

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

**Civil Case No. 18/2452 SC/CC**

**BETWEEN: Lu Wei and Zhou Wei**

*Claimants*

**AND: F.P.F Company Limited**

*First Defendants*

**AND: Feng Peng Fei**

*Second Defendant*

*Date of Hearing:* 27<sup>th</sup> July 2021  
*Date of Judgment:* 3<sup>rd</sup> November 2021  
*Before:* Justice Oliver.A.Saksak  
*In Attendance:* Mr Silas C Hakwa for the Claimants  
Mr Nigel Morrison for the First Defendant  
No appearance for the Second Defendant

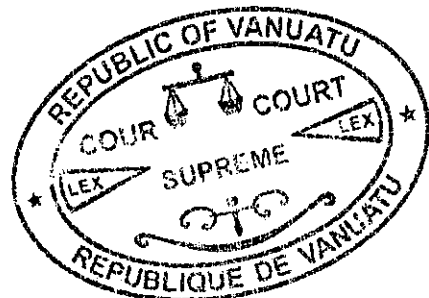
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**JUDGMENT**

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**Introduction**

1. This is a claim for reimbursements of moneys paid, and for damages for breach of contract.
2. In May 2017 pursuant to the terms of a Housing Contract, the First defendant agreed to sell to the claimants a fully Detached Villa and swimming pool comprised in a leasehold covering an area of 205.75 square metres. The consideration was for USD\$ 5,000,00 being for the swimming pool and USD\$305,790,00 being for the fully Detached Villa, totalling USD\$310,790,00.
3. Between the periods from May 2017 to July 2017 the claimants made payments by instalments through WeChat and international money transfers through several Chinese Banks.



4. By July 2017 the Claimants had paid USD 5,000,000 and USD\$305,790,00 totalling USD\$310,790,00.
5. The First Defendant has accepted receipt of USD\$5,000,00 and have repaid this amount to the Claimant. The First Defendant have however denied receiving the balance of the amount being claimed by the claimants.

### **The Parties**

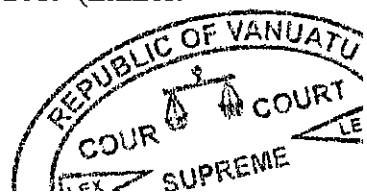
6. Initially the claimants had claimed against F.P.F Company Limited (First Defendant). Feng Peng Fei (Second Defendant) and the Republic of Vanuatu( Third Defendant).
7. During the course of proceeding the claims against the Republic were discontinued leaving only the First and Second Defendant.
8. The Second Defendant however does not reside within Vanuatu and although some of the claim was served on him by way of substituted service, Feng Peng Fei did not have any representation and did not take any part in the proceeding in any way.
9. That leaves only the First Defendant company which is a private local company having its registered office in Port Vila.

### **Background Pleadings**

10. The claimants filed their claims on 11 September 2018 containing a total of 56 paragraphs.
11. The First Defendant filed its defence on 15<sup>th</sup> October 2018 admitting to the pleadings in paragraphs 1-11,14,24,41,45 and 50. It denied the pleadings in paragraphs 15,16,18,25,30,31,32,33,34,38,39,40,43,44,49,53,54,and 55. It did not plead to paragraphs 12,13,17,19,20,21,22,23,26,27,28,29,35,46,47,48, and 56.

### **Evidence by Claimants**

12. The claimants Lu Wei and Zhou Wei gave oral evidence relying on their sworn statements filed on 3<sup>rd</sup> May 2019 (Exhibit C1), 15<sup>th</sup> July 2020 (Exhibit C2), 16<sup>th</sup> March 2021 (Exhibit C3) 3<sup>rd</sup> May 2019 ( Exhibit C4), 20<sup>th</sup> November 2019 (Exhibit



C5) 17<sup>th</sup> June 2020 ( Exhibit C6) and 13<sup>th</sup> August 2020 ( Exhibit C7) to prove their claims. They were cross –examined by Mr Morrison.

13. They relied also on the sworn statement of Paul Gambetta, Director of Lands Department filed on 28<sup>th</sup> June 2019 (Exhibit C8). This sworn statement was tendered into evidence by consent.

### **Evidence by Defendants**

14. Min Rui Cheng, the Director and Sole Proprietor of the First Defendant gave evidence in support of their defence. She relied on her sworn statements dated 10<sup>th</sup> October 2019 ( Exhibit D1) and of 9<sup>th</sup> April 2021( Exhibit D2). She was cross-examined by Mr Hakwa.

### **Written submissions**

15. Mr Hakwa filed written submissions containing 17 pages on 3<sup>rd</sup> September 2021.

16. Mr Morrison filed responding submissions of 4 pages on 6<sup>th</sup> October 2021.

### **Discussion**

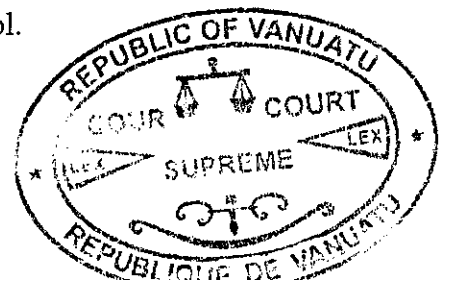
17. I have considered the evidence adduced by the claimants and the First Defendant.

18. I have read the submissions filed by Mr Hakwa and Mr Morrison. I am indebted and grateful to counsel for those submissions.

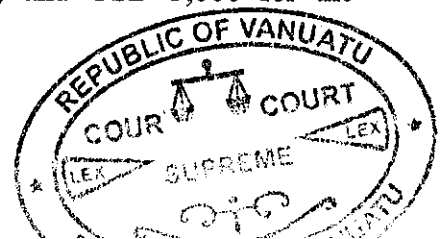
19. I consider the following to be the issues for determination:

- a) Did the claimants pay USD\$5,000,00 for a swimming pool and USD \$305,790,00 for a Detached Villa?
- b) If so, was there a breach of Agreement?
- c) If so, are the claimant's entitled to damages?
- d) Has the Defendant repaid USD \$5,000,00 and 600,000,00 RMB to the claimants?

20. It was not disputed that an agreement existed between the Claimants and the First Defendant about a fully Detached Villa and a swimming pool.



21. It is however disputed that (a) the claimants paid the moneys as claimed and (b) that the amounts claimed were received by the First Defendant.
22. The Claimants have the burden of proof on the balance of probabilities. First they have to prove they paid moneys. The claimant Zhou Wei's evidence by sworn statement tendered as Exhibit C5 and paragraph 17 shows that from 5<sup>th</sup> May 2017 to 26<sup>th</sup> July 2017 a total of 1,805,233,59 RMB were paid by the claimants. The details of those payments are provided as Annexure ZW1 which are copies of WeChat sessions screenshots.
23. Despite the First Defendant denying receiving any moneys claimed paid by the claimants, the First Defendant has acknowledged receipt of USD\$ 5,000,00 or 34,500 RMB being for the swimming pool which from the evidence, they have accepted responsibility for and have repaid.
24. Further despite their defence denying receipts of moneys, the First Defendant's own evidence in the sworn statement of Min Rui Cheng dated 9h April 2020 ( Exhibit D2) paragraph 3 (iii) and( iv) she says she made 2 payments of 600,000 RMB on 27<sup>th</sup> February 2017 and 1<sup>st</sup> August 2017. The total is 120,000,00 RMB.
25. The claimants have denied receiving these moneys. The problem I find with those receipts is that one is dated as 1<sup>st</sup> August 2017 ( MRC3) and the document ( MRC4) is undated.
26. But it does not stop there. For the First Defendant to claim she made repayments of 120,000.00 RMB when first denying its receipts implies only that the First Defendant is not a credible entity and Min Rui Cheng is not a credible witness. She has lied to the Court. It makes little or no sense at all to repay 120,000,00 RMB to the claimant when in the first place the First Defendant denied receiving any moneys.
27. Further the sworn statement of Lu Wei ( Exhibit C1) annexes a duly notarised receipt ( LW8) dated 10<sup>th</sup> July 2017 that the First Defendant received from the claimants the sums of USD 305,790 for a single Villa ( 205,75m<sup>2</sup>) and USD 5,000 for the

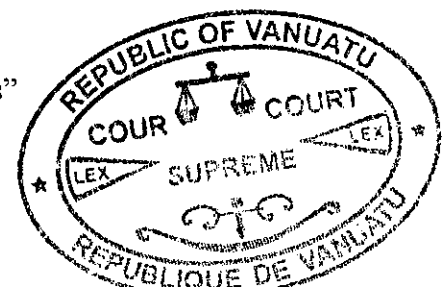


swimming pool. The total sums receipted was USD 310,790. The original text is in Chinese and translated into English.

28. The evidence of Lu Wei ( Exhibit C1) annexes a number of very essential documents such as F.P.F Company Articles of Association as LW1, the F.P.F Certificate of Incorporation as LW2, the plans of the Villa and swimming pool as LW3, the subdivision plans of Rainbow City at Narpow Point as LW4, the Housing Purchase and Sales Contract in Mandarin and English Languages ( as LW5 and LW6)and the Agreement for Sale and Purchase as LW7.
29. The existence of these documents extinguish completely any suggestion by the First and Second Defendants that the claims of the claimants for moneys paid were merely fanciful and did not reflect the reality that existed between them as mere friends . I prefer the evidence of the claimants as credible and truthful, than the evidence of Min Rui Cheng on behalf of the First Defendant.

### **Findings**

30. From the evidence I find the claimants and the First Defendants entered into a validly binding agreement for the sale and purchase of a Detached Villa with a swimming pool. I find further that pursuant to that Agreement the claimants paid moneys to the First Defendant totalling the sum of USD310,790. I find further that the First Defendant has repaid 34,500 RMB, equivalent to USD 5,000 being for the swimming pool and the balance not repaid is USD 305,790. I also find that the First Defendant having issued a receipt for the sum of USD\$310,790 and then failing to provide the claimants with a fully Detached Villa and a swimming pool was breach of their Agreement. Accordingly the claimants are entitled to damages for that breach of Agreement.
31. I therefore answer the issues raised in paragraph 18 of this judgment as follows:
- a) Did the claimants pay a total of USD 310,790 for a Detached Villa and swimming pool? The answer is “ Yes”
  - b) Was there a breach of their Agreement by the First Defendant? The answer is “Yes”
  - c) Are the claimants entitled to damages? The answer is “Yes”



- d) Has the First Defendant repaid USD 5,000? The answer is “ Yes”
- e) Has the First Defendant repaid 120,000 RMB to the Claimants? The answer is “No”.

### **Credibility of Min Rui Cheng**

32. I found Min Rui Cheng’s evidence in support of the First Defendant to be lacking in credibility and truth due to certain factors. First she uses several names as “ Ruimin Cheng”, “ Leah Andrews”, “ Leah Pakoa Andrew”, “ Amy Feng” and “ Ameennini” as seen from the further sworn statement of Lu Wei dated 16<sup>th</sup> March 2021 ( Exhibit C3). Secondly she was able to lie under sworn statement of 10 October 2019 ( Exhibit D1). She repaid the claimants twice the sums of 600,000 RMB. Thirdly while she had the opportunity to provide her bank statements to disprove the payments claimed by the claimants ( see MRC 2”), she failed to and omitted to make use of the opportunity. It was incumbent upon her to do so.

33. For those reasons, I disbelieved the evidence of Min Rui Cheng and reject them as unreliable.

### **The Result**

34. I enter judgment on behalf of the claimant’s for the following-
- a) USD 305,790,00 being the balance of Moneys paid to the First Defendant for a fully Detached Villa.
  - b) Liquidated damages in the sum of VT 11,761,000 which are unchallenged.
  - c) Costs on the standard basis as agreed or taxed.

**DATED at Port Vila this 3<sup>rd</sup> day of November 2021**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

