

(Civil Jurisdiction)

BETWEEN: PATRICK MERCIER & MARIE HELEN

Claimants

AND: ERIC BOB

First Defendant

AND: MARTIN MAHE

Second Defendant

AND: MAKLIN LOPEZ

Third Defendant

Mr Justice Oliver A. Saksak

**Mrs Marisan P. Vire for the Third Defendant and Counter-Claimant
Mr Kiel Loughman for the Claimants and Respondents
Mr Saling N. Stephens for the First and Second Defendants**

**Date of Hearing: 3rd March 2012
Date of Judgment: 6th February 2013**

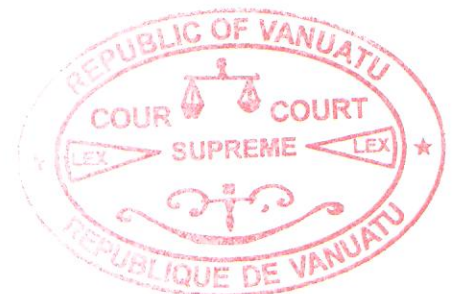
JUDGMENT

1. This judgment is in respect of the Counter-Claims of the Third Defendant, Maklin Lopez. Unfortunately and regrettably the Court acknowledges the untimely passing of Mr Lopez in December 2012. As such, his estate would therefore be entitled to any orders made under this judgment.
2. The Counter-Claimant's claims relate to a Motor Vehicle Mitsubishi L 200 Registered No. 6075 (the Vehicle). The vehicle has quite a long history. It was initially purchased by the Claimants in or about 2008. It was registered in the name of Barthelemy MH on 7th January 2008. She transferred ownership of it to Patrick Mercier on 25 January 2008. It was transferred into their joint names on 6th March 2008 and then transferred to the sole name of Patrick Mercier on 6th



May 2008. He transferred ownership to Leong Isma on 7th May 2008 who transferred ownership to Eric Bob, First Defendant on 12th May 2008. Eric Bob sold the vehicle to Martin Mahe, Second Defendant who had it registered in his name on 13th May 2008. On June 2008, Martin Mahe sold the vehicle to Mr Lopez for the sum of VT850.000.

3. At the time of its purchase by the Counter-Claimant from Martin Mahe on 20th June 2008, the vehicle was not in working order. It was sold on the basis of "as is where is," that the purchaser would be responsible for all repairs. The vehicle was relatively new but its engine was completely damaged by rust and corrosion due to the Claimant Patrick Mercier pouring acidic substance into it deliberately.
4. In light of those facts the Counter-Claimant seeks the following Orders:-
 - (a) That he is the bona fide purchaser and lawful owners of the vehicle.
 - (b) Alternatively that he be entitled to damages in the sum of VT1.534.844.
 - (c) That he be entitled to damages for loss of use of the vehicle to be assessed.
 - (d) That he be entitled to interests; and
 - (e) Legal costs.
5. When the matter came for trial on 14th March 2012, Counsel for the First and Second Defendants was not present. The First Defendant appeared in person and the Second Defendant did not appear. The Counter-Claimant appeared in person. Mr Loughman and Mr Lopez appear to accept that facts were not in dispute but quantum and costs were. They agreed that no trial hearing was necessary but agreed that time be given for written submissions be prepared and filed. Accordingly, the Court endorsed the parties position as to trial and directed that submissions be filed within 14 days by the Counter-Claimant and 14 days thereafter for the Claimants to respond.

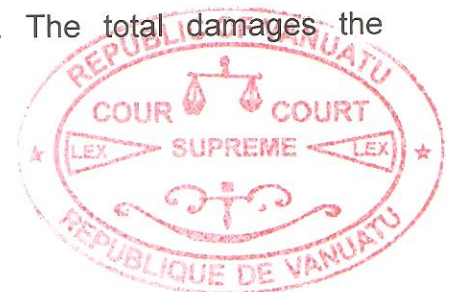


6. Mrs Vire filed written submissions on behalf of Mr Lopez on 6th June 2012. Mr Loughman filed written submissions earlier on 12th April 2012.
7. The Court considers those submissions in light of the evidence filed in support of the Counter-Claims by Mr Lopez in his sworn statement dated 13th August 2008.
8. I deal with the issues as raised by Mrs Vire in her written submissions as follows:-

- (a) Whether the Counter-Claimant as bona fide purchaser is the lawful owner of the vehicle?

This issue has been answered in the affirmative in the Court's decision dated 4th February 2011. That position remains unchanged. The Claimants accept that position in their written submissions.

- (b) Whether the Counter-Claimant is entitled to damages for a fixed amount of VT1,534,844. These comprised of VT850,000 being cost of the vehicle and VT684,844 as costs of repairs, labour, parts and associated costs. The Claimants disagree on the basis that the vehicle was not registered in Mr Lopez's name and as such any costs of repairs should be met by the Second Defendant. Those submissions are untenable and are rejected. The Second Defendant it appears from the facts in evidence that he never had much use of the vehicle himself. From the Registration Book Leong Isma had the vehicle for 4 days until he transferred to Eric Bob on 12th May 2008. Eric Bob had the vehicle for 1 day until he transferred ownership to Martin Mahe on 13th May 2008. Martin Mahe had the vehicle for a little more than 1 month until he sold to Mr Lopez on 20th June 2008. The Court has found that the Claimants were responsible for the damage to the engine of the vehicle by deliberately pouring acidic substance into it while in the possession of Martin Mahe. That finding was made in the decision dated 4th February 2011. The evidence of Mr Lopez in relation to costs stand unchallenged and un-rebutted. The Court accepts Mrs Vire's submission that the Counter-Claimant is entitled only to the costs of repairs and labour at VT246,750, parts and materials at VT353,783 and associated costs at VT84,311. The total damages the



Counter-Claimant is entitled to is the sum of VT684.844. The sum of VT850.000 are excluded.

(c) Whether the Counter-Claimant is entitled to damages in the sum of VT2.826.000 being for loss of use of the vehicle from 8 July 2008 through to 4 February 2011. The amount is claimed on the basis of VT3.000 per day. The Claimants disagreed on the basis that –

(a) Mr Lopez was not the registered owner of the vehicle;

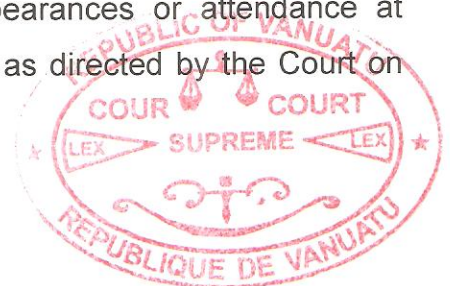
(b) The vehicle did not have a certificate of road-worthiness;

(c) No annual road tax had been paid in relation to the use of the vehicle on the public road.

Those reasons are untenable and are rejected. This vehicle was unworkable because the Claimants had deliberately destroyed its engine by acidic substance. Nobody buys a vehicle and expect not to use it whether for private or commercial purposes.

The Court accepts the submissions by Mrs Vire that the Counter-Claimant is entitled to damages for loss of use but the amount will be reduced from VT3.000 to VT500 per day being the minimum cost of fuel per refill. And also due to the fact that from 8 July 2008, the vehicle was under Court Order pending determination of its ownership. The total amount of damages allowed under this claim will therefore be VT471.000 calculated on the basis of 942 days x 500 per day; and

(d) On legal costs the Counter-Claimant claims the sum of VT595.000 on a solicitor-client basis. His evidence in support is contained in his sworn statement filed on 5 June 2012. These are unchallenged or rebutted by the Claimants. Supplementary submissions as to costs were filed by Mrs Vire on 4 June 2012. These are accepted. The Claimants disagree and offered to pay only VT300.000. These are rejected. They have deliberately delayed their proceedings by their non-appearances or attendance at Court or filing of documents within the times as directed by the Court on



numerous occasions. As such, it is appropriate that costs be allowed in favour of the Counter-Claimant on an indemnity basis and on Solicitor-Client basis. The costs allowed under head of claim is VT595.000. Disbursements are allowed at VT5.000.

9. In the final analysis of this case, the Court gives judgment in favour of the Counter-Claimant or the personal representative of his estate for damages as follows:-

(a) Repairs and related costs –	VT684.844
(b) Damages for loss of use of vehicle –	VT471.000
(c) Legal costs and disbursements –	<u>VT600.000</u>
Total –	<u>VT1.755.844</u>

10. The claims for interests at 20% are rejected as there appears to be no basis for it.

11. The Counter-Claimant is entitled to judgment in the total sum of VT1.775.84 against the Claimants jointly and severally.

12. The First and Second Defendants are entitled to their costs of and incidental to the action on the standard basis as agreed or determine by the Court.

DATED at Luganville this 6th day of February 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

