

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

Civil Case No. 160 /2010

BETWEEN: DENIS SAVOIE
Claimant

AND: DEEPWATER HOLDINGS LIMITED
First Defendant

AND: VICTORIA WHITE
Second Defendant

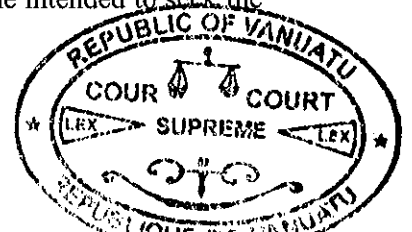
AND: MARC O'BRIEN
Third Party

Hearing : 13 February 2012
Before: Justice RLB Spear
Counsel: Willie Kapalu for the Claimant
Nigel Morrison for First and Second Defendants
Edward Nalyal Initially for the Third Party, replaced by Saling Stephens

JUDGMENT BY ADMISSION

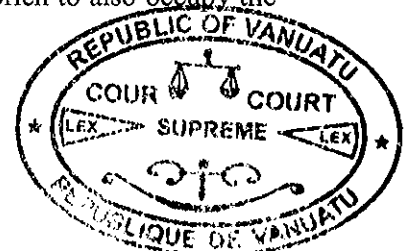
Ex Tempore

1. This case was to be heard today and, indeed, the trial did commence although no evidence was taken.
2. The first matter that had to be considered by the Court was an application by Mr Nalyal for leave to withdraw as counsel for the Third Party (Mr O'Brien). Mr Nalyal indicated that Mr Saling Stephens was to take over from him. Mr Stephens, indeed, eventually appeared and provided the Court with a letter that he had delivered up to the Chief Registrar this morning and bearing today's date explaining that he had just been engaged by Mr O'brien to act for him on the basis that "Mr O'Bbrien has finally felt the need to change solicitors". In that letter, Mr Stephens indicated that he intended to seek the



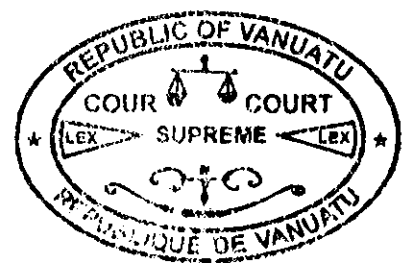
trial fixture for today to be vacated as he had not had sufficient time to prepare.

3. Mr Nalyal was granted leave to withdraw.
4. Before ruling on Mr Stephen's application, a frank exchange took place with counsel as to the merits of the various claims and defences. Mr Stephens took time to confer with Mr O'Brien who was in Court throughout the course of that exchange.
5. Three separate claims have been advanced.
6. The first claim is essentially for the purchase price of machinery that Mr Savoie alleges was sold to "*the defendants*" and by that he clearly means also Mr O'Brien. However it is clear and now accepted that the contract for the purchase of the machinery was just between Mr Savoie and the first defendant, Deepwater Holdings Ltd. . It appeared that the issues arising in respect of the first claim related to what the purchase price was for each item of machinery and whether it had been satisfied either in whole or in part. Mr Morrison indicated that it would be alleged that there had been substantial if not complete satisfaction of the payment of the total purchase price through payments, set offs and such like.
7. The second claim relates to the butcher shop business. It is clear that the contract is between the two claimants for the one part(with Mr Savoie as the owner of the business and Henger Ltd as the lessee of the premises and the second defendant Victoria White and the third party Marc O'Briena s joint purchasers. The agreement is in writing and is essentially for the sale and purchase of the butcher shop business with provision made for a rental to be paid pending settlement of the purchase price.
8. The purchase was never completed and so that claim is confined to being against Miss White and Mr O'Brien in relation to outstanding rental. Of course, it is somewhat irregular for a claim by a claimant be directed towards a third party but no prejudice would arise for Mr O'Brien to also occupy the



position of an additional defendant in respect of this particular claim. Counsel felt that there was some merit in a further discussion about that matter before the claim proceeded.

9. The third claim involves what can loosely be described as an agreement for the purchase of cattle and an option to purchase the Solway plantation owned by Mr Savoie. This agreement is documented in a letter dated 4 October 2002 under the letterhead of *Edgewater Holdings Ltd* which was the second defendant in this proceeding before being struck out some years ago. The reason why Edgewater was struck out is that it had been struck off the Register of Companies and accordingly no longer exists. It is clear, however, that the contract is between Mr Savoie and Edgewater for the purchase of cattle with the option to purchase the Solway property.
10. The claim however is not directed against Edgewater as of course Edgewater has ceased to exist. Be that as it may, the contract on which the claim is based cannot be against any of the defendants or the third party because they are simply not privy to that agreement. Indeed, on closer analysis, it appears that any legal remedies that Mr Savoie might have had in this respect were not just against Edgewater but against any person who was involved in the taking and the selling of the selling the cattle as well as entering onto the property; amounting specifically to trespass to land and goods. However, that is not the way the claim is pleaded. The claim is based solely on a an alleged breach of contract and accordingly it could only be against Edgewater Holdings Ltd which no longer exists.
11. Given that this is a matter that goes back to 2001/2002, it is clear that the time for Mr Savoie to pursue any available legal remedies against others has long since passed.
12. That was the accepted scope of the 3 claims raised in the course of the exchange with counsel. The parties then took time to confer with counsel to see whether there could be either resolution or a sharper focus applied to the trial.



13. When I returned to court, counsel informed me that settlement had been reached and that the matter could be disposed of today by a consent judgment.

Judgment by admission for the claimant Denis Savoie against the first defendant Deepwater Holdings Ltd in the sum of Vt 12,929,000 and interest at 5% per annum from 1 January 2002.

No order as to costs is required as the parties will now bear their own costs.

14. It can be noted that this consent judgment arises particularly out of the first claim in relation to the machinery. However, the settlement reflects the outcome that the parties have settled all their differences in relation to the three claims.
15. This brings this matter to an end based on upon that judgment by admission.

BY THE COURT

