

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

Civil
Case No. 22/3125 SC/CIVL

BETWEEN: Alfred Tarimoliliu and Katherine
Tarimoliliu
Claimants

AND: Violet Aki
Defendant

Date of Hearing: 27 April 2023
Before: Justice V.M. Trief
Counsel: Claimants – Mr P. Fiuka
Defendant – in person
Date of Decision: 7 August 2023

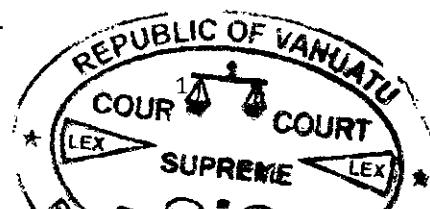
DECISION AS TO QUANTUM OF DAMAGES

A. Introduction

1. On 3 February 2023, Default Judgment was entered in this matter. The matter then proceeded to hearing as to quantum of damages.
2. This is the decision.

B. Background

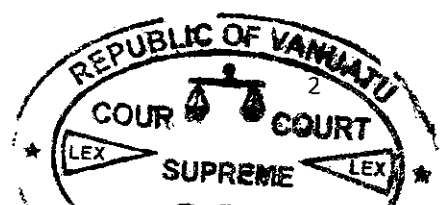
3. The Claimants Alfred Tarimoliliu and Katherine Tarimoliliu are the registered proprietors of and vendors of leasehold title no. 11/OH34/049 (the 'lease') located at Freswota 4 area in Port Vila.
4. On or about 1 July 2020, following her oral agreement with Mr and Mrs Tarimoliliu, the Defendant Violet Aki moved in and rented their house on the leased property for VT25,000 per month. It was agreed that Ms Aki would pay all payments for rent into the Tarimoliliu's bank account at the National Bank of Vanuatu ('NBV') because the lease was under mortgage with the NBV.
5. On or about 5 August 2020, the parties entered into a sale and purchase agreement for Ms Aki to purchase the lease for VT3,800,000 (the 'purchase price').



6. It was a term and condition of the agreement that Mr and Mrs Tarimoliliu would transfer the lease to Ms Aki, and she would mortgage the lease and apply the loan monies from the NBV to pay Mr and Mrs Tarimoliliu the full purchase price.
7. Sometime in 2020, Ms Aki obtained the registration of the transfer of the lease into her name but for almost 8 months, did not pay the purchase price. Consequently, Mr and Mrs Tarimoliliu issued a letter of demand dated 8 April 2021 demanding payment of the purchase price.
8. On or about 22 April 2021, the parties agreed that Ms Aki make an initial payment of VT2,700,000 and the balance of VT1,100,000 would be paid one year later. Ms Aki then paid VT2,700,000 to Mr and Mrs Tarimoliliu.
9. The balance was not paid one year later so a solicitor's letter of demand dated 30 May 2022 was sent to Ms Aki demanding payment of the outstanding balance of VT1,000,000.
10. Ms Aki has also failed to pay monthly rent to Mr and Mrs Tarimoliliu from 1 July 2020 to date.
11. While living on Mr and Mrs Tarimoliliu's property, Ms Aki made improvements to the property without their consent including extending the verandah and building a small house on the property.
12. Mr and Mrs Tarimoliliu seek orders for specific performance of payment of VT1,100,000, for payment of outstanding rents from 1 July 2020 to date, damages for the improvements on the property without their consent and costs.

C. Discussion

13. Alfred Tarimoliliu deposed in his sworn statement filed on 16 January 2023 that despite their agreement, Ms Aki has not paid the agreed rent of VT25,000 per month from 1 July 2020 to date. Their agreement was that rental payment should continue until Ms Aki had paid the purchase price in full. Total rental from 1 July 2020 to 1 August 2023 is VT950,000 (VT25,000 x 38 months).
14. Mr Tarimoliliu's evidence in his sworn statement filed on 22 February 2023 is that Ms Aki has paid VT104,000 rent. The difference owed is VT846,000 (VT950,000 – VT104,000).
15. Mr Tarimoliliu also deposed that despite the solicitor's letter of demand, Ms Aki has not paid the balance of the purchase price of VT1,100,000. He attached a copy of his bank account statement to his sworn statement filed on 22 February 2023 to show only VT2,700,000 of the purchase price was paid but not the balance of VT1,100,000. An order will issue for payment of the balance owed.



16. Mr Tarimoliliu deposed in his sworn statement filed on 16 January 2023 that sometime in 2020, Ms Aki obtained the registration of the transfer of lease into her name.
17. Any improvements made by Ms Aki including the verandah extension and building a small house on the property must have occurred after the lease was transferred to her. Accordingly, Mr and Mrs Tarimoliliu were no longer registered proprietors of the lease and Ms Aki did not need to obtain their consent for any improvements made. They are not entitled to damages in this respect.

D. Result and Decision

18. An order for specific performance is made in the Claimants' favour and it is ordered that the Defendant is to pay the Claimants the balance of the purchase price owed of VT1,100,000 and outstanding rents of VT846,000, totaling VT1,946,000 (the 'judgment sum').
19. Interest of 5% per annum is to be paid on the judgment sum until fully paid.
20. The Claimants are entitled to costs as agreed or taxed by the Master.

E. Enforcement

21. This matter is listed for Conference at **8.45am on 4 September 2023** for the Defendant to inform the Court: (i) that she has paid the judgment sum or (ii) to explain how she intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.
22. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

DATED at Port Vila this 7th day of August 2023
BY THE COURT

VM Tria
Justice Viran Molisa Tria

