

BETWEEN: Tabisa Harrison
Claimant

AND: Jong Phil Shin and Juan Yehun Yu
Defendants

Dates of Hearing: 28-29th September 2023 and 12-13th October 2023
Date of Judgment: 28th February 2024

Before: Justice Oliver A Saksak

Counsel: Mr Eric Molbaleh for the Claimant
Ms So'Oletaua Motuliki for the Defendants

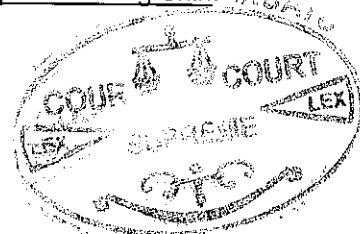
JUDGMENT

Introduction

1. This is simple claim whereby the claimant is seeking-
 - a) A declaration that an agreement about the payment of 30% of the damages awarded to the defendants to the claimant as contingency fee has been breached by the defendants, and
 - b) An order directing the defendants to pay the 30% commission as agreed.

Facts

2. The defendants instituted legal action against the Vanuatu Government and the Vanuatu Investment Promotion Authority (VIPA) seeking damages in Civil Case 20/2053, Jong Phil Shin and Jian Yeun Yu.
3. The Court gave judgment in their favour for damages in the sum of VT 92,000,000.
4. The Republic appealed the judgment in CAC 21/3058, Republic v Jong Shin.



5. The Court of Appeal allowed the appeal and remitted the case back to the Supreme Court for assessment of damages. The case is still pending final determination.
6. In both proceedings, the defendants instructed the claimant to act for them and she did.

The Claim

7. The claimant claims that the defendant had agreed with her verbally that they would pay her 30% of the damages awarded by the Court as contingency fee by way of a commission.
8. Despite being successful, the defendant did not pay her as agreed.
9. The claimant claims the agreement was breached and that she is entitled to an order directing the defendants to pay the 30% commission as agreed.

Defence

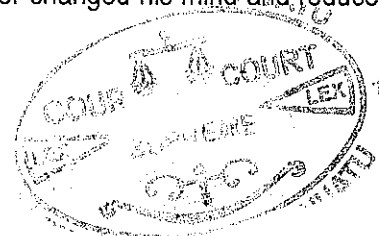
10. The defendants denied any liability. They say there was no verbal agreement made. They say further that even if there was any agreement first, it lacked certainty and second, it was tainted with threats, duress and compulsion, and therefore is a voidable agreement.
11. The defendants say the claims should be dismissed with indemnity costs.

The Issue

12. There is essentially one main issue of whether or not there was a verbal agreement.

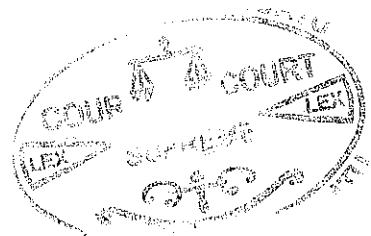
Discussion

13. For the claimant to succeed she must prove her claim on the balance of probabilities that there was a verbal agreement reached between herself and the defendants.
14. It is accepted as common ground that the claimant did perform work and legal services for the defendants in CC 20/2053 and in CAC 21/3058.
15. From the evidence of the claimant both oral and by sworn statements, she told the Court the defendants had agreed initially to pay 30% but latter changed his mind and reduced it down to

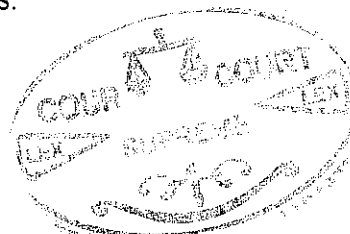


15-20%. She said that after she had agreed to his offer of 20%, the defendant changed his mind again and reverted to the initial 30% made.

16. The claimant disclosed the various text messages made between herself and Mr Shin as Annexures " TH33" to her sworn statement filed on 21st November 2022(Exhibit C8).
17. Mr Eric Molbaleh of Counsel for the claimant filed a sworn statement on 12th October 2022 (Exhibit C4) confirming that the claimant had informed him about the verbal agreement and that it was him who advised her that a written agreement should be made and signed between them as parties. Mr Molbaleh drafted the written agreement annexed as "EM1".
18. Mr Molbaleh is the supervisor over the claimant. The written agreement as drafted was never executed by the claimant and the defendants.
19. The claimant did inform her husband Mr Harrison about the verbal agreement as well.
20. In all probability, there was a verbal agreement.
21. The further issue that arises from that is the defence raised by the defendants that there was duress and undue influence. The defendants asserted duress and undue influence and it was incumbent on them to prove it by evidence on the balance of probabilities also.
22. The defendants relied on the evidence in their sworn statements tendered as Exhibits D1, D2 and D3. They relied on the Recording dated 13th October 2021 and that of 7th September 2021.
23. I accept those evidence establish there were threats made by the claimant not to attend Court on their behalf, threats to sue and to call the Police, and the continuous pressure exerted on Mr Shin by the claimant to sign the written agreement.
24. On the balance of probabilities, I am satisfied there was duress and undue influence exerted on the defendants in relation to the 30% commission and the written agreement.
25. The screenshots of text messages annexed as "TH33" by the claimant herself is clear evidence of pressure put upon the defendant Mr Shin by the claimant.



26. A further issue arises as to whether there was a "meeting of the minds" by the parties? From the evidence of both the claimant and the defendants, I am satisfied that there was no consensus or meeting of the minds regarding any commission and/or contingency fees of 30% of any damages awarded by the Court.
27. I accept the submissions by defence counsel that if there was a verbal agreement the terms and conditions of such were so uncertain, making it a voidable agreement.
28. There was evidence from Mr Harrison that a payment of VT 50,000 was made by the defendant on 22nd July 2020 for "opening file for Damage Claim Case." This evidence casts doubt as to the claimant's assertion that the 30% being claimed by her would be contingency fees for her legal services.
29. By my calculation, the 30% of VT 92,000,000 is VT 27,600,000 and 20% of the same amount is VT 18,400,000. These are exorbitantly high legal costs which are in my view unrealistic and morally and legally wrong to claim for as in this case.
30. The Court of Appeal on 19 November 2021 in CAC 222111/3058 Republic of Vanuatu v Jong Phil Shin and Anor made it plain in paragraph 14 that the Republic would pay all the respondent's legal costs and disbursement to date, both in the Supreme Court and in the Court of Appeal. And in [15] the Court of Appeal said:
- " We appreciate that this will involve Mrs Harrison, who has not yet rendered a bill, rendering an invoice for her time and disbursements incurred. The charges should be reasonable and consistent with fees charged generally for this type of litigation."*
31. The claimant's evidence in Exhibit C5 filed on 30th May 2022 annexes an Invoice dated 2nd December 2021. From 14th July 2020 to 11th November 2021 the claimant invoiced the Republic for the total sum of VT 1,705,990 charged at VT 30,000 per hour.
32. That invoice was issued pursuant to paragraph 15 of the Court of Appeal's judgment.
33. The claimant however went beyond and filed her claim on 30th May 2022. This is an action directly flying in the face of the Court of Appeal directions.



Conclusions

34. Returning now to the issues first, was there a verbal agreement? The answer is "yes". Second, was it made by duress and undue influence? The answer is "yes". Third is the agreement voidable? The answer is "Yes".

The Result

35. The claimant is unsuccessful and her claims are dismissed.

36. As to costs, it is my view that this is a case where parties must bear their own costs. There will be no order as to costs.

**DATED at Port Vila this 28th day of February 2024
BY THE COURT**

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**Hon. Oliver A Saksak
Judge**

