

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

Civil
Case No. 18/3162 SC/Cvl

BETWEEN: **Francois Chani**
Claimant

AND: **Bourgeois & Co Limited**
First Defendant
Vanuatu Market Handicraft Ltd
Second Defendant

Date: 3 July 2020
By: Justice G.A. Andrée Wiltens
Counsel: Ms A. Sarisets for the Claimant
Mr T. Bourgeois in person as Director for First Defendant (absent)
No appearance by or for the Second Defendant

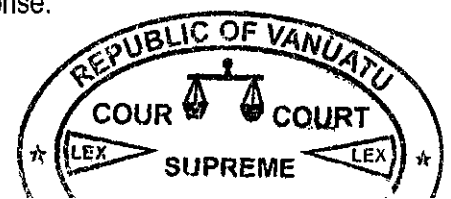
JUDGMENT

A. Introduction

1. This was an application for judgment by default on the basis of no steps having been taken by the Vanuatu Market Handicraft Ltd ("VMH Ltd").

B. Background

2. The Amended Claim, together with the sworn statement of the Claimant Mr F. Chani in support, was filed on 14 April 2020. It was served on the VMH Ltd on 27 May 2020. There has been no response.
3. The application for Judgment by Default with the sworn statement of Ms A. Sarisets in support was served on the VMH Ltd on 29 June 2020. There has been no response.



4. Accordingly, pursuant to Rule 9.1 of the Civil Procedure Rules VMH Ltd is in default of its obligations to file a Response and a Defence to the Claim. Further, pursuant to Rule 9.2, in such circumstances judgment, being for a fixed amount, may be claimed by Mr Chani by default, together with interest and costs.

C. The Claim

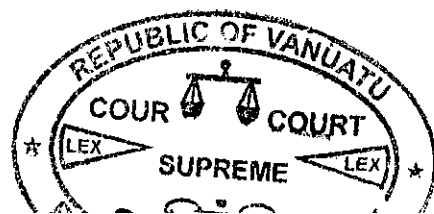
5. Mr Chani is the registered owner of Lease No. 11/OA23/021, a property on Wharf Road, Nambatri area, Port Vila. The lease runs from 1980 for a period of 50 years.
6. It is alleged that in late 2016 the VMH Ltd built a handicraft market business house within adjoining land owned by the First Defendant, but VMH Ltd's building encroached onto Lease No. 11/OA23/021.
7. Despite approaches being made to address this issue, there has been no satisfactory resolution. The Lands Department has confirmed the encroachment and recommended possible solutions to the dispute between the parties. VMH Ltd is simply ignoring the issue.
8. Mr Chani has instructed a registered valuer to produce a report as to the extent and value of the encroachment. That Valuation Report has assessed the value of the encroachment at VT 7.5 million.
9. Accordingly, the Claim seeks judgment in that amount, together with a further VT 1 million by way of general damages for loss of enjoyment and property rights, as well as interest and costs.
10. Pursuant to Rule 9.3, the part of the Claim relating to general damages is to be assessed by the Court on the available evidence.

D. Discussion

11. There is no difficulty in seeing that the encroachment is actionable; and that, in the absence of any steps being taken to defend the Claim, liability rests with VMH Ltd for erecting the building across the boundary between the properties and on Mr Chani's land.
12. However, the Claim effectively seeks to have VMH Ltd pay to purchase the area of Mr Chani's land that its building has encroached onto, without receiving in return good title to that area. That strikes as being inappropriate and unfair.
13. A better, fairer way to resolve the issue of compensation for the encroachment is to divide the value assessed by the number of years of encroachment. It is accepted that this does not alleviate the problem. However, this result should compel VMH Ltd to take action to remedy a very obvious and on-going problem.

E. Result

14. Judgment by default is granted in favour of Mr Chani against VMH Ltd. The judgment sum is arrived at by dividing the value of the land, as assessed at VT 7.5 million by 50 (the number of



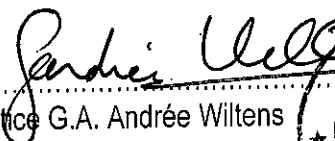
years the lease runs) and multiplying that by the period of the encroachment, namely 4 years. By my calculation that comes to VT 600,000.

15. There is no evidence produced as to general damages or the extent of the same. The area of encroachment is very small, and it is in a position of no inconvenience. It is on roadway frontage, but there is sufficient entrance to Mr Chani's land without the encroachment causing very much loss of enjoyment. The reality is that Mr Chani is undoubtedly inconvenienced by the encroachment, but not in a significant way – he is more annoyed than inconvenienced.
16. In terms of loss of enjoyment and property rights, I assess that to be compensated by a payment of VT 100,000.
17. Mr Chani is entitled to interest on those amounts at the rate of 5% p.a. from 14 April 2020, the date of the Amended Claim.
18. Mr Chani is also entitled to the costs of this Claim, which I fix at VT 75,000. That is to be paid within 21 days.

F. Enforcement

19. Pursuant to Rule 14.5(1), I now schedule a Conference for 8.30am on 27 July 2020 to ensure the judgment has been executed' or for the judgment debtor to explain how it is intended to pay the judgment debt.
20. For that purpose, this judgment must be served on the Defendant.

Dated at Port Vila this 3rd day of July 2020
BY THE COURT


Justice G.A. Andrée Wiltens

