

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

Civil
Case No. 21/1630 SC/CIVL

BETWEEN: **Philippe Carillo**
Claimant

AND: **Maxine Carillo**
First Defendant

AND: **Alfa Lal**
Second Defendant

AND: **William Mulham**
Third Defendant

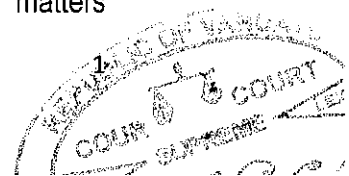
AND: **Director of Customs**
Fourth Defendant

Date of Hearing: 1 September 2021
Before: Justice V.M. Trief
In Attendance: Claimant – in person
First Defendant – no appearance (in person)
Second and Third Defendants – in person
Fourth Defendant – Mr K.T. Tari & Mr J.T. Wells
Date of Decision: 21 September 2021

JUDGMENT

A. Introduction

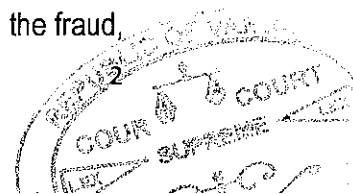
1. This is a ruling on a strike-out application.
2. The Claimant Philippe Carillo is suing the Defendants for fraud. The Second to Fourth Defendants dispute the Claim and applied for strike-out of the proceeding on the grounds of *res judicata* and *Anshun estoppel* preventing re-litigation of matters



previously heard in the Magistrates' and Supreme Courts and the Court of Appeal and the bringing of a fresh claim against the Defendants in this matter.

B. Background

3. The Claimant Philippe Carillo and the First Defendant Mrs Maxine Carillo were married and are now divorced.
4. On 18 October 2017, Mr Carillo purchased a silver Isuzu vehicle with registration number 16591 (the 'car') from Carpenters Motors for VT930,000.
5. The car was registered solely in Mr Carillo's name.
6. On 21 November 2017, Mr and Mrs Carillo separated.
7. Mrs Carillo damaged the car in a motor vehicle accident.
8. The car was taken to the Second Defendant Alpha Lal's garage, who sold it to his brother Tristin Aureal Lal in or about April 2018.
9. In April 2018, Mr Tristin Lal changed the registration of the car at the Department of Customs to his own name.
10. In June 2018, Mr Carillo informed Mr Alpha Lal and Mr Tristin Lal that the car had been transferred without his knowledge.
11. Mr Carillo commenced Civil Case No. 1969 of 2018 in the Magistrates' Court against Mrs Carillo alleging theft and fraudulent sale of the car to Mr Tristin Lal without Mr Carillo's knowledge or consent, and that Mr Tristin Lal had failed or refused to return the car.
12. Mrs Carillo did not take any steps in the Magistrates' Court proceedings.
13. After a trial, the Magistrates' Court issued its judgment dated 20 March 2019 in *Carillo v Carillo*; Civil Case No. 1969 of 2018.
14. Mr Carillo appealed to the Supreme Court in Civil Appeal Case No. 2070 of 2019. I heard that appeal and delivered judgment in favour of Mr Carillo and ordered immediate return of the car to him: *Carillo v Carillo* [2020] VUSC 204.
15. Mr Tristin Lal appealed to the Court of Appeal in Civil Appeal Case No. 2947 of 2020. The Court of Appeal delivered judgment in favour of Mr Tristin Lal: *Lal v Carillo* [2020] VUCA 55. Mr Carillo had in the meantime on-sold the car to a third party so the Court of Appeal ordered him to pay Mr Lal VT802,569 damages for recovery of the sums he expended in originally purchasing the car and subsequently making it roadworthy, and costs.
16. On 24 May 2021, Mr Carillo filed his Claim in this matter alleging that Mrs Carillo did not appear in the Magistrates' Court proceedings because of her involvement in the fraud,

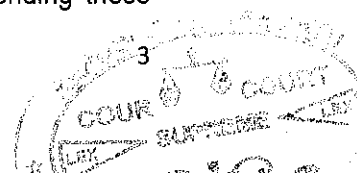


that Mr Alfa Lal committed perjury in the Magistrates' Court proceedings to hide his involvement in the fraud committed in the transaction of the car, that the Third Defendant William Mulham was involved in the fraudulent transfer of the car and the Fourth Defendant the Director of Customs (the 'Director') did not perform his duty to verify the signature on the transfer documents of the car.

17. The Claim is opposed. Mr Mulham and the Director filed Defences disputing all of the Claim. The latter also filed an Application to strike out the proceeding on the ground that the matter has been decided in the Court of Appeal therefore the principle of *res judicata* prevents it being re-litigated in this matter.
18. By his own Application, Mr Mulham joined the Director's Application and applied for a further order that the Claim be struck out on the ground that Mr Carillo is estopped by the doctrine of *Anshun Estoppel* from issuing a new claim against Mr Mulham.
19. At the hearing of the Applications, Mr Alfa Lal stated that he supported both Applications.
20. Mr Carillo opposed the Applications. He stated that when he commenced the Magistrates' Court proceeding he did not know who had committed fraud in the taking of his car. Now that he has the knowledge gained from the previous proceedings, he is suing the parties in this matter. He is seeking damages for loss suffered including the damages ordered by the Court of Appeal, damages for the period that he did not have possession of the car from 24 April 2018 to 9 September 2020, the loss suffered in having to sell the car for a reduced value, stress and anxiety, costs and exemplary damages against the Director for not verifying the signature on the car transfer document.

C. Discussion

21. It is alleged in the Claim in this matter that:
 - a) Mrs Carillo 'absconded' the country and never appeared in the previous proceedings because of her involvement in the fraud, and that she was assisted by her friend Mr Mulham to get the vehicle sold in a fraudulent transaction to sell the car and used the case to travel to her home country the United States of America and then did not respond to attempts to serve her to avoid having a judgment entered against her;
 - b) Mr Alfa Lal committed perjury in the Magistrates' Court proceeding;
 - c) Mr Mulham was involved in the fraud by helping Mrs Carillo to fraudulently sell the car thus enabling her to 'abscond' the country; and
 - d) The Director failed to perform his statutory duty to verify the signature on the transfer documents of the car.
22. I now deal with the allegations against each of the parties in turn.
23. Mr Carillo is effectively seeking to sue Mrs Carillo for not responding to his efforts to serve her the Court documents in the earlier litigation and for not defending those

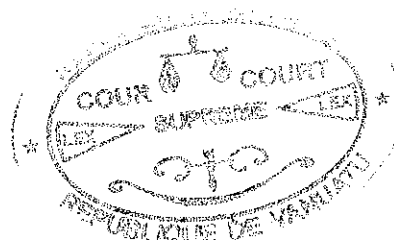


proceedings. However, there is no known cause of action for failure to defend Court proceedings. A party chooses whether or not to defend proceedings at their own peril. But they cannot later be sued for choosing not to defend the proceedings. Further, there is also no known cause of action for 'absconding' or leaving a country. The Claim must be struck out against Mrs Carillo as there is no cause of action disclosed against her.

24. Mr Carillo seeks to sue Mr Alfa Lal for perjury. Perjury is a criminal offence but there is no known cause of action for perjury. Therefore a person can be prosecuted for perjury but not sued in a civil action for committing perjury. The Claim must be struck out against Mr Alfa Lal as there is no cause of action disclosed against him.
25. Mr Mulham is alleged to have been involved in the fraud by helping Mrs Carillo to fraudulently sell the car thus enabling her to 'abscond' the country. Mr Carillo's claim in the Magistrates' Court against Mrs Carillo was for stealing and fraudulently selling the car to Mr Tristan Lal. Whether or not Mr Mulham assisted Mrs Carillo in the fraudulent transfer of the car is an issue which should have been raised and determined at that time. There has been a final determination of the substantive issues raised in the Magistrates' Court proceeding by the Court of Appeal in its judgment *Lal v Carillo* [2020] VUCA 55. Accordingly, the principle of res judicata, which extends to arguments or issues which should properly have been determined at that time, applies and prevents Mr Carillo from now suing Mr Mulham for involvement in the fraudulent transfer of the car: *Family Kalmat v Kalmat* [2017] VUCA 20 at [35]. The Claim must be struck out against Mr Mulham on the ground of res judicata.
26. Mr Carillo alleged in his Claim in the Magistrates' Court in the particulars of para. 7 that the Vanuatu Government Transfer of Ownership form dated 24 April 2018 was fraudulently signed by Mr Tristan Lal. Whether or not the Director failed to perform a statutory duty to verify the signature on the transfer of ownership form is an argument or issue which should have been raised and determined at that time. Accordingly res judicata applies and prevents Mr Carillo from now suing the Director for allegedly failing to prevent the fraudulent transfer. Even if I am wrong on this, the *Road Traffic (Control) Act* [CAP. 29] does not impose a duty on the Director to check the signature on the notice given him of the change of ownership of a motor vehicle. It follows that the Director cannot be sued for alleged failure to do so. The Claim must be struck out against the Director.
27. Finally, Mr Carillo chose to sell the car to a third party before the Court of Appeal determined the appeal before it, resulting in the order for damages made against him. The cause of that lies squarely at Mr Carillo's feet. None of the Defendants in this matter could be found responsible or held liable for that.

D. Result and Decision

28. For the reasons given, the Claim is struck out against each of the Defendants.
29. The Third and Fourth Defendants' Applications for Strike-out are **granted** but on different grounds than those relied on.



30. Given my decision, I need not consider the Claimant's Application that the Claim be served on the First Defendant in California, United States of America.
31. There is no order for costs of the Second and Third Defendants.
32. The Claimant is to pay the Fourth Defendants' costs as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

**DATED at Port Vila this 21st day of September 2021
BY THE COURT**

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Justice Viran Molisa Trief

