

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

**Civil Case No. 213/2011**

**BETWEEN: DOMINION INSURANCE LIMITED**  
Claimant

**AND: UNION ELECTRIQUE DU  
VANUATU LIMITED**  
Defendant

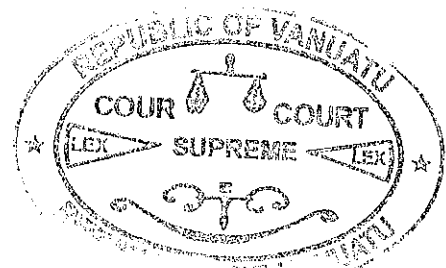
Coram: Justice Mary Sey

Counsel: Mr Nigel Morrison for the Claimant  
Mr John Malcolm for the Defendant

Date of Hearing: 10th June 2013  
Date of Judgment: 12th August 2013

**JUDGMENT**

1. The claim is for the sum of VT6,539,545 in respect of premium payments due to the Claimant by the Defendant on cancellation of insurance policies.
2. During the trial, both counsel agreed that no witnesses would be called for cross examination. The evidence is essentially contained in the sworn statements of Thelma Tapasei in support of the claim and that of Narelle Crawford dated 2 May 2013 on behalf of the Defendant.

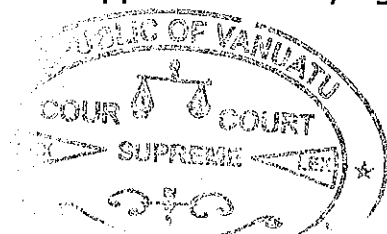


## Brief Facts

3. Prior to December 2010, AON Risk Services (Vanuatu) Limited (AON) provided the Defendant with insurance cover through the placement of policies with the Claimant for the following:
  - Motor Vehicle Policy
  - Workers Compensation Policy
  - Home and Contents Policy
  - Personal Accident Policy
  - Health - Surgery - Maternity Insurance Policy

All these policies expired on 31 December 2010.

4. The Claimant asserts that AON renewed the five (5) insurances on behalf of UNELCO for the period from 31 December 2010 until 31 December 2011 but then cancelled the policies on 2 February 2011.
5. The Claimant also asserts that the total premium for all the insurances for the 12 month period was to be VT15,387,517 and that, under cancellation clauses within the policies, the Claimant is entitled to VT 6,539,545 being 25% of the premiums for the minor policies and 50% of the medical policy.
6. The Defendant denies an existing contract was cancelled and says it did not renew the previous contract of insurance and further that on 31<sup>st</sup> December 2010 the Defendant requested a quote only and that the quote was never accepted.
7. In the Claimant's Reply to Defence dated the 7<sup>th</sup> day of June 2013, the Claimant pleaded that the Defendant is estopped from relying

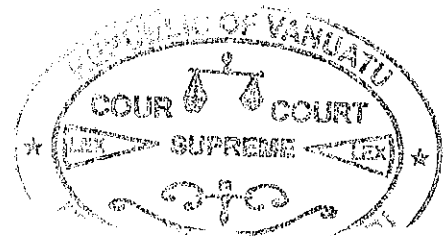


on delayed policy payments or no policy payments giving rise to lapsing or cancellation of the insurance cover.

8. Furthermore, in its submissions, the Claimant asserted that the failure to pay premiums historically had amounted to a practice as between AON and Dominion Insurance thus over-riding the terms of the contract.
9. The Defendant opposed the late pleaded assertion of estoppel and disputed the Claimant's proposition. It is further contended by the Defendant that there were no such ongoing discussions or correspondence with regard to the 2010 to 2011 situation.
10. Furthermore, the Defendant denied that there was any code of practice allowing for late payments of premiums and it argued that one example of late payment with no other extrinsic evidence as to why or what was agreed at that time between the parties does not go to a trade practice.
11. It is perhaps timely to set out a chronology of material events:

**20 October 2010** - AON (Narelle Crawford) advised the Claimant (Thelma Tapasei) by email that UNELCO had requested AON approach the market to prepare a comparison of terms from those insurers interested.

**2 November 2010** - AON received "Expire Notices" from the Claimant for the policies inviting renewal of the policies for a further 12 months by paying the renewal premiums shown. These notices state that "A condition of your policy is that all premiums must be paid within 14 days of inception or renewal."



**30 December 2010** - Claudia Kanegai of AON sent an email to Thelma Tapasei, requesting confirmation of renewal premium for "UNELCO VANUATU: MV FLEET" as per attached final list.

**31 December 2010** - Thelma Tapasei sent an email to Claudia Kanegai saying:

*"As per our conversation of this morning I am confirming cover for all of Unelco's policy to be quoted on same terms and conditions as expiring today, 31<sup>st</sup> December 2010, subject to reviewing terms and conditions in January 2011 for 2010/2011 period."*

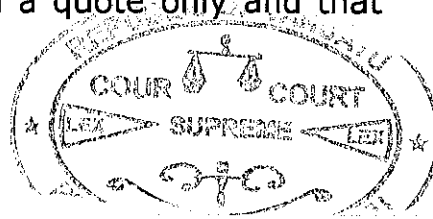
**2 February 2011** - Claudia Kanegai sent an email to the Claimant saying:

*"Please note that the clients above have cancelled their insurance policies due to cover no longer required. Cancellation closings to be sent soon."*

**3 February 2011** - Thelma Tapasei sent a reply on behalf of the Claimant confirming that:

*"short premium rates will apply to the time on risk premium as per our policy conditions. Premium to be calculated according to period from 31<sup>st</sup> December 2010 to 2<sup>nd</sup> January 2011 as per your notification below."*

12. The email dated **31<sup>st</sup> December 2010** between Thelma Tapasei and Claudia Kanegai goes to the root of the contentions raised by the parties. The Claimant's contention was that on 31<sup>st</sup> December 2010, AON confirmed renewal of all UNELCO's policies for a further 12 months. However, this was denied by the Defendant who argued that on 31<sup>st</sup> December 2010 they requested a quote only and that



the quote was never accepted. To buttress the point, the Defendant entered into evidence the sworn statement of Claudia Kanegai dated 30<sup>th</sup> April 2013. Whilst confirming that she entered into a telephone conversation with Thelma Tapasei on 31<sup>st</sup> December 2010, Claudia Kanegai categorically denied requesting confirmation of cover for 12 months. She said:

"At no time in the conversation did I request confirmation of cover for 12 months or did I accept an offer of cover for 12 month period."

13. I have perused all the policies tendered in evidence and I note that they stipulate the period of insurance specified in the schedule. All of them contain a specific Definition:

*"4. Period of cover means the "period" or "period of insurance" specified in the Schedule."*

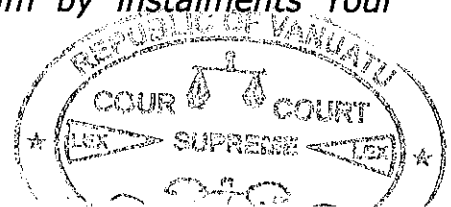
*The Health - Surgery - Maternity Policy specifically states:*

*"Article 14 - Term of the Policy*

*This policy shall be agreed to for the time remaining until 31 December in the year the policy was signed, but it SHALL NOT BE RENEWED BY TACIT AGREEMENT.*

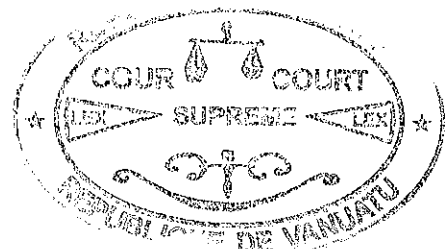
*It may thereafter be extended from year to year by the issue of an addendum signed by the Insurer's Representative and bearing the receipt of the renewal premium calculated on the basis of the rate applicable as at the day of such extension."*

The balance of the policies contain the clause *"unless we have agreed to accept payment of the premium by instalments Your*

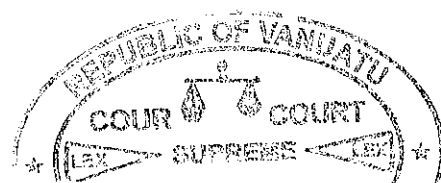


*policy will become null and void if the premium is not paid in full to Us before the original inception date or any subsequent renewal date".*

14. It is also in evidence that on the 2<sup>nd</sup> of November 2010, AON had received "Expire Notices" from the Claimant inviting renewal of the policies for a further 12 months by paying the renewal premiums shown. These notices state that *"A condition of your policy is that all premiums must be paid within 14 days of inception or renewal unless alternative credit terms have been agreed in writing"*
15. Paragraph 7 of the sworn statement of Narelle Crawford refers to clause 6.3 of the Broker Trading terms which stipulate that if no notice of acceptance of renewal of the contract of insurance is received by the insurer prior to expiry (or any extended period agreed by the insurer) that contract shall lapse.
16. The Claimant posed the following issues for the Court's consideration:
  1. Were the Defendant's contracts of insurance renewed and continuing with the Claimant after 31 December 2010?
  2. If they were renewed and continuing on what basis were they continuing?
  3. When were the Defendant's contracts of insurance with the Claimant cancelled?
  4. What amount, if any, is the Defendant liable to the Claimant for premiums for the period from renewal until the date of cancellation?



17. The binding force of a contract is based on the fact that it evinces a meeting of minds of two parties in Good Faith and it is fundamental to any insurance contract that the parties deal with each other in the utmost good faith. In my considered view, this is not borne out in the evidence and it appears to me that there was "no meeting of minds" of the Claimant and the Defendant in the course of their negotiations for renewal of the policies in question.
18. In particular, it is undoubtedly clear to me that each party viewed and interpreted the email of **31 December 2010** differently. On the one hand, the Claimant had reached a conclusion that **"AON had confirmed renewal of all UNELCO's policies for a further 12 months."** Whereas, on the other hand, the Defendant treated the email as **"a quote only"** whilst awaiting **"the reviewing terms and conditions."** In fact, there was no response at all to the email.
19. In her sworn statement, Narelle Crawford said: "As at the close of business on 31 January 2011, the reviewing terms and conditions had still not been provided and on 2 February we confirmed the cover was not required." It is noteworthy that it was on the same day (**2 February 2011**) that Claudia Kanegai sent an email to the Claimant saying:
- "Please note that the clients above have cancelled their insurance policies due to cover no longer required...."*
20. Judging from all the sworn statements relied upon together with the documents in the bundle entered into evidence at trial, I find that when the initial policy expired on 31<sup>st</sup> December 2010, the relationship between the Claimant and Defendant had ended according to the terms of the initial policy. There was no letter or



document finally agreeing terms from AON on behalf of UNELCO. There was also no policy in existence and no premiums for renewal were paid. The terms of the contract were quite clear namely:

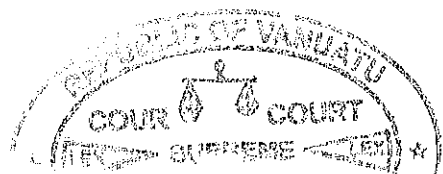
- i. Non-payment of premium nullifies the contract;
- ii. There is no tacit renewal.

21. Therefore, the policies became null and void for non-payment of premiums according to the policy documents. They were cancelled on 2 February 2011, if not automatic, and by then the Defendant had accordingly arranged insurance cover with an alternative provider from 1 January 2011.

22. I have considered the Claimant's assertion that the failure to pay premiums historically had amounted to a practice as between AON and Dominion Insurance thus over-riding the terms of the contract. The Correspondence asserting a previous late payment practice in 2009 with a late payment in 2010 is dated 23<sup>rd</sup> February 2011. The Claimant Callaghan wrote to the broker for the Defendant (Alistair) saying inter alia;

*"Documentation for the 2009 renewal was not received from your office until May 2010 and the premium was not paid until June. In the meantime we held cover and continued to pay claims"*

23. The further affidavit of Narelle Crawford, detailing the payment history of 2008 to 2009 and 2010 to 2011, shows that the only evidence of a delayed payment is between the year 2009 to 2010. The explanation given by the Defendant is that there were ongoing discussions and negotiations hence the delay in payment. There were no such ongoing discussions or correspondence in respect to





the 2010 to 2011 situation and the Claimant has failed to provide the correspondence going to the delay.

24. Be that as it may, the Defendant's contention is that one example of late payment with no other extrinsic evidence as to why or what was agreed at that time between the parties does not go to a trade practice. I agree.
25. In the final analysis, in answer to the issue posed by the Claimant as to whether the Defendant's contracts of insurance were renewed and continuing with the Claimant after 31 December 2010, the answer can only be "No."
26. The Claimant is only entitled to cover for the actual "time on risk" period from 31 December 2010 to 2 February 2011 (pursuant to section 74(2) of the Insurance Act) being a total of one month or 1/12<sup>th</sup> of the usual premium of VT15,387,517 namely VT1,282,293.
27. The case is accordingly dismissed with costs to be agreed or taxed.

**DATED at Port Vila, this 12<sup>th</sup> day of August, 2013.**

**BY THE COURT**

  
**M.M. SEY**  
**Judge**

