

(Civil Jurisdiction)

BETWEEN: WESTPAC BANKING CORPORATION

Claimant

AND: MARIE TIOME

Defendant

Mr Justice Oliver A. Saksak

**Mr Nigel Morrison for Claimant
Mrs Marisan P. Vire for Defendant**

JUDGMENT

Background Facts

1. The Claimant filed a claim on 17th April 2007 claiming the sum of VT2,710,555 being the residual balance of monies due and owing under an Asset Purchase Agreement. This amount was outstanding as at 22nd June 2008.
2. As at 4th September 2008, the amount had accrued to VT4,494,178. And as 4th November 2009, the amount had increased to VT5,674,361.
3. Interests at 22.5% and legal fees have been added to the principal sum to increase the amounts substantially.
4. On 16th July 2007, the defendant filed a Response neither agreeing or disputing the claim, but indicating only that she would make a counter-claim. On 19th July 2007, she filed her counter-claim claiming –



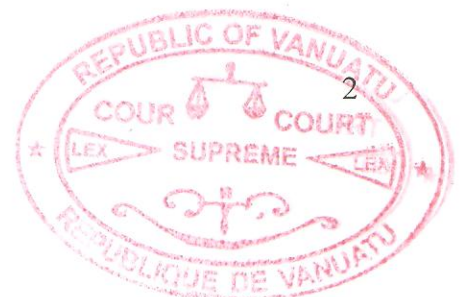
- (a) Replacement of the vehicle;
(b) Damages for loss of income at VT25,000 per month;
(c) Damages for health and defamation; and
(d) Costs of VT9,000,000.

The defendant filed a sworn statement in support of the Counter-Claim on the same date.

5. On 16th January 2008, the Claimant filed a defence to the Counter-Claim denying each and every allegation made by the defendant.
6. On 18th February 2008, the Claimant filed a supporting sworn statement by May Boe confirming the vehicle was sold at VT150,000 thus reducing the defendant's outstanding loan balance as at 22nd August 2006 to VT1,895,932.
7. On 27th February 2008, Counsel Mrs Vire filed a Notice of Beginning to Act for the defendant.
8. On 9th October 2008, the Court allowed 28 days to the Parties to attempt to reach settlement failing which they were given a further 28 days thereafter to file and serve final written submissions.
9. The Claimant filed written submissions on 16th November 2009. The defendant filed responses on 2nd August 2010.

Discussions

10. Counsel for the Claimant referred the Court to Clause 7.7 at paragraph 8 of his submissions as the basis for interests of 22.5% and legal



costs. However, no copy or extract of Clause 7.7 of the Agreement was produced to the Court.

11. Counsel for the defendant argued and submitted that –
 - (a) As at 16th August 2006, the total liability was VT903,299. However, after the sale of the vehicle the sum of VT150,000 was deducted accordingly, leaving the balance of VT753,299.
 - (b) Legal fees should not be included as part of the loan. Counsel relied on the Court of Appeal Orders dated 1st June 2006 and Part 15 of the Civil Procedure Rules in support of those submissions.
12. Counsel have not assisted the Court by making the full text of the Asset Purchase Agreement available to the Court. However, it is noted that the interest rate is 22.5% is ridiculously a high interest rate. Secondly if under Clause 7(b), it is made implicit that legal fees incurred are the borrower's or defendant's liability, it is an arbitrary provision. Any such legal costs or fees must be subject to challenge. And where it is challenged as it is in this case, then the correct procedure to be followed is available under Part 15 of the Civil Procedure Rules.
13. The Court must therefore accept the defendants' submissions that the only residual balance due and owing against the defendant is the sum of VT753,299 together with interests accruing at 22.5%. However, the accrual interests ceased at as 24th December 2003. But the defendant has done basically nothing from 2003 to date. As a result the Claimant, as a financial institution are entitled to their 22.5% interests on the sum of VT753,299 calculated annually. The accrual will continue until the defendant has paid off all the sum of VT753,299.



Conclusions

14. There is therefore judgment given in favour of the Claimant for the sum of VT753,299 together with interests at 22.5% per year from December 2003 and continuing until the sum of VT753,299 are fully repaid by the defendant.
15. The Counter-Claim of the defendant is dismissed.
16. The defendant is ordered to pay the Claimant's costs of this action on the standard basis as agreed or taxed by the Court.

DATED at Luganville this 6th day of December 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge

