

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

**Civil**  
**Case No. 21/642 SC/CIVL**

**BETWEEN: Paul Hocten**  
Claimant

**AND: Jinming Wang**  
Defendant

*Date of Hearing:* 14 September 2021  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr L. Malangtugun  
Defendant – Ms S. Mahuk  
*Date of Decision:* 24 September 2021

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**JUDGMENT AS TO APPLICATIONS BY CLAIMANT AND DEFENDANT**

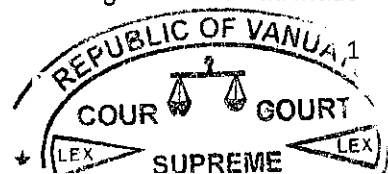
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A. Introduction

1. This decision relates to the Claimant Paul Hocten's Application for summary judgment and the Defendant Jinming Wang's Application for Strike-Out of the Claim.
2. Mr Hocten filed a third Application seeking leave to amend the Claim. Whether or not I deal with that application will depend on the outcome of the first 2 applications.

B. Pleadings

3. By the Claim, Mr Hocten alleges that he paid Mr Wang VT200,000,000 being deposit for the purchase of real property bearing lease title no. 11/OB22/025 and seeks payment for the refund of that payment.
4. In the Defence, Mr Wang alleged that discussions were had between the parties in relation to the sale of the 'Golden Port' however they never entered into a contract in any way, shape or form. As to the 5 payments that Mr Hocten alleged that he had made



to Mr Wang totalling VT200,000, Mr Wang alleged that invoices were issued to assist Mr Hocten with release of monies held by the Financial Intelligence Unit, that the invoices were back-dated at Mr Hocten's request and were created in 2020 bearing a TIN number after Customs had introduced use of TIN to replace CT numbers. Further, that the narrative of 'Golden Port' sale and payment history is a fabrication by Mr Hocten.

5. In the Reply to Defence, Mr Hocten responded to the pleading that the parties never entered into a contract that, "it was just an offer made by the defendant and the Claimant informed that Defendant that he will think about it and would give him a response at some later stage." He alleged that the invoices issued to him were in regards to the deposit he paid and not for any other purpose such as the Financial Intelligence Unit or otherwise. He alleged too that the invoice bearing a TIN number and being back-dated was irrelevant to Mr Hocten's cause of action.

C. Claimant's Application for Summary Judgment

6. Rule 9.6 of the *Civil Procedure Rules* (the 'CPR') applies where a Defence has been filed but the Claimant "believes that the defendant does not have any real prospect of defending the claimant's claim" (rule 9.6(1), CPR).
7. Rule 9.6(9) of the CPR provides that the Court "must not give judgment against a defendant under this rule if it is satisfied that there is a dispute between the parties about a substantial question of fact, or a difficult question of law."
8. The grounds for Mr Hocten's Application for Summary Judgment are as follows:
  - a. That there is no defence to the Claim because of the evidence filed by Mr Hocten (4 sworn statements by Mr Hocten, and 1 sworn statement each by Janet Hoctene, Joseph Kasso, Titus Simon and Silas Mae);
  - b. That the Defence contains only a general denial without any justification for such general denial; and
  - c. That the Defence does not really affect and or damage the evidence filed by Mr Hocten.
9. The first ground of the Application asserts that there is no defence to the Claim because of the evidence filed by Mr Hocten. However, the purpose of a summary judgment application is not to determine facts in dispute. Disputed questions of fact must be determined at trial. Accordingly, Mr Hocten cannot rely on the evidence filed to say that there is no defence to the Claim. There is no legal merit in this ground of the Application.
10. The third ground of the Application asserts that the Defence does not affect or damage the evidence filed by Mr Hocten. That is quite misconceived. A claimant's evidence is not countered by a Defence; it must be countered by evidence from the defendant. Accordingly, there is also no legal merit in this ground of the Application.
11. Finally, the remaining ground of the Application asserts that the Defence contains only a general denial without any justification. With respect, I disagree. The Defence contains



a number of justifications for denying the Claim including that the parties never entered into a contract, the invoices relied on were created in 2020 at Mr Hocten's request to assist him to release monies held by the Financial Intelligence Unit and the narrative about the sale of Golden Port and payments made are a fabrication. There is also no legal merit to this ground of the Application.

12. For the reasons given, the Claimant's Application for Summary Judgment is **declined and dismissed**.

D. Defendant's Application for Strike-Out of the Claim

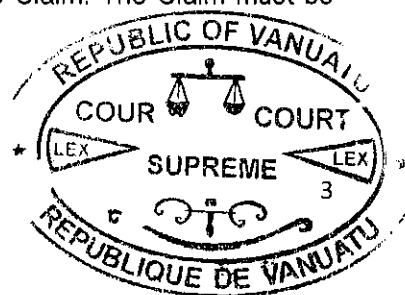
13. The grounds for Mr Wang's Strike-Out Application are that the Claim is fabricated and an abuse of process because:

- a. The evidence is compelling that on the occasions that Mr Hocten purportedly paid VT200,000,000, he was not in possession or control of such amount;
- b. That there was no contract on foot;
- c. The motivation for the Claim is that Mr Hocten is alarmingly indebted to Mr Wang for goods and services obtained from Mr Wang on credit with promises of couching his debt with a promise to purchase the 'Golden Port' business and restaurant, however Mr Hocten is unable to service these debts; and
- d. The invoices and receipts relied on by Mr Hocten are demonstrably false.

14. As I have stated, the purpose of a summary judgment application is not to determine facts in dispute. Whether or not Mr Hocten was in possession or control of the requisite amounts of money on the dates that he allegedly made payments to Mr Wang, Mr Hocten's motivation for making the Claim and whether or not the invoices and receipts relied on are false are disputed questions of fact for determination at trial. Accordingly, there is no legal merit in these grounds to strike out the Claim.


15. However, as to the ground asserting that there was no contract on foot, I note that in the Reply to the Defence, Mr Hocten agreed that there was "just an offer made by the defendant and the Claimant informed that Defendant that he will think about it and would give him a response at some later stage." Further, it is not pleaded anywhere in the Claim that the parties had a written contract. Mr Malantugun conceded this at p.3 of the Skeleton Submissions filed on 27 August 2021 that Mr Hocten did not sign any contract with Mr Wang.

16. There must be a written contract for the sale and purchase of real property. The Claim does not plead that the parties had a written contract for the purchase of the real property bearing lease title no. 11/OB22/025. Further, Mr Malantugun's submissions conceded that the parties did not have a signed contract. In the circumstances, I consider that there is no cause of action disclosed in the Claim. The Claim must be struck out.



- E. Claimant's Application seeking leave to Amend the Claim
17. Given my decision that the Claim be struck out, I need not consider the Application seeking leave to Amend the Claim.
- F. Result and Decision
18. For the reasons given, the Claimant's Application for Summary Judgment is **declined and dismissed**.
19. For the reasons given, the Defendant's Application for Strike-Out of the Claim is **granted**. The Claim is **struck out**.
20. Given my decision that the Claim be struck out, I need not consider the Application seeking leave to Amend the Claim.
21. The Claimant is to pay the Defendant's costs as agreed or taxed by the Master. Once set, the costs are to be paid within 21 days.

DATED at Port Vila this 24<sup>th</sup> day of September 2021  
BY THE COURT

  
Justice Viran Molisa Trief

