

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

Civil
Case No. 22/3125 SC/CIVL

BETWEEN: Alfred Tarimoliliu and Katherine
Tarimoliliu
Claimants

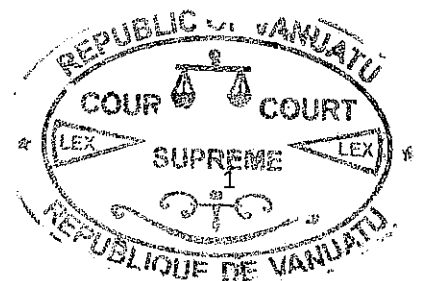
AND: Violet Aki
Defendant

Date: 19 February 2024
Before: Justice V.M. Trief
Counsel: Claimants – Mr P. Fiuka
Defendant – Mr A. Bal

DECISION AS TO QUANTUM OF DAMAGES

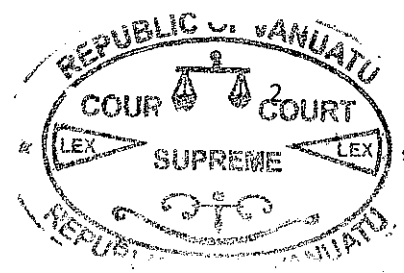
A. Introduction

1. On 3 February 2023, the Court entered Default Judgment in this matter as no defence was filed. The matter then proceeded to hearing as to quantum of damages. A decision as to quantum of damages issued on 7 August 2023.
2. Subsequently, the Defendant Violet Aki applied to set aside the default judgment. By Decision as to Application to Set Aside Default Judgment dated 30 November 2023, I set aside the decision as to quantum of damages dated 7 August 2024 but declined to set aside the Default Judgment: *Tarimoliliu v Aki* [2023] VUSC 243.
3. I then gave both parties the opportunity to file and serve sworn statements as to quantum of damages. Only the Claimant Alfred Tarimoliliu filed a further sworn statement.
4. I now determine the quantum of damages.



B. Background

5. The Claimants Alfred Tarimoliliu and Katherine Tarimoliliu were the registered proprietors of and vendors of leasehold title no. 11/OH34/049 (the 'lease') located at Freswota 4 area in Port Vila.
6. Subsequently, the lease was transferred to Ms Aki who is paying off the mortgage that she obtained to fund her purchase of the lease.
7. On 4 November 2022, Mr and Mrs Tarimoliliu filed the Claim seeking orders for payment of the VT1,100,000 balance of the purchase price for the lease, for payment of outstanding rents from 1 July 2020 onwards, and for damages for improvements on the property without consent, and costs.
8. The following is alleged in the Claim:
 - a. That on or about 1 July 2020, following her oral agreement with Mr and Mrs Tarimoliliu, Ms Aki moved in and rented their house on the leased property for VT25,000 per month. It was agreed that Ms Aki would pay all payments for rent into the Tarimoliliu's bank account at the National Bank of Vanuatu ('NBV') because the lease was under mortgage with the NBV;
 - b. That on or about 5 August 2020, the parties entered into a sale and purchase agreement for Ms Aki to purchase the lease for VT3,800,000 (the 'purchase price');
 - c. It was a term and condition of the agreement that Mr and Mrs Tarimoliliu would transfer the lease to Ms Aki, and she would mortgage the lease and apply the loan monies from the NBV to pay Mr and Mrs Tarimoliliu the full purchase price;
 - d. That Ms Aki obtained the registration of the transfer of the lease into her name sometime in 2020, but for almost 8 months, did not pay the purchase price. Consequently, Mr and Mrs Tarimoliliu issued a letter of demand dated 8 April 2021 demanding payment of the purchase price;
 - e. That on or about 22 April 2021, the parties agreed that Ms Aki make an initial payment of VT2,700,000 and the balance of VT1,100,000 would be paid one year later. Ms Aki then paid VT2,700,000 to Mr and Mrs Tarimoliliu;
 - f. That the balance was not paid one year later so a solicitor's letter of demand dated 30 May 2022 was sent to Ms Aki demanding payment of the outstanding balance of VT1,000,000;
 - g. That Ms Aki has also failed to pay monthly rent to Mr and Mrs Tarimoliliu from 1 July 2020 to date; and



h. That while living on Mr and Mrs Tarimoliliu's property, Ms Aki made improvements to the property without their consent including extending the verandah and building a small house on the property.

9. In Mr Tarimoliliu's Sworn statement filed on 6 December 2023, he deposed that he and Mrs Tarimoliliu were abandoning that aspect of the Claim seeking damages for improvements on the property without consent. Accordingly, I give no further consideration to that aspect of the Claim.

C. Evidence

10. **Alfred Tarimoliliu** deposed in his Sworn statement filed on 16 January 2023 that despite their agreement, Ms Aki has not paid the agreed rent of VT25,000 per month from 1 July 2020 to date. Their agreement was that rental payment should continue until Ms Aki had paid the purchase price in full.

11. He also deposed that sometime in 2020, Ms Aki obtained the registration of the transfer of lease into her name.

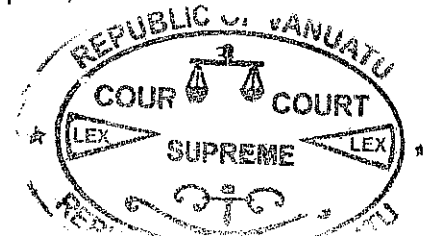
12. Mr Tarimoliliu deposed in his Sworn statement filed on 22 February 2023 that Ms Aki has paid VT104,000 rent. He attached a copy of his bank account statement to show the rental payments received from Ms Aki [**Annexure "AT1"**]:

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|-------------|---------------------|
| a. VT10,000 | 9 March 2021; |
| b. VT20,000 | 21 April 2021; |
| c. VT18,500 | 6 August 2021; |
| d. VT18,500 | 25 August 2021; and |
| e. VT37,000 | 23 September 2021. |

13. Mr Tarimoliliu also deposed that despite the solicitor's letter of demand, Ms Aki has not paid the balance of the purchase price of VT1,100,000. He attached a copy of his bank account statement to his sworn statement filed on 22 February 2023 to show only VT2,700,000 of the purchase price was paid but not the balance of VT1,100,000 [**Annexure "AT1"**, Sworn statement filed on 22 February 2023]. The VT2,700,000 payment was made on 5 November 2021.

14. In his Sworn statement filed on 6 December 2023, Mr Tarimoliliu deposed that he and Mrs Tarimoliliu withdrew the part of their claim for damages for making improvements on the property without their consent. First, because the property was transferred to Ms Aki sometime in September 2020. Secondly, because they did not have alternative arrangements about the improvements, like they did in relation to rental payments.

15. Mr Tarimoliliu also deposed that although he and his wife agreed to transfer of the property to Ms Aki so that she could obtain a loan for the purchase price, and that the

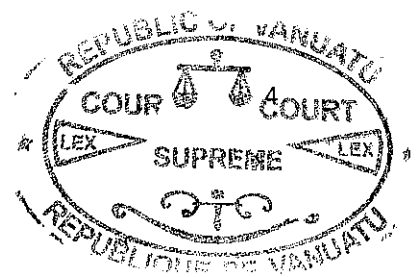


transfer occurred sometime in September 2020, it was their oral agreement that Ms Aki would continue to pay them rent until she had completely paid the full purchase price. That is why Ms Aki continued to pay rent until 23 September 2021. He urged the Court to find that rent was payable post-September 2020 because of the parties' oral agreement and because Ms Aki had already paid rent post-September 2020 in accordance with their agreement.

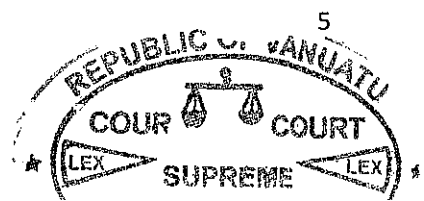
16. Mr and Mrs Tarimoliliu claim reimbursement of the Court filing fees of VT20,000 [Annexure "AT2", Sworn statement filed on 22 February 2023] as well as legal costs as agreed or taxed, and 5% interest.
17. **Violet Aki** deposed in her Sworn statement filed on 6 November 2023 that the lease was registered in her name on 8 August 2020, which was before she made her VT2,700,000 payment to Mr and Mrs Tarimoliliu. She was initially informed by Mr Tarimoliliu that the total purchase price of the property was VT3,800,000. She paid them VT2,700,000 in accordance with the parties' agreement dated 4 February 2021 (for total purchase price of VT3,300,000).
18. On 22 April 2021, the parties signed another agreement that Ms Aki would pay VT1,100,000 to Mr and Mrs Tarimoliliu after one year. She stated that this was the result of "the claimant's very own intentions request us to sign another agreement..."
19. She deposed that when Mr and Mrs Tarimoliliu demanded that she pay them the sum of VT1,100,000 in accordance with the 22 April 2021 agreement, she told them that the improvements that she had made on the property (changed the whole roof of the building including the timbers which hold up the roof, and replaced masonite) cost her VT813,765 which should be deducted from the amount of VT1,100,000. She prepared an agreement on 23 November 2021 to deduct the renovation costs from the sum of VT1,100,000 but Mr Tarimoliliu refused to sign it.

D. Discussion

20. I accept Ms Aki's evidence about when the transfer of lease to her was registered and find that the lease was registered in her name on 8 August 2020.
21. Ms Aki also set out in her evidence that the initial purchase price that Mr Tarimoliliu told her for the property was VT3,800,000 then on 4 February 2021, the parties signed an agreement that the purchase price was VT3,300,000. This was followed by a further agreement that they signed on 22 April 2021 that she would pay them VT2,700,000 as the first payment and VT1,100,000 after one year.
22. The terms of the 22 April 2021 agreement are consistent with a VT3,800,000 purchase price. Ms Aki did not raise any grounds for setting aside that agreement.



23. Accordingly, I find that the later agreement dated 22 April 2021 superseded the earlier agreement dated 4 February 2021. It follows and I find that the purchase price for the property was VT3,800,000.
24. It is undisputed that Ms Aki has paid VT2,700,000 of the purchase price. The evidence shows that she made this payment on 5 November 2021.
25. Ms Aki's evidence included that the parties agreed that what she spent on renovating the house would be deducted from the VT1,100,000 balance owed. She also deposed that Mr Tarimoliliu refused to sign an agreement setting this out. In the circumstances, I find that the parties did not agree that the cost of improvements/renovations be deducted from the balance owed.
26. The other aspect of the Claim was that Ms Aki owes rent of VT25,000 per month from 1 July 2020 until completion of payment of the purchase price. Mr Tarimoliliu's evidence was that the parties had an oral agreement to this effect, which was confirmed by Ms Aki's payments of rent up until 23 September 2021 which was well after the lease was transferred to her name. He adduced into evidence a copy of his bank statement showing deposits made by Ms Aki which he asserted were rental payments.
27. On the other hand, Ms Aki did not address anywhere in her evidence the claim that the parties had an oral agreement that she pay rent from 1 July 2020 until completion of payment of the purchase price.
28. Mr Tarimoliliu adduced into evidence a copy of his bank statement [**Annexure "AT1"**, Sworn statement filed on 22 February 2023] for an account from which the majority of transactions made are principal payments, interest payments and late payment fees. I conclude that this was a current account from which funds were drawn to pay off his loan account (a separate account). I am fortified in that conclusion by the transactions which followed Ms Aki's VT2,700,000 payment which applied that payment to late fees, late principal and interest payments until on 13 December 2021, the balance in the account was VT960 and presumably Mr Tarimoliliu's indebtedness to the bank had been satisfied.
29. I also note that the VT2,700,000 payment was made on 5 November 2021. Ms Aki had however made several deposits previously into Mr Tarimoliliu's account, commencing on 9 March 2021. It was alleged for the Claimants that these were rental payments which were owed monthly. However, not one of her payments was in the amount of VT25,000 which was alleged to be the amount of rent per month. The payments that Ms Aki made ranged from VT10,000 to VT37,000. Further, each payment was applied to late payment fees, and to late principal and interest payments.
30. I consider that this is consistent with the parties having entered into at least one agreement for the sale and purchase of the property, and while Ms Aki was waiting for



the bank to approve her own loan for the purchase price, she was told by the bank that in the meantime, she make payments/deposits directly into Mr Tarimoliliu's account to assist him with his own loan payments while waiting on approval of her loan.

31. In the circumstances, I do not agree and cannot find that the deposits made by Ms Aki into Mr Tarimoliliu's bank account from 9 March 2021 to 23 September 2021 totalling VT104,000 were rental payments. I consider that they were payments towards the purchase price of the property and therefore must be deducted from the VT1,100,000 balance owed. Accordingly, the balance owed by Ms Aki is VT1,100,000 less VT104,000 which is VT996,000. An order will issue for payment of this sum.
32. The Claimants have succeeded on part of their Claim. Costs must follow the event. An order will issue for their costs, and for their Court filing fees of VT20,000.

E. Result and Decision

33. An order for specific performance is made in the Claimants' favour but taking into account the deposits made into Mr Tarimoliliu's bank account, it is therefore ordered that the Defendant is to pay the Claimants the balance of the purchase price owed of VT996,000 (the 'judgment sum').
34. The Defendant is to pay the Claimants interest of 5% per annum on the judgment sum until fully paid.
35. The Defendant is to reimburse the Claimants their Court filing fee of VT20,000 and pay their costs of the proceeding as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

F. Enforcement

36. This matter is listed for Conference **at 1.20pm on 15 March 2024** for the Defendant to inform the Court: (i) that she has paid the judgment sum or (ii) to explain how she intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.
37. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

DATED at Port Vila this 19th day of February 2024

BY THE COURT


Justice Viran Molisa Trief

