

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

Civil
Case No. 19/994 SC/CIVL

BETWEEN: Samuel and Sophia LnParus
Claimants

AND: Arthur Faerua, Jeanette Faerua
and Hugh Langsdale
Defendants

Date: 25 March 2020
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr D. Yahwa for the Claimant
No appearance by of for the Defendants

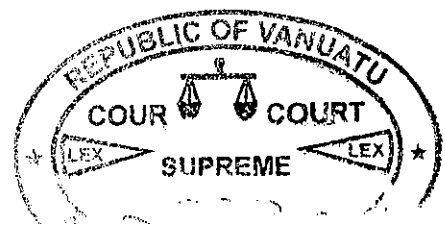
JUDGMENT

A. Introduction

1. This is an application for judgment by default due to no defence having been filed within 28 days. It relates to a failed contract whereby the Defendants were to rent to buy a home and shop property at Beverly Hills, Port Vila.

B. Background

2. The agreement entered into between the parties was made on 30 November 2012. It provided for the Defendants to pay a deposit of VT 3 million towards the total price of VT 16 million. The balance of the purchase price was to be made up by monthly "rent" payments of VT 250,000. It was part of the agreement that once the total paid had reached VT 16 million, the NBV mortgage would be discharged and title to the property would be transferred to the Defendants.
3. There was provision for the monthly "rent" to be paid on or before the 15th of each month; with a provision that late payments would accrue a penalty of a further VT 5,000 for each late payment.



C. Claim

4. The Defendants commenced to occupy the property from 30 November 2012. The VT 3 million deposit was paid on 3 December 2012.
5. The monthly "rent" payments were infrequent. Further, they were for amounts less than had been agreed. The following table shows all the payments made:

- 28 January 2013	VT 100,000;
- 12 February 2013	VT 95,500;
- 28 February 2013	VT 100,000;
- 14 March 2013	VT 50,000;
- 28 March 2013	VT 250,000; and
- 9 April 2013	VT 80,000.

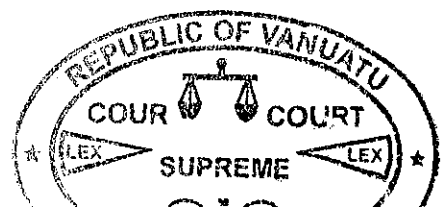
6. The Defendants vacated the property on 26 February 2015, after reminder letters had been sent regarding the late rent payments; and finally, after receiving a formal Notice to Vacate.
7. Tragically, on 17 July 2017, Mr Hugh Langsdale, one of the Defendants passed away. The Claim is accordingly now restricted to Mr and Mrs Faerua.
8. The Claimants seek the outstanding balance of the rent due. That is calculated as 27 months rent less the amount received, namely 27 times VT 250,000 less the VT 673,500 received. That equation comes to a total of VT 6,076,500.
9. As well, the Claimant seeks the late rent payments of VT 5,000 for every month the rent payments were not paid on or before the 15th of the month. The Claimant calculates this to be 26 times VT 5,000, which totals VT 130,000.

D. Defence

10. The Defendants have filed a Response to the Claim, indicating the Claim was opposed. However, there have been no further steps taken to defend the matter. According to the Civil Procedure Rules a Defence should have been filed within 28 days of service of the Claim. That has not been done.
11. Accordingly, there is no challenge to anything the Claimants have put before the Court.

E. Discussion

12. Although not expressly stated, the Claimants have repudiated the contract. There is no longer any prospect of the Defendants owing the property.



13. The deposit paid, was non-refundable. It therefore follows that the deposit paid cannot now be apportioned as part of the rent owing for the Defendants' occupation of the property. Effectively, the contract provided for the deposit to be paid, and quite separately for the balance of the VT 13 million purchase price to be paid at VT 250,000 per month.

14. The Claimant's calculations are entirely correct.

F. Decision

15. Judgment is hereby entered by default, pursuant to Rule 9.3(4)(b)(i) of the Civil Procedure Rules, in the gross sum of VT 6,206,500.

16. Interest is payable on that sum from the date of the Claim, namely 2 May 2019, until it has been paid in full at the Supreme Court rate of interest, namely 5% per annum.

17. The Claimant is also entitled to the costs of this action. They are set at VT 75,000. The costs are to be paid within 28 days.

G. Enforcement

18. Pursuant to Rule 14.5(1) I now schedule a Conference at 8am on 5 May 2020, to ensure the judgment has been executed or for the judgment debtor to explain how it is intended to pay the judgment debt. For that purpose, this judgment must be personally served on the Defendant.

Dated at Port Vila this 25th day of March 2020

BY THE COURT

Gardie Ull
Justice G.A. Andrée Wiltens

