

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

Civil  
Case No. 20/808 SC/CIVL

**BETWEEN: Adonai Limited**

Claimant/First Defendant on the Counter  
Claim

**AND: Martin Jones**

Defendant

**AND: Michael Brancatisano**

Second Defendant on the Counter Claim

*Date of Trial:* 30 & 31 May 2024  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant & Second Defendant on the Counter Claim – Mrs S. Motuliki  
Defendant – Mr N. Morrison  
*Date of Decision:* 7 October 2025

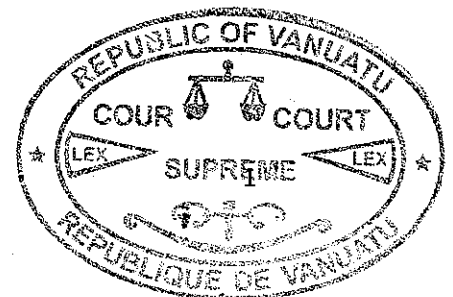
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## JUDGMENT

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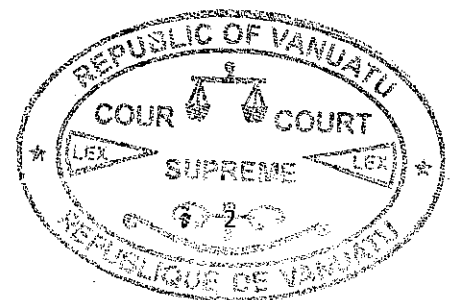
A. Introduction

1. The Claimant Adonai Limited is a local company incorporated in Vanuatu ('Adonai'). It is beneficially owned by the Second Defendant on the Counter Claim Michael Brancatisano. Mr Brancatisano is also a director of Adonai.
2. At all material times, the Defendant Martin Jones was the sub-lessee of commercial premises known as the Wahoo Bar located on leasehold title no. 12/0523/034 (the '034



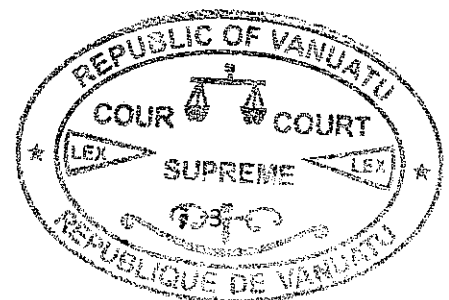
Lease').

3. In 2017, Andrew Colautti was the registered proprietor of the 034 Lease.
4. In 2017, Mr Jones entered into a Commercial lease agreement with Mr Colautti which was dated only "2017", in respect of the Wahoo Bar premises for the lease period 6 September 2017 to 5 September 2020 (the 'Commercial lease') and commenced possession of the premises. The terms of the Commercial lease included the following:
  - a) The Commercial lease was of the premises known as the "Wahoo Bar" excluding the residential bungalow... but including the bar/restaurant, deck area, jetty and the balance of the lease including parking;
  - b) It was a term of the Commercial lease that Mr Jones would pay 20% interest per annum on any rent not paid upon the due date (clause 23);
  - c) It was a term of the Commercial lease was that Mr Jones would maintain all fittings, drains, grease traps, pipes and other fixtures in good repair (clause 12);
  - d) It was a term of the Commercial lease that Adonai as the landlord, would maintain the external structure of the premises in a reasonable and sound condition having regard to the age of the buildings and would effect, at its own expense, as expeditiously as possible any structural maintenance and repairs that became necessary from time to time (clause 18); and
  - e) It was a term of the Commercial lease was that Mr Jones would indemnify Adonai against any loss or damage to the premises that he (Mr Jones) caused by his act or default (clause 14).
5. Mr Jones was at all times entitled to the quiet enjoyment of the lease premises.
6. In 2018, Mr Brancatisano became the registered proprietor of the 034 Lease.
7. Also in 2018, Mr Colautti assigned his interests and obligations under the Commercial lease to Adonai.
8. On or about 6 September 2020, Mr Jones vacated the premises. It is alleged that in vacating the premises, Mr Jones converted its fixtures to his own use and caused damage to the premises.
9. Adonai filed a Claim and later an Amended Claim. Mr Jones in turn filed a Defence and Counter Claim. Both sides of the dispute are alleging breaches of contract and other causes of action, and are seeking damages from the other.

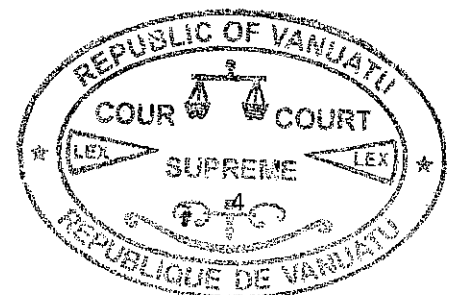


B. Pleadings

10. Adonai alleged the following in the Amended Claim filed on 26 October 2020:
- a) That it was a term of the Commercial lease that the Defendant pay AUD\$52,000.00 rent on or before the beginning of each rental year being 6<sup>th</sup> September;
  - b) That Mr Jones failed to pay the AUD\$52,000.000 for rent on or before 6 September 2018 and paid only \$8,646.000 for the period 6 September 2019 to 5 September 2020 therefore he owes Adonai rent and interest;
  - c) That in vacating the premises, Mr Jones wrongfully converted Adonai's fixtures to his own use;
  - d) That Mr Jones caused damage to the premises in removing the fixtures including damaging a number of power points and in some cases, their mounting blocks;
  - e) That the wrongful conversion of the fixtures and the trespass by damage to the premises or alternatively negligence causing damage to the premises were also breaches of the terms of the Commercial lease; and
  - f) As a result of the wrongful conversion, trespass and/or negligence causing damage and breaches of the lease agreement, Adonai has suffered loss and damage.
11. The relief sought in the Amended Claim includes payment of rent owed, damages for conversion and damage to the premises, plus interest and costs.
12. This is disputed.
13. Mr Jones' Defence and Counter Claim filed on 7 December 2020 must be together with the Further and Better Particulars of Counter Claim filed on 18 December 2020 and the Memorandum of Counsel for Defendant filed on 29 March 2021 (paras 3 and 4 of which were formally added to the Defence and Counter Claim on 26 October 2022).
14. Mr Jones alleged in the Defence and Counter Claim that the Commercial lease required monthly in advance payments and that any rent that Mr Jones did not pay by monetary amount was paid by credit owed to him (Mr Jones) for undertaking matters relative to the lease for and on behalf of the lessor Mr Brancatisano where he had failed to meet his obligations as lessor.



15. Mr Jones also alleged in the Counter Claim that Adonai and/or Mr Brancatisano continually breached the terms of the Commercial lease as follows:
- a) That in November 2018, Mr Jones issued a breach notice to Adonai requiring urgent repair work but that that notice was ignored;
  - b) On or about 2 September 2018, erected a chain linked padlocked barrier in the parking area which restricted the Wahoo Bar's parking area for 2 months;
  - c) Without permission, commandeered 5 car park spaces for their own use;
  - d) In December 2018, moored a boat immediately in front of the restaurant area restricting Mr Jones' use and that Mr Jones' lawyer's correspondence was again ignored;
  - e) On 2 March 2019, opened a drainage sump for 26 days leaving a putrid stench at the premises during the 26 days; and
  - f) Entering the lease property without invitation.
16. It was alleged that Adonai and/or Mr Brancatisano's breaches of the Commercial lease caused loss and damage to Mr Jones, namely loss of earnings from the failure to repair the jetty and the removal of carparking facilities, and Mr Jones had to pay Adonai's personal water bills to ensure continued water supply to the Wahoo Bar premises. It was also alleged that in September 2019, Adonai had its electricity supply disconnected consequently disconnecting Mr Jones' supply, therefore Mr Jones had to pay for Adonai's electricity supply to protect his own.
17. It was also alleged in the Counter Claim that Adonai and Mr Brancatisano's nuisance and harassment of Mr Jones (particularised as verbal abuse of Mr Jones and his guests) had a seriously adverse effect on his health giving rise to injury and loss. Mr Jones sought VT2,000,000 damages for personal injury. At the commencement of the trial, Mr Morrison stated that this aspect of the Counter Claim in relation to Mr Jones' health was not being pursued. Accordingly, I have no further regard to this aspect of the Counter Claim.
18. The relief sought in the Counter Claim includes damages for loss and damage, interest, costs and any other order deemed just.
19. On 14 December 2020, Adonai filed a Reply and Defence to the Counter Claim.
20. On 18 December 2020, Mr Jones filed Further and Better Particulars of the Counter Claim.
21. On 14 January 2021, Adonai filed an Amended Defence to the Counter Claim pleading further answer to paras 18-20 of the Counter Claim including the following:



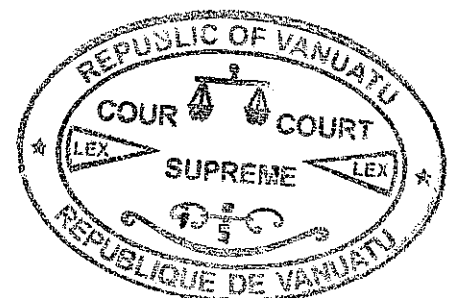
- a) That Mr Brancatisano's acts are his own and beyond the scope of his authority as Adonai's director or agent;
  - b) That Adonai had taken reasonable steps to keep the premises in good repair and says that if the jetty fell into a state of disrepair, deny that this affected any earning activity that Mr Jones was entitled to engage in at the premises; and
  - c) That Adonai used no water at the premises or bungalow and if Mr Brancatisano did, this was purely at his own expense and for his benefit.
22. Mr Brancatisano adopted Adonai's Defence to the Counter Claim and Amended Defence to the Counter Claim.

C. Issues

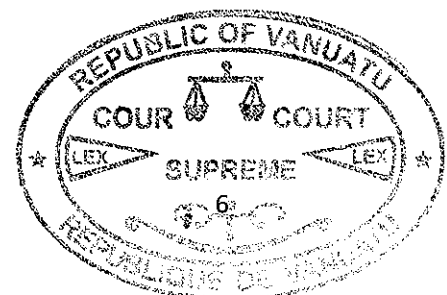
23. I will determine the issues between the parties under the following headings:
- a) The parties' agreement as to the payment of rent and whether or not Mr Jones owes rent to Adonai
  - b) Alleged removal of fixtures and damage to premises by Mr Jones
  - c) Has Adonai suffered loss and damage as a result of Mr Jones' acts?
  - d) What relief, if any, is Adonai entitled to under the Amended Claim?
  - e) Alleged breaches of Commercial lease, trespass and/or interference with Mr Jones' quiet enjoyment of the lease by Adonai and/or Mr Brancatisano
  - f) Has Mr Jones suffered loss and damage as a result of Adonai and/or Mr Brancatisano's acts?
  - g) What relief, if any, is Mr Jones entitled to under the Counter Claim?

D. Evidence

24. Adonai relied on the the Sworn statements of the following:
- (i) Michael Brancatisano filed on 16 May 2019 [**Exhibit C1**], 16 June 2020 [**Exhibit C2**], 29 January 2021 [**Exhibit C3**], 16 December 2022 [**Exhibit C4**] and 25 July 2023 [**Exhibit C5**];
  - (ii) Roman Maltou filed on 29 January 2021 [**Exhibit C6**];
  - (iii) Job Baravet filed on 29 January 2021 [**Exhibit C7**];
  - (iv) Maxwell Macgill filed on 3 July 2023 [**Exhibit C8**];



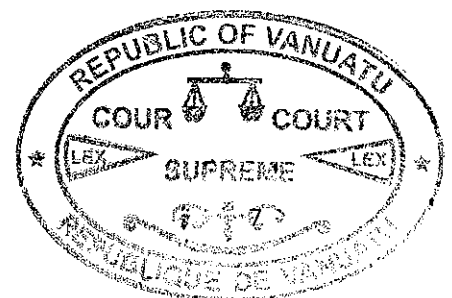
- (v) William Mala filed on 29 January 2021 [Exhibit C9];
  - (vi) Alexandre Joli filed on 29 January 2021 [Exhibit C10];
  - (vii) Francesca Grillo filed on 12 July 2023 [Exhibit C11]; and
  - (viii) Philip Brancatisano filed on 28 July 2023 [Exhibit C12].
25. Mr Brancatisano, Mr Maltou, Mr Baravet, Mr Macgill, Mr Mala and Mr Joli were cross-examined. Ms Grillo and Mr Philip Brancatisano were not required for cross-examination.
26. Mr Jones relied on the relied on the Sworn statements of the following:
- (i) Martin Jones filed on 9 August 2021 [Exhibit D1], 5 April 2019 [Exhibit D2] and 8 July 2020 [Exhibit D3];
  - (ii) Maliu Kalangis filed on 5 April 2019 [Exhibit D4]; and
  - (iii) Steve Adams filed on 4 March 2021 [Exhibit D5]. Mr Adams also adduced into evidence a document entitled, "Wahoo Bar Chattles" [sic] [Exhibit D6].
27. All the defence witnesses were cross-examined.
- E. The parties' agreement as to the payment of rent and whether or not Mr Jones owes rent to Adonai
28. Adonai's claim for rent is for the period 6 September 2019 to 5 September 2020. It is also seeking 20% interest on the rental owed pursuant to clause 23 of the Commercial lease. Adonai's claim is put on the basis that the annual rent was due by 6 September each year, or alternatively, that monthly rent was payable.
29. In para. 11 of the Defence and Counter Claim filed on 7 December 2020, Mr Jones admitted vacating the premises on 6 September 2020. It is therefore accepted that Mr Jones vacated the premises on or about 6 September 2020.
30. It was also pleaded in the Defence that any rent not paid by monetary amount was paid by credit owed to Mr Jones for undertaking matters in relation to the lease on Mr Brancatisano's behalf where the latter had failed to meet his obligations as lessor.
31. This pleading is an admission by Mr Jones that he did not pay some of the rent.
32. What was the parties' written agreement as to rent payments?
33. The parties' written agreement as to the payment of rent is set out in the Rental Payment clause of the Commercial Lease as follows:



**RENTAL PAYMENTS:**

*The Lessee shall pay to the Lessor the sum of **FIFTY TWO THOUSAND AUSTRALIAN DOLLARS** annually, such payment to be made on or before the 6<sup>th</sup> day of September each year, subject to any rental increase pursuant to the RENEWAL clause hereinafter.*

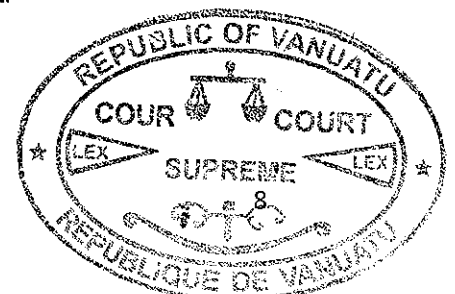
34. This clause provides that Mr Jones shall pay to Adonai the sum of AU\$52,000.00 annually, with "payment to be made on or before the 6th day of September each year...".
35. Significantly, there is no express requirement in the Rental Payments clause for rent to be paid in a lump sum or a one-off payment on or before the 6th day of September each year.
36. Mr Morrison had written a letter dated 26 September 2018 to Mr Jones' then lawyer stating that there was no enforceable agreement to pay AU\$52,000.00 upfront [**Exhibit C1 – Attachment "MB-1", page 8**]. This letter was put to Mr Brancatisano in cross-examination. He accepted that he had seen that letter. He stated that he had resigned himself to receiving monthly rent as "\$4,000 per month is not bad money for rent."
37. Given the absence of an express requirement for the whole year's rent to be paid upfront or in a lump sum, I accept and find that Mr Jones' monthly payment of rent was consistent with the parties' written agreement set out in the Rental Payment clause of the Commercial Lease.
38. I find, therefore, that the amount of monthly rent payable in advance is AU\$52,000.00 /12 = \$4,333.00.
39. Did the parties have an agreement that any rent that Mr Jones did not pay by monetary amount was paid by credit owed to him for undertaking matters in relation to the lease on the lessor Mr Brancatisano's behalf?
40. Mr Brancatisano's evidence was that he did not accept that any money that Mr Jones spent on paying his electricity bill be credited towards rent. He explained that he had let his electricity supply bills go unpaid as he had been in Melbourne for quite a long time by then but when it was disconnected, he found out for the first time that he was paying for the power to the electric pump that pumped water from the bore that supplied both the Wahoo Bar and his bungalow. He realised then that he had been paying for the supply of water to the Wahoo Bar (when it was Mr Jones who should have been pursuant to clause 1 of the Commercial lease) so he arranged for the power to the water pump to be connected to the Wahoo Bar's electricity supply. He said that Mr Jones was annoyed that he now had to pay for the power supply to the electric pump for the Wahoo Bar's water supply but that this was consistent with clause 1 of the Commercial lease [**Exhibit C3**].
41. Clause 1 of the Commercial lease provides as follows:



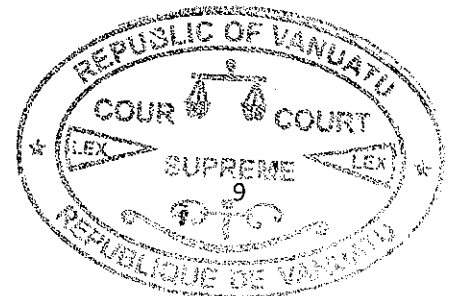
1. THE LESSEE shall be responsible for all utilities including telephone, telex, facsimile services, electricity, air conditioning, cleaning and other associated with its business.

*[emphasis added]*

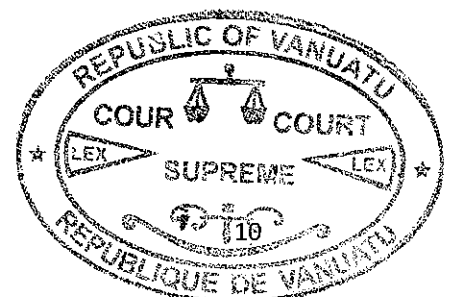
42. Mr Jones' evidence was that he withheld the payment of rent. He stated that in September 2019, he paid Mr Brancatisano's outstanding UNELCO bills for electricity supply which had not been paid for 6 months, totalling VT328,917 therefore he withheld the following month's rent and a portion of the rent due the month after. He had to pay the bills to ensure water supply to the Wahoo Bar as that depends on an electric pump for the water supply. He also withheld further payments to pay for urgent repairs to the premises so that he could continue to operate this business safely. This followed two inspections and reports that civil engineering firm Qualao Consulting conducted and produced in relation to the state of the Wahoo Bar premises [Exhibit D3].
43. Mr Jones' evidence makes clear that he withheld rent payments and considered that the payments he made for Mr Brancatisano's water bills and urgent repairs to the premises were credited towards the rent owed.
44. Mr Morrison submitted the following at para. 25 of the Defendant's closing submissions:
  25. *... Jones got to a point where he felt he was being cheated by continuing to pay the full rent he was paying at the commencement of the sub tenancy. He ceased rental payment 12 months before the tenancy came to an end as Brancatisano had failed to respond to notice and demand upon him, the premises were in an extremely poor state of repair. He was receiving no or less value for money and from his relationship with Brancatisano he understood he had a minimal chance of recovering his losses. He had already met costs of his landlord which the landlord apparently had no intention of reimbursing.*
45. Mr Morrison's submissions include that Mr Jones ceased rental payments 12 months before the tenancy came to an end. He submitted that Mr Jones withheld rent payments on purpose because he had formed the view he was receiving no or less value for money from his occupation of the premises. Mr Morrison also submitted that by late 2019, there was a lack of consideration received by Mr Jones for his rental payments hence he commenced withholding payments (at para. 32 of his submissions).
46. It is clear that the relationship between the parties was strained. Mr Jones informed Mr Brancatisano that he would withhold rental payments and that monies incurred would be credited towards rent.
47. However, there is no term in the Commercial lease allowing Mr Jones to withhold rental payments.
48. There is no evidence that Mr Brancatisano agreed to Mr Jones withholding rental payments and that monies incurred would be credited towards rent.



49. There is no evidence of the parties having a written agreement to the effect that any rent that Mr Jones did not pay by monetary amount was paid by credit owed to him for undertaking matters in relation to the lease on the lessor Mr Brancatisano's behalf.
50. Accordingly, I find that the parties did not have an agreement that that any rent that Mr Jones did not pay by monetary amount was paid by credit owed to him for undertaking matters in relation to the lease on the lessor Mr Brancatisano's behalf.
51. Where Mr Jones considered that Adonai and/or Mr Brancatisano was in breach of a term of the Commercial lease, the parties' agreement in clause 23 of that lease, which provides as follows, required him to give Adonai and/or Mr Brancatisano written notice requesting compliance within 30 days:
23. **IN THE EVENT** of non payment of rental or any other breach of the Terms and Conditions of this Lease the following procedure shall apply:
- (a) The Lessor or Lessee as the case may be shall give written notice requesting compliance within 30 days of date of such notice.
- (b) In the event of non-compliance within 30 days of date of such notice;
- (i) All outstanding rentals and outgoings shall bear interest at 20% per annum if not paid on due date.
- (ii) The Lessee shall deliver up the premises forthwith.
52. Clause 23 of the Commercial lease further provided that in the event of non-compliance within 30 days of the date of the notice, that, relevantly, all outstanding outgoings would bear interest if not paid on the due date (as set out in the notice) and that the lessee would deliver up the premises forthwith.
53. Accordingly, in the event of non-compliance within 30 days of the date of the notice, any outstanding outgoings not paid by the due date would bear interest and/or Mr Jones would deliver up the premises forthwith.
54. However, Mr Jones did not vacate the premises. He remained in occupation. He therefore had to pay the monthly rent which was due each month.
55. The next question is how much rent Mr Jones owes Adonai.
56. Mr Brancatisano's evidence included his attached bank account statement showing that on 3 September 2019, he received payment of AU\$4,313.00 monthly rent then no rent was paid for October 2019, then he received payment of another month's rent of AU\$4,333.00 on 7 November 2019. After that, he received no further rent payments up to the date of that sworn statement – 16 June 2020 [Exhibit C2].



57. The same two payments of rent are shown in Mr Jones' bank account statement [Exhibit D3 – Attachment "MJ4"].
58. I find that Mr Jones paid rent for September 2019 and November 2019 totalling AU\$8,646.00, therefore Mr Jones owes Adonai rentals for the period 6 September 2019 to 5 September 2020 in the amount of AU\$52,000.00 less \$8,646.00 = AU\$43,354.00.
59. Next, does Mr Jones owe interest on the amount of rent owed?
60. Adonai's claim for interest is set out in para. 8 of the Amended Claim.
61. The relevant term in the Commercial lease is clause 23 which provides as follows:
23. ***IN THE EVENT*** of non payment of rental or any other breach of the Terms and Conditions of this Lease the following procedure shall apply:
- (c) *The Lessor or Lessee as the case may be shall give written notice requesting compliance within 30 days of date of such notice.*
- (d) *In the event of non-compliance within 30 days of date of such notice;*
- (iii) *All outstanding rentals and outgoings shall bear interest at 20% per annum if not paid on due date.*
- (iv) *The Lessee shall deliver up the premises forthwith.*
62. Mr Brancatisano's evidence included a copy of his then lawyers Sugden Lawyers' letter dated 7 February 2020 to Mr Jones demanding payment of all unpaid rent within 30 days, and proof of service of that written notice on Mr Jones on the same date [Exhibit C2 – Attachment "MB4"].
63. I find therefore that Adonai gave Mr Jones written notice dated 7 February 2020 demanding payment of unpaid rent within 30 days, in accordance with clause 23(1) of the Commercial lease.
64. The due date for payment, therefore, was 30 days from the date of such notice, that is, 9 March 2020.
65. This notice was not complied with.
66. Given the non-compliance within 30 days of the date of the notice, all outstanding rentals shall bear interest at 20% per annum from the due date, that is, 9 March 2020 pursuant to clause 23 of the Commercial lease.



67. In conclusion, I have found that Mr Jones owes Adonai rentals for the period 6 September 2019 to 5 September 2020 in the amount of **AU\$43,354.00**, and that **20% interest per annum is payable** on those outstanding rentals **from 9 March 2020 onwards**.

F. Alleged removal of fixtures and damage to premises by Mr Jones

68. Adonai's claim that Mr Jones removed fixtures and wrongfully converted them to his own use is set out in para. 11 of the Amended Claim as follows:

11. *The Defendant vacated the premises on or before 06/09/2020 and in the process of vacating the premises wrongfully converted the claimants' fixtures to his own use.*

**PARTICULARS**

*The Defendant removed the following fixtures from the premises.*

- (1) *kitchen sink and plumbing including taps*
- (2) *laundry sink and plumbing including taps*
- (3) *bar sink and plumbing including taps*
- (4) *single sink and plumbing including taps*
- (5) *ventilation fans together with extension poles from the highroof, switches and speed controllers and electrical cabling*
- (6) *range hood in kitchen and electrical cabling*
- (7) *most ceiling lights and all LED lights including parts of wiring cut to allow removal.*
- (8) *all lights under deck and all connecting cables to those lights*
- (9) *the hot water service*
- (10) *the water drainage down pipe from the roof of the premises*

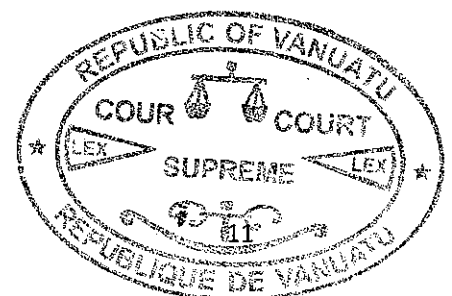
69. In the Defence, Mr Jones admitted that he vacated the premises on 6 September 2020 as pleaded but otherwise denied para. 11 of the Amended Claim.

70. Adonai also alleged, in paras 12 and 13 of the Amended Claim that Mr Jones caused the following damage to the premises:

12. *The Defendant caused damage to the premises in removing the said fixtures and also caused other damage.*

**PARTICULARS**

*Broke a number of power points and, in some cases their mounting blocks, in the bar, restaurant, kitchen and back of the premises.*



13. *The wrongful conversion of the fixtures and trespass by damage to the premises or alternatively negligence causing damage to the premises listed in paragraphs 12 and 13 are also breaches of the terms of the Commercial lease [clauses 12 and 14].*

71. Clauses 12 and 14 of the Commercial lease provide as follows:

12. **THE LESSEE** at its own expense shall maintain all doors, windows, fittings, drains, grease traps, partitions, pipes and other fixtures on the premises including painting and carpet in good repair and condition through the term of this Lease and any renewal thereof.

...

14. **THE LESSEE** shall indemnify the Lessor against any loss or damage to the premises or by any act of default or negligence of the Lessee arising from its occupation and use of the premises by the Lessee or its employee, agents or invitees of the Lessee.

72. First, Adonai must prove that it owned the fixtures which it alleges that Mr Jones removed.

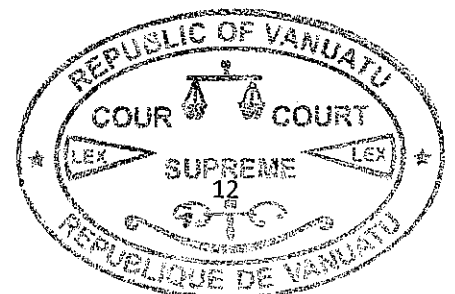
73. However, Adonai has not adduced any evidence that it owned the fixtures that it alleges that Mr Jones removed. Adonai seems to have run its case on the assumption that it owned the fixtures that were removed, and hence has not adduced any evidence that it owned those fixtures.

74. On the other hand, defence witness Steve Adams adduced into evidence a document entitled, "Wahoo Bar Chattels" [**Exhibit D6**]. Mr Adams' evidence is that Mr Jones is the owner of the chattels in the list in **Exhibit D6**, some of which chattels he purchased from Mr Colautti when he commenced the sublease of the Wahoo Bar. He stated in cross-examination that the chattels list in **Exhibit D6** rolled over into an asset register for Mr Jones' business, and that Mr Jones had purchased some of the chattels independently and some from Mr Colautti on entering into the Commercial lease (sublease).

75. The items on the list in **Exhibit D6** include, "Stainless Steel sink", "Fan", "Stove" and "12 LED Lights." These correspond with items particularised in para. 11 of the Amended Claim.

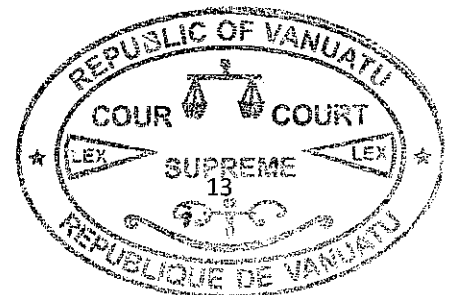
76. Mr Jones gave evidence about his purchase of particular items and/or the manner that he had them removed in **Exhibit D1 – Attachments "MJ2" and "MJ3**.

77. Mr Jones' evidence also was that Mr Brancatisano locked him out of the premises two weeks prior to their termination date. He stated that Mr Brancatisano came on the property while he was in Port Vila and took the keys to the bar and restaurant from the staff. He put two 'Closed' signs on the Wahoo Bar roadside signage, bulldozed the car park and gardens, and erected a chain across the main entrance, preventing him from removing his chattels and locking us out two weeks prior to their termination date. After that,



Mr Jones and his staff would have been unable to enter the property to commit any of the alleged damage [Exhibit D1 – Attachment “MJ1”].

78. There is no evidence contradicting Mr Jones' assertion of ownership of these chattels or fixtures. It is not inherently unlikely that Mr Jones purchased such chattels for his Wahoo Bar restaurant and bar business, either independently or as part of a chattel list which he purchased from Mr Colautti on entering into the Commercial lease.
79. Accordingly, I find on the balance of probabilities that Adonai has not proved that it was the owner of the fixtures that it alleges Mr Jones removed from the premises and wrongfully converted to his own use.
80. Secondly, there is no evidence that Mr Jones was the one who removed the fixtures complained of from the premises, or broke the power points and some of their mounting blocks. There is no eye witness evidence of Mr Jones or his employees or his agents removing the fixtures or damaging power points and mounting blocks.
81. Different witnesses went to the property in August and September 2020 and saw that the premises were damaged but no one actually saw Mr Jones or his employees or agents removing fixtures from the premises or damaging the premises.
82. The premises were left vacant.
83. With respect, it is a quantum leap and assumption that Mr Jones was the tenant, he left, there was damage found after, so he must have been responsible.
84. I conclude that there was ample opportunity for others unknown to have entered the vacated premises and removed fixtures or caused damage.
85. Clause 12 requires Mr Jones to maintain all fittings and other fixtures on the premises through the term of this Lease. This clause only applied during the term of the lease. It no longer applied once Mr Jones had vacated the premises. Accordingly, Mr Jones cannot be held responsible for fixtures removed or damage caused after his vacation of the premises.
86. Clause 14 of the Commercial lease provides that Mr Jones shall indemnify Adonai against any loss or damage to the premises by the Lessee or its employee, agent or invitees of the Lessee. However, given the absence of evidence that Mr Jones or his employees or agents removed fixtures or damaged the premises, I find that no indemnity is payable under clause 14 of the Commercial lease.
87. I conclude that Adonai has not proved on the balance of probabilities its claims for breaches of the terms of the Commercial lease, for wrongful conversion of fixtures and



trespass by damage to the premises or alternatively negligence causing damage to the premises.

G. Has Adonai suffered loss and damage as a result of Mr Jones' acts?

88. Given my findings that Adonai has not proved its claims for breaches of the terms of the Commercial lease, for wrongful conversion of fixtures and trespass by damage to the premises or alternatively negligence causing damage to the premises, this issue need not be considered.

H. What relief, if any, is Adonai entitled to under the Amended Claim?

89. Given my answer to the previous issues, the only relief Adonai is entitled to is an order for payment of unpaid rent and interest.

I. Alleged breaches of Commercial lease, trespass and/or interference with Mr Jones' quiet enjoyment of the lease by Adonai and/or Mr Brancatisano

90. Part of Mr Jones' Counter Claim is that since July 2018, Adonai has continually breached the terms of the Commercial lease is set out in para. 18 of the Amended Claim as follows:

18. *Since the Claimant received assignment of the said lease in or about July 2018 it has continually breached terms of that Lease:*

**PARTICULARS**

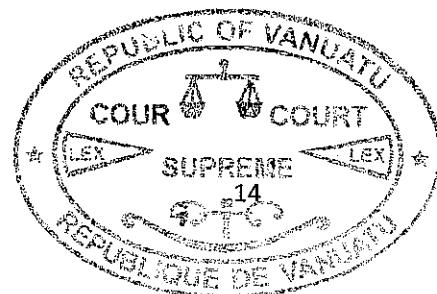
- (i) *Breaches of Clause 18 by failure to maintain.*
- (ii) *Trespasses and uninvited interference with the Claimant's Lease by blocking car parking and uninvited use of the jetty.*
- (iii) *Interference with the Claimant's quiet enjoyment by blocking car parking and entering the lease property without invitation.*

91. I will deal first with the alleged breaches of clause 18 of the Commercial Lease, and then with the alleged trespasses and/or interference with Mr Jones' quiet enjoyment of the lease.

*Alleged breaches of clause 18 of the Commercial lease by failure to maintain*

92. Clause 18 of the Commercial Lease provides as follows:

18. **THE LESSOR** shall maintain the external structure of the premises in a reasonable and sound condition having regard to the age of the buildings and to effect as expeditiously as possible any structural maintenance and repairs that become necessary from time to time at the expense



of the Lessor who shall also keep in reasonable repair and condition the common areas of the buildings.

93. Again, clause 23 of the Commercial Lease is relevant:

23. ***IN THE EVENT*** of non payment of rental or any other breach of the Terms and Conditions of this Lease the following procedure shall apply:

(a) The Lessor or Lessee as the case may be shall give written notice requesting compliance within 30 days of date of such notice.

(b) In the event of non-compliance within 30 days of date of such notice;

(i) All outstanding rentals and outgoings shall bear interest at 20% per annum if not paid on due date.

(ii) The Lessee shall deliver up the premises forthwith.

94. Clause 23 of the Commercial lease provides that in the event of, relevantly, "... any other breach of the Terms and Conditions of this Lease", the procedure in that clause would apply.

95. Accordingly, in the event that Mr Jones considered that there was a breach of clause 18 of the Commercial lease, he needed to give Adonai written notice in accordance with clause 23(a).

96. Mr Jones' evidence is that by letter dated 26 September 2018, his lawyer gave the following written notice under clause 23 for Adonai to remedy its breach of clause 18 [Exhibit C1 – Attachment "MB-1", page 8]:

*Your sublessor client is now in breach of the lease in the following respects;*

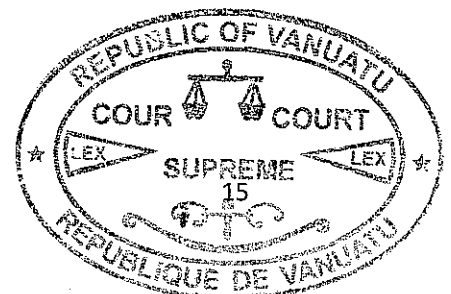
...

\* *whilst our client has complied with condition 3 in schedule 2 the insurance is ineffective due to your client's breach of lease conditions 18 and 19. Particularly the sublessor has and does fail to maintain the external structure in a reasonable and sound condition. There has been a complete neglect of required maintenance.*

*Please accept this letter as a 30 day "compliance notice" under condition 23 within the lease.*

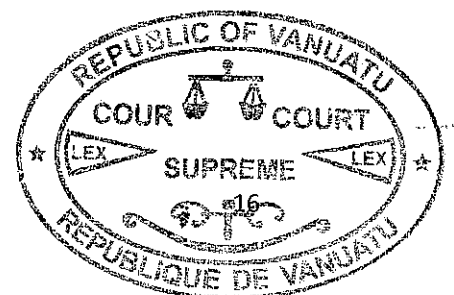
*Within that 30 day period we expect remedy of your client's breaches of the lease.*

97. However, the notice is in general terms. It does not provide specifics as to what is being complained of constituting the alleged breach of clause 18 to, "fail to maintain the external structure in a reasonable and sound condition" nor what specific actions are required to remedy the breach. It cannot be any surprise that Adonai has not remedied any breach



when the notice given did not provide specifics of the alleged breach nor what actions were required to remedy such breach. I consider therefore that the notice was ineffective.

98. Even if the notice was effective, clause 23 provided that in the event of non-compliance with the notice, any outstanding rentals or outgoings would attract 20% interest per annum pursuant to clause 23(b)(i), and/or the lessee shall deliver up the premises forthwith pursuant to clause 23(b)(ii).
99. Clause 23(b)(i) is not relevant as the notice did not refer to any outgoings.
100. However, under clause 23(b)(ii), in the event of non-compliance within 30 days of the date of the notice, Mr Jones would deliver up the premises forthwith.
101. However, as stated earlier, Mr Jones did not vacate the premises. Instead, he remained in occupation of the premises hence he is liable for the unpaid rentals.
102. Imposition of interest of 20% per annum on outstanding rentals or outgoings, or the lessee delivering up the premises being the course that the parties agreed to in clause 23 of the Commercial lease in the event of non-compliance with a notice alleging breach of a term of the lease, there is no scope to seek payment of damages in relation to the same alleged breach.
103. I find therefore that seeking the payment of damages for breach of a term of the lease is not available relief for the breach of a term of the Commercial lease which the parties in the present matter agreed to.
104. In terms of the allegation that Adonai *continually* breached clause 18, there is no evidence of any other notice given pursuant to clause 23 of the Commercial lease in respect of alleged breaches of clause 18.
105. I conclude that Mr Jones has not proved on the balance of probabilities that aspect of his Counter Claim that since July 2018, Adonai has continually breached clause 18 of the Commercial lease by failure to maintain.
106. I turn now to the alleged trespasses and/or interference with Mr Jones' quiet enjoyment of the lease by Adonai and/or Mr Brancatisano. These were particularised in paras 18 and 19 of the Counter Claim, and in the Further and Better Particulars of Counter Claim, as follows:
  - a. On or about 2 September 2018, Adonai and/or Mr Brancatisano erected a chain linked padlocked barrier in the parking area which restricted the Wahoo Bar's parking area for some 2 month period;



- b. Adonai and/or Mr Brancatisano without permission commandeered 5 car park spaces for their own use;
- c. In December 2018, Adonai and/or Mr Brancatisano moored a boat immediately in front of the restaurant area restricting Mr Jones' use, and lawyer's correspondence was again ignored;
- d. On 2 March 2019, Adonai and/or Mr Brancatisano opened a drainage sump for 26 days leaving a putrid stench at the premises during the 26 days; and
- e. Interference with Mr Jones' quiet enjoyment of the lease by entering the lease property without invitation.

107. It is common ground that Mr Jones was at all times entitled to the quiet enjoyment of the lease premises.

108. I will deal with each set of allegations in turn.

*Alleged restriction of car parking area for 2 month period*

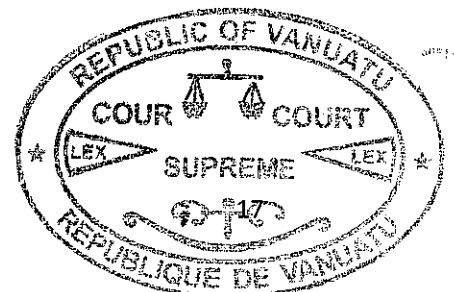
109. It is alleged that on or about 2 September 2018, Adonai and/or Mr Brancatisano erected a chain linked padlocked barrier in the parking area which restricted the Wahoo Bar's parking area for some 2 month period.

110. Mr Jones attached a photo of a chain linked barrier across what looks like the carparking area however did not state when that photo was taken, and how long the barrier remained there [**Exhibit D3**].

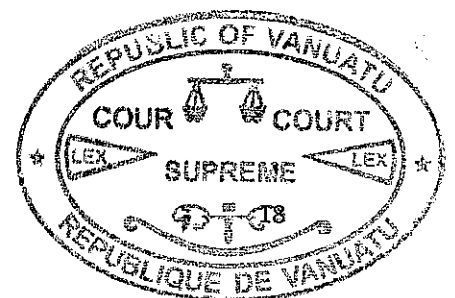
111. Mr Morrison's letter dated 26 September 2018 to Adonai's then lawyer Ms Mahuk contained notice that Adonai's erection of a barrier restricting parking access was in breach of the lease given Mr Jones' sublease included, "*the balance of the lease title including parking.*" He demanded the immediate removal of the barrier [**Exhibit C1 – Attachment "MB-1", page 8**].

112. In Mr Morrison's letter dated 12 November 2018 to Adonai's then lawyer Ms Mahuk, he acknowledged that the barrier across the lease property had been removed [**Exhibit D2 – Attachment "MJ2"**].

113. Defence witness Steve Adam's evidence was that he is a chartered accountant and has provided a report to Martin Jones in respect of loss of earnings suffered by him. In his report, **Attachment "SA1"**, he referred to "Incident one – 13/06/2018 – Chain restricting car parking of 4 cars for 49 days" for the months of June and July 2018 [**Exhibit D5**].



114. Mr Brancatisano's evidence was that shortly after Adonai became Mr Jones' landlord, it commenced renovations on the property. At the same time, there was a large open trench behind the bungalow for the work UNELCO was doing for the electricity and water supply to the Wahoo Bar. There was danger to pedestrians crossing the paved area so he instructed his builder, Roman, to put up a chain to block the area off. After Roman put up the chain, Mr Jones complained to him that he was not entitled under the lease to have it there so he instructed Roman to remove it. However, before Roman could do that, someone smashed the supports for the chain and removed it. The chain was only in place for a very short time [Exhibit C3].
115. Mr Brancatisano's evidence in **Exhibit C5** was that he put up the chain restricting the car parking area only for the overflow car park area which was only being used by Turtle Reef Tours, 2 buses and Chrisie Bowlen. He stated that unfortunately he was not aware that the overflow space was part of Mr Jones' lease but then they received Mr Morrison's letter to Ms Mahuk. She advised him that the overflow space was part of Mr Jones' lease, so then he instructed his son to have the chain removed immediately, and it was [Exhibit C5].
116. Adonai's witness Roman Maltou's evidence was that he was the builder who Mr Brancatisano engaged in 2018 to carry out renovations to his bungalow and the guest bungalow. The building materials were kept in the paved space next to the bungalow. He was concerned about the danger to people walking near the building materials and also a nearby open trench that UNELCO dug so Mr Brancatisano told him to put up a chain to block off the paved area. He put up a chain between two posts set in concrete, finishing it on a Friday before he went home to Erakor for the weekend. When he returned the following Monday, someone had removed the chain by smashing the mountings for the chain and removing it. Mr Brancatisano had already told him to remove the chain, but he did not have to do that work [Exhibit C6].
117. I am satisfied on the evidence that Mr Jones brought the chain barrier restricting the car parking to his lawyer's attention resulting in a notice dated 26 September 2018 alleging breach of the lease, and then another letter dated 12 November 2018 acknowledging that the barrier had been removed. Mr Adams was asked to calculate the resulting loss of earnings – he did so on the basis that the car parking was restricted in June and July 2018.
118. However, I cannot make any findings on the evidence before the Court as to the number of days that the car parking was restricted.
119. Even if I could make a finding as to the total number of days the chain barrier restricted the car parking, Mr Adams' report does not contain relevant evidence as he calculated lost earnings on the basis of a totally different time period (June and July 2018) from that



which was alleged (September and October 2018) or in which Mr Morrison's letters were written (September and November 2018).

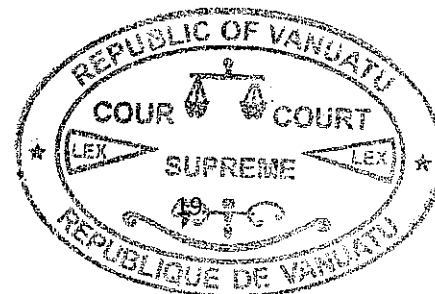
120. I conclude that Mr Jones has not proved on the balance of probabilities that aspect of his Counter Claim that on or about 2 September 2018, Adonai and/or Mr Brancatisano erected a chain linked padlocked barrier in the parking area which restricted the Wahoo Bar's parking area for some 2 month period.

*Alleged commandeering of 5 car parking spaces for their own use*

121. Mr Jones' evidence was that Mr Brancatisano on frequent occasions left locked rental cars from his Omega Rental Cars business in the car park for periods of up to two weeks. He did this out of pure spite to prevent Wahoo Bar customers parking. He stated that there are photos available to support his statement [**Exhibit D1**] however, no photos were attached nor dates given for particular cars being parked there.
122. In Mr Adam's report produced at Mr Jones' request in respect of loss of earnings suffered by him, **Attachment "SA1"**, he referred to "Incident two – 1<sup>st</sup> Sep 2018 to 31<sup>st</sup> Aug 2020 – 2 car park spaces blocked off" being a total of 731 days from 01/09/2018 to 31/08/2020 [**Exhibit D5**].
123. Mr Adams accepted in cross-examination that he did not have any first-hand knowledge of the alleged events in Incident two – he relied on the information received from Mr Jones as to when these alleged events occurred.
124. Mr Brancatisano's evidence was that his Omega car rental business is based in Vila and his rental cars are kept at the business when they are not on hire. He stated that any Omega rental cars parked at or near the Wahoo Bar were cars that had been hired and were in the full control of the hirers and not under his control. Finally, that Adonai had no interest in the car rental business [**Exhibit C3**].
125. There is no conclusive evidence as to Adonai and/or Mr Brancatisano commandeering of 5 car parking spaces for their own use, as alleged. Accordingly, I conclude that Mr Jones has not proved on the balance of probabilities this aspect of his Counter Claim.

*Alleged uninvited use of the jetty*

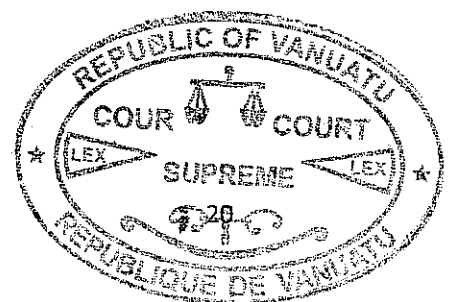
126. Mr Jones' evidence was that the jetty was part of his lease, and he objected to Mr Brancatisano's use of the jetty. His employees selling fish from his fishing charters business undermine the operation of the Wahoo Bar (which was primarily renowned as a seafood restaurant) [**Exhibit D1**].



127. Mr Brancatisano's evidence was that his Islands Fishing Charters business has two boats. One is kept at the Pango Marina. The other boat is kept at the mooring owed by Adonai that is situated in front of the Wahoo Bar. He had originally intended to take clients to use the latter boat but in December 2018, Mr Jones objected to the use of the jetty for this purpose so he immediately stopped taking clients to that boat until he could build another jetty or arrange to use another jetty. He did not use the jetty for fishing charters after December 2018. Adonai had and has no interest in the fishing charters business or the 2 boats [Exhibit C3].
128. The jetty is part of the land sub-leased by Mr Jones.
129. I find that Mr Brancatisano used the jetty for his fishing charter business but in December 2018, Mr Jones objected to his use of the jetty for that purpose and Mr Brancatisano ceased.
130. There is no evidence that Mr Brancatisano used the jetty for the purpose objected to after December 2018.
131. Accordingly, I conclude that Mr Jones has not proved on the balance of probabilities this aspect of his Counter Claim.

*Alleged opening of a drainage sump for 26 days with a putrid stench*

132. Mr Jones' evidence was that Mr Brancatisano instructed him not to repair the grease trap, as he would engage a contractor to do so. The contractor left the grease trap open with the result that foul smells permeated the bar and restaurant area for 26 days [Exhibit D1 – Attachment "MJ1"].
133. Mr Brancatisano's evidence was that when Mr Jones asked him to fix the sump/grease trap, he did not realize it was Mr Jones' responsibility under the Commercial lease. He employed tradesmen to fix it. He agreed there was a smell but this was caused by Mr Jones who had continually thrown grease and used cooking oils over an area of ground near the fence in spite of his requests that he stop his employees from doing that [Exhibit C3].
134. The parties' agreement in clause 12 of the Commercial lease is that Mr Jones would at his own expense maintain all grease traps in good repair and condition through the term of the lease. Accordingly, it was Mr Jones' responsibility to maintain the grease traps, not Adonai's or Mr Brancatisano's. This aspect of the Counter Claim is misconceived. It has not been proved on the balance of probabilities.



*Alleged entering of the lease property without invitation*

135. Mr Jones' evidence was that Mr Brancatisano repeatedly came onto his leased property without notice [Exhibit D1]. However, no dates or occasions were specified as to when this occurred.
136. Mr Brancatisano's evidence was that he may enter onto the premises at any time under clauses 10 and 15 of the Commercial lease therefore Mr Jones could not prevent him from entering the premises [Exhibit C1].
137. Mr Brancatisano is correct that he had the right on Adonai's behalf to enter onto the property at any time pursuant to clauses 10 and 15 of the Commercial lease.
138. Mr Jones has not provided evidence as to specific dates and times that Mr Brancatisano entered onto the property without a right to. Mr Jones was operating a restaurant and bar out of the Wahoo Bar premises – Mr Brancatisano could also have entered the property onto the Wahoo Bar premises just like any member of the public could have.
139. I conclude that Mr Jones has not proved on the balance of probabilities this aspect of his Counter Claim.

J. Has Mr Jones suffered loss and damage as a result of Adonai and/or Mr Brancatisano's acts?

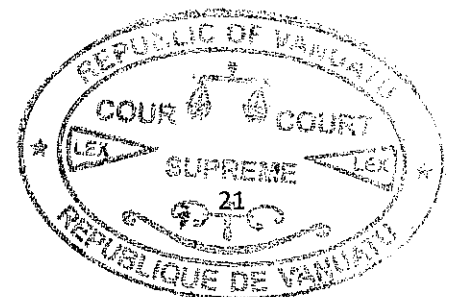
140. Given my answer to the previous issues, the issue of whether Mr Jones has suffered loss and damage as a result of Adonai and/or Mr Brancatisano need not be considered.

K. What relief, if any, is Mr Jones entitled to under the Counter Claim?

141. Given my answer to the previous issues, the answer is that Mr Jones is not entitled to any relief under the Counter Claim.

L. Result and Decision

142. Judgment is **entered** for the Claimant on the Amended Claim.
143. The Counter Claim is **dismissed**.
144. The Defendant is to pay the Claimant AUD\$43,354.00 for unpaid rent for the period 6 September 2019 to 5 September 2020 (the 'judgment sum').
145. 20% interest per annum is payable on the judgment sum from 9 March 2020 onwards until fully paid.



146. Costs must follow the event. The parties are invited to forward **by 4pm on 21 October 2025** their agreed quantum of costs as well as their agreed application of the funds paid as security for costs into the Chief Registrar of the Supreme Court's Trust Account.

M. Enforcement

147. This matter is listed for Conference **at 1.20pm on 19 November 2025** for the Defendant to inform the Court: (i) that he has paid the judgment sum or (ii) to explain how he intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.

148. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

**DATED at Port Vila this 7<sup>th</sup> day of October, 2025  
BY THE COURT**

  
Justice Viran Molisa Trief

