

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

**Civil
Case No. 15/51 SC/CIVL**

BETWEEN: Dominique Champalou
Claimant

AND: Marie Rose Molbarav
First Defendant

AND: Steven Remy
Second Defendant

Before: *Justice Aru*

Counsel: *Mme. M. N. Patterson for the Claimant
Mr L. Tevi for the First and Second Defendants*

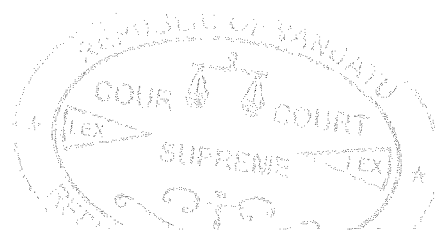
JUDGMENT

Introduction

1. Marie Rose Molbarav is the custom owner of certain areas of land at Lope Lope area in Santo. She agreed to sell 1 hectare of that land to Dominique Champalou of Noumea New Caledonia for a sum of VT 4 million. As a result, lease title No 04/2641/084 ("084 Lease ") was then created and registered in Mr Champalou's name. Before he could build on the land a dispute arose between them over payment of the full purchase price, access to the property and damage to the land. This led to the claimant filing these proceedings.

Background

2. The agreed facts are that in 2010 the first defendant and the claimant agreed for the first defendant to sell 1 hectare of her land to the claimant for a sum of VT 4 million. The 084 Lease was then created and registered to the claimant. As the claimant was in Noumea, it was agreed that payment was to be made in instalments through telegraphic



transfers. These payments were made between 2010 and 2013. From May 2013 to 2015 the first defendant caused disturbances on the property.

3. The second defendant is the owner of the business known as Santo Earth Works. Around November 2014 to January 2015 he removed 2410m³ of sand from a general area where the lease is located. This was authorized by the first defendant. The claimant knew nothing of the arrangement.

Pleadings

4. In summary the claimant claims that he has paid the full agreed price for the land being VT 4 million. In addition he alleges that he made an overpayment of VT395, 000. Following registration he has not been able to access the land as the first defendant has denied him access.
5. In 2014 when he was in New Caledonia he claims that the first defendant allowed sand to be extracted from the property damaging the land and leaving a big hole in the ground. He now seeks an order for the first defendant to create an easement on her adjoining land to give him access and seeks a refund of the over payment. In addition he claims damages in the sum of VT 5 million for damage to the land, losses incurred in paying for services for the construction of his residence which were never carried out, damages for loss of use of the land, general damages, damages for pain and suffering and restraining orders.
6. The defendants on the other hand deny the claim and filed a counter claim. The first defendant counter-claims that VT 4 million was never paid and a balance of VT1, 510, 000 was still outstanding. She says that the total monies received was VT2, 490, 000 through telegraphic transfer as agreed. She now claims the balance with interest at 10 % per annum being VT906, 000.
7. Each party bears the onus of proving what they allege in the claim and counterclaim on the balance of probabilities.

Issues

8. There are three main issues; namely was the full purchase price of VT 4 million paid by the claimant to the first defendant; was there an overpayment of VT 395, 000 by the claimant and finally was the sand removed from within the claimant's lease.

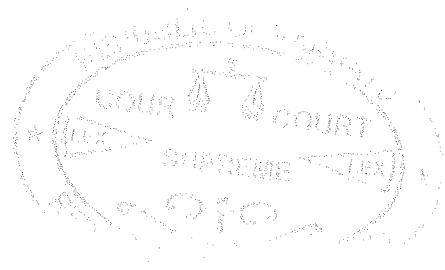


Submissions

9. The claimant submits that he paid VT 4million as agreed but says that he made an overpayment of VT 395,000 which entitles him to a refund. He also submits that sand was illegally removed from his lease rendering the land unfit for building purposes therefore he is entitled to damages.
10. The defendants on the other hand submit that the claimant did not complete the payment of the full purchase price as agreed and demand payment of the balance in the sum of VT 1,641,990 with interest at VT906, 000. They deny that the sand was removed from the 084 Lease and therefore say that the claimant is not entitled to any damages.

Discussion

11. At the outset, the claimant remains on the register as the registered proprietor of the 084 Lease. The first defendant in her counter claim does not seek any cancellation or rectification of the lease. All she is seeking is payment of the balance of the purchase price which she says is owing with interest.
12. The matter is somewhat complicated by the fact that there is no written sale and purchase agreement to document the transaction. It was all done verbally with the understanding that payments will be made by instalments from Noumea. In their evidence, both parties agree that the verbal arrangement was for the claimant to obtain a lease of 1 hectare of land from the first defendant for a total sum VT 4 million. The lease was registered on 20 July 2012 before payments were allegedly completed.
13. Under cross-examination the claimant confirmed that this was the arrangement. The certificate of registered negotiator he obtained on 25 May 2011 is evidence of his intention to purchase 1 hectare of land. He says he accepts that the land as shown in the survey map is slightly bigger than what they agreed namely 1 hectare 30.
14. This is an error in the survey map which should have been corrected before the lease was registered to reflect the parties intentions. This is the cause of the dispute as it detracts from what the parties originally intended. It has also caused confusion to the surveyors in identifying the exact boundary.
15. The actual area of the 084 Lease as shown on the survey map is 1 hectare 29.



Purchase Price

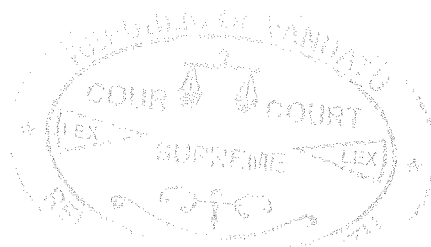
16. The claimant alleges that he paid VT 4 million for the lease as agreed for 1 hectare of land. In his evidence the claimant says that his land boundary is 1 hectare 30. If he has paid the full sum as alleged then that can only be for the agreed 1 hectare. He has not paid for the extra 30 which was not part of their agreement. It is for the claimant to prove that he paid the full VT 4 million towards the land as the first defendant disputes receiving any cash payments towards the land as alleged aside from transfers through the bank.
17. Apart from the claimant's own list of payments made shown in exhibit 'C10' he has not called evidence or produced receipts to show that he made cash payments and that those cash payments were made as part payment of instalments towards the full purchase price of the lease. The first defendant when cross examined denied she was ever shown the list of payments in exhibit 'C10'. She says what she was given which she signed was an acknowledgment of receipt of payment by the claimant in the sum of VT 683,000 into her daughters account at Bred Bank.
18. Although the claimant now relies on exhibit 'C10' to say that the first defendant acknowledge receipt of all the payments made by signing, the claimant has not shown in his evidence that he produced and showed the first defendant the list of payments on the reverse page of exhibit 'C10' and they both went through the list of payments before signing the acknowledgement.

Overpayment on the purchase price

19. Given my answer to the first issue above, I am not satisfied that there was an overpayment of VT 395,000 as alleged by the claimant.

Damage to the land

20. The verbal agreement was for 1 hectare of land. That is not disputed. Given the error in the survey plan, the claimant alleges that he is entitled to 1 hectare 30. There is no evidence that he has paid for the extra 30 or that the first defendant agreed to the additional land. Having heard the evidence, I am not satisfied that the claimant has proved that the sand was dug from within his 1 hectare of land resulting in the damage alleged.



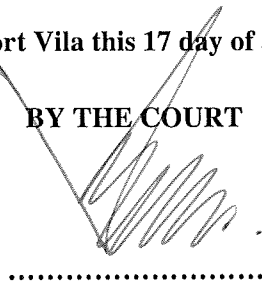
Conclusion

21. The claim is therefore dismissed. The counter claim is allowed and the claimant must pay the balance owing in the sum of VT 1,510,000 with interest at VT906, 000. The survey map needs to be rectified to reflect what the parties agreed. The claimant cannot gain from an error on the survey map.

22. The defendant is entitled to costs to be agreed or taxed by the Master.

DATED at Port Vila this 17 day of January, 2019

BY THE COURT



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D. ARU
Judge

