

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

Civil Case No. 2269 of 2016

**BETWEEN: LAURENT MICHEL GARROT**  
Claimant

**AND: F1JANTES ET PNEUS Ltd**  
First Defendant

**AND: MICHEL DIEGO**  
Second Defendant

**Hearing:** 7<sup>th</sup> & 8<sup>th</sup> March 2017  
**Before:** Justice Chetwynd  
**Counsel:** Mr Thornburgh for the Claimant  
Ms Patterson for the Defendants

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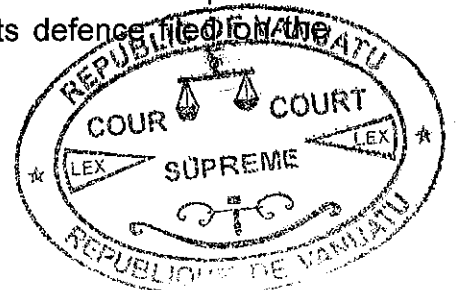
**Judgment**

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1. This case involves a Monsieur Garrot ("Mr Garrot") as Claimant and a Limited Company ("F1 Ltd") together with Monsieur Diego ("Mr Diego") as defendants. The facts are relatively straightforward. Mr Garrot lent money to Mr Diego and F1 Ltd. He now wants his money back. The sum claimed is 167,000 Euros plus interest.

2. The case is made slightly more complicated because of an earlier order made which required the defendants to pay VT 20,000,000 into court being part of the proceeds of sale of F1 Ltd in 2016. To add a little more scope for complication, particularly of a mathematical kind, it would appear that original payments and repayments were offered by way of cheques made out in Change Franc Pacifique (or CFP or franc) amounts.

3. The issues are relatively straightforward. Was the money loaned by Mr Garrot to F1 Ltd or to Mr Diego or to both in differing amounts? The Claimant's case is that he loaned the money to the company, F1 Ltd. Mr Diego says that is not the case, he personally borrowed 97,690 Euros from Mr Garrot. A further sum of 67,000 Euros was borrowed by F1 Ltd. That is set out in Mr Diego's defence filed 26<sup>th</sup> September 2016 and in which he acknowledges his indebtedness. By its defence filed on the



same day F1 Ltd acknowledges it owes 67,000 Euros to Mr Garrot but denies borrowing the initial 97,690 Euros.

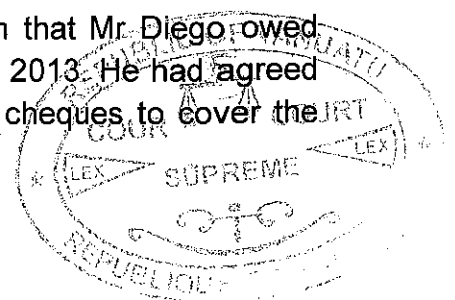
4. The initial sum which Mr Diego acknowledges as his debt was not the subject of a formal loan agreement. There was an oral agreement between Mr Garrot and Mr Diego but exact details were not put into writing. Mr Garrot says that he was aware Mr Diego was the Director of F1 Ltd and he believed he was dealing with Mr Diego as the Director and so, he submits, he was loaning the money to the company. The initial arrangement was described by Mr Garrot in his evidence as him giving Mr Diego cash or cheques and Mr Diego would give him cheques drawn on his (Mr Diego's) bank in New Caledonia to cover the amounts loaned. That is confirmed by annexure B set out at pages 22 to 32 of the Defendants' bundle. Those pages also set out acknowledgements of indebtedness by Mr Diego and which refer to his cheques being payable or presentable before 15<sup>th</sup> December 2013. Nowhere in those documents is F1 Ltd mentioned. Mr Garrot described Mr Diego's cheques as guarantees. He agrees he never presented them for payment. He gave various reasons why he accepted the cheques and why he did not cash them. Unfortunately none of the reasons were very credible.

5. He said the payments to Mr Diego in the very beginning were payments in CFP and they both just carried on using CFP. He felt safe because he could cash the cheques in New Caledonia. He did not cash the cheques because he made enquiries and knew they would not be met. He was a little evasive about the enquiries he made and it became apparent that he had not made formal enquiries of the bank, he just accepted some unspecified information the cheques would not be met. That is certainly the case as regards a later cheques handed over by Mr Diego.

6. There is no doubt in my mind that the initial loan of 97,690 Euros was to Mr Diego personally. There was no intention by Mr Diego to involve F1 Ltd at that time and no acknowledgment from the company that it owed anything to Mr Garrot at that time. There is no evidence at all of any loan to F1 Ltd at that time. Mr Garrot's belief he was loaning money to F1 Ltd was and is purely fanciful and is not supported by any of the documentation produced to the Court.

7. I am equally sure that a sum of 67,000 Euros was loaned to F1 Ltd. That money went directly from Mr Garrot to F1 Ltd. The transfer was apparently on 19<sup>th</sup> December 2014. The exact terms of the loan to F1 Ltd were not reduced to writing although a document was apparently signed several months later.

8. From the evidence then situation seems to have been that Mr Diego owed 97,690 Euros which he borrowed between February and June 2013. He had agreed to re-pay the loan by December 2013. He had handed over cheques to cover the



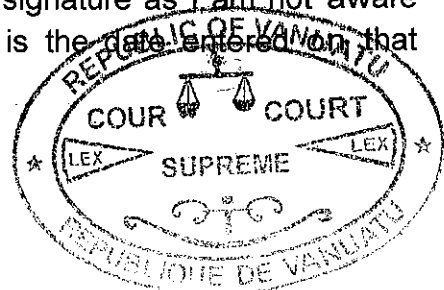
total amount. None of those cheques were presented for payment. It is not in dispute that the cheques are now unable to be cashed because they all became void after 6 months. In other words, by simple effluxion of time under the banks terms and conditions. In December 2014 with the initial sum outstanding another agreement was reached to loan 67,000 Euros. Whilst the money loaned in December was to be repaid by Mr Diego it is not greatly disputed that it was for the use of F1 Ltd to purchase stock.

9. On 18<sup>th</sup> December 2014, the day before the transfer to F1 Ltd, Mr Diego wrote a personal cheque on his New Caledonian bank for 20,000,000 CFP. It was payable to Mr Garrot. It was intended to cover the money already borrowed and the proposed loan of a further 67,000 Euros. That cheque was never cashed. Even though the loan was personally guaranteed by Mr Diego I am sure, as I said above (paragraph 7) this was a loan by Mr Garrot to F1 Ltd.

10. In February 2015 there was an attempt to reduce the agreements so far made into writing. The document is at page 45 of the bundle. It was also tendered as "LMG1". It is in French. For the first time interest is mentioned. The time for payment of all the money was extended to 15<sup>th</sup> August 2015 but interest was to be paid at the rate of 9%. The difficulty with the interest is that the payment to F1 Ltd was made on 19<sup>th</sup> December 2014 and the agreement is dated 8<sup>th</sup> February 2015. Mr Garrot says in his sworn statement (paragraph 9 at page 11 of the bundle), "*Accordingly, the parties entered into a variation of the original contract on 8<sup>th</sup> February 2015...*" The provision for interest could only have taken effect from the date of the variation, 8<sup>th</sup> February 2015. Mr Diego had "guaranteed" the loan by handing over his cheque for CFP 20,000,000 on 18/12/14 and there is no evidence interest was discussed prior to the advance of 67,000 Euros to F1 Ltd the next day. The defence say that there was no consideration and so there could be no interest. I find there was sufficient consideration by Mr Garrot agreeing to forgo payment until August 2015. Interest was payable for 6 months initially but as payment was not made in August 2015 the agreement to pay interest carried over.

11. The money was not paid in August 2015 and neither was Mr Diego's new cheque for CFP 20,000,000 presented for payment. Mr Garrot says that a second variation was signed on 15<sup>th</sup> August 2015. The document can be found at page 47 and it was tendered as "LMG2".

12. I have difficulties with this document. It is said to have been signed in the presence of a Commissioner for Oaths. There is clearly a stamp imprinted on the document and that stamp has been endorsed by the Commissioner, Mr Tom Bethuel. At least I have assumed that is Mr Bethuel's signature as I am not aware that the signature is disputed. The problem though is the date entered on that



stamp. It is dated 8<sup>th</sup> February 2015, some 6 months prior to the supposed date of the document 15<sup>th</sup> August 2015. In my view no reliance can be placed on a document which is supposed to have originated in August 2015 and which is said to have been signed in August of 2015 when it is date stamped February 2015. Mr Bethuel was not called to try and explain this disparity. The only written document which affects this agreement is the one acknowledged to have been made by all parties on 8<sup>th</sup> February 2015.

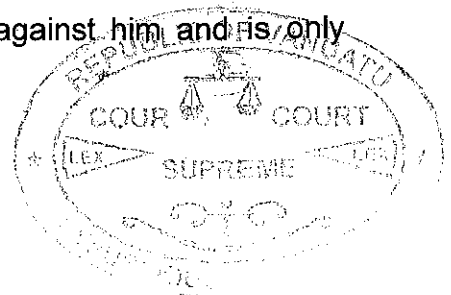
13. During this trial there were attempts character assassination. Mr Garrot was said to be an alcoholic and Mr Diego was said to have criminal convictions for fraud. Even though he did admit to having had a car accident and losing his licence for some months there is no evidence of Mr Garrot being an alcoholic. Mr Diego admitted being involved in a criminal case "20 years ago" but no evidence was introduced to show any current or recent convictions. Accordingly I have taken absolutely no notice of the attempts to discredit witnesses in this manner. The accusations should not have been made in the first place.

14. In all the circumstances I find that there was a loan to Mr Diego personally of 97,690 Euros. From 8<sup>th</sup> February 2015 the loan has attracted interest at 9% per annum. I find that as from 19<sup>th</sup> December 2014 F1 Ltd was indebted to Mr Garrot in the sum of 67,000 Euro. That sum attracted interest at 9% per annum from 8<sup>th</sup> February 2015.

15. There have been offers to partially settle the debt. They were made in July 2016. There was a formal offer by the First Defendant F1 Ltd to settle in September 2016. In the circumstances I order that VT 8,000,000 of the money paid into court be paid forthwith to the Claimants lawyer. If the Claimant does not agree that is in full satisfaction of the debt owed by F1 Ltd, including interest from 8<sup>th</sup> February 2015 to 6<sup>th</sup> July 2016, then a sworn statement should be filed with detailed calculations and the Court will make the final decision as to judgement after hearing from the parties. If it is accepted the Court is to be informed (by letter will do) and judgement will be entered against the First Defendant for VT 8,000,000. The balance of the monies paid into court will be paid to Counsel for the First Defendant F1 Ltd forthwith.

16. As for the Second Defendant Mr Diego, judgment will be entered against him for 97,690 Euros or the Vatu equivalent together with interest from the 8<sup>th</sup> February 2015 to the date of payment at the rate of 9% per annum. The Claimant is to approach the Master for a date for an enforcement conference unless the parties come to some other arrangement for payment.

17. As for costs, the Claimant is not entitled to costs against the First Defendant F1 Ltd. As for Mr Diego Mr Garrot did not fully succeed against him and his only



entitled to limited costs. I order the Second defendant Mr Diego to pay 33% of the Claimant's agreed or taxed costs.

**DATED at Port Vila, this 28<sup>th</sup> day of April 2017**

**BY THE COURT**

