

**BETWEEN: Paul Hocten & Janet Hocten trading as JPO
Investment Limited
Claimant**

**AND: Anthony Soris Sagaya Jude Viillavarayen trading
as J. N. Aqua Marine
First Defendant**

**AND: The Motor Vessel "Pacific Star"
Second Defendant**

Date of TRIAL: 3rd day of September, 2021 at 9:00 AM

Date of Judgment: 7th day of July, 2022

Before: Justice Aru

**In Attendance: L Malantugun – Claimant
D Yawha – First Defendant
Second defendant – no appearance**

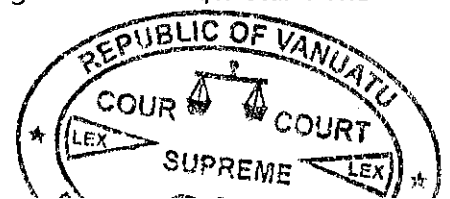
RESEVED JUDGMENT

Introduction

1. This is a claim for breach of contract for the sale and purchase of the vessel *MV One People* by the claimants to the first defendant.

Background

2. The claimants , Paul and Janet Hocten are husband and wife and are well known in the business community as they own a number of businesses namely JPO Investments Limited and Semiawiljoo Shipping Limited . The first defendant , Anthony Soris Sagaya Jude Viillavarayen (Mr Sagaya) is a Sri Lankan national previously a resident of Noumea ,New Caledonia doing business as SN Fishing & Export .He also owns and trades in Vanuatu as JN Aquamarine.
3. On 22 April 2016 Mr Hocten on behalf of Semiawiljoo Shipping Limited signed a Memorandum of Agreement (the 2016 MOA) with Mr Sagaya in Noumea for the sale and purchase of Mr Sagaya's vessel which was then operating as *MV Pacific Star* . The

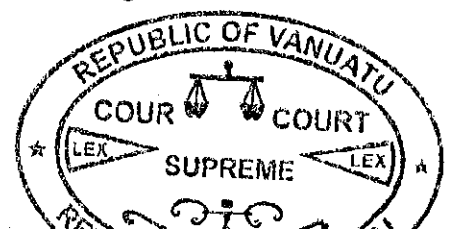


purchase price was VT 30 million to be paid in four (4) instalments. The signatories to the 2016 Memorandum were Mr Sagaya for SN Fishing & Export as the seller and Mr Hocten for Semiawiljoo Shipping Ltd as the buyer . No witnesses signed with them.

4. On 12 May 2016 a Bill of Sale was signed by the parties recording the transfer of the vessel by Mr Sagaya to Mr and Mrs Hocten as transferees .Mrs Hocten also signed as a transferee . On the same date a Transfer of Ownership was also signed by the parties .There is no dispute concerning these transactions . In addition all the necessary paperwork were completed and issued by the Department of Ports and Harbour namely, a provisional delivery certificate of registry and a provisional manning certificate under the new name *MV One People* so that the vessel can enter Vanuatu .
5. In order for the vessel to sail to Vanuatu , Mr and Mrs Hocten engaged Mr Sagaya for the task and he accepted the offer .The terms of this engagement is disputed as to whether it was oral or written . I will come to that later .
6. The vessel was brought to Vanuatu under this arrangement . On arrival all permanent registration documents namely : a permanent certificate of registry , a permanent safety certificate and a permanent safe manning certificate were issued by the Department of Ports and Harbour .The name of the vessel was formerly registered with the Vanuatu Financial Services Commission as *MV One People* with Mr Hocten as the registered owner . The vessel was in operation from August 2016 to February 2018. The claimants allege that it incurred heavy losses and as a result , the vessel was advertised for sale for VT 18 million . The first defendant offered to buy the vessel for VT 10 million . The defendants agreed to the sale and on 30 May 2019 a Memorandum of Agreement for the sale and purchase of the vessel was signed with the first defendant as purchaser . The claimants allege that to date they have not received any payment for the vessel as promised . As a result they filed the claim.

Pleadings

7. In brief , the claimants claim the first defendant breached their contract and rely on the United Kingdom Sale of Goods Act 1893 alleging deceit ,fraud ,undue influence, unconscionability unjust enrichment . They claim they are entitled to damages and compensation and that the contract be declared null and void, the vessel be returned to them and that the transfer of ownership be cancelled .
8. The first defendant on the other hand denies the claim and says their services were engaged pursuant to a manning agreement which the claimants breached and still owe him a sum of VT 16,485,000 . A sum of VT 14,485,000 was paid by cheque but returned unpaid by the bank due to lack of funds .
9. By way of counter claim, the first defendant claims the sum of VT 14,485,000 being monies owed for services rendered to the claimants under the manning agreement and VT 2,460,000 for the repair of the vessel with 5% interest an damages for stress and trauma .



Evidence

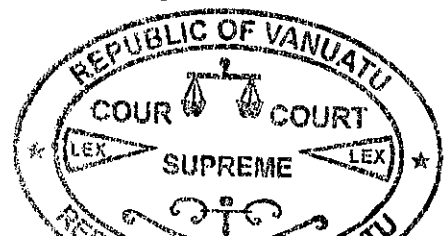
10. The evidence for the claimants was given by Mr Paul Hocten [Exhibit C1], [Exhibit C2] and [Exhibit C3], Mrs Janet Hocten [Exhibit C4] and [Exhibit C5], Johnson Willie [Exhibit C6], Thomas Ialmok [Exhibit C7], Sul Ezra [Exhibit C8], Daniel Esau [Exhibit C9] Priscilla Philip [Exhibit C10] and Famona Saling [Exhibit C11]
11. Mr Sagaya gave evidence himself in support of his defence and counterclaim [Exhibit D1], [Exhibit D2] and [Exhibit D3].

Discussions

12. At the end of the trial, directions were issued for the filing of submissions. The claimants filed their submissions. The defendants have not filed any submissions to date despite a number of reminders. This is a civil case. The burden of proof rests with the claimants. They have to prove their case on the balance of probabilities. At the outset, there is no dispute about the original sale of *MV Pacific Star* to the claimants. The issues arise when the claimants engaged the first defendant to bring the vessel to Vanuatu as they admit they lacked the knowledge and experience to man, operate and manage a shipping business.
13. The first issue is whether there was a Manning Agreement. The parties agree there was a manning agreement. Where they differ is the claimants allege the manning arrangement to engage the first defendant was verbal and nothing was written. Mr Sagaya on the other hand says they signed a written Manning Agreement spelling out the terms of his engagement to bring the vessel to Vanuatu. If the answer to the first issue is Yes, that there was a written Manning Agreement, the second issue is whether the terms of the Manning Agreement were breached and by whom. The third issue is whether *MV One People* was sold to the first defendant. If the answer is Yes, whether the sale was obtained through unconscionable conduct, undue influence, duress, deceit and fraud on the part of the first defendant.

Issue 1 - Whether there was a written Manning agreement

14. As set out above, the vessel *MV One People* was previously owned by the first defendant under the name *Pacific Star*. The claimants went to Noumea to purchase the vessel from the first defendant for a sum of VT 30 million.
15. Following the purchase, the claimants admit that they engaged the first defendant to deliver the vessel to Vanuatu. They allege this was done verbally and the terms were orally agreed. The claimants deny signing any Manning Agreement. The first defendant disputes that and says to protect his position to deliver the vessel to Vanuatu, a Manning Agreement was entered into and signed by himself and Mr Paul Hocten [see annexure **AJI Exhibit D2**].



16. Paul Hocten in his evidence accepts that his signature is on the Manning Agreement but says he did not sign it as he would never sign any document by himself without Mrs Hocten who would always co-sign documents with him. That is rejected as the Memorandum of Agreement for the sale of the vessel was signed by Mr Sagaya and Paul Hocten himself as owner . Mrs Hocten did not sign the Memorandum with her husband although she confirmed under cross examination that they were both in Noumea to complete the purchase of the vessel.

17. Under cross examination , Mr Hocten confirmed his knowledge of the terms of the written Manning Agreement when responding to the following questions from Mr Yahwa :

Q. In your discussions, he (Mr Sagaya) will be paid VT 500,000 every month?

A. Yes

Q. Apart from payment of VT 500,000 to Anthony each month, you agreed for 4 Sri Lankans to man the ship to Vanuatu

A. Yes

Q. You agreed Anthony will pay the costs of visa's and travelling to Vanuatu?

A. Yes

Q. You agreed if the Sri Lankans come to Vanuatu, you will pay their tickets, salary, residence permits and repatriation costs?

A. Yes

Q. Part of your discussions with Anthony regarding the ship is that Anthony will advise how the ship will be operated because he knows the shipping business?

A. Yes

Q. He will also make sure that the crew have proper certificate from Maritime and training need?

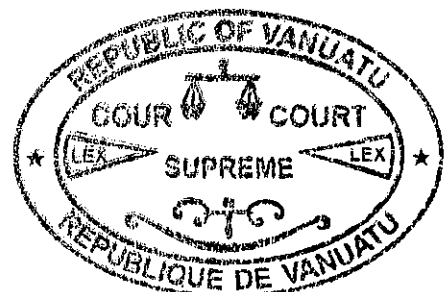
A. Yes

Q. Agree you as owner of the ship you will keep all accounts of the ship and sales separately for the shipping business?

A. Yes

18. The claimants did not bring any other evidence to show that Mr Hocten did not sign the Manning Agreement except accepting that it was his signature but he did not sign such document. Furthermore, Mr Sagaya was not cross examined in respect of Manning Agreement . His evidence is the Manning Agreement was signed by himself and Mr Hocten as he wanted to protect his position .I accept the first defendant's evidence as the vessel had just been purchased from him and he was asked to man the vessel which was in itself a huge risk .

19. I therefore find that Mr Hocten did sign the Manning Agreement and therefore my answer to the first issue is Yes , there was a written Manning Agreement setting out the terms of the manning arrangement .

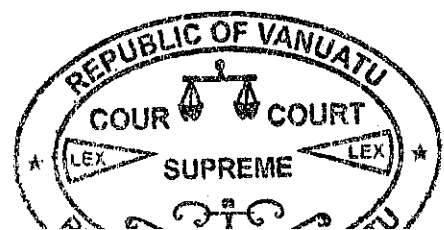


20. The Manning Agreement was entered into and signed by Mr Paul Hocten as owner on behalf of Semiawiljoo Shipping Ltd and Mr Sagaya as the manning agent on behalf of J N Acqua Marine . The main terms of the agreement were:

- Term – it is to commence from 1 June 2016 and be for a period of five (5) years.
- Obligations of the owner of *MV One People* –
 - a. to employ the following Sri Lankan nationals to man *MV One People* :
 - 01 Chief Engineer
 - 01 Engine room assistant
 - 01 Marine fitter
 - 01 chief Cook
 - b. The contract period for each crew member will be nine (9) months from the date of joining on board the vessel.
 - c. The owner has to arrange for the relevant Vanuatu visa to the crew members during their stay on board the vessel.
 - d. The owner has to pay an air ticket to each crew from Colombo to Port Vila for a safe journey to join the vessel
 - e. After completion of their contracts , a return air ticket has to issue for a safe journey from Port Vila to Colombo Sri Lanka by the owner ;
 - f. A sum of VT 500,000 (Five Hundred Thousand Vatu) has to be paid by the owner to the managing agent
- Obligations of the manning agent
 - a. The manning agent has to pay the crew members the agreed signed salary on end of each calendar month.
 - b. All costs relating to the crews relevant courses , passports seaman books, and medicals is the responsibility of the crew members or the manning agent

Issue 2 - whether the terms of the Manning Agreement were breached and by whom

21. The claimants say that due to their special disability being lack of knowledge or education experience and skills to operate the vessel they contracted the first defendant to be their manager and financial controller and because he knew of these special disabilities accepted the offer . That is rejected as the claimants are well known business people. The agreement does not state that the first defendant will be manager and financial controller. As the manning agent the first defendant is to ensure 4 Sri Lankan seamen are available to serve as Chief engineer, engine room assistant , marine fitter and chief cook to man the vessel so that it can operate in Vanuatu waters .
22. The agreement was for a period of 5 years starting first June 2016. The first defendant says that once the ship begun operating until 31 December 2018 the claimants owed him VT 22,455,000 in expenses. The claimants paid VT 5,970,000 leaving a balance of VT



16,485,000. On 29 January 2019 they gave him a cheque for VT 14,485,000 but there were no funds in the account when the cheque was presented and is still outstanding.

23. The claimants says that pursuant to their agreement they made the following payments to the first defendant in 2016 :

- 31.8.16 – Chq No 0000359 VT500,000
- 30.9.16 - Chq No 0000360 VT500,000
- 31.10.16 - Chq No 0000361 VT500,000
- 30.11.16 - Chq No 0000362 VT500,000
- 31.12.16 - Chq No 0000363 VT500,000

24. And in 2017 the following:

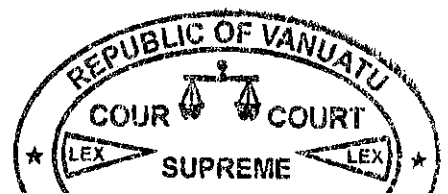
- 31.1.17 Chq No 0000364 VT1,000,000
- 28.2.17 Chq No 0000365 VT1,000,000
- 31.3.17 Chq No 0000366 VT1,000,000
- 1.4.17 Chq No 0000367 VT1,000,000
- 3.8.17 Chq No 0000368 VT1,000,000
- 30.11.17 Chq No 0000369 VT2,150,000

25. The claimants allege these payments were all cash cheque payments. The first defendant denies receiving these funds .The claimants have not shown in their evidence any evidence or bank statements to show that these funds were debited from the respective account and paid to the first defendant or that the cheques were actually cashed and paid out to the first defendant . That would have been sufficient proof to corroborate the check butts shown. The cheque butts on their own cannot be proof that money was paid to the first defendant as he denies receiving any of these funds.

26. Furthermore the claimants in their evidence provided copies of letters allegedly written by the first defendant acknowledging receipt of cash monies paid by JPO Investments to JN Fishing & Export on the following dates :

- 20.12.16 - VT 4million
- 15.3.17 - VT 6 million
- 3.1.18 - VT 7 million.

27. The first defendant denies receiving any of these funds. First he was operating his business in Vanuatu as JN Aqua Marine not JN Fishing & Export and second each payment would be too large an amount to be paid in cash without some sort of scrutiny by the bank over the source of the funds . Given the first defendant's denial, it is for the claimants to prove these funds were received by the first defendant . In my view the letters alone are not sufficient prove of payment and receipt of funds. There is no



evidence that these funds were actually paid and received by the first defendant other than a letter produced by the claimants saying he did. A bank statement indicating payments made and received would have sufficed.

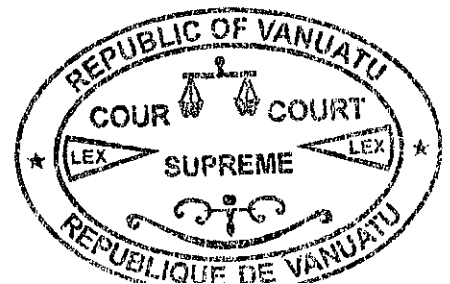
28. In answer to the issue, the Manning Agreement was breached by the claimants in not keeping up with their payments to the first defendant as agreed . Total expenses owed by the Claimants from 1 June 2016 to 31 December 2018 was VT 22,455,000. The claimants paid a total amount of VT 5,970,000 leaving an outstanding balance of VT 16,485,000. Although a cheque payment of VT 14,485,000 was made by the claimants as part payment , it was rejected by the bank when presented by the first defendant due to lack of funds and remains unpaid.
29. As the manning agent , any suggestion that Mr Sagaya was also the financial controller and manager of *MV One People* is rejected . Similarly the claimants evidence on this aspect of the claim is rejected .

Issue 3 - Whether the sale of MV One People was obtained through unconscionable conduct , deceit and fraud .

30. On 30 May 2019 the claimants allege they reluctantly signed a Memorandum of Agreement (the 2019 MOA) for the sale and purchase of *MV One People* by Mr Sagaya , a Bill of Sale and a Transfer of Ownership of the vessel to JN Aquamarine was also signed . They allege they were unduly influenced , coerced , forced and defrauded in the process . The payment was made in two cheques of VT 5million . Following the transfer , the Department of Ports and Harbour formalised registration of the transfer with the vessel renamed as *Pacific Star* . On 23 June 2020, the Acting Regulator of Ports and Harbour confirmed by letter that Mr Sagaya was the new registered owner of the vessel previously known as *MV One People* .
31. On 25 August 2020, the Vanuatu Foreign Investment Promotion Agency (VIPA) issued JN Aquamarine with a certificate of approval as an investor and that has not been revoked.
32. The claimants advertised the sale of the vessel for VT18million . When the first defendant approached them to purchase the ship for VT 10 million they agreed and signed the memorandum of transfer .The claimants were informed that when his cheque for VT 14,485,000 is cleared they will get their VT 10 million purchase price . He denies any fraud or unconscionable conduct .Mrs Hocten under cross examination denies being threatened with a knife or weapon or gun to force her to sign the sale agreement . She denies signing the sale agreement however no evidence is shown that it was a fraud .

Counterclaim

33. The first defendant counterclaims for funds owing under the Manning Agreement being VT 16,485,000, VT 2,460,000 for repairs done from 30 May 2019 to 31 October 2020 and damages for stress and trauma with interest at 5% per annum.



34. The claim for damages for stress and trauma are rejected as there is no medical evidence to that effect . Similarly the claim for costs of repairs undertaken by the first defendant is also rejected . No invoices or payment receipts were produced by the first defendant to show he incurred such expenses .

Result

35. The claimants have not proved their case on the balance of probabilities . The claim is therefore dismissed . The counterclaim is allowed in part. The claimants' cheque payment of VT 14,485,000 shall offset the first defendant's cheque payment totalling VT 10,000,000. The claimant shall pay the outstanding balance owing on the first defendants expenses in the sum of VT 6,485.000 within 30 days with interest at 5% per annum . The first defendant is entitled to costs to be agreed or taxed by the Master.

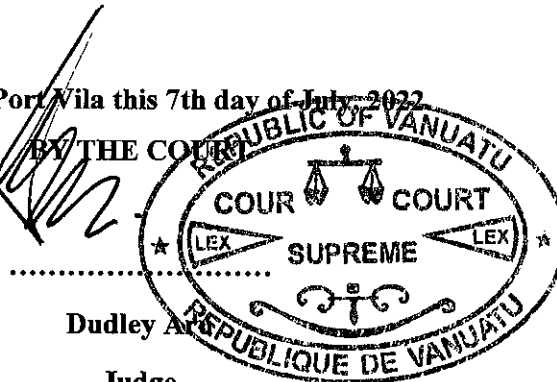
36. The first defendant is also declared the owner of the vessel now renamed *MV Pacific Star* formerly known as *MV One People* .

Enforcement

37. For the purposes of enforcement , an enforcement conference is listed for **8.15am on 18 August 2022** for the claimant to inform the Court whether payment has been made . The sheriff to serve the claimants Mr. and Mrs. Hocten personally with a copy of this judgment immediately.

DATED at Port Vila this 7th day of July 2022

BY THE COURT



Dudley A
Judge