

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

**Civil**  
**Case No. 20/2862 SC/CIVL**

**BETWEEN: Alain Jacobe**  
Claimant

**AND: Port Vila Municipal Council**  
Defendant

*Date of Hearing:* 18 October 2022  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr J. Tari  
Defendant – Mr S. Kalsakau  
*Date of Decision:* 22 February 2023

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**DECISION AS TO QUANTUM OF DAMAGES**

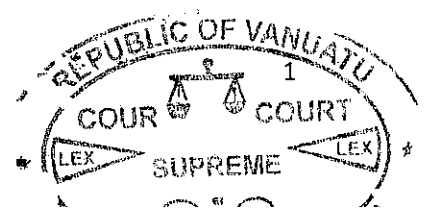
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A. Introduction

1. On 10 December 2022, Default Judgment was entered in this matter. The matter then proceeded to hearing as to quantum of damages and filing of written submissions.
2. This is the decision as to quantum of damages.

B. Background

3. On 19 October 2020, the Claimant Alain Jacobe filed a Claim against the Defendant Port Vila Municipal Council ('PVMC') for an amount of damages to be decided by the Court.
4. The Claim was not defended. This resulted in Default Judgment for an amount to be determined.
5. The Default Judgment has never been appealed nor application made to set it aside.



6. Accordingly, the accepted facts are as follows:
- a. Mr Jacobe is a businessman operating at his business place at Tebakor area in Port Vila;
  - b. On 4 May 2018, Lesley Latro, a PVMC employee in the course of his employment was driving the PVMC vehicle registration 4149 and caused an accident which resulted in damage to Mr Jacobe's property at Tebakor area;
  - c. Mainguy Consulting Engineer assessed the damage to the property and recommended the full construction of the building from its foundation to the roof;
  - d. Mr Jacobe obtained quotes from two separate construction companies for construction of the damaged building;
  - e. Despite demand and despite its promises to, the PVMC has not paid the costs of repair and the property has not been repaired in accordance with the Engineering report and the two construction companies' quotes; and .
  - f. The PVMC is vicariously liable to pay for the costs of the damage caused by Mr Latro.
7. Mr Jacobe seeks damages for the costs of the repair of VT7,316,352, general damages for trauma and stress of VT5,000,000, interest and costs.

C. The Evidence

8. Mr Jacobe in his sworn statement filed on 3 November 2020 [**Exhibit C1**] attached a copy of the engineering report obtained from Mainguy Consulting Engineer and Project Management's report titled "Jacobe Building at Tebakor "Structural Damages to the Building due to Truck Collision" dated March 2019 (annexure "AJ1" of **Exhibit C1**). Clauses 2.3 and 3 of the report state as follows:

2.3 **RECOMMENDATIONS**

*The extent of damages caused by the heavy vehicle is quite visible with extensive structural cracks to the external walls that protrude inside.*

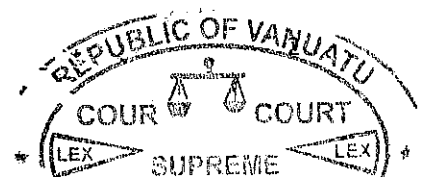
*Therefore the entire damaged walls where Bedrooms 1 and 2 are located are to be completely reconstructed from footings to roof in line with the plans in appendix B. Drawing XA1.01a is the demolition plan that confirms the extent of the damages and areas to be reconstructed.*

*When reconstruction is to occur, the Contractor is to ensure the structural plans attached in Appendix B are strictly followed including all the finishes similar to the existing with ceiling, painting etc...*

*The external chain link fence is also to be reinstated.*

3 **CONCLUSION**

*Based on the above findings, it can be concluded that the existing building was extensively damaged with structural damages to the walls and therefore a full section of the Building is to be reconstructed in accordance to the structural plans.*



9. Mr Jacobe also attached copies of the quotations he obtained from two construction companies for the necessary reconstruction. Franconieri and Son Construction's quotation of VT7,737,131 was attached as annexure "AJ2" of **Exhibit C1**. Christophe Dinh Construction's quotation for VT7,316,352 was attached as annexure "AJ3" of **Exhibit C1**.
10. In his sworn statement filed on 4 March 2021 [**Exhibit C2**], Mr Jacobe deposed that the damaged building was used for rental business. The business Tebakor Island Products Ltd that he was General Manager of had entered into an agreement with Michel Raikatalau of V-Organic to use the building for storage and training (attached as annexure "AJ1" of **Exhibit C2**). This agreement was for monthly rent payable of VT207,770 for a period of 24 months, totalling VT4,984,980
11. The sworn statement of Mr Jacobe's lawyer Mr James Tari was tendered by consent [**Exhibit C3**]. Mr Tari attached a copy of Mainguy Consulting Engineer and Project Management's report dated 27 June 2022 responding to the sworn statement of Peter Sakita filed for the PVMC. The report states as follows:

*Further to our previous report dated March 2019, we have been advised that the Port Vila City Council has provided a quote from Pandosy J. Charles of VUV3,211,440 to repair the damages to roof and repair the cracks to the walls.*

...

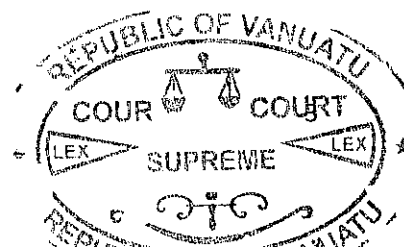
*It was recommended that part of the building be demolished and reconstructed from footings to roof as the damages caused by the accident resulted in severe structural damages.*

*This is not reflected into the quote received from Mr Pandosy.*

....

*Therefore I confirm herewith that the total amount of the quote provided by Mr Pandosy will not be sufficient to undertake the works in line with our Structural report to reconstruct the damages areas.*

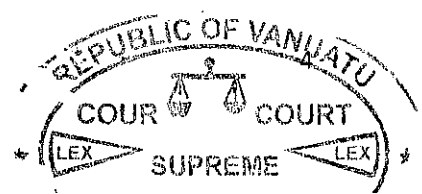
12. In cross-examination, Mr Jacobe stated that his deceased father Joseph Jacobe was the registered lessee of the property at Tebakor. Mr Jacobe's sister Marie-Jo Raikatalau was appointed as administrator of his estate. He said that last week Lands confirmed that Family Jacobe Limited is now the lessee of the property where the accident occurred and that the other land with the commercial building on it is now in the name of Tebakor Island Products Limited.
13. Mr Jacobe was asked why Family Jacobe Limited was not the Claimant. He answered that he was a director of both family companies, he had asked the companies to sue and through the lawyer, his name appeared as the Claimant. He said that the company has 4 directors who agreed to the suit being brought. He thought that there was a company resolution to that effect. He agreed it was not in his sworn statement. It was put to him that the company as the lease owner was the proper Claimant. He replied that he did not know how to answer the question but as a company director, he thought he had the right to sue.



14. Mr Jacobe agreed that the accident happened in May 2018 and then he obtained the Mainguy engineer's report in March 2019. It was put to him that he waited a whole year before getting the Mainguy report. He answered that the PVMC truck caused the accident, it was not his fault, so he would wait... It was put to him that in fact he had no money to pay for repairs. Mr Jacobe replied that he would not repair while the case was on foot. The engineer's report stated that the building had been shaken to its foundation so the case must end before he can do any repairs.
15. It was put to him that no repairs having been done since the accident, the building has deteriorated even more. He replied that the report stated that the building must be destroyed and rebuilt so he could not see how the building would deteriorate more when the engineer's recommendation is that it must be destroyed and rebuilt. He agreed that no claim for loss of the company's profits was set out in the Claim. He agreed that he did not have medical evidence for the claim for general damages.
16. There was no re-examination.
17. The sworn statement of Peter Sakita, Town Clerk of the PVMC was also filed although not tendered into evidence as Mr Sakita was not called to do so. A copy of the quotation to repair the damaged building of VT3,211,440 from Charles Pandosy was attached. Mr Sakita stated that the PVMC was prepared to pay Mr Pandosy to undertake the repairs based on his quote and so asked the Court to endorse that quote over the two provided by Mr Jacobe which he stated were excessive and exorbitant.

D. Submissions

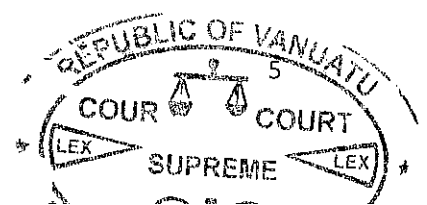
18. Mr Tari submitted that Mr Jacobe's evidence included an engineering report which was vital to show the damage done. Then knowing the extent of the damage, Mr Jacobe obtained quotes to repair the damage that the engineer had assessed in his report.
19. He submitted that there was no engineering report in evidence that supported the amount of the quotation attached to Mr Sakita's sworn statement. Therefore the Court could not rely on that quotation to fairly assess the damages due to Mr Jacobe. However, it could rely on the quotations adduced by Mr Jacobe, which were based on the engineering report obtained. He invited the Court to assess damages in the lower amount of the two quotations provided.
20. Mr Tari also submitted that Mr Jacobe's evidence about his lost earnings was not disputed by any evidence from the PVMC. Accordingly, Mr Jacobe was entitled to be awarded damages for future loss of earnings.
21. In response, Mr Kalsakau submitted that the engineering reports adduced into evidence were hearsay and beyond the knowledge of Mr Jacobe and Mr Tari and were therefore inadmissible.
22. He also submitted that Mr Jacobe lacked standing to bring the Claim as it was never disclosed in the Claim or evidence but only in cross-examination that his father was the owner of the lease and building and after he death, it was only recently (in 2022) that it was transferred to Family Jacobe Limited (the 'family company').



23. Additionally, Mr Jacobe had never obtained the leave of the Court to bring the proceeding in the name and on behalf of the family company as required by sections 89 and 90 of the *Companies Act* No. 25 of 2012. Instead, Mr Jacobe as a director of the family company acted in breach of the law in bringing the proceeding in his personal name rather than seeking leave of the Court to sue for and on behalf of the family company.
24. Mr Kalsakau submitted that given the failure to make full and frank disclosure, the Court must set aside the default judgment and dismiss the Claim entirely on the grounds that Mr Jacobe had no standing to bring the proceedings.
25. As to the loss of earnings sought, Mr Kalsakau submitted that this was not pleaded in the Claim. Further, the rent agreement adduced into evidence was not signed and Mr Jacobe had to prove more than that there was an agreement.
26. He submitted that the engineer whose engineering report was relied on had not made a sworn statement himself and there was no evidence about his qualifications and experience. There was also no evidence or information as to the 'engineer's' past record of giving expert evidence in court proceedings. Mr Kalsakau submitted that if the Court could not be sure of the expert's specialized knowledge then the 'report' was not admissible or was of diminished weight.
27. Finally, Mr Kalsakau submitted that Mr Jacobe had failed to produce sufficient and admissible evidence to prove the damages sought.
28. In reply, Mr Tari submitted that PVMC was estopped from raising the issue of standing as it had accepted liability given the default judgment and it had not applied to set aside the default judgment.
29. Further, the only evidence about standing was Mr Jacobe's evidence that he was authorized by the family company to take the case on behalf of the company. There was no evidence filed to dispute that.
30. Mr Tari submitted that sections 89 and 90 of the *Companies Act* were not relevant to the issue of liability, which had been accepted by the PVMC.

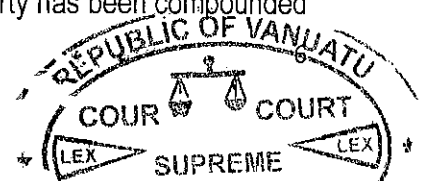
E. Discussion

31. The engineering reports and quotations adduced into evidence by Mr Jacobe, and indeed the quotation adduced into evidence by Mr Sakita, were business records of Mr Jacobe and the PVMC respectively and therefore exceptions to the hearsay rule. Accordingly, they are admissible.
32. The engineering reports having been ruled admissible, they can be relied on as proof of the damage suffered by Mr Jacobe. The maker of the reports was not called as an expert witness. Therefore he did not have to give evidence about his qualifications and experience. Rather, he was contracted by Mr Jacobe to assess the damage caused to the building by the PVMC vehicle and then to produce reports setting out what that damage



was and what was required to remedy that damage. He did so and the reports can be taken as proving the damage caused to the building and what its repair would entail.

33. Mr Kalsakau raised lack of standing on Mr Jacobe's part. However, this was not an application to strike out the Claim or to set aside default judgment. Accordingly, standing was not in issue. The Claim as filed was not disputed resulting in default judgment being entered. Liability having been accepted, arguments as to standing cannot now be used to deter the Court from determining the quantum of damages.
34. If I am wrong on that and standing is in issue, the only evidence about standing was Mr Jacobe's evidence that he was authorized by the family company directors to take the case on behalf of the company. There was no evidence to the contrary. Accordingly, I accept that Mr Jacobe was authorized by the family company to bring the proceeding on its behalf. For the same reasons, I reject the submission that Mr Jacobe failed to make full and frank disclosure.
35. Additionally, the family company did not become lessee of the property until late 2022. That also should not be a bar to Mr Jacobe bringing the Claim on behalf of the family company (in 2020) as it had not yet been formalised as the property owner.
36. It was also argued that Mr Jacobe acted in breach of sections 89 and 90 of the *Companies Act*. However, those sections appear in Part 6 of the Act titled "Enforcement" which is concerned with proceedings brought to ensure compliance with the Act and rules, including to restrain a company or a director from engaging in conduct that would contravene the company's rules or the Act. Part 6 of the Act does not apply in any way to the present matter. Mr Kalsakau's submissions to that effect are rejected.
37. Loss of future earnings was not pleaded in the Claim, contrary to rule 4.10 of the *Civil Procedure Rules*. Accordingly, there cannot be an award for loss of future earnings.
38. The only heads of damages pleaded in the Claim were damages for the costs of the repair of VT7,316,352 and general damages for trauma and stress of VT5,000,000.
39. There was clearly damage caused to the building by the vehicle driven by Mr Latro as evidenced by Mr Jacobe and detailed in the engineering reports that he adduced into evidence.
40. The engineer's recommendation was that the building be reconstructed from the footings to the roof and that the external fence be replaced. Mr Jacobe obtained quotations to do so from two construction companies. He is willing for the Court to award damages based on the quotation with the lower amount, from Christophe Dinh Construction, of VT7,316,352. I will so order.
41. As to the general damages sought for trauma and stress, Mr Jacobe's evidence is not contested that the PVMC promised to pay for the damage but has not. It is over 4 years since the accident and Mr Jacobe has had to be put to the cost and stress of suing the PVMC to obtain payment. Even then, the Claim was not disputed. In all of that time, Mr Jacobe has been kept out of funds to repair the damage caused to the property. I find that the stress caused to Mr Jacobe of the damage to his property has been compounded



by the lack of payment for repairs from the PVMC and the need to bring legal suit. An award of VT500,000 for the trauma and stress suffered is merited.

F. Result and Decision

42. The Claimant is awarded damages as follows, to be paid by the Defendant, for:

- |   |                                   |
|---|-----------------------------------|
| a. The costs of the repair of the property<br>and | VT7,316,352 (the 'judgment sum'); |
| b. General damages                                | VT500,000.                        |

43. Interest is to be paid on the judgment sum until fully paid, at the Supreme Court rate of 5% per annum.

44. The Claimant is entitled to the costs of this action as agreed or taxed by the Master. Once settled, the costs are to be paid within 21 days.

G. Enforcement

45. This matter is listed for Conference **at 11.15am on 21 March 2023** for the Defendant to inform the Court: (i) that it has paid the judgment sum or (ii) to explain how it intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.

46. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

at Port Vila this 22<sup>nd</sup> day of February 2023  
BY THE COURT

  
Justice Viran Molisa Trief

