

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

Civil
Case No. 24/1508 SC/Civil

BETWEEN: Timbaland Limited
Claimant

AND: Shefa Provincial Government Council
Defendant

Before: Justice Oliver A. Saksak

Counsel: Mr Justin Ngwele for the Claimant
Mr James Tari for the Defendant

Date of Hearing: 27th February 2025

Date of Judgment: 12th May 2025

JUDGMENT

Introduction

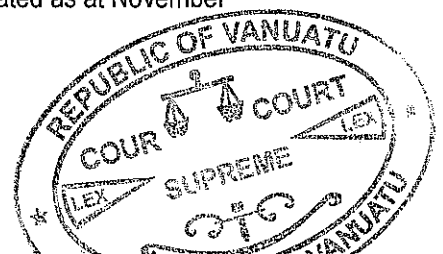
1. This is a claim for damages for breach of contract executed between the parties on 11 December 2017.

Facts

2. Pursuant to the contract the claimant rented an office space within the defendant's premises. It was their arrangement under the contract that the claimant would renovate and repair the office and then submit invoices to the defendant for reimbursements of the monies expended.
3. The claimant performed its obligations under the contract and issued two invoices No. 3358 and 3762 for VT 1,170,000 and VT 10,907,901 in December 2018.
4. The defendant failed to pay the sums claimed as per the invoices.

Defence

5. The defendant denied any liability. They filed a defence and counter-claim in July 2024. They assert the claimant breached the contract and that the contract was terminated as at November



2018. Finally the defendant asserts that the claimant's claims are time-barred pursuant to the provisions of the Limitation Act.

Evidence of the Claimant

6. The claimant adduced evidence from 3 witnesses, the first being Thi Tham Venaos Goiset who gave oral evidence confirming her evidence by three sworn statements dated 24 September 2024 (Exhibit C1), 16 July 2024 (Exhibit C2) and 28 August 2024 (Exhibit C3).
7. Next Paul Soane, a councillor to the Defendant Provincial Government Council gave evidence in support of the claim, confirming his sworn statement dated 28 August 2024 tendered as Exhibit C4.
8. The third witness, Nokai Manipen, another councillor and Vice Chairman of the Defendant's Finance Committee gave oral evidence in support of the claim confirming his statement dated 28 August 2024, tendered as Exhibit C5.

Evidence of the Defendant

9. The defendant adduced evidence in support of their defence and counter-claim from Willie Suran Kalo, the Law Enforcement Officer of the Defendant who gave oral evidence confirming his sworn statement dated 6th August 2024, tendered as Exhibit D1, Further Lionel Kaluat, the Secretary General and Head of Administration of the Defendant gave oral evidence for the Defendant confirming his statements dated 17 September 2024 (Exhibit D2) and his statement dated 5th November 2024 tendered as Exhibit D3.

The Issues

10. From the pleadings and submissions it appears to me the following are the issues for determination:-
 - a) Whether or not the claim is time- barred?
 - b) Whether or not the defendant breached the contract?
 - c) Whether the claimant is entitled to damages for breach of contract.
 - d) Whether the claimant breached the contract?
 - e) Whether the contract was terminated?

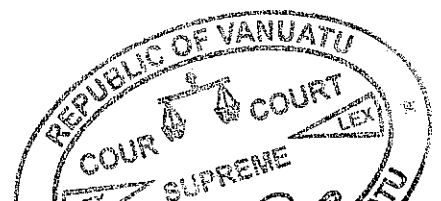
The Agreement (contract)

11. This claim is hinged on the Agreement dated 11 December 2017 which states as follows:

"Letter of Agreement (LOA) for use of Office Space at Shefa Provincial Government Council Headquarters:

This letter of Agreement (LOA) Binds Madame D Tam Venaos and Shefa Provincial Government Council to enter into a Tenancy arrangement for a three year period, renewable under the following terms for the use of Office Space at Shefa Provincial Government Council.

1. A monthly rent of Eighty Thousand (80,000) vatu be for the first six (6) months and increasing to one Hundred thousand (100,000) vatu per month.



2. The Letter of Agreement specifies that Shefa Provincial Government Council as the Land Lord of the said property permits Madame D Tam Venaos as the Tenant to enter the existing property and improvise the existing structures to an official standard facility.
3. Upon entering the property the tenant agrees to provide intentions and quotation of expenditure to the Land Lord prior to and or at the completion of construction and/or renovation work.
4. General Agreement also involves both parties to dialogue and negotiate for an established Memorandum of Understanding and or Agreement (MOU/MOA) to further improve the outlook of the Physical Layout of Shefa Provincial Government Council Headquarters, to be inclusive but not limited to a Physical Chief Nakamal Building for Shefa Chief.
5. A Memorandum of Agreement and or Memorandum of Understanding (MOA/MOU) be drafted by the parties to include short and long term investment Projects during the duration of the period of the period specified in the Letter of Agreement (LOA)."

This Agreement is entered in to this 11th day of December 2017 at 04.05pm Local Time.

It is a Principal Agreement that is signed by:

"The Honourable President of Shefa Provincial

Government Council as the Landlord

AND

Honourable Councillor Aram Alick

Madame D Tam Venaos as the tenant

(signed)

(signed)

Witnessed by the Secretary General Shefa Provincial Government Council

Zechariah Daniel

(signed)"

Discussion

12. The first issue; Whether or not the claim by the claimant is time-barred?

Mr Tari submitted that the claims are time barred because they have been brought some 5 years after the cause of action. Counsel placed reliance on section 3(1) of the Limitation Act [Cap.212] which states:

3. Limitation of actions of contract and tort and certain actions

- (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say –

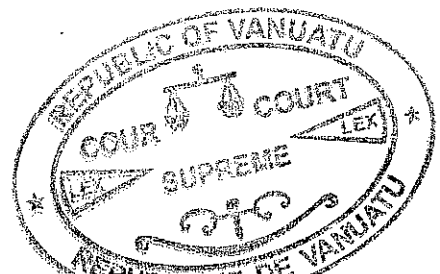
(a) actions founded on simple contract or on tort;

(b) N/A

(c) N/A

(d) N/A:

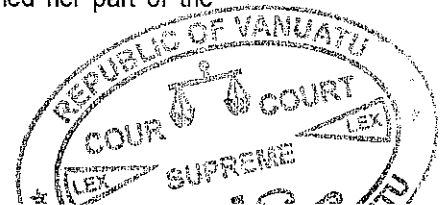
Provided that –



- (i) in case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years....

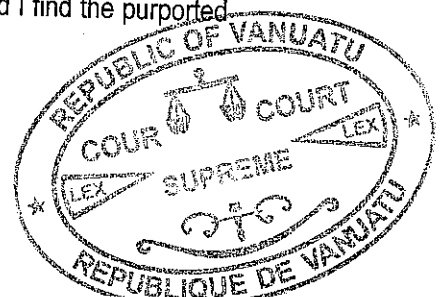
(My underlining for emphasis)

13. From the evidence, the claimant issued 2 Quotations on 15 December 2018, that was after one year the parties had executed the Agreement dated 11 December 2017. One quote was for VT 10,869,910 and the other was for VT 1,170,110. The defendant did not produce any evidence showing they responded to the quotations.
14. On 22nd May 2019 Mr Warsal wrote a letter to Zecharia Daniel about the breach and demanding payment of VT 10,869,910 within 21 days failing which legal action would follow. See Annexure VT TG8 to Exhibit C2. That letter was in response to the Notice of Termination dated 29th March 2019 sent by Mr Tari: See Annexure VTTG7.
15. Further correspondences were sent on 22nd February 2020 (VTTG14- To Exhibit C2), and on 3rd March 2024 VTG15.
16. From those evidence, I find that a cause of action arose as at 12 December 2018 when the two quotations were issued. As such I am satisfied the claim fell within the three year period and is not time-barred as submitted by the defendant. That submission is rejected.
17. The second issue is whether the defendant by not paying the claimant in relation to the two quotations breached the Agreement of 11 December 2017?
18. Examining the Agreement carefully there is no specific provision creating an obligation on the defendant to pay the quotes, although it can by necessary implication be inferred.
19. It appears to me the Agreement is incomplete because by Clause 4 a further Memorandum of Understanding or Agreement is anticipated for dialogue and negotiations. There is no evidence showing this further step was taken by the parties. But this is not an issue between the parties.
20. The photographs tendered into evidence by the claimant as Annexure VTTG4, showing the state and conditions of the defendant's property before and after renovations were done under the terms of the Agreement are clear evidence that the clamant had performed her part of the

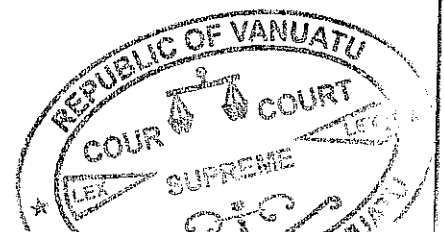


Agreement. If therefore renovations were done and quotations were sent for payments which have not been paid and remain outstanding, it is implied under the Agreement that the defendant owes a duty under the Agreement to pay the claimant for the two outstanding quotations. In my view the defendant has breached an implied duty under the Agreement to pay the claimant.

21. Thirdly, whether the claimant is entitled to damages? The answer is in the affirmative.
22. Fourthly, the defendant asserted that it was the claimant who breached the Agreement due to her not paying the rentals amounting to VT 1,200,000. As a result of that breach the defendant terminated the Agreement on 7th November 2018 as evidenced by Willie Kalo Suran at paragraph 16 of the sworn statement Exhibit D1.
23. Despite the assertion, the defendant through Counsel Mr Tari only issued a letter informing Mrs Goiset of the purported termination by letter dated 29 March 2019, annexed as "VTTG7" to Exhibit C2.
24. The defendant's witness Willie Kalo Suran confirmed this letter in paragraph 17 of his sworn evidence, Exhibit D1.
25. There is no evidence the defendant had informed the claimant about the termination prior to November 2018.
26. The reason given by for the termination was that the claimant had failed to pay rentals to the total sum of VT 1.200.000. The claimant however refuted those assertions. In her evidence in Exhibit C2 the claimant deposed at paragraph 12 that she paid VT 500,000 on 9th August 2018 and annexed the photograph of the cash moneys she paid as annexure " VTTG6". Earlier in June 11 of her sworn statement she paid VT 50,000 by cheque (dated 8/10/2008) and cash payments of VT 80,000 on 16/06/18 and VT 160,000 on 25/10/18 being rentals for July and August 2018. These are annexed as " VTTG5" to Exhibit C2.
27. Adding those sums together the claimant paid up to VT 850,000 as rentals.
28. What remains unclear is the total arrears or outstanding rentals. The defendant did not produce any evidence showing how the claimed VT 1,200,000 was calculated. There is no evidence when rentals were first due, for which months, and whether invoices were issued by the defendant.
29. As the evidence stands, I accept that the claimant paid rentals up to VT 850,000 and due to lack of any documentary evidence by the defendant. I am not satisfied there is any outstanding rentals as claimed to be paid by the claimant. Even if there was, on the defendant's arguments, this counter-claim would be time barred as well.
30. The counter-claim for rentals by the defendant is therefore dismissed. And I find the purported termination of the Agreement was unlawful by the defendant.



31. Mr Tari in his submissions appeared to take issues with Mrs Goiset signing the Agreement of 11 December 2017 on behalf of Cimex and the transfer of its assets to Timbaland Limited without any evidence from the Financial Services Commission confirming the transaction, and that the Agreement is not clearly expressed for Cimex and/or Timbaland Limited.
32. Despite those submissions, Counsel for the defendant failed or omitted to include in the defendant's defence and counter-claim a lack of standing by Timbaland Limited. To raise issues by or through submissions and arguments without first raising them in pleadings is highly improper as it denies the claimant adequate opportunity to make appropriate responses with any relevant evidence in rebuttal. Therefore the defendant's submissions in paragraphs 4,5 and 6 are rejected as untenable.
33. The Invoice dated 15/12/2018 annexed as " VTTG8" was issued under Timbaland Letterhead. Mrs Goiset wrote a follow up letter on 12 February 2020 as annexed "VTTG10" as Managing Director on Timbaland Letterhead. And Mr Warsal wrote on 22nd February 2020 about an amicable arrangement to pay Timabland and Cimex, seen annexure "VTTG11". And Mrs Goiset wrote again on 15 August 2021 on Timbaland Letterhead to the defendant.
34. Despite those correspondences the defendant has no evidence showing they received those correspondences and objected to Cimex and/or Timbaland having any standing to institute this proceeding. The defendant is estopped from raising any issues about standing in their submissions as they have tried to do.
35. There is evidence about a round-table meeting with the involvement of the Police which the claimant appeared to have acknowledged. In her evidence, Exhibit C2, paragraph 24, the claimant deposed that she was unfairly treated. Her involvement at the meeting and she having agreed to vacate the premises, did not imply she was accepting that the Agreement she executed with the defendant on 11 December 2017 was terminated on a lawful purpose. On the contrary, the Agreement was unlawfully terminated.
36. Finally the quantum of the claimant's claims. Firstly I am of the firm view that the claimant is entitled on a quantum meruit the sum of VT 12,079,001. These are the two sums submitted in Invoices 3357 and 3762 on 15 December 2018 together.
37. It is immaterial that these were quotations prior to renovations being done. The photographs of the premises after renovations were done and completed is clear evidence that renovations were done by the claimant. The defendant is now benefiting from those renovations and repairs and it is highly unreasonable that they are now refusing to make any payments because of a lack of proper or final invoices. In the absence of final invoices, these two invoices are deemed the final invoices issued pursuant to the Agreement.
38. In actual fact the sum which the Defendant's Finance Committee accepted to pay to the Claimant was VT 18 million which is still subject to internal disagreements within the Defendant's



administration. Therefore I will leave that figure aside because that is not the amount being claimed in the claim.

39. Next for breach of contract. The Agreement was for a duration of 3 years from 11 December 2017 until 11 December 2020. It was unlawfully terminated on 7 November 2018 less than a year latter. The claimant had been paying the rentals up to October 2018 as the evidence shows. She was compelled to vacate the premises and she did. She removed her flowers and some personal furniture. There is no actual evidence of the properties of the defendant she took away or any damage caused to any remaining property. In circumstances of this nature, it goes without saying that as humans, stress and pains will be felt.
40. Taking all those factors into account, I assess the amount of damages in a general way to be in the sum of VT 3,000,000.
41. Accordingly the total amount of damages awarded to the claimant under this judgment is
- | | | |
|----|---|-----------------------------------|
| a) | Quantum Meruit- For work done- | VT 12,079,901 |
| b) | Interest on the VT 12,079,901 at 5% per annum | VT 603,995 x 6 years= VT3,623,970 |
| c) | General Damages - | <u>VT 3,000,000</u> |
| | Total- | <u>VT 18,703,871</u> |
42. The claimant is therefore successful in her claims and judgment is entered in the claimant's favour against the defendant for payments of VT 18,703,871 together with interests of 5% per annum on the quantum meruit from 7 November 2018 to date of settlement of the judgment sum.
43. In addition, the claimant is entitled to their costs of the litigation on the standard basis as agreed or be taxed.
44. This matter is made returnable on Wednesday 4th June 2025 at 0830 hours for an enforcement conference.

DATED at Port Vila this 12th day of May 2025

BY THE COURT


Hon. OLIVER A SAKSAK

Judge

