

IN THE MAGISTRATES' COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil. Case No. 140 of 2014

BETWEEN: PETER PRASAD

Claimant

Claimant's lawyer:
Daniel Yawha of YAWHA &
ASSOCIATES
Port Vila, Efate, Republic of
Vanuatu

**AND: CHARLIE FUNA
QUENZELL**

Defendant

Defendant's Lawyer:
Gregory Takau of
INDIGENE LAWYERS
Port Vila, Efate, Vanuatu

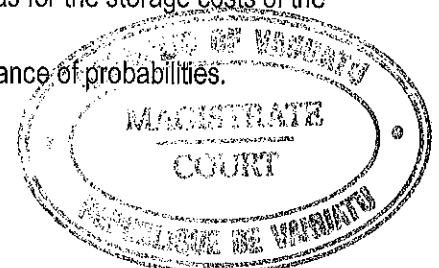
Coram: Moses Peter

Court Clerk: Florina Ephraim

*Appearances: Daniel Yawha for Claimant
Gregory Takau for Defendant*

RESERVE JUDGMENT

1. The Claim and an urgent application for delivery up of goods was filed on 25th November 2014. An order was made on the urgent Application.
2. The Claim did not clearly set out the cause of action but was pleaded with particulars the court had taken to amount to a claim for goods wrongly detained by the Defendant. The goods were a motor vehicle, stationary items, and a freezer.
3. A counterclaim was filed on 8th December 2014. The Counterclaim was for the storage costs of the goods.
4. In the claim, the onus is on the claimant to prove the case on the balance of probabilities.



5. In the Counter claim, the onus is on the claimant to prove the case on the balance of probabilities.

Background

6. Although at the earliest stage there appeared to be a suggestion that the Defendant/Counter claimant had wrongly come into possession of the goods, it now is not in dispute that the goods were entrusted to him by Michel Kalorib, who had requested the Defendant's assistance to remove them and store them. Mr Kalorib was acting for the Claimant in the seizure of the goods and sought the Defendant's assistance. He asked the Defendant to store them as he had no space to do so. There was some discussion, the terms of which are not precisely clear on the evidence, that the defendant could use the vehicle. He did use it.

The issues for the Court to decide

- o On the claim, did the defendant deprive the Claimant of the goods?
- o On the Counter-claim, was there a contract in relation to the storage of the goods, that included a term for storage costs.
7. The case was adjourned after the hearing of evidence and orders made for the parties to file written submission. Neither party did so.

The relevant law

The Claim is covered by the law relating to wrongful detention of goods.

The counter-claim is covered by contract law.

The evidence

The Claimant's case

8. Sworn statements were filed and evidence was given before the court.
9. Even on the Claimant's sworn statement it seems there is no dispute that the Defendant was voluntarily given the goods by the Claimant's agent, with permission to use the vehicle in a certain way. This evidence did not support the pleadings of a wrongful detention of the goods. I note that in evidence the Claimant said Mr Kalorib was not his agent but this conflicts with his sworn statement filed.
10. The real issue on the Claim emerged as a dispute on how the Defendant was using the vehicle, rather than a case based on wrongful detention from the start. Because this issue arose further into the evidence, it is not adequately covered in the pleadings. The difficulty for the Claimant is that the he did not plead a breach of contract as to the terms under which the vehicle was to be used.
11. In the Claimant's sworn statement filed on 6th July 2015 at paragraph 3 the Plaintiff states that his agent gave the Defendant the goods and that "*the agreement (was) also benefited the defendant because he use my vehicle for his personal gain on a daily basis*". Despite this the Claimants case was that he never authorised the Defendant to use the vehicle.
12. It was when the Claimant wanted the car back that some conditions were imposed by the Defendant as to the costs of storing the other items.



13. The Claimant, in his sworn statement, referred to damage to the vehicle but this was not pleaded and the court will not take it into consideration.
14. If there was a period of detention, once the Claimant wanted the vehicle back, the evidence does not make it clear when and where precise conversations took place for the return of the vehicle. The evidence on this was contradictory.

The Counter Claim

15. The Counter claimant claims for storage fees for the goods.
16. There is no evidence of any agreement for storage fees. The request for fees only arose after the dispute arose over use of the car.
17. This is fatal to the Counter Claim.

Reasons for accepting or rejecting relevant aspects of the evidence

18. As mentioned above, the pleadings and the evidence, both on the Claim and Counter Claim, were not consistent.
19. There was no unlawful detention of the goods when they were stored by the Defendant, with the consent of the Claimant, via his agent.
20. As to the terms of any contract about use of the vehicle, breach of contract was not pleaded by the Claimant. If it had been the Claimant may have provided more detailed evidence as to the terms of the agreement relating to use of the car.
21. On the information before the court, in both the sworn statements and the oral evidence, there are various versions about the terms of use of the vehicle.
22. The evidence being as it is the court cannot place any weight on it where there are conflicts in order to resolve those factual conflicts.

Findings of fact by the Court

23. There was no unlawful taking of the goods into the Defendant's custody. The goods were left with the Defendant with the implied consent of the Claimant.
24. The terms of use of the vehicle and requests for its return were unclear and so the court cannot reach conclusions as to the facts in dispute.
25. There was no agreement to pay storage costs.

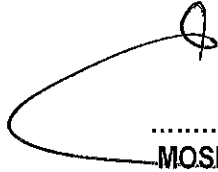
Decision

1. I am not satisfied on the balance of probabilities that the Claimant has established its claim.
2. I find for the Defendant on the Claim.
3. On the Counter Claim, I am not satisfied on the balance of probabilities that the Counter Claimant has established the Counter claim.
4. I find for the Counter Defendant on the Counter Claim.
5. On both the Claim and the Counter Claim each party is to pay its own costs.

Dated at Port Vila this 31st day of August 2017



BY THE COURT



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MOSES PETER
Senior Magistrate

