

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

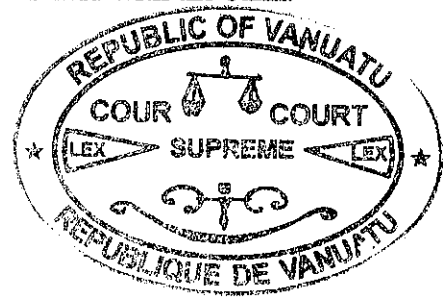
Civil
Case No. 22/1973 SC/CIVL

BETWEEN: Pacco Siri and Gloria Siri
Claimants
AND: National Bank of Vanuatu Limited
First Defendant
AND: Wanfuteng Bank Limited
Second Defendant

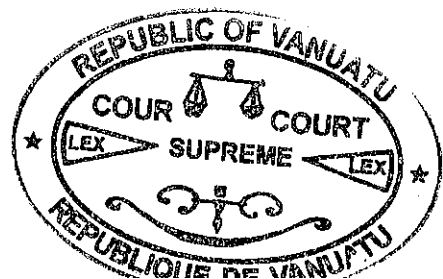
Date of Hearing: 26 October 2022
Before: Justice EP Goldsbrough
Appearances: Harrison, T for the Claimant s
Harmer, C for the Second Defendant/ Applicant

Decision on Application

1. This is an application to strike out a claim filed on 11 August 2022 wherein the claimants Pacco and Gloria Siri alleged negligence against both the First and Second Defendant. This application is brought by the Second Defendant (the Applicant) and, by consent, the First Defendant did not attend the hearing as not being affected by it. The single ground of the application is that the claim does not disclose a cause of action and should therefore be dismissed as frivolous or vexatious.
2. The claim alleges that the Applicant owed a duty of care to the claimants as the claimants had borrowed money to finance the purchase of a motor vehicle. The motor vehicle was not to be security for the loan. The loan was the subject of a written agreement which formed a contract between the claimants and the second defendant. In that contract security for the amount lent by the applicant was expressed to be funds already deposited with the bank in other accounts held with the bank.

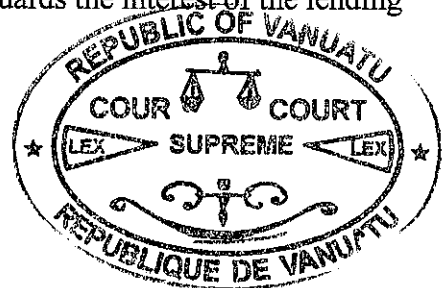


3. The claim alleges that the First Defendant, which did have a registered interest in the motor vehicle, should have passed on the registration book belonging to the motor vehicle when ownership was transferred from the seller to the claimants after the purchase price was handed over.
4. The applicants in their defence do not accept that there was any such obligation that required them to obtain the registration book from the seller and keep it safe until the applicant had discharged the loan. For that reason, the applicant submits that there is no duty of care.
5. The significance of the registration book becomes clear when details of how the seller sought the assistance of the police to repossess the motor vehicle, ostensibly producing the registration book as evidence of ownership.
6. Transfer of ownership of a motor vehicle is regulated. It is regulated by the Road Traffic Control Act [Cap 29]. Part of that regulated process is that the seller and the purchaser notify the licensing authority, which is the Department of Customs and Inland Revenue, within 7 days of a sale and the purchaser must present the registration book for the change of ownership to be effected together with payment of the prescribed fee. The new owner, the claimants, did not complete that process within the required 7 days. He did not do anything for more than six months. It appears from the claim that the claimants believe that the responsibility to obtain and safeguard the registration book in some way becomes the responsibility of any financial institution which grants a loan facility to purchase a motor vehicle even if the motor vehicle is not to be used as security.
7. The motor vehicle in question was removed from the possession of the claimants by the seller who sought assistance from the police to repossess the motor vehicle. He used the registration book which still showed his name as evidence to convince the police of his claim of ownership. It seems that there was an underlying dispute as to whether the full purchase price had been paid.
8. Part of this claim was interim relief sought to retake possession of the motor vehicle. An interim order was made and possession was returned to the claimants. After the claimants regained possession the same vehicle was then sold on by a relative of the



claimants to a third party. That transaction, not part of this claim, is described by the claimants as unauthorized.

9. The First Defendant had security over the motor vehicle as the seller had been a customer of that institution and had held with registration book until a loan facility granted for the original purchase of the motor vehicle was discharged. The essence of this claim is that the First Defendant should not have returned the registration book to the seller when the loan was paid off but should have handed the registration book to the applicants and that the applicants should have taken the registration book and kept it safely.
10. There is no other relationship submitted to exist between the claimants and the First defendant. Yet the duty of care alleged is both against the First Defendant, which should, it is submitted, not have released the registration book it held back to the seller but should have handed it to the applicants when they receive the settlement cheque from the applicants.
11. The duty to require the First Defendant to hand over the registration book is not made out on the evidence. The applicants had not required the motor vehicle as security for the loan granted by them. There is no evidence of any terms of the loan facility which require the applicants to do anything other than forward the money loaned directly to the First Defendant bank to pay off the loan that the seller had with that bank allowing the security to be discharged.
12. Nothing in the filed material explains how the obligation imposed by the Road Traffic Control Act can be passed from the purchaser to the financial institution. Until the purchaser fulfils the obligation to register the transfer of ownership and pays the required fee, the registration book will remain in the name of the seller. That responsibility rests on the purchaser and cannot be transferred by the purchaser to another.
13. It is conceded that there is a normal banking practice that a lending institution which finances the purchase of a motor vehicle may require the purchaser to give possession of the registration book to the lending institution when that institution has taken security for the loan over the motor vehicle. That safeguards the interest of the lending



institution in that it attempts to ensure the borrower does not sell the motor vehicle until the loan is paid off.

14. In this case, the lender, the applicant, did not take security over the motor vehicle and so did not require possession of the registration book. Even if it had, the registration book with the borrower named as the new owner could only have been provided to the applicants by the borrower client after he had registered the transaction with the Department of Customs and Excise. The claimants admit that they took no step to effect the name change until long after the purchase and only when the motor vehicle had been taken from them by the seller.
15. For the above reasons, it is clear that no duty as alleged in the claim exists for the applicants to fulfil and that the claim thus fails to disclose a cause of action. For that, the claim against the applicants must fail. It is hereby dismissed by striking it out.
16. Costs of and incidental to this claim are ordered to be paid to the applicants by the claimants. The costs awarded are awarded on an indemnity basis. Notice of such claim for indemnity costs was given both in the application for strike out and in correspondence. The basis for awarding costs on an indemnity basis is that the claim had no prospect of success and was thus brought in circumstances that amounted to an abuse of the litigation process.
17. Counsel are invited to file submissions on the quantum of indemnity costs within seven days of receipt of this decision, failing which the court will fix indemnity costs without the benefit of those submissions.

Dated at Port Vila this 26th day of October 2022

BY THE COURT

EP Goldsbrough

EP Goldsbrough

Supreme Court Judge

