

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

Civil
Case No. 19/894 SC/CIVL

BETWEEN: Daniel and Louise Yahwa
Claimants

**AND: Zhang Yumin, Liu Jiangbo, Qiang
Qunchu, Chen Pingping and Zhang
Qaing**
Defendants

Date of Trial: 2 April 2020
Before: Justice V.M. Trief
In Attendance: Claimants – Ms S. Mahuk
Defendants – no appearance (unrepresented)
Date of Decision: 22 May 2020

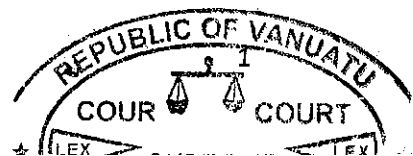
RESERVED JUDGMENT

A. Introduction

1. The parties contracted for the sale and purchase of a number of leases. The Claimants Mr and Mrs Yahwa assert that they have a valid contract with the Defendants, which the Defendants have breached. Their Claim seeks specific performance of the contract and damages.
2. This decision determines the Claim.

B. Background

3. The Defendants were initially represented by Mr Hakwa. They filed a Defence entirely disputing the claim. They asserted that none of the Defendants was a party to the contract; that the contract was made with SouthPacific GreatFuture Development Co.



Limited. Accordingly, that Mr and Mrs Yawha had no cause of action against any of the Defendants and the claim must be dismissed in its entirety with costs to the Defendants.

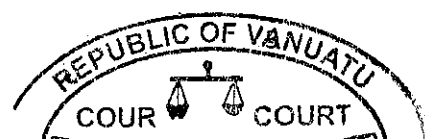
4. SouthPacific GreatFuture Development Co. Limited (the '**Company**'), represented by Mr Hakwa, had in turn filed separate proceedings Civil Case ('**CC**') 19/1939 claiming that the subject leases were registered by fraud or mistake and seeking the return of the VT31,000,000 deposit. I consolidated CC 19/1939 with the current proceeding.
5. On 28 January 2020, Mr Hakwa requested and was granted leave to cease acting for the Defendants and the Company. He stated that the Defendants had left Vanuatu, and he could not obtain any instructions from them. It is undisputed that they and the Company have no assets in Vanuatu.
6. Also on 28 January 2020, Mr and Mrs Yawha obtained orders for substituted service by email to the Defendants' addresses provided by Mr Hakwa. Finally on 28 January 2020, I listed the current proceeding for trial on 2 April 2020.
7. Thereafter the Defendants were unrepresented and did not take any further steps in the proceeding.
8. The defendants in CC 19/1939 (Mr and Mrs Yawha, and Mr Napat) applied for security for costs. This was granted particularly in light of the Company not having any assets in Vanuatu. The Company did not pay the security for costs ordered nor the costs separately ordered. On 12 March 2020, I struck out CC 19/1939 for the Company's failure to comply with the Court's Orders.
9. The Defendants did not appear at trial. Given the passage of time since the filing of the claim, noting that the Defendants have fled the jurisdiction, and being satisfied that they were notified of the trial date but had not appeared, Mr and Mrs Yawha sought judgment on the basis of rule 12.9(1)(b) of the *Civil Procedure Rules*. That rule provides that if a defendant does not attend when the trial starts, the court may give judgment for the claimant.
10. The Claimants relied on the sworn statements filed on their behalf as well as the sworn statement of Paul Gambetta, the Director of Lands. That was the only evidence I could consider.

C. The Agreement

11. Mr and Mrs Yawha were the registered proprietors of 7 rural residential leases title numbers 12/0912/1010, 12/0912/1011, 12/0912/1012, 12/0912/1013, 12/0912/1014, 12/0912/1015 and 12/0912/1010 (the '**7 rural residential leases**'). These properties are situated at Ernas area (Erakor Road).
12. In May 2018, Mr and Mrs Yawha received inquiries from the Defendants Zhang Yumin and Chen Pingping, via their go-between Peter Hong, for the purchase of these leases. Mr Hong also acted as English translator for Mssrs Zhang and Chen.



13. The person who introduced Mr Hong to Mr Yawha was Jotham Napat, then Minister for Infrastructure and Public Utilities. Mr Napat deposes that he is distantly related to Mr Yawha and introduced the Defendants to Mr Yawha after the Defendants, through Mr Hong, had approached him for a recommendation as to who they could purchase land from. He said that he and his wife had bought 4 leases from Mr and Mrs Yawha within the same subdivision as the 7 rural residential leases. He had had no legal issues with his purchase and so he recommended the purchase of leases from Mr and Mrs Yawha to the Defendants.
14. Mr Napat took part in several meetings between Mr Yawha, Mr Hong and various of the Defendants to negotiate the sale and purchase of leases from Mr and Mrs Yawha.
15. Mr Yawha understood that the Defendants were Chinese nationals and investors in Vanuatu, residing at Erakor House at Korman area in Port Vila.
16. Mr Yawha, a registered legal practitioner, prepared a written sale and purchase agreement. He deposes that just prior to signing he questioned Mr Zhang and Mr Chen, through their spokesperson Mr Hong, as to the seal of the company to be put on the agreement when executed. He and Mr Napat were told that the company had not yet been incorporated and there was no company seal therefore that the Purchaser would be recorded on the sale and purchase agreement as Mr Zhang, on behalf of the Company.
17. Mr Yawha and Mr Napat were also told by Messrs Zhang, Chen and Hong that the purchasers of the leases would actually be several individuals and not the Company but they would let him know in good time the names of these persons. Therefore, for now, to keep the Purchaser noted as Mr Zhang on behalf of the Company.
18. Mr Yawha deposes that he did not conduct a company search as he believed the Defendants. He was also put at ease by the Defendants' offer to pay more than the usual 10% on signing of the Agreement, but to pay almost 50% of the purchase price.
19. Mr Yawha finalised the sale and purchase agreement and it was executed on 12 July 2018 by Mr and Mrs Yawha as the Vendors, by Mr Zhang ("on behalf of SouthPacific GreatFuture Development Co. Limited") as Purchaser, and Minister Jotham Napat as personal guarantor for the Vendors (the '**Agreement**'). By the Agreement, Mr and Mrs Yawha agreed to sell and the Purchaser agreed to purchase the 7 rural residential leases for the sum of VT65,000,000.
20. Mr Napat deposed that the Defendants wanted a guarantor for Mr and Mrs Yawha, and he was willing to so act. Accordingly he signed the contract as their guarantor.
21. It was a condition of the Agreement that after payment of the deposit – VT30,000,000 – that Mr and Mrs Yawha would apply for the change of class of the lease from residential to commercial class at the Defendants' cost, and upon transfer of these commercial



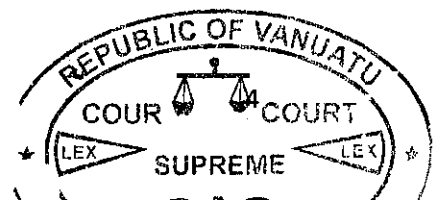
leases to the Defendants, that they would pay the VT35,000,000 balance of the purchase price to Mr and Mrs Yawha.

22. Mr Yawha evidences that the deposit was paid to him and Mrs Yawha in hard cash. He learnt after that that the cash came from each Defendant personally and that was why they wanted the properties to be in their personal names and not the Company's. Thereafter he and Mrs Yawha undertook the following as per their obligations under the Agreement:

- Applied for and obtained a change in the class of the 7 leases from residential to commercial, as required by clause 7 of the Agreement. This cost VT731,140. The new commercial leases issued were lease title numbers 12/0912/1052; 12/0912/1053; 12/0912/1054; 12/0912/1055; 12/0912/1056; 12/0912/1057; and 12/0912/1059 (the '**7 commercial leases**').
- Prepared the Transfers of lease for the 7 commercial leases pursuant to clause 3 of the Agreement. They and the Defendants signed these on 4 October 2018;
- The transferors of each lease were Mr and Mrs Yawha. The transferees of each lease were the Defendants Liu Jianbo, Qian Qunchu, Mr Zhang, Mr Chen and Zhang Qaing.
- Applied for and on 23 November 2018, obtained the Minister of Lands' consent as lessor to the transfer of the 7 commercial leases to the Defendants, in accordance with clause 2 of the Agreement;
- Obtained invoices dated 30 November 2018 for the stamp duty and registration fees for the transfer of the 7 commercial leases;
- Served those invoices on the Defendants on 30 November 2018 requesting settlement by 3 December 2018; and
- In January 2019, paid all outstanding fees and charges over the 7 commercial leases ready for transfer to the Defendants, as required by clauses 4 and 5 of the Agreement.

23. The Defendants have not paid the stamp duties and registration fees invoiced, despite notices on 28 and 30 November 2018, and a third and final notice dated 26 February 2019 requesting settlement by 6 March 2019.

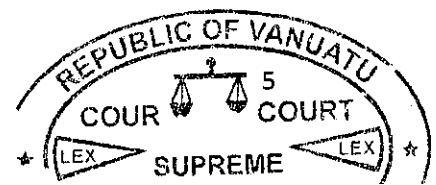
24. The Defendants' response to the 30 November 2018 letter was via their solicitor Mr Hakwa's letter dated 3 December 2018 setting out a list of documents that the Defendants wished to be appraised of before they could settle the balance of the Agreement. Mr Yawha provided the documents requested the following day. In that letter, he gave notice for the Defendants to complete the Agreement within 20 working days as per clause 12(1)(a) of the Agreement or he and Mrs Yawha would cancel the contract and the deposit under the contract would be forfeited to them.



25. Mr Hakwa's letter dated 23 January 2019 disputed all the documents provided and stated that the Defendants did not wish to proceed with the Agreement and wanted their money refunded. In both letters from Mr Hakwa, he stated that he was acting for the Defendants.
26. On 30 April 2019, Mr and Mrs Yawha received a letter from the Company and Mr Zhang that the Purchaser had decided to cancel the contract effective from the date of that letter and demanding that the Vendor refund the sum of VT31,000,000.
27. In April 2019, Mr and Mrs Yawha filed their Claim seeking specific performance, damages, interest and costs.
28. Mr Yawha deposes that only on 30 April 2019 did he finally conduct a company search. He discovered for the first time that the Company was registered on 26 June 2018 with Mr Zhang as its director and Mr Chen, Qian Qunchu and Liu Jiangbo as shareholders. Mr Yawha states that he was shocked to learn that they had lied to him all this time.
29. The sworn statement of Paul Gambetta, Director of Lands sets out the full chronology of dealings of the subject leases.
30. Eilon Mass deposed that he and the Defendants Chen Pingping and Zhang Yumin had all resided at Erakor House, but that those two Defendants and their families had left Vanuatu in about August 2019. After that they had sold all of their personal belongings including a vehicle and 2 shipping containers that had been kept at Erakor House.

The parties to the Agreement

31. The Purchaser named in the Agreement was Mr Zhang "on behalf of SouthPacific GreatFuture Development Co. Limited". I accept Mr Yawha's evidence that he drafted the Agreement and after his queries as to the status of the Company, that he was told by Messrs Hong, Zhang and Chen to name the Purchaser in the Agreement as Mr Zhang on behalf of the Company. He was told that this was because the Company had not yet been incorporated and there was no company seal. Further, that Mr Yawha was told that the purchasers under the Agreement would actually be several individuals and not the Company so for the time being, to name the Purchaser in the Agreement as Mr Zhang on behalf of the Company.
32. After the Agreement was signed, the Defendants paid the deposit to Mr and Mrs Yawha as required by the Agreement. Mr Yawha does not state in his evidence the amount paid as deposit. Clause 1(a) of the Agreement provides for a deposit of VT30,000,000 but Mr Hakwa's letters refer to the deposit paid being VT31,000,000. The Claim in CC 19/1939 also sought return of the VT31,000,000 deposit so I accept that that was the amount paid.
33. I accept Mr Yawha's evidence that he learnt afterwards that that the cash came from each Defendant personally and that was why they wanted the leases to be in their personal names and not the Company's.



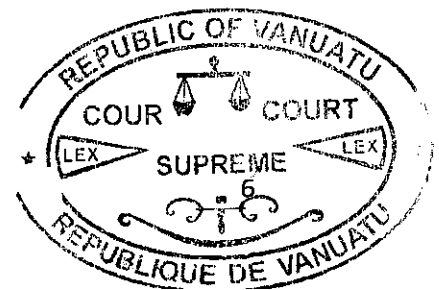
34. In the week prior to the signing of the Transfers of lease of the 7 commercial leases from Mr and Mrs Yawha to the Defendants, the Defendants provided copies of their passports to Mr and Mrs Yawha with instructions that they be named as the proprietors of the 7 commercial leases, rather than the Company.
35. Mr and Mrs Yawha then prepared the Transfers of lease to the Defendants. On 4 October 2018, they and the Defendants signed the Transfers of lease for the 7 commercial leases.
36. Although the Agreement named the Purchaser as Mr Zhang purportedly on behalf of the Company, the representations to Mr Yawha and the Defendants' subsequent acts ensured that the Defendants were the beneficiaries of the Agreement in their personal capacity regardless of the styling of the title of Purchaser in the Agreement. Accordingly I find that the parties to the Agreement are Mr and Mrs Yawha as Vendor, and the Defendants as the purchasers.
37. There is consideration for the Agreement in that the Defendants paid the deposit they were obliged to under the Agreement. This was expressed in the Agreement to be VT30,000,000 but as set out above, I find that the amount paid was VT31,000,000.
38. Accordingly, the Agreement constituted a valid contract between Mr and Mrs Yawha and the Defendants.

Claimants' compliance with the Agreement

39. I find that Mr and Mrs Yawha complied with their obligations under the Agreement by doing the acts set out in paragraph 22 above.

Defendants' breach of the Agreement

40. I find that the Defendants have breached the Agreement as follows:
 - The Defendants were required under clause 9 of the Agreement to refund Mr and Mrs Yawha the cost of VT731,140 for the change of class of the leases from residential to commercial. They have not done so.
 - The Defendants were required to pay stamp duty and registration fees for the registration of the Transfers of lease, pursuant to clause 3 of the Agreement. They have not done so preventing registration of the Transfers of lease and settlement under the Agreement.
41. In conclusion, I find that Mr and Mrs Yawha have proved on the balance of probabilities that they had a valid contract with the Defendants, that they complied with the contract and that the Defendants breached the contract.
42. Accordingly, Mr and Mrs Yawha are entitled to judgment.



D. Result

43. Judgment is granted for Mr and Mrs Yawha and it is ordered that:

43.1 The sale and purchase agreement executed on 12 July 2018 by Mr and Mrs Yawha as the Vendors, by Mr Zhang on behalf of SouthPacific GreatFuture Development Co. Limited as Purchaser, and Minister Jotham Napat as personal guarantor for the Vendors, for the benefit of the Defendants as set out in this judgment, is lawfully terminated;

43.2 The VT31,000,000 deposit paid by the Defendants to Mr and Mrs Yawha is forfeited, and is held by Mr and Mrs Yawha for their own benefit. There shall be no other order for damages; and

43.3 Mr and Mrs Yawha are hereby exonerated of all obligations under the contract and are free to engage with third parties in respect of lease title numbers 12/0912/1052; 12/0912/1053; 12/0912/1054; 12/0912/1055; 12/0912/1056; 12/0912/1057; and 12/0912/1059.

44. Mr and Mrs Yawha are entitled to their costs on the standard party/party basis to be agreed, or taxed by the Master. Once settled, the costs are to be paid within 21 days.

DATED at Port Vila this 22nd day of May 2020

BY THE COURT


Viran Molisa Trief
Judge

