

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

**Civil
Case No. 17/3297 SC/CIVL**

BETWEEN: David Nelson
Claimant

AND: Toyota Tusho (Vanuatu) Limited
Defendant

Date of HEARING: 16th October 2019
Date of Judgment: 7th February 2020
Before: Justice Oliver Saksak
In Attendance: Mary Grace Nari for the Claimant
Abel Kalmet for the Defendant

JUDGMENT

Introduction

1. The Claimant's claims for damages fall under two heads:-

(a) General Damages for-

(i) Theft-	VT 200,000
(ii) Conversions and breach of agreement	VT 500,000
(iii) Loss of business income	VT 18,770,000
(iv) Stress and anxiety	VT 200,000

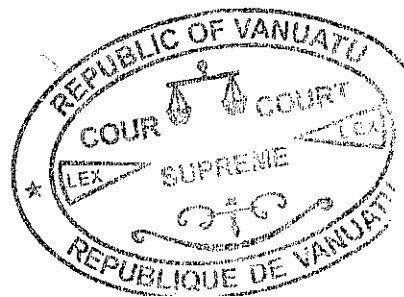
TOTAL **VT 19,670,000**

(b) Special damages-

(i) Repossession of vehicle-	VT 1, 496, 829
(ii) Eski (Cooler)-	VT 39,375
(iii) Transport expenses-	VT 98, 610
(iv) Accommodation-	VT 42,000

TOTAL **VT 1, 676, 814**

The total damages claimed is VT 21, 346, 814.

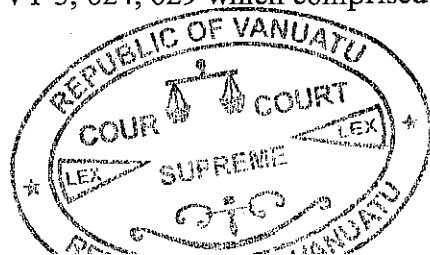


The Facts

2. In November 2012 the Claimant obtained a loan from the Credit Corporation to purchase a Toyota Hi-Lux truck on a “ as is where is” basis. He purchased the truck at VT 2 million and took possession. However no longer after he experienced a problem with the gearbox. He brought the problem to the attention of the defendant. Arrangement was made for the gearbox to be sent to the defendant in Port Vila. The claimant sent the gearbox to the defendant in a cooler eski in August 2013. He made follow-up phone calls to check on the status of his gearbox. These were unfruitful. He paid personal calls to the defendant’s workshop on 26 August 2013. He was accompanied to the showroom but his gear box and eski- cooler went missing.
3. The claimant instructed his solicitor who wrote to the defendant about the missing gearbox and eski and sought reimbursements of his personal expenses. The defendant replied assuring him of a replacement at their expenses. The new gearbox arrived on 16 September 2013. It was sent over to Malekula to be fixed or fitted.
4. Once fitted, the same problem was encountered and the defendant instructed the claimant to have the vehicle shipped to Port Vila at their own expense. This occurred but the defendant did not fix the new gearbox into the vehicle.
5. As a result Credit Corporation repossessed the vehicle on 12 September 2014. And the claimant filed his claims on 9 November 2017 claiming damages.

Discussion

6. The defendant accepted liability but dispute the amounts of damages claimed.
7. After an assessment hearing on 16th October 2019, Counsel were directed to file final submissions. Mrs Nari filed her submissions on 30th October 2019 and Mr Kalmet filed responding submissions on 9th December 2019.
8. From the Claimant’s submissions paragraph 35 of those submissions show that the claimant’s claims have been substantially reduced to VT 3, 624, 829 which comprised of-



- a) Theft in the sum of VT 200.000.

From the evidence required on the balance of probability the claimant has established his original gear box and orange eski costing VT 39, 375 went missing while in the custody of the defendant. There was no evidence as to the costs of the old gearbox that went missing. Therefore the only amount allowed for theft is VT 39, 375 for the eski cooler.

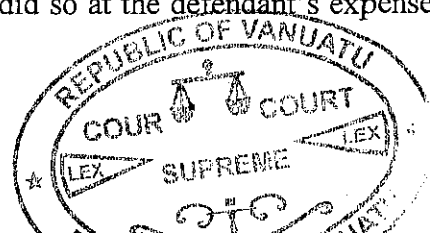
- b) Breach of agreement in the sum of VT 500.000. The terms of this agreement are contained in the letters of Patrick Lange dated 27th August 2013 and of 17 February 2014. These are that the defendant would reimburse the claimant's airfares (VT 9,390), accommodation (42,000vt) and costs of eski (VT 39,375). Altogether the defendant promised to reimburse the claimant the sum of VT 98,610.

The defendant has not clarified whether the VT 98.610 was actually paid. If it has been paid, then the defendant has no further obligation. If it has not, then the claimant is entitled to be paid this amount in full and final settlement of his claim for travelling, accommodation and costs of the eski cooler.

- c) Loss of business income in the sum of VT 1,428,000. From the evidence, the claimant has shown the purpose of obtaining the loan and the purchase of the vehicle was to do business. He did not possess a business licence but that is immaterial. He could have done that if the truck was working and operating but he had not arrived at that stage.

Despite the submissions of the defendant opposing this claim, my view is that the claimant is entitled to loss of business income at an average rate of VT 7,000 per day but it will not be for the 8 months claimed. In my view the claimant is only entitled to costs of income from May 2014 to September 2014, a period of 5 months= VT 7000 x 24 days per month = 168 days x 5 months = VT 840,000.

It was in April 2014 Harry Calder instructed the claimant to ship his vehicle to the defendant in Port Vila. When he finally did so at the defendant's expense



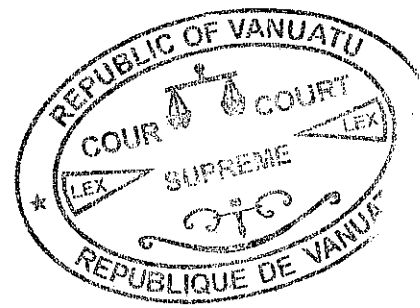
the defendant did little or nothing with it until the vehicle was repossessed in September 2014.

- d) Stress and anxiety in the sum of VT 200.000. I accept the defence submissions that as there is no evidence showing any medical report of any condition faced by the claimant during the period all these were happening, this claim is unsubstantiated and must be disallowed.
 - e) Loss of Toyota Hilux in the sum of VT 1, 496, 829. I accept the defendant's submissions that the claimant is not entitled to recover these from the defendant. He purchased the vehicle on a "as it where is basis" and therefore his claim cannot be against the defendant. This claim is disallowed.
 - f) From the evidence however he did make a deposit of VT160.000 for the new gear box. It is not clear to me whether this has been reimbursed. If it is then he has no further entitlement. If on the other hand it has not, then it is my view he is entitled to be reimbursed for this. And this would in my view fall within the head of breach of agreement in 8(b) above.
9. In conclusion the claimant has judgment for the total sum of VT 1,305,985 broken down as follows-

(i)	Cost of eski cooler-	VT 39,375
(ii)	Reimbursements-	VT 98,610 + 160,000 = VT 258, 610
(iii)	Loss of business income -	VT 840,000

TOTAL	VT 1,137,985
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10. In the event the defendant has included the costs of the eski in the VT 98,610 and VT 160,000 have been reimbursed, these are to be deducted accordingly and the balance only shall be paid by the defendant to the claimant.



Interest and Costs

11. Finally I order that the defendant pays interests on the full amount or on the balance after any deductions. The interest shall be 5% per annum calculated from the date of filing of the claim to the date of judgment.

12. I further order that the defendant pays the claimant's costs of the proceeding on the standard basis as agreed or be taxed by the Master.

DATED at Port Vila this 7th day of February 2020

BY THE COURT


OLIVER.A.SAKSAK

Judge

