

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

Civil  
Case No. 17/1448 SC/CIVL

**BETWEEN: LILIAN MAI JOHNSON**

Claimant

**AND: THI THAM GOISET**

Defendant

**Date of Hearing:** 8<sup>th</sup> August 2018  
**Date of Judgment:** 14<sup>th</sup> March 2019

**Before:** Justice Oliver A. Saksak

**Counsel:** Bruce Kalotiti Kalotrip for the Claimant  
Christina Thyna for the Defendant (Ceased Acting)

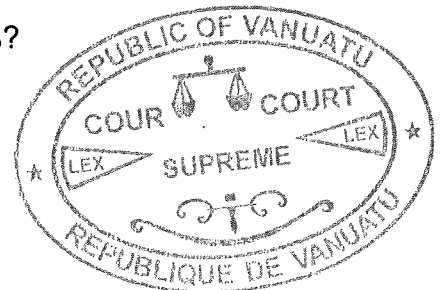
---

## JUDGMENT

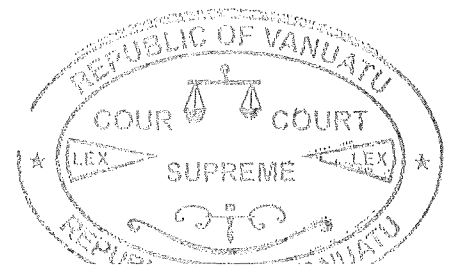
---

### Background

1. This case has been partly settled by the defendant returning the claimant's ring and the claimant refunding the sum of VT5,500,000 paid by the defendant as part of the purchase price of the ring.
2. On 8<sup>th</sup> August 2018 the Court issued a Minute recording that there were three remaining issues –
  - (a) Whether the claimant is entitled to interests and costs?



- (b) Whether the defendant is entitled to interests and costs?  
(c) If so, by what percentage and amount?
3. The Court then ordered the claimant to file a sworn statement and submissions within 25 days (by 4<sup>th</sup> September 2018 and the defendant to file submissions in response within a further 28 days (by 2<sup>nd</sup> October 2018).
  4. Mrs Thyna has since ceased acting for the defendant. The defendant's husband was present at the hearing as representative of the defendant on 8<sup>th</sup> August.
  5. The claimant filed a sworn statement on 3 October 2018 and closing submissions on 1 November 2018. The defendant filed submissions only on 4 March 2019.
  6. The claimant filed her supreme court claim on 14 June 2017 claiming –
    - (a) The balance of the purchase price of the ring at VT2,500,000;
    - (b) VT317,319 being for supply of furniture in June July and August 2012.
    - (c) Interests at 5% and costs on an indemnity basis.
  7. The defendant filed a response on 30 June 2017 and on 21 August 2018. She denied the claimant was the sole owner of the ring and claims that on that basis the oral agreement for the purchase of the ring with the claimant was void and unenforceable. She denied the claimant had issued any certificate of valuation at any time. She denied receiving any invoices for the payments of the furniture and claims the Vanuatu Government was liable for the payment of the debt. She claimed a refund of VT5,500,000, interest at 12%, the return of the ring to the claimant and costs in her counter-claims against the claimant.
  8. As indicated earlier the ring has been returned and the claimant has refunded the VT5,500,000 to the defendant.
  9. Now both the claimant and the defendant claim for interests and costs.



### Relevant Facts About the Ring

10. On 25 May 2012 the claimant and the defendant entered into a verbal sale and purchase agreement. The claimant agreed to sell a diamond and platinum ring to the defendant at a price of VT8,000,000. The defendant agreed to pay the purchase price by instalments of VT1,000,000 per month until the total sum of VT8,000,000 was fully paid. On 25 May, 15 June, 31 July and 6 September 2012 the defendant paid the sums of VT1,000,000. On 6 September, 18 September, 9 October and 16 November 2012 the defendant paid only VT500,000 on each of those dates. In total the defendant had paid VT5,500,000. The claimant delivered the ring to the defendant's possession. The balance remaining was VT2,500,000.

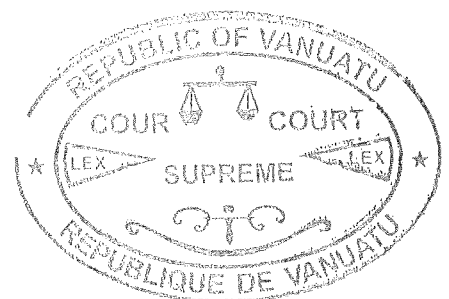
### Relevant Facts About Supply of Furniture

11. On 12 June and 9 July 2012 the defendant ordered furniture from the claimant's boutique in the sum of VT76,016 on 12 June and VT84,303 on 9 July. In August 2012 the defendant ordered Butterflies for a wedding at VT157,000. The claimant supplied the orders but the defendant has not paid any money in return.

### Discussion

12. I consider first the oral agreement about the ring. The claimant submitted that it was a valid contract. The defendant's defence is that it was void and unenforceable. I reject this defence and accept the claimant's submissions.

13. The oral agreement was performed in part by both the claimant and the defendant. The date of the agreement was 25 May 2012. On 25 May 2012 the defendant paid VT1,000,000 and continued to do so until 6 September 2012. By then she had paid VT4,000,000 which is half of the purchase price. She had failed to pay



VT1,000,000 for the month of August 2012. Then she reduced payments by VT500,000 from 18 September 2012 which was not in accord with the agreement.

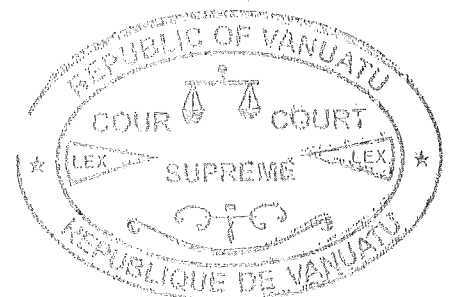
14. The claimant could have complained about the breaches of agreement immediately in September 2012 after the non-payment of the August instalment but she did not. And she could have complained about the reductions of VT500,000 from 18 September 2012 but she did not. She waited until 14 June 2017 when she filed her proceeding against the defendant. That is almost some 4 years later.

15. In similar vein the defendant complained that the claimant never issued any certificate of valuation to confirm the purchase price before completing payments. It is her defence that the absence of the certificate rendered the agreement void and unenforceable. The defendant is estopped from raising such defence. It is too late to do so in 2017 after the claimant had filed her proceedings.

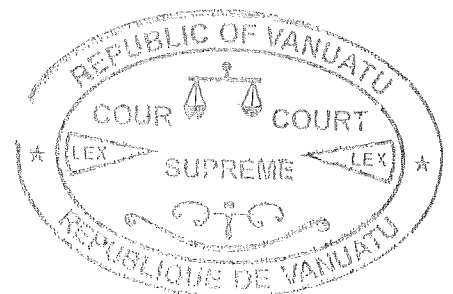
16. As to whether or not the certificate existed, I accept the defendant's evidence by sworn statement that no such certificate was issued by the claimant. Had there been one it would have shown the true value of the ring and that to sell it at VT8,000,000 was grossly undervalued. It would be highly unlikely the claimant would have sold the ring at the time. In any event the absence of the certificate at the time did not vitiate the oral agreement in my view.

17. The parties to the oral agreement have in essence repudiated the agreement. Having done so, the claimant now is in lawful possession of her ring and the defendant has been refunded her VT5,500,000. They are now both on equal footing.

18. The claimant now says she is entitled to 12.5% interest on the balance of VT2,500,000 and to her costs of travelling at VT146,821, costs of valuation, personal damages of VT1,000,000, legal costs and court costs.



19. Had the claimant done a valuation of the ring in 2012 before the sale of the ring, it is highly unlikely she would have sold the ring and this situation would have been avoided. There would have been no need to travel to Australia to do another valuation. Travel costs and valuation costs would have been avoided. Had proceeding been filed in 2012 or 2013, it would have minimised all costs. It was incumbent on the claimant as a matter of good practice to have done all these. But she failed to mitigate her losses and damage by waiting for 4 years before she filed her proceeding and have the ring valued. She has become the author of her misfortune, losses and damages. She is estopped from claiming those losses and damages and shifting the responsibility to the defendant.
20. The defendant on the other hand seeks 12% interest on her VT5,500,000 and costs. Whilst it is correct to say the claimant has had the benefit of her money for some 5 years since 2012, she has not given any evidence whether she obtained a bank loan to pay for the instalments she made from May to September 2012. On the other hand the defendant has had the benefit of enjoying the claimant's ring that was sold undervalue for almost some 5 years since 2012. It is not in evidence what exact date the defendant had been handed over the ring but from the sworn evidence of the claimant dated 14 June 2017 at paragraphs 9 and 10 read together with the Invoice for Butterfly's for the defendant's daughter wedding dated August 2012, it is reasonable to assume the wedding was held in August 2012.
21. I have discussed earlier the defendant's defence of a void and unenforceable agreement and have rejected it as a valid defence. Like the claimant she too could have challenged the validity of the agreement in May or June 2012 but she did not. She waited until the claimant served her proceeding on her in 2017, some 5 years later to come up with a defence. And like the claimant, she has had the benefit of the claimant's ring for all those years. And like the claimant, the defendant too is the author or her own misfortune and losses, if any. She cannot now in my view shift the blame or responsibility to the claimant.



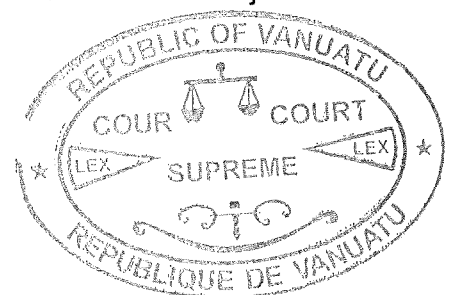
## Findings

22. Having analysed all the facts, evidence for and against, and all the materials and documents before me, and having said all I have said in the preceding paragraphs of this judgment, I make the following findings –

- (a) On whether there was a valid agreement, I have found that there was and answer the question in the affirmative.
- (b) On whether the agreement was breached, I have found that it was breached; and as a result of the breaches the agreement has been repudiated by both parties.
- (c) On the issue of which party breached the agreement, I have found that both the claimant and defendant have breached their agreement.
- (d) On whether the parties have suffered losses and damages, I have found no losses or damages suffered by either parties but in the event there are, that both the claimant and the defendant are the authors of their losses and damages.
- (e) On whether the parties are entitled to interests, I have found they are not entitled and answer this issue in the negative.

## Findings on the claimant's claims for costs of furniture and Butterflys

23. I find the documents annexed as "B" and "C" in the sworn statement of the claimant dated 14 June 2017 insufficient as evidence to show a debt of VT76,016 and VT84,303 owing from the defendant. Further the document in annex "B" is dated 12 June 2012. To the date of filing of the claimant's claim this claim is 6 years out of time and is barred by the Limitation Act. These claims are therefore rejected and dismissed.




24. The claim for butterflys, an Invoice dated August 2012 (Annexure "D") is in my view a valid claim to which the defendant has no valid defence. The amount is for VT252,000. However the defendant has paid off VT95,000. The balance owing is VT157,000.

25. This part of the claimant's claim is successful. I therefore enter judgment in her favour against the defendant for the payment of the sum of VT157,000.

26. On the issue of costs I accept the claimant is entitled to some costs of her action. Having lost 90% of her claims my view is that the claimant is only entitled to 10% her costs of the proceeding on the standard basis as agreed or taxed by the Master. I should point out and make it clear that the claimant's costs of travelling to Australia for the valuation certificate and the costs of valuation and court attendance time for the purposes of the ring are excluded.

**DATED at Port Vila this 14<sup>th</sup> day of March, 2019.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**  
Judge

