the loan of Vt 6 million.
22. He is also entitled to recover the unpaid interest owed to him from the time that the loan was made on 7 April 2005 to the date that this proceeding was commenced on 10



September 2010 - a total of 65 months. The total interest payable over that period amounts to Vt 3,250,000 from which is to be deducted the total amount of interest paid of Vt 240,000 leaving an outstanding balance at 10 September 2010 of Vt 3,010,000.

Conclusion

23. Judgment is accordingly entered for Joseph Tangis against Thi Tham Goiset in the sum of Vt 6 million and unpaid interest of Vt 3,010,000 making a total of Vt 9,010,000. There will be further interest payable on that total sum of Vt 9,010,000 at the rate of 5% per annum from 10 September 2010 together with costs on a standard basis to be agreed or taxed. Those costs will include the air fares and accommodation expenses of Joseph Tangis who resides on Santo but has had to travel to Port Vila for this hearing.
24. There will be an enforcement conference before me at the Supreme Court Office at 8.30 am on Wednesday, 21 November 2012. The defendant (as enforcement debtor) is required to attend and to bring with her details of her financial position so that she can be examined as to her financial means. Mr Joel is to arrange for a summons in form 24 to issue requiring Thi Tham Goiset's attendance at the enforcement conference. That summons may be served by delivery to either Mr Worsal or Mr Napuati.

BY THE COURT

