

BETWEEN: Kalkawa Lauman James
Claimant

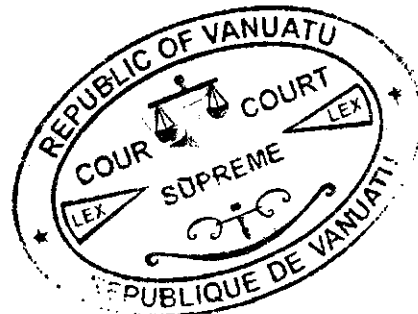
AND: Richard Collen
Defendant

Date of Hearing: 19th February 2018
Date of Decision : 14th June 2018
Before: Justice Oliver A. Saksak
Counsel: Pauline Kalwatman for the Claimant
Christina Thyna for the Defendant

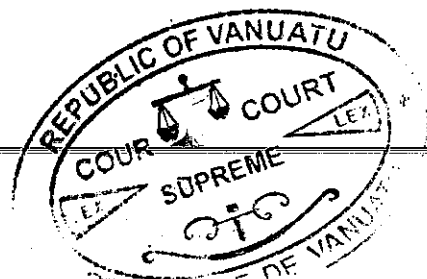
DECISION

1. The Claimant is successful in his claims against the defendant and judgment is entered in his favour for damages in the sums of-

- a) VT 1.500.000- Principal Debt
- b) VT 240.000- Replacement Costs
- c) Costs on the standard basis as agreed or taxed
- d) Interests at 5% per annum from date of filing to judgment on the sum of VT 1.740.000



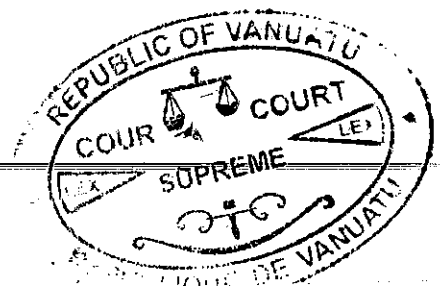
2. The defendant is not successful on his counter-claim against the claimant and his counter-claim for the sums of VT 904.766 and a further VT 1.000.000 are dismissed.
3. The Claimant and the defendant executed a sale and purchase agreement on 5th April 2013 whereby the parties agreed that
 - a) The price of the defendant's vehicle was VT 1.300.000 (Clause 1.1)
 - b) A deposit of VT 500.000 be made, (Clause 2.1)
 - c) The claimant takes possession on payment of deposit (Clause 2.3)
 - d) Payments be made by instalments of VT 100.000 (Clause 2.2)
 - e) Ownership be transferred on completion of instalments and full payment of purchase price – (Clause 3.2)
4. After the signing of the first agreement the claimant took possession of the vehicle to use to collect rubbish under the business name Havannah Rubbish Collection.
5. On 30th May 2013 the parties signed the second agreement which amended the first agreement of 5th April 2013 by
 - a) Increasing the purchase price to VT 1.500.000 (Clause 1.1)
 - b) Including the costs of wire covering of VT 70.000 (Clause 1.2)
 - c) Including the cost of tarpaulin of VT 30.000 (Clause 1.3)
 - d) Including the business licence at VT 100.000 (Clause 1.4)
 - e) Clarifying that the purchase price included the registration of the vehicle and its public transport licence or permit (Clause 1.5)
 - f) Specifying the Claimant had until December 2013 to complete payment of the vehicle (Clause 1.6)



- g) Specifying the deposit made upfront at VT 400.000 (VT 500.000) (Clause 2.1).
- h) Specifying the remaining monies payable at VT 1.100.000 (Clause 1.2)
- i) Specifying monthly instalments at VT 100.000 or fortnightly instalments of VT 50.000 (Clause 2.3)
- j) Giving liberty to increase instalments to VT 150.000 per month depending on the Claimant's monthly income (Clause 2.4).
- k) Specifying the Claimant's right to possession of the vehicle upon payment of the deposit (Clause 2.5)
- l) Specifying ownership of the vehicle remain with the defendant until the claimant completes payment (Clause 3).
- m) Specifying the defendants should not interfere with the Claimant's management of the vehicle (Clause 4.1)
- n) Specifying the claimant was to repair the vehicle and all its defaults (Clause 4.2) and
- o) Specifying the second agreement overrides all past agreements (Clause 5.1).

6. The Claimant's complaints are that-

- a) He paid a total of VT 1.500.000 as agreed and the defendant did not transfer ownership of the vehicle as agreed.
- b) The costs of wire covering (VT 70.000) and the cost of tarpaulin (VT 30.000 and business licence were included in the sale price of VT 1.500.000 and should not be paid separately as claimed by the defendant.
- c) There was no third oral agreement for an extra VT 460.000 as claimed by the defendant, and



d) The defendant did not disclose that the vehicle was under a credit union loan.

7. The defendant's counter-complaints are that-

a) He did repairs or maintenance on the vehicle in May 2013 and is entitled to VT 460.000.

b) He is entitled to a repossession fee of VT 244.766

c) He is entitled to VT 70.000 (wire cost), VT 30.000 (Tarpauline Cost) and VT 100.000 as permit fees.

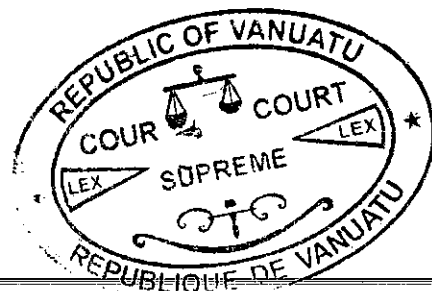
d) He is entitled to loss of income of VT 1.000.000.

8. The Claimant relies on the evidence in the sworn statements filed on 3rd November 2014, on 27th April 2015 and on 13th October 2017. He relies also on Kalo Tom's evidence by sworn statement filed on 13th October 2017.

9. The defendant relies on his sworn statements filed on 28th September 2017 and on 6th October 2017.

10. All sworn statements were agreed and admitted into evidence on 19th February 2018. Most of the facts are generally agreed.

11. As for the Claimant's claims I am satisfied from the evidence that there is no dispute that the claimant has paid the sum of VT 1.500.000 to the defendant being the purchase price of the vehicle.



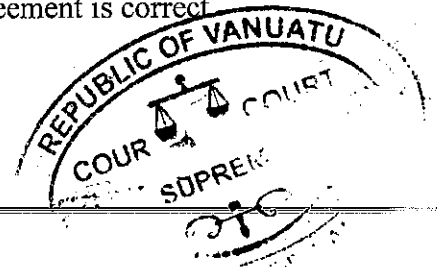
12. The dispute relate to the additional sums of VT 70.000 for wine cage, VT 30.000 for tarpaulin, VT 100.000 for business permit, VT 460.000 for repairs and related costs and VT 244.766 for recovery of repossession fees.

13. The Claimant's case appears to be that the VT 70.000, VT 30.000, and VT 100.000 are already included in the purchase price of VT 1.500.000. I accept the Claimant's assertion on this issue.

14. The first agreement of 5th April 2013 states clearly the purchase price was VT 1.300.000. That was without or exclusive of VT 70.000 + VT 30.000 + VT 100.000. The Claimant agreed to pay the extra VT 200.000 as claimed by the defendant and so they agreed to execute the second agreement dated 31st May 2013 Clause 5 of which overrode the agreement of 5th April 2013.

15. The amount of the purchase price went up to VT 1.500.000 under Clause 1.1. Clauses 1.2, and 1.3 and 1.4 clarify the increase from VT 1.300.000 by VT 200.000 to VT 1.500.000.

16. Whereas in the first agreement the upfront deposit was VT 500.000 which is indicated in the words in brackets as "(Five Hundred Thousand vatu)" after the new deposit sum of VT 400.000". (See Clause 2.1), the balance remaining is VT 1.100.000- (Clause 2.2). Putting the two figures together, it is the sum of VT 1.500.000. This is consistent with the purchase price stated in Clause 1.1 as VT 1.500.000. Therefore the Claimant's understanding of the agreement is correct



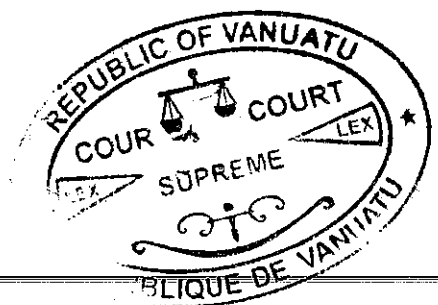
17. If as the defendant claims the purchase price should have been VT 1.500.000 + VT 200.000 = VT 1.700.000 then this amount should have been in clause 1.1 instead of VT 1.500.000. But that is not what the second agreement provides.

18. I am therefore satisfied the purchase price of the defendant's vehicle was VT 1.500.000 which is inclusive of the extra VT 200.000 being claimed by the defendant. Further I am satisfied that the Claimant has paid VT 1.300.000 plus the additional VT 200.000 making a total of VT 1.500.000. And I am satisfied the Claimant has paid this amount in full in December 2013.

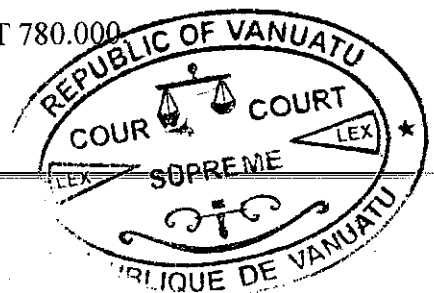
19. It follows logically also from this finding that the defendant's counter-claims for VT 70.000 + VT 30.000 + VT 100.000 must fail.

20. The claimant's claims for VT 240.000 for 6 weeks at VT 40.000 per week is not challenged and it is allowed by the Court in addition to the VT 1.500.000 he has paid to the claimant. In total the claimant is entitled to VT 1.740.000 in damages against the defendant.

21. The defendant's counter-claims for VT 460.000 due under an oral agreement is unfounded and this claim must fail. There is no basis for this amount. If it is in respect of repairs and related costs for maintenance of the vehicle done in May 2013 then there was no provision in the original agreement of 5th April 2013 which places this as a liability on the Claimant.



22. The defendant's counter-claims for VT 244,766 for recovery fee is also unfounded. It has no basis and must fail. I am satisfied the defendant failed to disclose his loan arrangements about the vehicle with Credit Union Corporation and claiming that sum from the claimant would, I accept be extortion as asserted by the Claimant.
23. There is one final issue and that is whether or not the claimant or the defendant breached the agreement?
24. From the evidence and the facts and absent written submissions from Counsels, I am satisfied the sale and purchase agreement dated 31st May 2013 has been rescinded by the claimant for failure by the defendant to effect the transfer of the ownership of the vehicle pursuant to Clause 3 of the Agreement.
25. I am satisfied the defendant breached that agreement. And as a result the claimant has suffered loss and damages for which he is entitled.
26. The Claimant's evidence is that the vehicle was removed from him on 7th August 2014. And he bought a new vehicle in September 2014 to mitigate his losses. He was earning VT 20.000 per day. He hired another truck in March 2014 at VT 8.000. See "KL3".
27. In my opinion the Claimant is entitled to damages from 7th August 2014 at VT 20.000 per day for 5 working days per week but excluding Saturdays and Sundays. That is a minimum of 17 working days for August and 22 working days for September at VT 20.000. The total amount of damages is VT 780.000.



28. In summation, the claimant is entitled to judgment for the following sums-

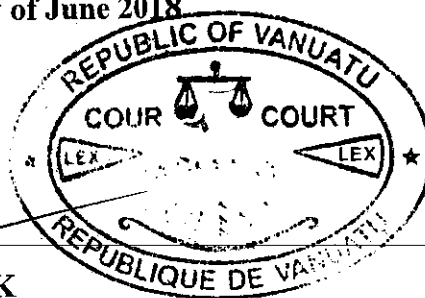
(a) Principal Debt-	VT 1,500,000
(b) Replacement Debt-	VT 240,000
(c) Damages of breach of Contract-	VT 780,000
Total	VT 2,520,000

(d) 5% per annum on VT 2,520,000 from date of filing of claim, 8th October 2014 to date of judgment

(e) Costs on the standard basis as agreed or be taxed by the Master.

DATED at Port Vila this 14th day of June 2018

BY THE COURT




OLIVER.A.SAKSAK

Judge