

BETWEEN: **AVOCK MAEL**
 Claimant

AND: **DAVID JOSEPH trading as DJ AUTO REPAIR &**
 SEPTIC TANK
 Defendant

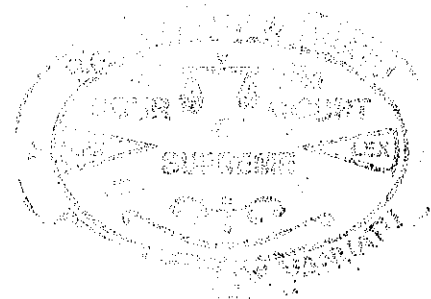
Coram: Justice Mary Sey
Counsel: Mrs. Mary Grace Nari for the Claimant
 Mr. James Tari for the Defendant

Date of Judgment: 5th September 2016

RESERVED JUDGMENT

Background

1. This is a claim for damages quantified at **VT4,594,000** against the Defendant.
2. On 10 February 2011, the Claimant's grey Hyundai Grace bus had been in a collision with the bus of a Mr. Bill Kalpoi. On 11 February 2011, the Claimant took the bus to the Defendant's workshop where a detailed quotation to repair the bus for the sum of VT448,000 was issued in the name of Mr. Kalpoi. However, Mr. Kalpoi failed to pay the amount and on 9 July 2012, the Claimant settled the payment of VT448,000 as per the quotation. The Defendant promised that the bus would be fixed within 2 weeks from that date. After the panel beating work was completed the bus was repainted with yellow colour instead of the original grey colour.
3. At the end of December 2012, the Claimant went to the Defendant's workshop to take delivery of his bus but when the parties tried to start the bus the engine could not start. In January 2013, the bus was towed with the permission of the Claimant from the Defendant's garage to the home of Willie Satearoto at Fresh Wota where a mechanic tried to solve the engine problem. The Claimant asserts that the Hyundai engine and gear box were removed by the Defendant and replaced with a Starex bus engine and other second hand spare parts. The Claimant says he requested the Defendant to replace the engine with the correct engine and gear box for Grace bus but the Defendant failed to do so.



Claim

4. The Claimant therefore claims damages for:
 - (a) Removal of parts, engine and gear box - Vt500,000;
 - (b) Putting in of second hand parts in the bus and painting the bus yellow instead of grey - VT224,000;
 - (c) Daily loss of income at Vt7,000 from 1/08/12–20/05/14 = 550 days - VT3,850,000; and
 - (d) Court fees of VT20,000

Defence

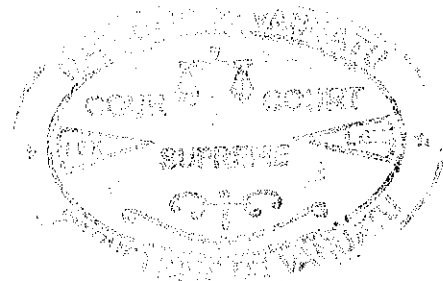
5. The Defendant denies the allegations in his Amended Defence dated 14 May 2015 and he denies liability for all the missing spare parts on the basis that they had been removed by him and secured safely in the bus.
6. The Defendant further contends that he wanted to help fix the engine problem “*for the sake of his garage good reputation*” and so he paid VT 227,000 for spare parts to fix the engine when it was brought back to his garage.

Evidence

7. The claimant relied on his sworn statement dated 17th July 2014 and further sworn statement in support of the claim dated 15th June 2015 which he confirmed in his examination-in-chief and admitted into evidence as **Exhibits C1 and C2**.
8. The Defendant relied on his sworn statement dated 15th May 2015 and filed in support of the Amended Claim. This was tendered and admitted as **Exhibit D1**. He also relied on the evidence of Mr. Willie Pakoa Sateroto by sworn statement filed on 23rd July 2015 and admitted into evidence as **Exhibit D2**.

Issues

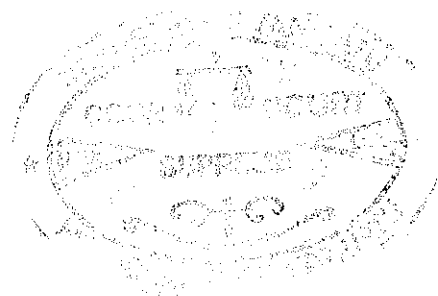
9. The two main issues identified for determination are as follows:-
 - (i) Whether the engine of the Claimant’s bus was removed by the Defendant; and
 - (ii) Who is responsible for any loss incurred by the Claimant following the removal of the engine?



Discussion and Decision

10. The quotation of VT448,000 issued by the Defendant to Mr. Kalpoi on 11th February 2011 was specifically for the panel beating works and painting of the Claimant's bus. It had nothing to do with the engine which was still working by then. In fact, it is in evidence that the Claimant himself drove the bus to the Defendant's workshop.
11. The problem arose when the Claimant went to collect the bus in December 2012 and it could not start. The Defendant says the piston ring had stopped working and he attributes this to the fact that the bus had been parked in his workshop for a long period over one year six months. He says that after identifying the issue he then had to look for a qualified mechanic to fix the engine because his workshop only specializes in repair services including panel beating and painting.
12. The crucial question is whether the engine of the Claimant's bus was removed by the Defendant? It appears from all the evidence adduced before this Court that the Defendant does not deny the fact that the Claimant's engine and gear box were removed by him in his workshop.
13. His lame explanation seems to be that the items were removed and stored inside the bus and that at the time the bus was removed from his workshop by Mr. Pierre Willie and Mr. Willie Sateroto the missing parts were kept securely and safely in the bus. In fact this averment is put forward by the Defendant at paragraph 8 of his Amended Defence where he states as follows:

*“(a) It [was] almost one year six months that the bus was kept unattended by the Claimant in the Defendant's workshop.
(b) The reason for removing the engine and gear box was to enable the Defendant to fix the part of the bus [sic] that was quoted [sic] VT448,000.
(c) The Claimant was advised of the removal of the engine and gear box to fix the problem and the Claimant agreed for the engine and gear box to be removed.
(d) The engine and gear box had been removed and stored safely inside the bus.
(e) The engine and gear box were never used for any other purposes but removed to fix the problem.
(f) Before the engine and gear box can be fitted the Claimant removed the bus from the Defendant's workshop and took it to another place.”*
14. I must say that I find this defence unconvincing and unsatisfactory and I totally reject it as it is undoubtedly clear to me that the engine and gear box of the Claimant's bus were removed by the Defendant and replaced with other second hand spare parts. I therefore find that the Claimant is entitled to damages for removal of parts, engine and gear box from his bus.



15. The second issue for me to determine is as to who is responsible for any loss incurred by the Claimant following the removal of the engine. The Claimant seeks damages for daily loss of income at Vt7,000 from 1 August 2012 until 20 May 2014 totaling VT3,850,000 for 550 days. I find that this is pecuniary damages which need to be specifically pleaded and specifically proven. In *Bonham-Carter v Hyde Park Hotel Ltd*, (1948) 64 T.L.R 177 Lord Goddard C.J stated as follows:

“On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages it is for them to prove their damages, it is not enough to write down the particulars and, so to speak, throw them at the head of the Court saying this is what I have lost I ask you to give me these damages. They have to prove it.”

16. Regrettably, this is what the Claimant has done in this case as I find that he has not specifically proved his daily loss of income at Vt7,000 from 1 August 2012 until 20 May 2014 totaling VT3,850,000. It is not enough for him to just write down the particulars. He has to prove it. In the circumstances, no award will be made for this head of damages. See *Mamelin v Republic of Vanuatu* [2015] VUSC 1; CC 71 of 2013 (27 January 2015.)
17. For his part, the Defendant submits that one year six months is a total of 547 days of storage of the Claimant’s bus in his garage at the daily rate of VT2,500 making a total of VT 1,367,500. Furthermore, that the full body repair for a bus would cost roughly another VT 1,000,000 plus an amount of VT227,000 which he paid for the spare parts. However, there is no counterclaim before me so I need say no more about this.
18. I hereby enter judgment for the Claimant. I accept his quotation from Auto Centre Mechanic for the engine and gear box in the amount of **VT500,000** as shown in the valuation marked “F” and annexed to **Exhibit C1**. I also make an award of **VT224,000** as damages payable by the Defendant for putting in of second hand parts and painting the Claimant’s bus yellow instead of grey. I also find that there has been an inordinate delay by the Defendant and a breach of his agreement to repair the Claimant’s bus within two weeks as stated in his letter dated 7th April 2014 and for this I award the Claimant damages assessed at **VT500,000**.
19. The Claimant is also to be reimbursed his court fees of **VT20,000** and he is entitled to interests on the total judgment sum at the rate of **5%** from the date of judgment plus costs on a standard basis to be taxed failing agreement.



DATED at Port Vila, this 5th day of September, 2016.

BY THE COURT


M.M. SEY
Judge

