

BETWEEN : JEAN-YVES DIDOU  
(Plaintiff)

AND : RENAUD FROUIN  
(Defendant)

JUDGMENT

In September 1985, the Plaintiff entered into an agreement with the Defendant for the construction of a catamaran for the sum of 4.2 million Vatu, to be completed by March 1986.

There are three main issues in this case:-

1. Was 50% deposit agreed to between the parties?
2. Was there an agreement or understanding that hard wood was to be used in the construction in preference to white wood?
3. What sum of money, if any, are either of the parties entitled to receive.

1. The 50% deposit:-

The Plaintiff stated there was no agreement as to the payment of a 50% deposit of the agreed price whereas the Defendant stated he asked for such a deposit, as it was usual for a deposit to be paid at the commencement of such a contract for the payment of materials and labour. Also because he was constructing the boat at a figure much less than the normal price. The sum of 7 million Vatu was mentioned.

He stated that the reply of the Plaintiff was that he would do his best to give the Defendant that amount.

The sum of 500,000VT was handed over on the 19th September and the sum of 700,000VT on the 28th October 1985 to the Defendant. The Defendant stated that at the end of 1985, this sum of 1.2 million Vatu was used for purchases of material and labour wages and requested another 1 million Vatu from the Plaintiff.

I think it helpful if I call attention to some of the facts. From the evidence before the Court the Plaintiff did admit that he had money due to him from an Iririki contract and had received a cheque but that the said cheque lacked a signature and did mention this to the Defendant when he asked for money. From this I think it is reasonable for me to infer that had the cheque been properly signed, the Plaintiff would have given more money to the Defendant. This seems to indicate that a deposit of 50% of the agreed price was to be made to the Defendant. Having listened carefully to the evidence of both parties, I find myself inclined to accept and do accept the evidence of the Defendant in preference to that of the Plaintiff on this point.

2. Hard Wood:-

The evidence before me, which is not disputed, was that the parties were

good friends at the time of the agreement. That the Plaintiff visited the boat yard of the Defendant daily to view the progress of the construction of the boat and that on a visit sometime in January 1986, he said he noticed that white wood had been used in the frames and stringers of the hull and mentioned to the Defendant that some friends had criticised the quality of white wood. The Defendant said the Plaintiff did not state that he did not want white wood nor did he state that the white wood should be removed and replaced by hard wood. The Defendant stated that if he had done so, he would have replaced the white wood with hard wood as he had just commenced using the white wood and after all it was the Plaintiff who was paying.

The Plaintiff, in evidence, said:-

"In January 1986 I had an argument with the Defendant as he was not using the correct wood for construction. He was using white wood. He should have used hard wood. The yacht was for ocean sailing. At the end of January 1986 the Defendant asked for 1 million Vatu which I refused to give, due to the fact he was using white wood and still had not given me a written quote. I went to Australia on 1st March and returned at the end of March 1986. I asked for a quote again but the Defendant had done nothing about it. The Defendant had done nothing more on the boat. I went again to Australia on the 11th April and returned on the 9th May 1986. That a quote was presented on the 5th May 1986 but did not specify the kind of wood being used and the equipment. In July I went to see the Defendant and asked him for everything - hull, etc; but the Defendant refused until he was paid the balance of money due to him."

I am quite astounded at the reaction of the Plaintiff when he noticed that white wood was being used instead of hard wood, which he contends should have been used. Why did he not instruct the Defendant to remove the white wood and replace it with hard wood? Why did he not tell the Defendant that if hard wood was not used in the frames and stringers he was no longer interested in the boat? I should have thought any reasonable person would have exercised that right. After all he was paying and he should get what he wanted. Surely if he was not getting what he alleged he wanted i.e. hard wood, he should have called a halt to operations until the Defendant did as he was told and removed the white wood and replaced it with hard wood.

Further, that the Plaintiff made two long trips to Australia without leaving money with the Defendant to continue with the construction of the boat.

I think the Court must weigh the risk to the Defendant in engaging in further work on the boat, with the actions of the Plaintiff.

The only conclusion I can reach is that the Defendant was not categorically instructed to use hard wood in the frames and stringers. That the Plaintiff had lost interest in the construction when the Defendant requested more money.

I think the Defendant was justified in not continuing with the construction of the boat in view of the attitude of the Plaintiff and his refusal to release more money. I further think that the Defendant was justified in not releasing the boat to the Plaintiff when he refused to give him money to cover work done and labour. I cannot say that I agree with the sum requested but some sum must have been due. The events that followed are in my opinion entirely due to the actions of the Plaintiff and of course cyclone Uma, which occurrence was unfortunate for all concerned.

3. As I find in favour of the Defendant on the first two issues, I must now consider what sum, if any, is due to the Defendant. Having seen the figures produced by the witnesses I am inclined to consider more favourably the estimate of Mr Whitelaw. I think the figure of 500,000VT is too high. The sum of 200,000VT seems to me to be a more appropriate figure comparing the different estimates submitted and I give judgment for that amount. Judgment will therefore be for the Defendant for 200,000VT. The hull and all materials relating to the catamaran to be handed back to the Plaintiff, including the materials used in the construction of the shed. Costs will be allowed to the Defendant.

Dated at Vila this 30 day of *October*, 1987.

*Frederick G. Cooke*  
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CHIEF JUSTICE

