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

Civil
Case No. 19/1918 SC/CIVL

BETWEEN: **Marco Meltemal**
Claimant

AND: **David George & Linda George**
Defendants

Date of Trial:	12 October 2021
Before:	Justice V.M. Trief
In Attendance:	Claimant – Mr J. Vohor
	Defendants – Mr J. Garae
Date of Decision:	9 February 2022

JUDGMENT

A. Introduction

1. This case concerns the sale of a second-hand vehicle on the basis of an oral agreement, the exact terms of which are now disputed. The vehicle has been re-claimed by the vendor, and there is dispute about whether the purchase price was fully paid, whether repairs to the vehicle while in the possession of the purchaser should be paid for by the vendor or purchaser, and whether the vendor had the right to reclaim the vehicle. There is a Counter-Claim, for money earned by the purchaser while using the vehicle, to be paid to the vendor and for damages for breach of contract in relation to the purchase of the vehicle.

B. Claim

2. Mr Meltemal contends he agreed to purchase the second-hand Toyota truck for VT1.3 million from Mr George. He paid an initial VT500,000 deposit in December 2016, a further VT200,000 in May 2017 and a final payment of VT100,000 in July 2017. He contends that there was no agreement as to when the balance of the purchase price would be paid.

3. Mr Meltemal took possession of the vehicle after paying the initial deposit.

4. Mr Meltemal contended that at all times the vehicle was in poor repair, and he alleges that while the vehicle was in his possession, he paid a total of VT617,570 for repairs to the vehicle.

5. Mr Meltemal further contends that while he was in New Zealand as an RSE worker, the vehicle was in his brother's custody. However, without warning, Mr George repossessed the vehicle, alleging the full purchase price had not been paid.

6. Accordingly, Mr Meltemal sought to recover the VT800,000 he had paid towards purchasing the vehicle, together with the VT617,570 costs he had paid for the repairs to the vehicle. He also sought interest and costs.

C. Defence and Counter-Claim

7. Mr George contended in the Defence that he wanted a written agreement, but Mr Meltemal insisted there was no need for that as they were family. It was his position that the purchase price for the vehicle had been VT1.8 million, but that Mr Meltemal had forced him to accept VT1.3 million. He had agreed to VT1.4 million, but then Mr Meltemal said VT100,000 should be further deducted to pay for the mechanic, but such payment did not occur.

8. Mr George contended that there was a timeframe for payment. He accepted an initial deposit of VT500,000 was paid on 18 January 2017. He stated that a further VT400,000 was to be paid by 31 March 2017. Instead, only VT200,000 was paid on 23 May 2017. He stated the final deposit of VT400,000 was to be paid in July 2017 on Mr Meltemal's return from his RSE engagement, but instead he received only VT100,000.

9. Mr George contended further that he did not give over possession of the vehicle once the initial deposit had been paid. Instead, Mr Meltemal's brother simply removed the vehicle from where it was stored at his premises, supposedly so a mechanic could inspect it and do some minor repairs. He never returned the vehicle.

10. Mr George maintained the vehicle was in good working order at all times. He disputed the amounts said to have been expended on repairs to the vehicle. He contended that if there were repairs required, they had resulted from Mr Meltemal's use of the vehicle to provide transport services at Malekula.

11. In April 2018, he repossessed the vehicle for non-payment of the purchase price. He did so after contacting the Lakatoro police who gave notice of this to Mr Meltemal's brother.

12. After he had reclaimed the vehicle, he was unable to use the vehicle (including to earn money) for a further 4 months.

13. Mr George maintained that Mr Meltemal had used the vehicle to provide transport services on Malekula for 8 months. He considered the vehicle enabled Mr Meltemal to earn VT5,000 per day net. Accordingly, by way of Counter-Claim, he sought to recover an amount of VT1,440,000. He also sought VT100,000 for breach of the sale and purchase agreement. He sought to set-off against those amounts the total of what Mr Meltemal had expended on repairs; and he also sought costs.

D. Responses

14. Mr Meltemal replied to the Defence. He insisted that when first inspecting the vehicle he had discussed necessary repairs. Mr George agreed to deal with those matters, but failed to do so. Mr Meltemal decided to ship the vehicle to Malekula, as by then, Mr George was based there and could therefore effect the repairs. He admitted attempting to provide public transport services, but contended that the vehicle broke down regularly so that proved impossible. He earnt no money as a result, and had to pay for repairs. He regularly approached Mr George to effect the repairs, but to no avail. He stated he had spent over VT 2 million on repairs to the vehicle.

15. In Defence to the Counter-Claim, Mr Meltemal denied that he conducted any public transport service as the vehicle was not fit for that purpose and that Mr George had not repaired the vehicle as promised.

16. Mr George replied to Mr Meltemal's Defence to the Counter-Claim. He maintained the vehicle was in good condition and fit for public transport service. He asserted Mr Meltemal had taken the vehicle for a test run prior to agreeing to purchase it. He did not at any stage agree to effect repairs. The purchase price was reduced from VT1.8 million to VT1.3 million on the basis that Mr Meltemal would effect the required repairs at his own cost. He stated that possession was agreed to be handed over after the second installment of VT400,000 had been made, but that was not done, and Mr Meltemal's brother unlawfully took the vehicle and did not return it.

E. Evidence

17. Marco Meltemal was the Claimant. He produced, by consent, a sworn statement as his evidence (**Exhibit C1**). He confirmed purchasing the Toyota truck from Mr George and his mother at an agreed price of VT1.3 million, making 3 payments totaling VT800,000 between January 2017 and July 2017 – he produced 3 receipts to evidence that. The vehicle was sold in very bad condition, and he realized he would need to expend a lot of money to repair it.

18. He stated that Mr George had repossessed the vehicle without any notice, and without giving him back the VT800,000 he had paid towards the purchase price. He had expended VT617,570 on repairs to the vehicle – he produced poor copies of a number of invoices/receipts to demonstrate this, even a credit advice in the amount of VT28,150. I noted that the documents did not clearly relate to repairs to the vehicle, which was not

identified by number plate; and further that the invoices from Asco Motors were in respect of two different account holders. When I totaled the amounts reflected by the documents, I arrived at a figure of VT513,470. I noted one receipt was for fuel. This evidence is extremely unsatisfactory.

19. Mr Meltemal stated that he had intended to complete the repairs on his return from RSE in New Zealand and to pay the balance of the purchase price.

20. He was not required for cross-examination.

21. Kenole Meltemal is a brother to the Claimant. He produced, as his evidence-in-chief, a sworn statement which became **Exhibit C2**. He confirmed first going to meet Mr George and his mother in January 2017, when a deposit of VT500,000 was paid for the Toyota truck. Two further payments were made in May and July, of VT200,000 and VT100,000.

22. He confirmed his brother had tried to operate a public transport business. But it failed as the vehicle kept on breaking down. He claimed his brother had expended almost VT2 million in repairs, and he appended true copies of receipts to demonstrate that. The copies were better in quality than those appended by his brother, but they were otherwise largely identical.

23. He stated that the vehicle was re-possessed at Easter 2018.

24. In cross-examination, he did not agree that the vehicle was in good condition when he, Mr Meltemal and mechanic Mark Wolep took it on a test drive before the purchase price was agreed – the vehicle needed repairs. The purchase price was VT1.3 million with Mr George to make some repairs and he and Mr Meltemal to make others.

25. He agreed in cross-examination that the payments were to be VT500,000 initial deposit followed by two payments of VT400,000 each – the second in March 2017 and the final one on Mr Meltemal's return in July 2017. However, only VT200,000 was paid in June 2017 and VT100,000 in July 2017. He agreed that the purchase price had not been paid in full.

26. Mr Kenole Meltemat did not agree that he took the vehicle to Malekula without Mr George's knowledge or consent. He stated that he took the vehicle from Mr George's house, where it had spent months for repairs, and he took it with Mr George's agreement. He stated that he agreed to Mr George repossessing the vehicle – it was not because the purchase price had not been paid in full. He agreed that because the purchase price remained unpaid, he should not have taken the vehicle nor his brother operated the vehicle on Malekula.

27. In re-examination, he stated that his brother Mr Meltemal had the vehicle on Malekula and attempted to provide public transport service but the vehicle needed many repairs, hence the claim for the cost of repairs. He agreed that logically, if a buyer has not

completed payment he cannot take possession of the vehicle. But in this case, he had Mr George's agreement, that's why he took the vehicle to Malekula. Mr George is a good friend of his and they conversed a lot resulting in the agreed amounts for the second and third payments made.

28. David George was the Defendant, together with his mother. His sworn statement, produced by consent, became **Exhibit D1**. He confirmed the selling price for the vehicle was VT1.8 million, but this was reduced to VT1.3 million so that Mr Meltemal would effect the necessary minor repairs to the vehicle. He asserted the second installment of VT200,000 was in breach of their agreement, compounded by the subsequent unlawful taking of possession of the vehicle.

29. Mr George stated that he saw the vehicle being used for public transport in Malekula. He advised the vehicle was in Mr Meltemal's possession for 12 months, being used for public transport – he sought compensation for that. The vehicle was re-possessed in April 2018 due to the full purchase price not having been paid. The vehicle was in good condition prior to being moved to Malekula therefore any repairs required on Malekula was because of the vehicle being driven there by Mr Meltemal.

30. Mr George disbelieved the various receipts produced by Mr Meltemal.

31. Mr George's second sworn statement, also produced by consent, became **Exhibit D2**. He stated that when Mr Meltemal first came to inspect the vehicle, be brought with him a mechanic. Mr Meltemal, his brother and the mechanic took the vehicle for a test drive. On their return, Mr Meltemal offered a deposit of VT500,000, but Mr George refused that – he wanted to first hear what the mechanic had to say about the vehicle. Mr Meltemal then haggled over the price. The mechanic had estimated VT400,000 for the needed repairs, and Mr Meltemal wanted a further VT100,000 reduction to pay the mechanic for his trouble. Mr George was unhappy, but eventually agreed.

32. The arrangement was for an initial VT500,000 deposit, a second payment of VT400,000 by March 2017, and the final payment by July 2017, when Mr Meltemal's brother would be returning from New Zealand. Possession of the vehicle was to change hands after the second installment had been paid.

33. Contrary to the agreement, Mr Meltemal paid a second installment of only VT200,000, and a third installment of only VT100,000. In the meantime, in April 2017, his brother took the vehicle away to let the mechanic make the needed repairs, and he did not return the vehicle.

34. He later heard the vehicle was in Malekula, and after he transferred to reside/work there, he saw the vehicle engaged in public transport. The vehicle was repossessed in April 2018 for failure to pay the full purchase price.

35. Radly Silas was present when the vehicle was taken for a test drive by Mr Meltemal and the mechanic. He produced, by consent, 2 sworn statements as **Exhibits D3 and D4**, which are completely repetitious. He confirmed Mr George's evidence as to the negotiations and ultimate agreement that was reached.

36. Mark Wolep was the mechanic. His sworn statement was produced by consent as **Exhibit D5**. He considered the vehicle to be in really good condition, with only minor things requiring fixing. He did not advise Mr Meltemal the vehicle was worth VT1.4 million, or indeed any other amount.

37. He stated that in April 2017, Mr Meltemal's brother took the vehicle to him to effect repairs. He changed the 4 wheels, changed 2 tyrods, changed 2 upper pushings, changed every spring push and changed 1 oil seal. He confirmed that these parts "...did not cost much money".

38. No defence witness was cross-examined.

F. Findings

39. Mr Kenole Meltemal was the only witness cross-examined. I was able to make an assessment of his veracity and accuracy as a witness. He answered questions in a forthright manner. He did not change his evidence in cross-examination. He explained his answers in detail in re-examination. I accepted that Mr Kenole Meltemal was a witness of truth and accepted his evidence except for the aspects discussed below for the reasons given.

40. I was unable to make an assessment of the other witnesses as their evidence was not challenged before me.

(i) Claim for refund of purchase price payments

41. Mr Marco Meltemal, Mr Kenole Meltemal and Mr George all evidence that the purchase price agreed upon was VT1.3 million. I find that was the purchase price.

42. It is accepted that only VT800,000 of the purchase price has been paid.

43. Mr Kenole Meltemal evidenced that although a second and final payment of VT400,000 each was initially agreed to, Mr George agreed to Mr Meltemal paying VT200,000 and then VT100,000 due to other circumstances that had arisen. However, there is no evidence as to any agreement by the parties when the balance of the purchase price would be paid after that. I therefore find that there was no agreement as to when the balance of the purchase price would be paid.

44. As to when possession of the vehicle was to occur, Mr George evidenced that possession of the vehicle was to change hands after the second instalment initially agreed

(VT400,000) had been paid. His case was that Mr Meltemal took possession of the vehicle in April 2017 unlawfully as he had not yet paid a second instalment, and even when he paid second and third instalments, those only totaled VT300,000. He evidenced that he repossessed the vehicle for failure to pay the full purchase price.

45. Further, Mr Kenole Meltemal agreed in cross-examination that if a buyer has not completed payment he cannot take possession of the vehicle. He stated in re-examination that he took possession only with Mr George's agreement and then agreed to Mr George taking back the vehicle. He also evidenced that his brother decided to return the vehicle to Mr George.

46. I consider that the parties' conduct is instructive. Mr Kenole Meltemal took possession of the vehicle without paying the second instalment that was agreed. After 12 months, both the second instalment initially agreed and the balance of the purchase price remained unpaid in full. At that point, he and Mr Meltemal agreed to return of the vehicle to Mr George. I note that Mr Kenole Meltemal has now agreed that a buyer cannot take possession of the vehicle until he has completed payment of the purchase price. Accordingly, I find that possession of the vehicle was to change hands after the second instalment initially agreed (VT400,000) had been paid.

47. Neither party pleaded that they consider the sale and purchase agreement to have ended. In the circumstances, VT500,000 of the purchase price remains unpaid and it is for Mr Meltemal to complete payment. Accordingly, the claim for refund of the VT800,000 already paid fails.

(ii) Claim for refund of cost of repairs

48. As to payment of repairs to the vehicle, again the parties' conduct is instructive.

49. Mr Marco Meltemal and Mr Kenole Meltemal with Mr Wokep took the vehicle for a test drive. After that the purchase price was agreed at VT1.3 million. Mr George's uncontested evidence is that the purchase price was reduced from VT1.8 million to VT1.3 million so that Mr Meltemal would effect the required repairs at his own cost.

50. Although Mr Kenole Meltemal asserted in cross-examination that both the vendor and the purchaser were responsible for repairs to the vehicle, the only repairs made since the purchase price was agreed in January 2017 have been by Mr Meltemal, including the repairs made in April 2017 by Mr Wolep before the vehicle was shipped to Malekula.

51. From the parties' conduct, I consider it more likely than not that the purchase price was reduced to VT1.3 million on the basis that Mr Meltemal would be solely responsible for repairing the vehicle.

52. Even if I were wrong on that, the repairs were incurred while the vehicle was in Mr Meltemal's possession, who was attempting to operate a public transport service. Accordingly, the repairs should be paid for by him.

53. For the reasons given, the claim for refund of the costs of the repairs to the vehicle also fails.

(iii) Counter Claim

54. It is accepted that Mr Meltemal had possession of the vehicle from April 2017 to April 2018.

55. It is also accepted that Mr Meltemal attempted to operate a public transport service on Malekula however the vehicle kept requiring repairs.

56. However, there is no evidence as when and for how long Mr Meltemal conducted public transport, if at all, nor as to his earnings from such business.

57. Accordingly, the Counter Claim has not been proved.

58. Mr George also sought damages for breach of agreement by Mr Meltemal failing to complete payment of the purchase price. Given my finding that that there was no agreement as to when the balance of the purchase price would be paid, there has not been a breach of the agreement such that damages can flow.

59. This aspect of the Counter Claim also fails.

G. Result

60. The Claim and Counter Claim are dismissed.

61. Costs must lie where they fall as both parties have been unsuccessful on their claims.

DATED at Port Vila this 9th day of February 2022
BY THE COURT

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Justice V.M. Trief

REPUBLIC OF VANUATU COUR COURT LEX SUPREME LEX REPUBLIQUE DE VANUATU