

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

**Civil**

**Case No. 21/642 SC/CIVL**

**BETWEEN: Paul Hocten and Janet Hocten  
trading as J.P.O Investment Limited**  
Claimants

**AND: Mr Jinming Wang, Shi Qi Wang, Xin  
Wang and Hu Yan trading as Golden  
Port Restaurant and Hotel (101105)**  
Defendants

*Date of Hearing:* 1 February 2023

*Before:* Justice V.M. Trief

*In Attendance:* Claimants – Mr L. Malantugun  
1<sup>st</sup>-named Defendant – Ms S. Mahuk

Other Defendants – Ms S. Mahuk, holding papers for Mr J. Malcolm

*Date of Decision:* 23 October 2023

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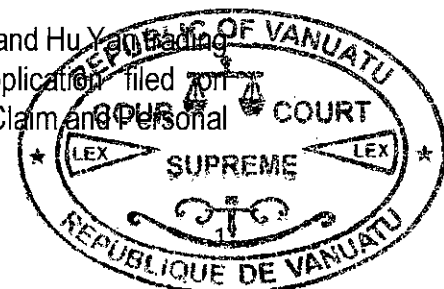
**DECISION AS TO APPLICATIONS BY CLAIMANTS AND DEFENDANTS**

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A. Introduction

1. This decision relates to the following applications:

- a) The Claimants Paul Hocten and Janet Hocten trading as J.P.O. Investment Limited's Application filed on 2 August 2022 seeking leave of the Court to Amend the Claim;
- b) The Defendants Mr Jinming Wang, Shi Qi Wang, Xin Wang and Hu Yan trading as Golden Port Restaurant and Hotel (101105)'s Application filed on 23 November 2022 to Strike out all or part of the Amended Claim and Personal Costs or Security for Costs; and



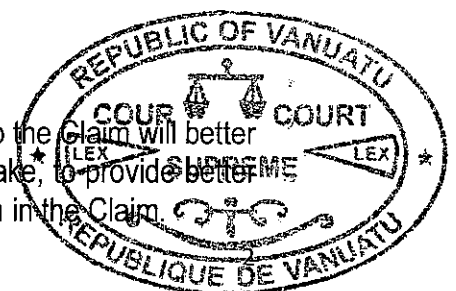
c) The Claimant's Application for Summary Judgment filed on 31 January 2023.

B. Background

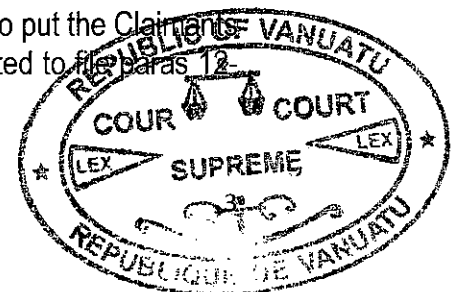
2. On 8 March 2021, Mr Hocten filed the Claim claiming a refund of VT200,000,000 which he claimed he made by way of deposit towards the purchase of the Defendants' property bearing lease title no. 11/OB22/025 and business known as the Golden Port Hotel and Restaurant at the Nambatu area in Port Vila.
3. A Defence was filed on 24 March 2021.
4. Following several Applications filed, by the Decision dated 24 September 2021, I struck out the Claim: *Hocten v Jinming Wang* [2021] VUSC 278.
5. This was appealed. By Judgment dated 19 November 2021, the Court of Appeal allowed the appeal, set aside the strike-out order and remitted the matter back to this Court. The Court of Appeal stated that the appellant "*should promptly seek to amend the Claim*"; para. 25, *Hocten v Jin Ming Wang* [2021] VUCA 53.
6. On 16 December 2021, an Amended Claim was filed.
7. On 27 January 2022, Mr Malantugun withdrew that Amended Claim as it was filed without the leave of the Court. Mr Malcolm had also made submissions as to defects in that document.
8. On 9 May 2022, the Claimant filed Application seeking leave of the Court to Amend the Claim and on 27 May 2022, Application to Add Party [sic]. Both applications were heard on 30 May 2022. By the Minute and Orders dated 30 May 2022, I dismissed the Application seeking the leave of the Court to Amend the Claim for the reasons given. The Application to Add Party was not opposed so I granted it and ordered that the Claimants be changed to the current iteration and adding 3 other Defendants.
9. On 2 August 2022, the Claimants filed Application seeking leave of the Court to Amend the Claim (the 'Application') with separate document titled 'Supreme Court Claim as Further Amended' also filed on 2 August 2022 (the 'proposed draft').
10. On 23 November 2022, the Defendants filed their submissions in response to the Application which also included their Application to Strike out all or part of the Amended Claim and Personal Costs or in the alternate, Security for Costs.
11. On 31 January 2023, the Claimants filed their submissions in reply to the Defendants' Application which also included their Application for Summary Judgment.

C. Claimant's Application for leave to Amend the Claim

12. The Application is made on the grounds that the amendment to the Claim will better identify the parties, better identify the issues, to correct a mistake, to provide better facts about each issue and to better clarify the causes of action in the Claim.

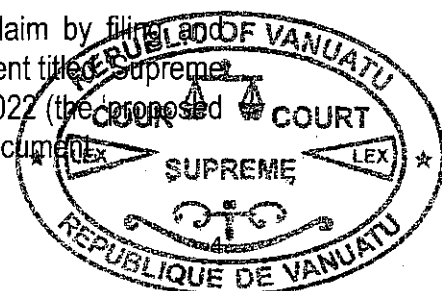


13. It is stated in the opening paragraph of the proposed draft that the Claim is brought for breach of contract for sale and purchase of the Golden Port Hotel and Restaurant which was partly oral and partly written. Other causes of action stated to be relied on in the proposed draft are promissory estoppel, proprietary estoppel, part performance, unilateral mistake, unconscionability, unjust enrichment, *quantum meruit* and the restitutionary remedy of "account of profits".
14. The Defendants' submissions in response to the Application set out detailed submissions in opposition to the Application. Similarly, the Claimants' submissions in reply are exhaustive.
15. I thank counsel for their submissions to assist the Court.
16. Rule 4.2(1) of the *Civil Procedure Rules* ('CPR') provides as follows:
  - 4.2 (1) *Each statement of the case must:*
    - (a) *be as brief as the nature of the case permits; and*
    - (b) *set out all the relevant facts on which the party relies, but not the evidence to prove them; and*
    - (c) *identify any statute or principle of law on which the party relies, but not contain the legal arguments about it; and*
    - (d) *if the party is relying on custom law, state the custom law.*
17. The proposed draft is an improvement on the Amended Claim which was withdrawn as it is shorter (12 pages compared to 31 pages) and counsel has endeavoured to set out the relevant facts on which the Claimants rely, as they see them, with a reduced number of paragraphs setting out legal arguments or conclusions.
18. Even so, there were many paragraphs of the proposed draft that Defendants' counsel objected to for being a legal submission, not a pleading.
19. However, I consider that the references in paras 5, 11, 15,16 and 18-22 of the proposed draft are references to the statute or principle of law on which the Claimants rely, in accordance with rule 4.2(1)(c) of the CPR.
20. I do not accept that promissory estoppel or proprietary estoppel alleged in paras 12-14 of the proposed draft are available causes of action as the Claimants have not pleaded any assertion of fact (such as the example given in the Defendants' counsel's submissions, a sealed Judgment in Vanuatu) which can be used to estop a Defendant denying a debt. I consider that the Claimants are seeking to rely on these principles to estop the Defendants from denying the payments claimed but that is the right that the Defendants have to deny the payments and to put the Claimants to proof of their Claim. Accordingly, there will not be leave granted to file paras 12-14 of the proposed draft.



21. I understand paras 5-7 and 17 of the proposed draft to be the paragraphs in which the Claimants plead the relevant facts on which they rely in alleging that the parties entered into a partly oral and partly written purchase and sale agreement, and that the Claimants were put under the mistaken impression that a contract was drawn and would be formalised and signed once they completed payment of the deposit.
22. In para. 5, the unsigned written agreement is set out in the particulars presumably going to the 'partly written' aspect of the alleged agreement.
23. However, the particulars in para. 6 fall short of supporting the assertion in that paragraph that there were other terms of the conditions of the agreement which were orally made. At the least, the particulars should set out the following:
  - a) What were the terms and conditions of the agreement which were orally made; and
  - b) When were these orally agreed and by whom.
24. Paragraphs 7 and 17 allege the same fact to the effect that the Claimants understood from the Defendants' representations (para. 7) or were put under the mistaken impression (para. 17) that a contract was drawn and would be finalised and signed once they completed payment of the VT200,000,000 deposit. Defendants' counsel accepted in their submissions that para. 17 'is fair'.
25. In para. 8 of the proposed draft, it is alleged that the Claimants relied on the Defendants' representations and promises to "changed [sic] their positions". However, the particulars should set out each of the alleged representations and promises relied on. I understand the particulars detailing 5 instalment payments totalling VT200,000,000 to be particularising the alleged "change" in position as a result of reliance on the representations and promises made.
26. As to the claim for *quantum meruit* alleged in para. 21 of the proposed draft, *quantum meruit* is a claim for work performed by the Claimants for an unspecified or not actually agreed sum. There is no work performed here by either party. This aspect of the Claim is misconceived. Accordingly, there will not be leave granted to file para. 21 of the proposed draft.
27. The restitutionary remedy of "account of profits" alleged in paras 22-24 of the proposed draft is not a cause of action but relief that can be sought in a claim. Accordingly, there will not be leave granted to file para. 22 of the proposed draft.
28. In the circumstances, the Application is **granted in part** as follows:

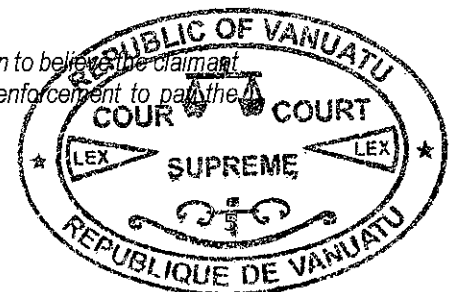
- a) The Claimants are **granted** leave to amend the Claim by filing and serving an Amended Claim in the terms of the document titled 'Supreme Court Claim as Further Amended' filed on 2 August 2022 (the 'proposed draft') but excluding paras 12-14, 21 and 22 of that document.



- b) In addition, the Amended Claim must include the following changes:
- i) The particulars in para. 6 of the proposed draft are to set out the following:
    1. What were the terms and conditions of the agreement which were orally made; and
    2. When were these orally agreed and by whom; and
  - ii) The particulars in para. 8 of the proposed draft are to set out each of the alleged representations and promises relied on.
29. There will also be an order declaring the 'Supreme Court Claim as Further Amended' document filed on 2 August 2022 ineffectual.
30. The costs of the Application are reserved.
- D. Defendants' Application to Strike out all or part of the Amended Claim and Personal Costs or Security for Costs
31. Given the determination above of the Claimants' Application for leave to Amend the Claim and the order made to declare the document filed on 2 August 2022 as ineffectual, that answers the Application to Strike out all or part of that purported Amended Claim.
32. Given the order as to the costs of the Application, I need not consider further the application as to personal costs.
33. The Defendants' application for security for costs is opposed. The application is made on the ground that the justice of the case requires the making of the order because of the evidential issues it now has to prove forgery in respect to all or any documentary evidence and the Claimants' history as alleged fraudsters (rule 15.19(f), CPR) and with reference to the matters set out in rule 15.20 of the CPR which rules provide as follows:

15.19 *The court may order a claimant to give security for costs only if the court is satisfied that:*

- (a) *the claimant is a body corporate and there is reason to believe it will not be able to pay the defendant's costs if ordered to pay them; or*
- (b) *the claimant's address is not stated in the claim, or is not stated correctly, unless there is reason to believe this was done without intention to deceive; or*
- (c) *the claimant has changed address since the proceeding started and there is reason to believe this was done to avoid the consequences of the proceeding; or*
- (d) *the claimant is ordinarily resident outside Vanuatu; or*
- (e) *the claimant is about to depart Vanuatu and there is reason to believe the claimant has insufficient fixed property in Vanuatu available for enforcement to pay the defendant's costs if ordered to pay them; or*
- (f) *the justice of the case requires the making of the order.*



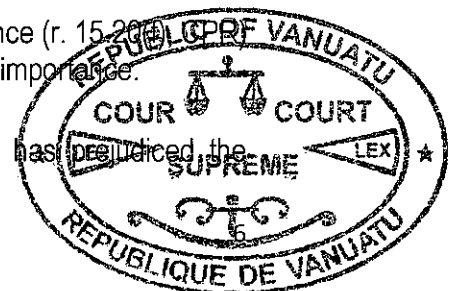
15.20 In deciding whether to make an order, the court may have regard to any of the following matters:

- (a) the prospects of success of the proceeding;
- (b) whether the proceeding is genuine;
- (c) for rule 15.19 (a), the corporation's finances;
- (d) whether the claimant's lack of means is because of the defendant's conduct;
- (e) whether the order would be oppressive or would stifle the proceeding;
- (f) whether the proceeding involves a matter of public importance;
- (g) whether the claimant's delay in starting the proceeding has prejudiced the defendant;
- (h) the costs of the proceeding.

34. Mr Malantugun submitted that the Claimants' lack of means is because of the Defendants' conduct and that the Claimants' financial position is such that they will not be able to pay the security for costs sought of VT10,000,000 within 6 months. He submitted that the Claimants do not totally lack means as they paid VT1,700,000 to an overseas QC to draft an amended Claim but which was subsequently returned to them when the QC could not do so.

35. In assessing the justice of the case, I have regard to the rule 15.20, CPR matters as follows:

- a) The prospects of success of the proceeding (r. 15.20(a), CPR) – I make no comment as to the prospects of success as that will depend on the trial, if this matter proceeds that far.
- b) Whether the proceeding is genuine (r. 15.20(b), CPR) – I accept that to the Claimants, it is a genuine proceeding.
- c) The corporation's finances (r. 15.20(c), CPR) – Does not apply.
- d) Whether the Claimant's lack of means is because of the Defendants' conduct (r. 15.20(d), CPR) – I make no comment as to this as this is a matter to be proved at trial, if this matter proceeds that far.
- e) Whether the order would be oppressive or would stifle the proceeding (r. 15.20(e), CPR) – I consider that an order for security for costs would not stifle the proceedings depending on the amount of security ordered. I also consider that the prejudice to the Defendants absent such orders outweighs that to the Claimants.
- f) Whether the proceeding involves a matter of public importance (r. 15.20(f), CPR) – Any matter in which forgery or fraud is alleged is of public importance.
- g) Whether the Claimants' delay in starting the proceeding has prejudiced the Defendants (r. 15.20(g), CPR) – Does not apply.



- h) Costs of the proceeding (r. 15.20(h), CPR) – The Defendants' counsel sought VT750,000 costs of the Application. They submitted that the Court ought to order security for costs in the sum of VT10,000,000 to be paid within six months. Given the interlocutory steps taken and costs incurred so far in this matter, and the time that it has taken to finalise the Claimants' statement of the case (the Claim as amended), and taking into account the Defence case, I consider that an order for security for costs in the total sum of VT3,000,000 is reasonable.

36. Accordingly, an order will be made for security for costs.

37. The costs of this Application are reserved.

E. Claimants' Application for Summary Judgment

38. Rule 9.6 of the *Civil Procedure Rules* (the 'CPR') applies where a Defence has been filed but the Claimant "believes that the defendant does not have any real prospect of defending the claimant's claim" (rule 9.6(1), CPR).

39. This application for summary judgment is premature as the Claimants have by today's decision, been granted leave to amend the Claim. A Defence to that amended Claim must then be filed. At that point, the Claimants may wish to seek summary judgment but it is premature to do so at this point.

40. For the reasons given, the Application for Summary Judgment will be declined and dismissed.

41. The costs of this Application are reserved.

F. Result and Decision

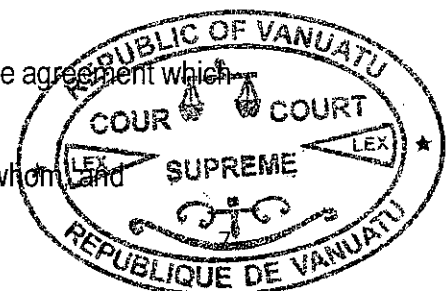
42. For the reasons given, the Claimants' Application filed on 2 August 2022 seeking leave of the Court to Amend the Claim is **granted in part** as follows:

a) The Claimants are **granted** leave to amend the Claim by filing and serving an Amended Claim in the terms of the document titled 'Supreme Court Claim as Further Amended' filed on 2 August 2022 (the 'proposed draft') **however, excluding** paras 12-14, 21 and 22 of that document as there is no leave granted to file those paragraphs;

b) In addition, the Amended Claim must include the following changes:

i) The particulars in para. 6 of the proposed draft are to set out the following:

1. What were the terms and conditions of the agreement which were orally made; and
2. When were these orally agreed and by whom and



- ii) The particulars in para. 8 of the proposed draft are to set out each of the alleged representations and promises relied on; and
  - c) Such Amended Claim is to be filed and served **by 4pm on 23 January 2024.**
43. The document titled, 'Supreme Court Claim as Further Amended' filed on 2 August 2022 is declared **ineffectual** pursuant to rule 18.10(2)(c) of the *Civil Procedure Rules*.
44. The Defendants' Application filed on 23 November 2022 to Strike out all or part of the Amended Claim and Personal Costs or in the alternate, Security for Costs is **granted in part** and it is ordered as follows:
- a) The Claimants are to pay security for the Defendants' costs in the sum of VT3,000,000 into the Chief Registrar of the Supreme Court's Trust Account **by 4pm on 23 January 2024;**
  - b) The Claimants are to file and serve notice of when and how security was given **by 4pm on 30 January 2024;** and
  - c) In default of payment of the security of costs ordered, the Defendants are at liberty to apply to strike out the Claim/Amended Claim. Such application is to be filed and served **by 4pm on 9 February 2024.**
45. The Claimants' Application for Summary Judgment is **declined and dismissed.**
46. The costs of the Applications are reserved.
47. The listings for 24 and 25 October 2023 are **vacated.**
48. This matter is listed for Conference and hearing of any strike-out application **at 1.15pm on 7 March 2024.**

**DATED at Port Vila this 23<sup>rd</sup> day of October 2023  
BY THE COURT**

  
Justice Viran Molisa Trief

