

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

Civil Case No. 156 /2009

**BETWEEN:**           **HONG SHELL PRODUCTS COMPANY  
(VANUATU) LIMITED**  
Claimant

**AND:**               **JIANG YING (AKA TONY JIANG)**  
Defendant

*Hearing:*            17 May 2011  
*Before:*            Justice RLB Spear  
*Appearances:*    Mr N Morrison for Claimant  
                          Mr RT Kapapa for Defendant

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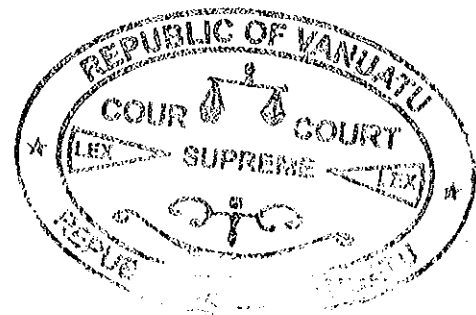
**CONSENT JUDGMENT**

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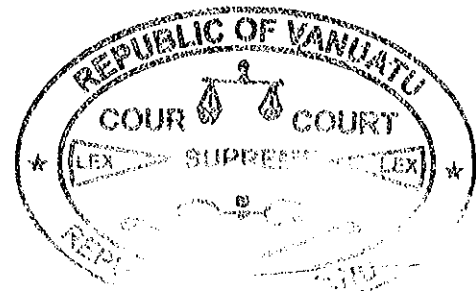
*Judgment for the Claimant (in respect of both the Claim and the Counterclaim) in the sum of Vt 2,124,327.*

*There is no order for costs.*

*Enforcement Conference listed for 8.30 am on Monday 13 June 2011 (Supreme Court Hearing Room).*



1. This case (claim and counter claim) was set down for hearing today. Settlement has, however, been reached between the parties following some discussions in court as to the applicable general legal principles.
2. The first relates to the real risk that a company runs if it leaves just one person as the sole director and in particular as the managing director. That is because most management decisions by that managing director will be attributed to the company – that is, as having been properly made by the company.
3. However, that does not necessarily extend to decisions which can be perceived as personally benefitting the managing director. The managing director, in this example, has both a fiduciary and a legal responsibility to the company and payments that benefit him personally need to be able to be seen as having the support of the company in general meeting. That is, as part and parcel of his remuneration package.
4. The counterclaim seeks damages arising from the summary dismissal of the defendant. The reasons for that dismissal are not exactly identified but can probably be assumed from the claim. This, however, would still leave open whether the correct and necessary procedures for dismissal were followed.
5. It is now accepted by the defendant that, for the purposes of the settlement, he should not retain the benefit of the non-authorized commission payments made to himself personally, air fares to China for members of his family and personal phone calls all amounting to Vt 4,644,327.
6. In relation to the counterclaim, it is accepted by the claimant that the contractual severance arrangements raised an entitlement of Vt 1,890,000 and the further three month notice provision adds a further Vt 630,000 to that leaving a total amount on the counter claim of Vt 2,520,000.
7. The net position between the claim and the counter claim is Vt 2,124,327 in favour of the claimant.
8. In my view, this pragmatic approach to resolution recognises the realities of the respective strengths and weaknesses of both the claim and the counterclaim. I have not had the opportunity of hearing extensively from counsel nor seeing any witnesses cross-examined. However, the sworn statements filed certainly suggest that the claimant would struggle to succeed with its entire claim and the defendant needed to be somewhat realistic in his expectations as to the counterclaim.
9. While a settlement has been reached, Mr Morrison has asked that I outline the basis upon which settlement discussions have taken place today and the indications that I have given as to what I thought were the appropriate legal principles. I have been happy to do so.



10. The settlement is by way of the entry of judgment in favour of the claimant in the sum of Vt 2,124,327 which represents the difference between the settled amount arising from the claim and the settled amount arising from the counter claim.
11. As both parties have both succeeded in part and failed in other parts in respect of their respective claims, it is appropriate that costs lie where they fall. Counsel have not sought to argue otherwise.
12. There will be an enforcement conference before me at 8:30 am on Monday 13 June, 2011 when the defendant (now the judgment debtor) will be required to attend and bring all relevant documents and materials necessary to enable the Court to understand how he can best settle the judgment debt now entered as owing by him.

BY THE COURT

