

BETWEEN: Ning Zhi Wei
Claimant

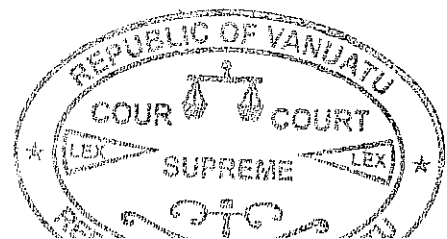
AND: Amanda Aiello and Bartley Robert
Field
Defendants

Date: 10 August 2021
Before: Justice G.A. Andrée Wiltens
Counsel: Ms M. Vire for the Claimant
Mr N. Morrison for the Defendants

Judgment

A. Introduction

1. This Claim relates to an alleged transaction involving the sale of land in Luganville.
2. The Claimant, Ms Ning Zhi Wei, wanted to purchase the land which was owned by the late Allan Power. Following enquiries, she dealt with First National Real Estate ("First National") acting on behalf of the vendors of the property, who were the executors of the Estate of Allen Power.
3. With the assistance of First National, Ms Ning signed an Agreement for Sale and Purchase of the land for VT 57 million. This Agreement was not signed by the vendors.
4. There were further negotiations which led to a second Agreement for Sale and Purchase being prepared by First National offering VT 65 million and signed by Ms Ning. As well, Ms Ning paid the 10% deposit to First National as mentioned as being required in the Agreement.



5. This second Agreement has not been counter-signed by the vendors.
6. Ms Ning has subsequently caused a caution to be registered against the title in order to safeguard her perceived position, as she has apparently come to learn of another offer made by another party.

B. Claim

7. This Claim was subsequently filed in the Supreme Court seeking to enforce the Agreement by means of specific performance on the part of the vendors.

C. Response

8. In response, Mr Morrison initially suggested to Ms Vire, without success, that the Claim be withdrawn as there was no contract in existence between the parties.
9. Subsequently, Mr Morrison filed an application to strike out the Claim.

D. Discussion

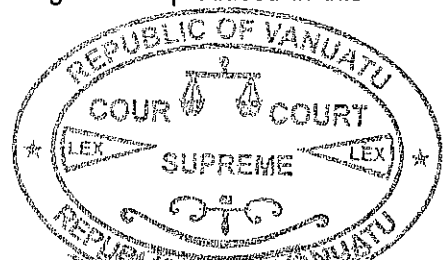
10. The application to strike out was based on the premise that there was no contract in existence. In law, the second Agreement was no more than an offer by Ms Ning to purchase the property at VT 65 million. It was then open to the vendors to accept the offer or otherwise. Acceptance would require the vendors to counter-sign the Agreement. It is accepted by Ms Vire that this did not occur.
11. Unless and until the Agreement was counter-signed by the vendors, regardless what the document stated, it was not a legally binding or enforceable contract.
12. Further, over and above this fundamental tenet of contractual law, the provisions of section 40 of the Law of Property Act 1925, are relevant. That states:

40. Contracts for sale, etc., of land to be in writing.-

(1) No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunder by him lawfully authorised.

(2) This section applies to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance or sales by the court.

13. Ms Vire sought to rely on her client's belief that she had entered into a viable contract, as evidenced by the conduct of First National, the wording of the Agreement and her payment of the deposit. However, the position in law is clear. The second Agreement produced in this

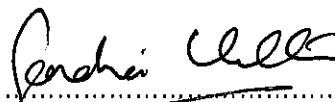


matter is not a valid contract as it was not signed by both parties. It is no more than an offer by Ms Ning, which has not been accepted by the vendors.

E. Result

14. The Agreement is accordingly not enforceable, and the Claim must be struck out as having no prospect of success or basis in law.
15. The caution registered against the title is to be removed within 14 days, at Ms Ning's expense. There is no legitimate reason for it remain registered against the title.
16. The VT 6.5 million deposit paid is to be returned to Ms Ning within 14 days, less VT 35,000. That deducted amount is to be paid within 14 days to Ridgeway Blake, Solicitors as their clients' costs in this matter.
17. Finally, it is apt to make comment on a common practice in Vanuatu, whereby counsel proceed on the instructions of their clients, as occurred in this case. The role of counsel is not to simply act according to their instructions. Instead, once instructions are received, counsel must give their clients legal advice. In many instances, it may not be advice that is well received. However, only if counsel give proper advice can clients determine for themselves whether to proceed or not with full knowledge of the risks involved which may well involve the imposition of costs. This case illustrates that. Stern advice ought to have been given to Ms Ning that despite her belief, she had no legal resort available to her in the circumstances she found herself in. She should have been advised to save her money rather than embark on costly but futile Court action.

**Dated at Port Vila this 10th day of August 2021
BY THE COURT**


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Justice G.A. Andrée Wiltens

