

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

Civil  
Case No. 20/143 SC/CIVL

**BETWEEN:** Leah Claire Phillips  
Claimant

**AND:** David Anthony Phillips  
Defendant

*Date of Trial:* 25 May 2021  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mrs M. Vire  
Defendant – Mr S. Kalsakau  
*Date of Decision:* 28 May 2021

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**JUDGMENT**

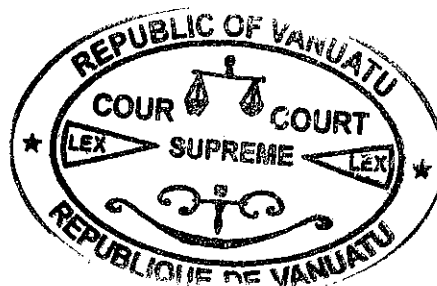
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A. Introduction

1. This is a dispute regarding the alleged failure to remit 50% of particular income of Santo Marina (Vanuatu) Limited ('Santo Marina') to the Claimant Leah Claire Phillips. She and the Defendant David Anthony Phillips jointly own Santo Marina. The Claim is entirely disputed by Mr Phillips.

B. Background

2. The parties each own 50% of the shares in Santo Marina which is a private local company limited by shares. On formation in 2005, they were both named as Directors. Mrs Phillips is no longer a Director.
3. By Transfer of Lease registered on 9 November 2007, Santo Marina acquired leasehold title no. 03/O184/049. It is a water frontage property at Luganville, Santo (the 'property').
4. The parties spent a decade building up their business and the property. Rental premises are located on the property, including a wharf used by the resorts at Aore, Bokissa and Ratua islands.



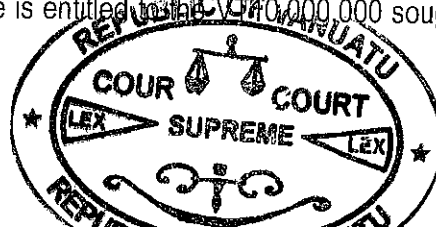
5. The parties have a Bred Bank account in their joint names and either party could withdraw from the account.
6. In 2015, Mrs Phillips moved back to Australia and has lived there since. Prior to attendance for the trial in this matter, she was last in Vanuatu in January 2020 and in 2015.
7. The parties separated in 2019 and are now divorced.
8. Mrs Phillips alleges that she has not received her full share of Santo Marina's income since 2016. In 2019, the Vanuatu Government compulsorily acquired part of the property. It paid VT40,342,643 in compensation for the acquisition.
9. The Claim filed is for 50% of the acquisition compensation payment, for VT10,000,000 being Mrs Phillips' share of the rental income from usage of the property since 2016 and VT5,000,000 damages for pain and suffering. Mrs Phillips bears the onus of proving her Claim on the balance of probabilities.

C. Discussion

10. Mrs Phillips evidenced Santo Marina's ownership of the property, that part of the property was compulsorily acquired by the Government and that it paid compensation for the acquisition by cheque for VT40,342,643 which was deposited into the Bred Bank account on 9 September 2019 [**"Exhibit C1"**].
11. Mr Phillips does not dispute that Mrs Phillips is entitled to half the acquisition compensation payment less the financial expenses incurred in the acquisition process. Mr Phillips adduced into evidence two invoices: one from Sugden Lawyers for legal fees of VT1,013,213 and one from Mark O'Brien, The Lookout Services Limited for VT3,200,000 [**annexures "DAP3" and "DAP4", "Exhibit D1"**]. I am satisfied these were expenses incurred in relation to the acquisition. It follows that they must be deducted from the acquisition compensation payment amount:

Acquisition compensation payment	VT40,342,643
Less Sugden Lawyers fees	VT1,013,213
Less LOOKOUT fees	VT3,200,000
TOTAL	VT36,129,430
50% of TOTAL	VT18,064,715

12. Mrs Phillips is entitled to judgment for the sum of VT18,064,715 being her share of the net acquisition compensation payment received from the Government.
13. As to the claim for VT10,000,000 being Mrs Phillips' share of the rental income from usage of the property since 2016, Mrs Phillips has not adduced any evidence to prove her claim on the balance of probabilities as to the amount of rental income received by Santo Marina since 2016 such that she is entitled to the VT10,000,000 sought as her



share. She needed to provide supporting documentation as to occupancy of the property, by whom, for how long, and at what rent. None of that is in evidence. No documentation has been adduced into evidence to substantiate the estimates set out in para. 15 of her sworn statement, [**“Exhibit C1”**].

14. Mrs Vire submitted that the Orders made on 19 June 2020, requiring Mr Phillips to give account to Mrs Phillips of Santo Marina's income, expenses, profits and losses since 1 January 2016 were intended to obtain the requisite evidence. However, the Orders were not complied with. The short answer to that submission is that the burden of proving the Claim never shifted from Mrs Phillips. She chose with Mrs Vire as counsel to commence the trial on the evidence filed. She did not seek to adjourn the trial in order to obtain more evidence, whether by way of the 19 June 2020 orders or otherwise.
15. Mr Kalsakau submitted that Mr Phillips did comply with the Orders dated 19 June 2020; he did so via the hand-written annual overview of Santo Marina's income and expenses for 2016-June 2020 attached to his sworn statement [**annexure “DAP1”, “Exhibit D1”**]. Mr Phillips stated in cross-examination and Mr Kalsakau strongly submitted that having seen Mr Phillips' sworn statement, no request has ever been made by Mrs Phillips to inspect the company's books to verify the breakdowns provided nor to request an audit of the company's records.
16. Whether or not Mr Phillips has complied with the Orders dated 19 June 2020 is immaterial. The onus is on Mrs Phillips to prove this aspect of her Claim. She has not done so. Her claim for VT10,000,000 share of rental income for 2016 to date fails.
17. Mrs Vire submitted that Mrs Phillips was entitled to damages for pain and suffering. She had to accept in response to my questions however that there is no cause of action pleaded in the Claim which if proved would sound in damages. This aspect of the Claim fails at the first hurdle as no cause of action has been pleaded.

D. Result and Decision

18. Judgment is entered for the Claimant for the sum of VT VT18,064,715.
19. The Orders dated 19 June 2020 are hereby discharged. The Defendant is to pay the Claimant the judgment sum from the funds held in Bred Bank account number 343672010015.
20. Interest will be payable on the judgment sum until fully paid, at the Supreme Court rate of 5% per annum.
21. The Claimant has not proved the aspect of her Claim in relation to VT10,000,000 share of rental income since 2016. As to the claimed damages for pain and suffering, there is no cause of action pleaded in the Claim which if proved, would sound in damages.
22. The Claimant has succeeded in only one of the three aspects of her Claim however for more than the amount offered by the Defendant to settle this proceeding – VT15,000,000. Accordingly, costs will lie where they fall.



E. Enforcement

23. Pursuant to rule 14.3(1) of the *Civil Procedure Rules*, I now schedule a Conference at **11 am on 21 June 2021**, including by video link to the Luganville Court House, to ensure the judgment has been executed or for the Defendant to explain how it is intended to comply with this judgment. For that purpose, this judgment must be personally served on the Defendant.

DATED at Luganville this 28<sup>th</sup> day of May 2021

BY THE COURT

*VM Trief*

Viran Molisa Trief  
Judge

