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

Civil Appeal
Case No. 18/2538 SC/CIVA

BETWEEN: **Edna Lew Ratonel**
Appellant

AND: **Manuela Alguet -Leroux**
Respondent

Date of HEARING:	***15th day of March, 2019 at 9:00 AM***
Date of JUDGMENT:	***22nd day of March, 2019 at 9:00 AM***
Before:	***Justice Oliver A. Saksak***
Counsel:	***Andrew Bal for Appellant*** ***Viska Muluane for Respondent***

JUDGMENT

Introduction

1. Edna Lew Ratonel appeals against the decision of the Master dated 29 August 2018 whereby the Master found and held she was liable to the estate for the sum of VT5,200,000 being for the devaluation of the property and for VT2,100,000 for unpaid rents.

2. At the hearing of the appeal Mr Bal abandoned the second ground of appeal on the basis of the Consent Order dated 13 December 2018 whereby the appellant agreed to pay VT2,100,000 as unpaid rents, VT594,160 as costs as ordered on 29 August 2018 and VT250,000 as costs of enforcement and stay of proceedings.

Cross-Appeal

3. The respondent Manuela Alguet Leroux filed a cross-appeal for the sum of VT5,440,000 as unpaid rents for periods from 2003 to 4 February 2014, for the sum of VT8,300,000 being the loss of the estimated value of the property valued initially at VT31,300,000 but sold only at

VT23,000. And finally the respondent cross-appealed for Loss of Machinery in the Showroom at VT9,098,000 or VT81,850,000 or in the alternative to a minimum amount of VT4,000,000.

Late appeal

4. The respondent's appeal was filed outside of the appeal period but counsel sought leave to appeal out of time, and leave was granted.

5. The respondent filed an application to strike out the appeal of the appellant. This was withdrawn by counsel at the outset of the hearing.

Arguments and Submissions

6. Mr Bal for the appellant argued and submitted that the Master had erred when she found the appellant was liable to pay VT5,200,000 to the estate being the devaluation costs of the property. Mr Bal founded his arguments on an agreement dated 22 June 2017 whereby the appellant and respondent had agreed for the selling price of the property at VT23,000,000 and how the proceed of such sale were to be distributed. Mr Bal argued and submitted the parties were bound by that agreement. Responding to the cross-appeal Mr Bal submitted the appellant was not responsible for collection of unpaid rents before she became the administratrix of the estate. And for Loss of Machinery on the Showroom, Mr Bal submitted the respondent had not substantiated her claims with evidence and therefore the Master was correct in rejecting that part of the claim or submission.

7. On the cross-appeal Ms Muluane argued and submitted the Master had erred in not allowing an additional sum of VT5,440,000 in unpaid rents for the periods 2003 to 4 February 2014 on the basis of Section 25 of the Administration of the Estate Act 1925. Counsel argued the appellant had failed her duty. As regards the VT8,300,000 claimed for loss of actual value of property, counsel argued that had the appellant sold the property within one year of her taking administration, it would have sold for VT31,300,000 being the value at the time. It was argued that because she failed, the value of the property depreciated greatly. Furthermore that during the relevant period, she benefitted from the property and the delay of sale. As for the loss of Machinery in the Showroom counsel argued there was evidence by Albertine Hakwa showing the sum of VT9,098,000 and the evidence of Manuela Leroux (respondent) showing

VT81,850,000. By not allowing these sums or considering them, it was submitted the Master had erred.

Discussion

8. On the appeal against the award of VT5,200,000 as devaluation costs the Court below had considered the failure of the appellant in maintaining the property at page 2 of the judgment under the Hearing "ii. Devaluation of Property". The Court made clear references to the valuation done by Richard Barnes and that done by Toka Consultants. The Court decided that had the property been properly maintained it would have attracted a sale to the value of VT28,200,000. Having sold at VT23,000,000, it was an undervalue sale by VT5,200,000. And that was how the Court held the appellant responsible for that amount.

9. Mr Bal argued that pursuant to the agreement dated 22 June 2017 the parties were bound by the sale price of VT23,000,000 as the final price. This argument is misconceived and is rejected.

10. What the respondent claimed in her submission dated 18 May 2018 at [5] page 8 was for interest or a rate for loss of use of money. Three different sums of VT5,200,000, VT8,300,000 or VT6,750,000 were submitted. The Master considered the valuation of Richard Barnes and accepted the sum of VT28,200,000 as the proper value. The Master calculated the difference between VT28,200,000 and VT23,000,000 being VT5,200,000 was the appropriate amount to award as damages against the appellant for negligence of duty. The award was made as damages. In that regard the Master was entirely correct in awarding the sum of VT5,200,000. Her judgment is therefore upheld. And the appellant's appeal on this point fails and is dismissed.

The Cross-Appeal

11. First the cross-appellant contends that the Master did not consider her submissions in relation to rentals due from 2003 to 4 February 2014. Had she done so, it is argued, the Master would have held the sum of VT5,440,000 is owing from the appellant.

12. The relevant passage in the judgment is Headed "Unpaid Rent". There does not seem to be any mention or discussion of this amount or the submission made by the respondent. This indicates this submission was not considered and the cross-appellant succeeds on this point.

13. Second, that the Master erred in not awarding the sum of VT8,300,000 instead of VT2,500,000. I have dealt with this aspect in [10] and that basically covers this point of appeal. This part of the cross-appeal fails.

14. Third, for the loss of machinery, the Court below dealt with this under the Heading "Loss of Machinery in Showroom" at page 3 of the judgment. It is clear the Court considered the evidence of Albertine Hakwa but there is no mention or indication the evidence of Manuela Leroux dated 29 April 2016 was considered. The cross-appellant's appeal succeeds on this point.

The Results

15. The appeal of the appellant is dismissed.

16. The cross-appeal of the respondent is allowed. I Order that the case be remitted to the Master for a rehearing and determination of the respondent's submissions as to unpaid rents for the period 2003 to 4 February 2014 and for rehearing and determination of the respondent's submissions as to machinery in the showroom, based on the evidence of the respondent dated 29 April 2016.

17. In the circumstances of the case there will be no Order as to costs of the appeal. Each party will bear their own costs.

DATED at Port Vila this 22nd day of March, 2019.

BY THE COURT

.....

Oliver Saksak

Judge