

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

Civil Case No. 183 of 2015

**BETWEEN: ABDUL SHAMIM Trading as Classic Printers**  
*Claimant*

**AND: QBE INSURANCE (VANUATU) LIMITED**  
*Defendant*

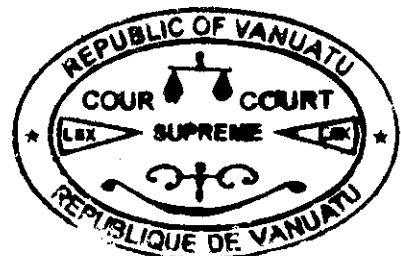
**Hearing:** *Thursday 15<sup>th</sup> and Friday 16<sup>th</sup> December 2016*  
**Judgment:** *Friday, 3<sup>rd</sup> February 2017.*  
**Before:** *Justice JP Geoghegan*  
**Appearances:** *Mr James Tari for the Claimant*  
*Mr Mark Hurley for the Defendant*

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**JUDGMENT**

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1. Mr Shamim operates a printing business in Port Vila trading under the name of Classic Printers.
2. When setting up his business in 2013 he sourced printing machinery overseas. He dealt with a supplier in Australia known as Shamrock Pacific Pty Ltd ("Shamrock") who supplied him with the machinery necessary to run his business. Included in that machinery was a Heidelberg single colour press machine which is used for commercial offset printing. The machinery was installed by Shamrock who also provided training to operate the machine as well as machine maintenance.
3. Given the valuable nature of the machinery located in his premises Mr Shamim sought insurance cover and entered into a contract of insurance with the defendant, QBE. Mr Shamim in fact, took out two policies of insurance, one being a commercial fire policy and the other being an engineering policy. There is no dispute that the



relevant policy in terms of these proceedings is the commercial fire policy, policy number VV110017181, (*"the fire policy"*).

4. Mr Shamim alleges that on March 10<sup>th</sup> 2015, the machinery was damaged by lightning. It was in the week prior to the arrival of Cyclone Pam and Mr Shamim claims that he was in the office at the time when lightning struck causing significant damage to the machine. Mr Shamim accordingly lodged an insurance claim with QBE on March 20<sup>th</sup>.

5. The claim form is signed by Mr Shamim and dated March 20<sup>th</sup> 2015. Under the heading "incident details" Mr Shamim has recorded the date of the incident as March 12<sup>th</sup> 2015 between 2 and 5 pm and briefly described the incidents as follows:-

"There was heavy lightning and sudden power supply, the machine was operating as the heavy fuctuations (sic) damaged board and looks like severe damage".

6. The claim form required Mr Shamim to complete various claim details in section "K" of the form. In that section Mr Shamim described the property as a "Printing press Heidelberg Mo Single colour". The following questions and answers were then completed in section "K":-

Question: Where purchased?

Answer: Shamrock Pacific PTY Limited, Australia.

Question: When purchased?

Answer: 2<sup>nd</sup> April 2014.

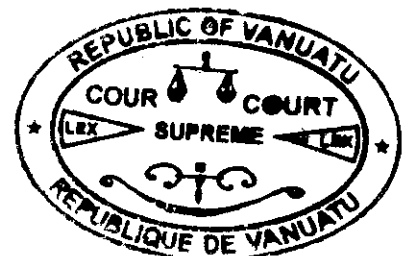
Question: Value at time of loss?

Answer: Officiated value of the asset VT 5,467,100.

Question: Replacement value (attach quotes).

Answer: Board damaged and it will be really no replace of part brand new available have not expect to fix even. Vt 5, 467, 100 (sic)."

7. In signing the claim form Mr Shamim made the following declaration :-



*"I/we declare that:*

- 1) The information and answers given above are correct to the best of my/our knowledge and belief.*
- 2) I/we understand the claim may be refused or reduced if information is withheld.*
- 3) I/we authorize QBE to disclose information contained herein to QBE's advisors, reinsurers and to other insurers. I/we authorize QBE to obtain from any other party information that is, in QBE's view relevant to this claim."*

8. Clause 2 of the general conditions of the policy provided as follows:-

*"2. FRAUDULENT OR FALSE CLAIMS*

*If any claim is fraudulent or false in any respect to the extent permitted by the insurance contracts Act 1984, the company may refuse to pay the whole or part of such claim."*

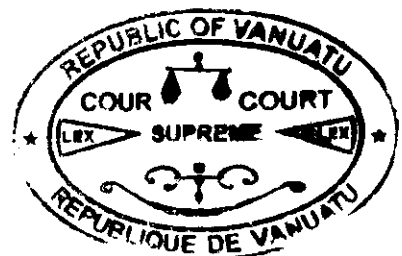
9. On April 2<sup>nd</sup> 2015, Mr David Conwell, an assessor engaged by QBE carried out an assessment on the damage to the machine and took various photographs of it. Some weeks later Mr Shamim became impatient regarding the fact that the claim had still not been resolved and accordingly he called to the office of the agent who had undertaken the assessment to make enquiries of the progress of the claim. Mr Shamim claims that at that meeting he was told that he didn't own the machine and that there was a problem with the amount being claimed.

10. On June 20<sup>th</sup> 2015, QBE wrote to Mr Shamim advising that his claim would not be met and that QBE regarded his policy as being "void ab initio". The letter received by Mr Shamim stated as follows:-

*"Dear Sir/Madam,*

*Re: Abdul Shamin – Heidelberg printer*

*Notification of a loss suffered to your Heidelberg printing machine has been referred to our office via your insurance broker, Aon (Vanuatu) Ltd.*



*QBE Insurance (Vanuatu) Ltd has undertaken an extensive review of this loss. Investigations were conducted both in Vanuatu and Australia and the result of these investigations raised a number of serious concerns in relation to not only the actual value of the printer but the ownership of the printer.*

*The nature of these concerns give QBE Insurance (Vanuatu) Ltd little option but to consider your policy "void ab initio". What this means is that you effectively have no insurance cover in place and therefore nothing to register a claim against. QBE Insurance (Vanuatu) Ltd does not make such decisions lightly but after thorough investigation we believe there is no option but to cancel the policy from inception. The premium received for this policy will be returned to you via your broker. We are also required to inform all interested parties noted on your insurance policy of this parties noted on your insurance policy of this position.*

*If you have any queries or wish to discuss this matter further then please do not hesitate to contact your insurance broker.*

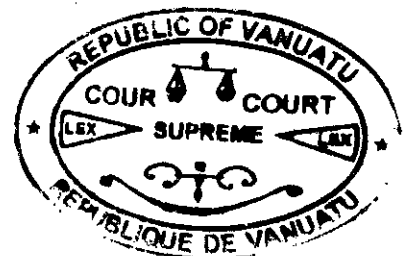
*Yours faithfully,*

*Jason Thomas*

*General Manager*

*QBE Insurance (Vanuatu) Ltd"*

11. Mr Shamim claims that the actions of QBE in cancelling the policy were unlawful and that as a result he has suffered loss and damage not only in respect of the machine itself but also arising from a consequent need to repair the machine and the losses sustained in not being able to use the machine. Accordingly, Mr Shamim claims damages in respect of those losses.
12. For its part, QBE denies any liability to Mr Shamim. It acknowledges that if the machine had been damaged by lightning then that damage would. subject to any

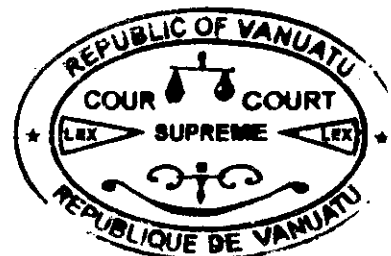


applicable exclusions, be covered by Mr Shamim's commercial fire package policy. QBE says that it is not liable for the damage claimed by Mr Shamim because:-

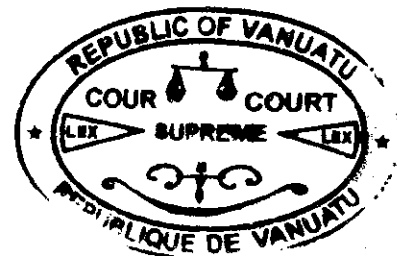
- a) Mr Shamim misrepresented to QBE that he was the proprietor of the printer in circumstances where he knew that he had not paid the supplier of the printer for it and that that was a material misrepresentation; and
- b) Mr Shamim's claim was a fraudulent, false or fraudulently exaggerated claim or declaration of loss which rendered the policy void pursuant to clause 2 of that policy. Specifically QBE claims that:

- i) Mr Shamim supplied to QBE a "*profoma invoice*" for the printer which showed a purchase price of 65,000 Australian Dollars when in fact the purchase price for the printer was 19,500 Australian Dollars and/or
- ii) Mr Shamim knew or ought to have known that the purchase price was 19,500 Australian Dollar whereas in his claim form he sought a replacement value for the printer in the sum of Vt 5, 467, 100; and/or
- iii) Mr Shamim stated in his claim form that the printer needed to be replaced but he knew or ought to have known following reasonable enquiries that the printer did not need to be replaced and could be repaired for the approximate cost of 4,000 Australian Dollars.

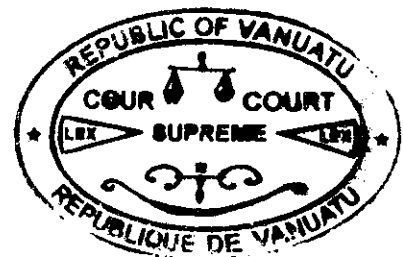
- 13. At the outset of this trial Mr Hurley, for QBE, advised the court that the issue of ownership of the machine would not be pursued. Accordingly the trial was conducted on the sole basis that the claim by Mr Shamim had been fraudulent as previously described.
- 14. Counsel had also agreed that the only issue for determination, at this stage was the issue of liability. In the event of Mr Shamim being successful there would be a separate hearing regarding damages.



15. The Court heard evidence from Mr Shamim, Mr Jason Thomas the General Manager of QBE (Vanuatu) Ltd, Mr Conwell and Mr Anthony Lynas an electrical and electronic engineer who has specialized expertise in the installation and maintenance of Heidelberg machinery and who had interaction with Mr Shamim both prior to and after the alleged damage to the machine.
16. The reference to a *"proforma invoice"* is a reference to a document issued by Shamrock headed *"Proforma invoice"* and which contains a list of machinery, including the Heidelberg printer and the prices of the machinery. It is dated April 2<sup>nd</sup> 2014. In addition there was a further invoice issued by Shamrock dated April 10<sup>th</sup>, 2014 which contains the same list of machinery but with different prices.
17. As to the issue of the proforma invoice Mr Shamim says that he provided that to QBE's agent Mr Conwell at Mr Conwell's specific request. Mr Shamim's evidence was that when Mr Conwell visited to inspect the machine Mr Shamin told him that the Heidelberg machine was made in Germany and that there were no engineers in Vanuatu to assess the damage. He requested that Mr Conwell either repair or replace the machine because of the printing jobs which were backing up. Mr Conwell asked what a brand new machine would cost at which point Mr Shamim provided him with a proforma invoice. The evidence establishes that that invoice was provided to Mt Conwell on April 16<sup>th</sup> 2015, under cover of an e-mail of the same date.
18. Mr Shamim stated that Mr Conwell *"then assisted to fill a claim form which he was carrying and he himself was emphasizing the machine to be replaced"*. Mr Shamim stated that he could not have known that the machine could be fixed as he is not an engineer and that would have been plain to Mr Conwell. Under cross-examination Mr Shamim appeared to resile from his assertion that Mr Conwell had assisted him in completing the claim form. When pressed by Mr Hurley on the issue he stated that Mr Conwell was *"writing something"* and that he may have assumed that he was completing a claim form. The concession did not reflect well on Mr Shamim's credibility.

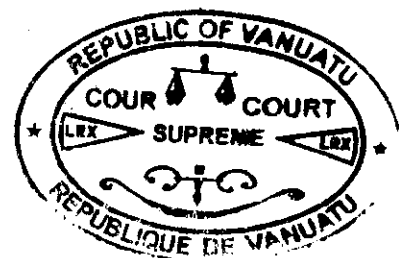


19. The invoices relating to Mr Shamim's purchase of the machinery are significant in the context of these proceedings. The "*proforma invoice*" dated April 2<sup>nd</sup> 2014 lists a total of six items of machinery at various prices with the total value of those items being \$201,000 AUD. Included in those items of machinery is the Heidelberg printer listed at \$65,000. In fact there appear to be two invoices dated April 2<sup>nd</sup> 2014. In his sworn statement, Mr Thomas produced the business claim form signed by the claimant on March 20<sup>th</sup> 2015. That form annexes the proforma invoice which is headed "*proforma invoice*". In a sworn statement of the insurance assessor Mr David Conwell, Mr Conwell annexes the email from Mr Shamim dated April 16, 2014 attaching a similar invoice. The same machinery is listed at the same prices. The invoice is also dated April 2<sup>nd</sup>, 2015 however the typeset appears somewhat different, but more significantly the invoice is headed "*invoice*" rather than "*proforma invoice*". There is no explanation as to why two different documents appear to have provided.
20. The difference between the two is significant however as the e-mail accompanying the "*Invoice*" is headed "*Invoice for Machine*". It is easy to see how the recipient of such an invoice might reasonably regard the document as being evidence of the purchase price of the machine or otherwise indicative of its value. It is also significant given the evidence of Mr Conwell discussed at paragraph 26( c ) of this judgment.
21. The invoice dated April 10<sup>th</sup> 2014 is quite different in appearance and was annexed to a sworn statement of Mr Shamim. It appears to list the same items of machinery as the invoices of April 2<sup>nd</sup>, however the prices of the items of machinery are clearly significantly different. The price of the Heidelberg printer is recorded as \$19,500 AUD and the total price of all the six items of machinery is listed at \$114,350 AUD.
22. What the evidence establishes very clearly is that the invoice dated April 2<sup>nd</sup>, was effectively a price list sent to Mr Shamim by Shamrock with the price of the goods listed. Negotiations had then taken place between Mr Shamim and Shamrock which



have resulted in the invoice of April 10<sup>th</sup> which shows the actual price paid for the machinery by Mr Shamim.

23. In my assessment Mr Shamim struggled under cross examination to explain his reasons for providing the proforma invoice in support of his insurance claim. It was clear from his evidence that he has considerable experience in the printing industry having worked in that industry for some 30 years. He is a man familiar with printing machinery and presumably the value of it. He accepted (as he had to) that he had purchased the machinery in April 2014 for \$19,500 AUD but was telling QBE nearly 12 months later that the value of the machine was VT 5,467,100, a figure which he agreed was approximately \$60,000 AUD. He conceded at one point during his cross examination that the replacement value listed was an over statement. He agreed that the insurance claim form was asking him to provide a replacement value but insisted that the replacement value was the figure outlined in the proforma invoice. When it was put to him that the replacement value must have been less than Vt 5,147,100 he stated that it could in fact be more than that figure and that *"we took a quote from overseas and then we attach the proforma invoice"*. I am of the view however, having heard the evidence, that Mr Shamim must have known at the time that he provided the proforma invoice that it was not reflective of either the replacement value or the purchase price of the Heidelberg printer. He must also have appreciated that having been through the process of buying the printing machine only 12 months earlier, the replacement cost was likely to be considerably less than the sum which he referred to in the claim form.
24. Mr Shamim's evidence was that the insurance claim had been completed by one of his staff, a Mr Nikesh Sivan who was the Manager of Mr Shamim's company but who now lived in Fiji. Nothing turns on that issue however, as Mr Shamim accepts the claim was lodged by him.
25. The evidence of Mr Conwell was that on the instructions of the Chief Executive of QBE (those instructions having been received on March 25<sup>th</sup>) he attended the office

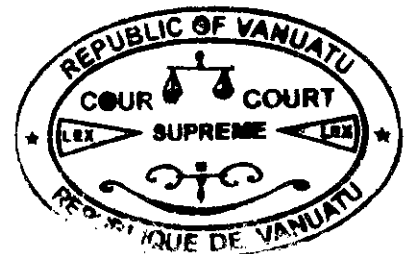




of Classic Printers on April 2<sup>nd</sup> 2015. He took a number of photos of the Heidelberg printer and was told by Mr Shamim that he had purchased the machine second hand from an agent in Germany "last year for 70,000 dollars". He also stated that Mr Shamin had told him the machine had functioned normally since its installation but that in November 2014 it developed some problems at which time Shamrock sent an engineer to rectify them. Mr Conwell said Mr Shamin had told him that he had examined the machine to determine that the main board had failed and that he had then made contact with Shamrock who in turn referred him to Mr Lynas. Mr Lynas was the engineer who had rectified the problems with the machine in November 2014.

26. As to the evidence of Mr Shamim regarding his interactions with Mr Conwell, Mr Conwell gave the following evidence:-

- a) He had never informed Mr Shamim that he would see to it that the machine was either fixed, replaced or reimbursed as was suggested by Mr Shamin.
- b) When Mr Shamim attended Mr Conwell's office on April 22<sup>nd</sup> 2015, Mr Conwell asked him whether he owned the machine. Mr Shamim told Mr Conwell that he paid for it and it didn't matter because he insured it. Mr Conwell denies, as is claimed by Mr Shamim that he would make sure that Mr Shamim would not proceed with his claim.
- c) Mr Conwell never made any request for Mr Shamim to supply a proforma invoice and that rather he had asked Mr Shamim to provide him with the invoice "of his purchase of the machine". The reason for that request was that Mr Conwell's established practice of assessment of machinery breakdown was to assess the loss quantum based on proof of the original purchase price, possible repair costs, if applicable, and the relative replacement cost of a similar machine.
- d) During a conversation with Mr Shamim on April 16<sup>th</sup> Mr Shamim advised him that his enquiries revealed that the machine would require spare parts which were not available. Further he stated that Mr Shamim advised him that he was a printing machine engineer and that he had



purchased the machine approximately a year ago for Vt 5 million and that he would send him the invoice. Mr Conwell maintains that Mr Shamim advised him that the "main board" had gone.

- e) At no stage did he assist Mr Shamim to complete the insurance claim form and that it would have been a completely unacceptable practice for him to do so. In addition, the claim form was stamped as having been received by Aon (Vanuatu) Ltd on March 20<sup>th</sup> 2015, by QBE Vanuatu on March 23<sup>rd</sup> 2015 and by Mr Conwell's office on March 25<sup>th</sup> 2015, all of which dates were after completion of the claim form by Mr Shamim.

27. The evidence of Mr Lynas was that he has an exclusive agreement with Shamrock to support its business in the Pacific Region and travelled to Vanuatu in November 2014 to inspect Mr Shamim's machinery. Although Mr Shamim asserted in his evidence that Mr Lynas had not inspected the Heidelberg machine at that time Mr Lynas was adamant in his evidence that he had checked every machine in Mr Shamim's premises including the Heidelberg machine and that he had been specifically requested by Shamrock to make sure that Mr Shamim was "happy". He had formed the opinion during the visit that the machinery was functioning in line with the manufacturers recommended operating parameters and that there was no issue with any of it. That position was confirmed by Mr Lynas to Mr Shamim at the conclusion of his inspection.

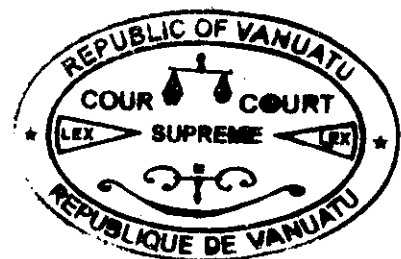
28. On March 20<sup>th</sup> 2015 Mr Shamim had sent an email to Mr Lynas regarding the alleged damage to the Heidelberg machine. The email stated:-

*"Hello Tony,*

*See attached pictures of the MO with the smoke coming out.*

*We have lodged our claim for insurance, however we need your(engineers) report to back our claim.*

*Can you send me a report outlined as below.*



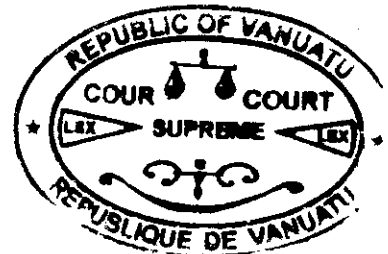
- 1) *Machine type.*
- 2) *Time serviced (when you came to service last)*
- 3) *Damage: transformer, motherboard damaged.*
- 4) *Cause: 100% by lightning and/or power fluctuation.*
- 5) *Repairs: cannot be repaired but can be replaced. The machine of this model is no longer manufactured and the parts are too expensive.*

*Let me know if you need more information.*

*Kind regards,*

*Abdul Shamim"*

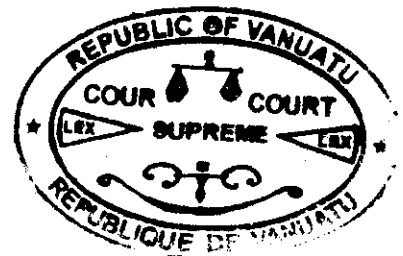
29. In a sworn statement Mr Lynas stated that when he reviewed the photographs in Mr Shamim's email of March 20<sup>th</sup> he was concerned that Mr Shamim was attempting to dictate to him the contents of the report that Mr Shamim wished him to write including the reference to the fact that the machine could not be repaired but could be replaced. He was also concerned at the reference to the damage to the machine having been caused "*100% by lightning and/or by power fluctuation*".
30. Mr Lynas expressed the view that if that had been the cause of that damage then he would have expected that all of the Classic Printers machinery would have been similarly damaged and not just the Heidelberg machine.
31. In an e-mail reply to Mr Shamim, Mr Lynas expressed the opinion that the photographs did not show that the machine could not be replaced and he thought that the machine could probably be repaired by the replacement of a transformer although the cause could only be known once he inspected the machine. He advised Mr Shamim that it would cost Mr Shamim \$500 AUD payable in advance for the provision of a full insurance quotation.



32. Mr Lynas also advised Mr Shamim in his e-mail that if the problem with the machine was the replacement of a transformer then the overall cost of repair including labour would have been in the region of \$4,000 AUD.
33. Mr Lynas was subsequently contacted by Mr Conwell and provided Mr Conwell with a copy of the email communication between he and Mr Shamim. According to Mr Lynas that resulted in Mr Shamim calling Mr Lynas and saying words to the effect of *"why did you forward my full email to the insurance company, what were you thinking about, you've ruined everything!"* This conversation was denied by Mr Shamim who denied that there had been any telephone conversation with Mr Lynas.

### Submissions

34. For Mr Shamim, Mr Tari submits that Mr Shamim did not complete the claim form with any fraudulent intent and that his only intention was for the insurance company to repair or replace the machine that was damaged by lightning. He submits that nowhere in the communication between the parties is there anything that shows that the claimant provided fraudulent information to the defendant. Rather, the claimant provided a proforma invoice to the defendant in an attempt to have QBE fix or replace the printer.
35. Mr Tari also submitted that QBE should have made counter proposals or an alternative offer of fixing or replacing the printing machine. I give no weight to this submission. While it is usual of course for insurers to communicate with insured regarding the best means of resolving a policy the focus in this case must be on the issue of whether or not Mr Shamim made a fraudulent claim.
36. Mr Tari also submits that given the specialized nature of the printing machine there were very few places that could provide a quote for the replacement cost of the machine. What that submission ignores however is that Mr Shamim provided QBE with a document from the very supplier who had sold Mr Shamim the Heidelberg



machine. Accordingly it would not have been difficult for Mr Shamim to access a quote from Shamrock. That was not however, what Mr Shamim supplied.

37. It is submitted by Mr Hurley on behalf of QBE that the trial issues in respect of these proceedings are as follows:-

- a) Did the claimant knowingly make and deliver to the defendant a fraudulent, false or fraudulently exaggerated claim and declaration of loss with the intention that the defendant would accept his claim?
- b) If the answer to a) is yes was the defendant entitled to advise the claimant that the subject insurance policy was void ab initio for the reasons set out in its letter to the claimant dated June 20<sup>th</sup> 2015?

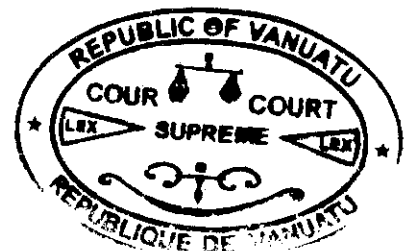
38. Clause 2 of the terms of policy sets out the following:-

"2) *FRAUDULENT OR FALSE CLAIMS*

*If any claim is fraudulent or false in any respect, to the extent permitted by the Insurance Contracts Act 1984, the company may refuse to pay the whole or part of such claim".*

39. Although there is reference to the Insurance Contracts Act 1984 which, I was advised, is an Australian statute, the policy does not require these proceedings to be determined in accordance with Australian Law. It was submitted in this regard by Mr Hurley that the applicable law is the law of Vanuatu given that both parties are located in Vanuatu, the property is located in Vanuatu and the contract was entered into in Vanuatu. Accordingly the issue should be dealt with on the basis of the applicable common law principles. I accept that submission and indeed I did not note any objection by Mr Tari to that approach.

40. I was advised by counsel that there is no Vanuatu case law considering the applicable common law principles of a fraudulent, false or fraudulently exaggerated claim and declaration of loss under an insurance policy. Accordingly, Mr Hurley referred me to the classic definition of fraud as stated by Lord Herschell in Derry v. Peek (1889) 14App Cas 337 374 -



*"First, in order to sustain an action in deceit, there must be proof of fraud and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (1) knowingly, (2) without belief in its truth, or (3) recklessly, careless whether it be true or false".*

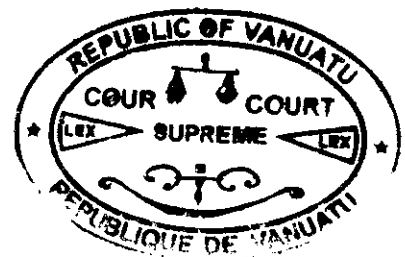
41. Mr Hurley also referred to the English authorities of Agabitos v. Agnew [2002] 1Lloyd's Law Reports 573 and Manifest Shipping Company Limited v. Uni - Polaris Shipping Company Ltd [2001] 1 All ER 743.

42. In Agbitos Mans LJ stated at page 581 that:-

*"A fraudulent claim exists where the insured claims, knowing that he had suffered no loss, or only a lesser loss than that which he claims (or is reckless as to whether this is the case). A fraudulent device is used that the insured believes that he has suffered the loss claimed, but seeks to improve or embellish the facts surrounding the claim by some lie....."*

43. In Manifest Shipping Lord Hobhouse stated:-

*"Where an insured is found to have made a fraudulent claim upon the insurers, the insurer is obviously not liable for the fraudulent claim. But often there will have been a lesser claim which could properly have been made and which the insured, when found out, seeks to recover. The law is that the insured who has made a fraudulent claim may not recover the claim which could have been honestly made. The principle is well established that has certainly existed since the early 19<sup>th</sup> century..... This result is not dependent upon the inclusion in the contract of a term having that effect or the type of insurance: It is the consequence of a rule of law. Just as the law will not allow an insurer to commit a crime and then use it as a basis for recovering and indemnity.....So it will not allow an insurer who has made a fraudulent claim to recover. The logic is simple. The fraudulent insured must not be allowed to think: if the fraud is successful, then I will gain,; if it is unsuccessful I will lose nothing."*



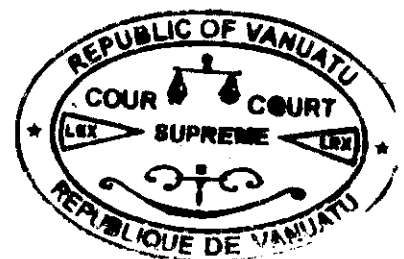
44. As to the onus which applies in relation to allegations of fraud, Mr Hurley referred to the Vanuatu Court of Appeal decision in Colmar v. Rose Vanuatu Ltd [2011] VUCA 20 at 51 where the Court stated:-

*"Before making relevant findings of fact, we refer to Mr Hurley's submissions about the requisite standard of proof. Because fraud is alleged, Mr Hurley submitted that a finding on a mere balance of probabilities was inappropriate. He referred to Briginsajw v. Briginsajw [1938] HCA 34: (1938) 60CLR336 (HCA) at 362 – 363 in which Dixon J said that such an allegation must be proved "clearly" "unequivocally" or "with certainty". It is clear that despite the application of the civil standard of proof regard must be had to the gravity of the allegation of fraud. See Z v. Dental Complaints Assessment Committee [2009] 1NZLR 1(SC) at paras [98] – [102] (McGrath J for himself and Blanchard and Tipping JJ) and re H (minors) (sexual abuse: standard of proof) [1996] AC 563 HL (at 586 – 587) Lord Nicholls, with whom Lord Goff and Lord Mustill agreed). We apply these principles in reaching our own view of the relevant facts surrounding Mr Toka's involvement."*

45. I apply these principles in considering the facts of this case. Accordingly, I must be satisfied that the allegation of fraud in this case has been proved "clearly", "unequivocally" or "with certainty".

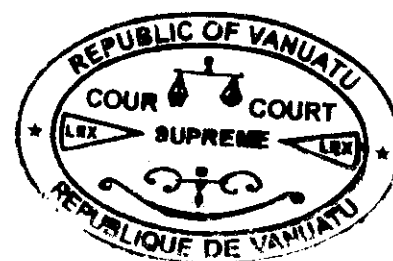
### **Conclusion**

46. Having assessed the evidence in this case I am satisfied that QBE have clearly established that Mr Shamim's insurance claim was false. The reasons for that are as follows:-
- a) I did not form a favourable impression of Mr Shamim's credibility when he gave evidence. Mr Shamim endeavored to place some responsibility at the feet of Mr Conwell for the completion of the insurance claim. That was a serious allegation and one which is not supported by the evidence, particularly given Mr Shamim's evidence under cross-examination. While Mr Shamim insisted that Mr Conwell had assisted him in preparing the insurance claim form that is simply inconsistent with the clear chain of



events which show that the completed and signed claim form was first received by Aon (Vanuatu) Ltd on March 20<sup>th</sup> 2015 while Mr Conwell's first inspection of the machine was on April 2<sup>nd</sup> 2015. Mr Conwell's evidence, which was unchallenged, was that he received instructions from QBE in respect of the matter on March 25<sup>th</sup> which was after the claim form had been completed. Mr Conwell also denied Mr Shamim's assertion that Mr Conwell had asked Mr Shamim to supply a proforma invoice and that Mr Conwell had actually asked for an invoice for Mr Shamim's purchase of the machine. In addition Mr Conwell had stated that Mr Shamim had told him that he had purchased the machine second hand from an agent in Germany for \$70,000. Mr Conwell's evidence in this regard was not challenged. Where Mr Shamim's evidence conflicts with that of Mr Conwell I accept the evidence of Mr Conwell.

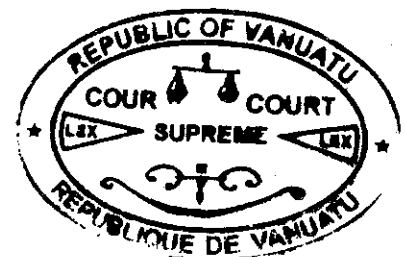
- b) Although there was no cross-examination on this specific issue I find the fact that Mr Shamim supplied an invoice on April 16<sup>th</sup>, 2015 marked "Invoice" rather than "Proforma Invoice" to be highly questionable. Given the evidence of Mr Conwell it could only have been supplied to give Mr Conwell, and hence QBE, the impression that the price set out in the invoice was the purchase price of the machine.
- c) Mr Shamim's evidence also conflicted with that of Mr Lynas. Mr Shamim had denied that Mr Lynas had checked the Heidelberg machine when Mr Lynas had travelled to Vanuatu in November 2014. I accept Mr Lynas' evidence that because of the importance of Mr Shamim as a client of Shamrock Mr Lynas had taken extra care to inspect all of the machines in Mr Shamim's premises. Mr Lynas gave clear and unequivocal evidence in this regard. I also accept Mr Lynas' evidence regarding his concern that in March 2015, Mr Shamim was attempting to "dictate" to Mr Lynas the contents of a report which Mr Shamim wished Mr Lynas to provide. Of particular significance in that regard was a reference by Mr Shamim to a report which refers to the fact that the Heidelberg machine could not be repaired but could be replaced as the model of that machine was no longer manufactured and the parts were too expensive. That assertion appears to





have been clearly incorrect and the evidence establishes Mr Shamim's keenness to see the machine replaced rather than repaired. I am also satisfied that the telephone conversation that Mr Lynas referred to between he and Mr Shamim did take place.

- d) In the various conflicts of evidence between Mr Shamim and Messrs Conwell and Lynas I am satisfied that Mr Shamim has not simply been mistaken in his evidence, but that he has been untruthful.
- e) Mr Shamim must have known at the time he lodged the claim with QBE that the "*proforma invoice*" was not an accurate reflection of the value of the Heidelberg machine at the time of the damage or that it was even an accurate estimate of the replacement cost of the machine in the event that it had to be replaced. Mr Shamim must have been aware of that because he was acutely aware of the fact that while Shamrock may have originally sought a purchase price of \$65,000 for the machine, Mr Shamim had paid significantly less than that when he purchased it. Despite that clear knowledge Mr Shamim included the documentation anyway and the only possible purpose of doing so would have been to persuade QBE that the cost of a replacement machine was Vt 5, 467,100. That was clearly false.
- f) The reference by Mr Shamim in the claim form to the "*officiated value*" of the Heidelberg machine being Vt 5, 467,100 was also clearly false. It was anything but an "*officiated value*".
- g) While Mr Shamim gave evidence that his intention in giving the proforma invoice "*was to inform what a brand new would cost*" that evidence was contradicted by Mr Shamim's evidence under cross examination when he stated that the proforma invoice of April 2<sup>nd</sup> 2014 contained a list of second hand machines. It was clearly not a list of brand new machines and accordingly could never have served the purpose which Mr Shamim asserted it was serving. The proforma invoice was to all intents and purposes irrelevant but would clearly have given QBE the impression that either Mr Shamim's Heidelberg machine was worth Vt 5,467,100 or the cost of a brand new replacement was Vt 5, 467,100. Neither is correct.



- h) At no time prior to the commencement of these proceedings did Mr Shamim provide to QBE or anyone else on QBE's behalf the purchase invoice from Shamrock which would have revealed the true purchase price of the Heidelberg machine as \$19,500 AUD. It is significant that, rather than providing this document, which at the least would have been concrete proof of what Mr Shamim had paid for the machine, he instead chose to provide a document or documents which, while not being proof of anything, would have given QBE the clear impression that the machine was worth significantly more than it actually was.
47. For these reasons I find that QBE has clearly established that Mr Shamim's claim was a fraudulent, false or fraudulently exaggerated claim and declaration of loss and that such claim was made with the intention that the defendant would accept that claim.
48. As a consequence of that finding and on the basis of the common law principles referred to herein I also find that QBE was entitled to consider the policy as void ab initio. There is no dispute that QBE has refunded the premiums made by Mr Shamim in respect of his policies.
49. For the reasons referred to herein I accordingly dismiss the claimant's claim. The defendant is entitled to costs and in the event of costs not being agreed between the parties within 21 days costs are to be taxed.
50. Given the findings as to liability there would be no need to proceed to a consideration of the issue of damages.

**Dated at Port Vila, this 3rd<sup>th</sup> day of February, 2017**

**BY THE COURT**

