

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

Civil
Case No. 10/174 SC/Civil

BETWEEN: Brian and Pam Fisher
Claimants

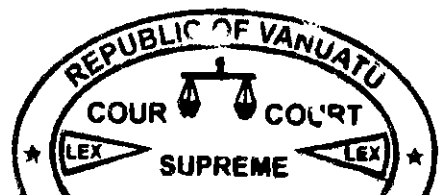
AND: Bob and Cornelia Wylie
Geoffrey Gee & Partners
Defendants

Date of Hearing: 17 – 20 June, and 3 August 2019
Before: Justice G.A. Andrée Wiltens
Counsel: Mr R. Sugden for Claimants
Mrs C. Wylie, in person, for the First Defendants
Mr P. Finnigan with Ms S. Motullki for the Second Defendant
Date of Decision: 20 August 2019
Date Reasons Given: 5 August 2020

JUDGMENT

A. Introduction

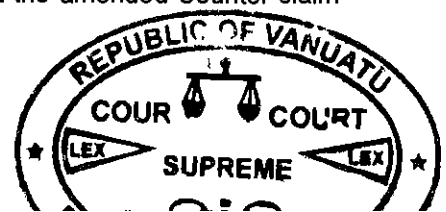
1. This case concerns the fallout of the purchase of a gardening business.
2. In 2009, Mr and Mrs Wylie sold their business Rainbow Gardens Limited (“RGL”) to Mr and Mrs Fisher as a “going concern”. In 2010, Mr and Mrs Fisher purported to repudiate the contract, and brought this action for breach of contract to recover their purchase price and other related expenditure.



3. Mr and Mrs Fisher further alleged negligence of the part of the solicitors Geoffrey Gee and Partners ("GGP") who acted for both parties in the transaction – damages were sought in relation to that.
4. Mr and Mrs Wyllie challenged the purported repudiation as not being legally available. They counter-claimed for the balance of the purchase price, being VT 15 million owing under the vendor finance aspect of the transaction, plus a further VT 10.5 million for stock not paid for. Mr and Mrs Wyllie additionally sought damages for having to take back the business and operate it on behalf of Mr and Mrs Fisher for a period. Interest and costs were also sought.
5. GGP maintained (i) that they had acted properly throughout for both Mr and Mrs Wyllie and Mr and Mrs Fisher, and (ii) that they were not in any way negligent. Accordingly, their stance was that GGP had no liability. Additionally, GGP claimed indemnity from Mr and Mrs Wyllie if found to be liable.
6. The unfortunate aspect of this drawn out saga is that there can be no winner in relation to this Claim, as all the participants have had to put up with intolerable delay. Such cases as this should not have required a decade to be concluded. The Vanuatu Civil Procedure Rules No 49 of 2002 were implemented to deal with all civil litigation "justly", and includes the requirement of ensuring cases are dealt with "speedily and fairly". The Court has the responsibility to ensure that this occurs. In this particular case, it can be seen that the Court has failed the parties in this regard.
7. This case was heard on 17 – 20 June 2019 inclusive, and final submissions were made on 3 August 2019. Due to the delays referred to, I published a "result" decision on 20 August 2019, with written reasons for coming to that decision to be subsequently supplied. These are they – regrettably also not as timely as desirable, but deliberately not given the attention due as the result was already known. With a backlog of other work waiting for decisions to be made the reasons for arriving at my final conclusions could no longer be afforded priority.

B. The Pleadings

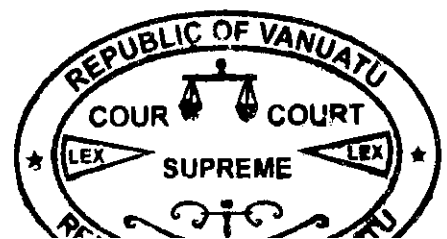
8. There is a considerable history to the pleadings.
9. The originating Claim was filed by Mr and Fisher on 12 November 2010. That was responded to by Mr and Mrs Wyllie on 10 February 2011 by way of a Defence denying all the allegations and including a Counter-claim. The Counter-claim sought payment of VT 15 million for outstanding vendor finance, plus VT 10.5 million for stock, and finally VT 1.029 million for monthly management fees for the period after Mr and Mrs Fisher had vacated the RGL premises.
10. An Amended Defence and Counter-claim was subsequently filed on 17 March 2011. The defence remained constant as a total denial of all allegations; but the amended Counter-claim expanded on the justifications to be relied on.



11. Further Amended Claims, as per Court orders, required to more particularly articulate the separate claims against Mr and Mrs Wyllie and GGP were subsequently filed – adding in the allegation that Mr and Mrs Wyllie had fraudulently misrepresented the true value of the business. The last filed amended Claim was dated 28 August 2015.
12. GGP also filed an indemnity or contribution Claim against Mr and Mrs Wyllie, in the event that GGP was held to be liable for breach of contract and/or negligence towards Mr and Mrs Fisher.

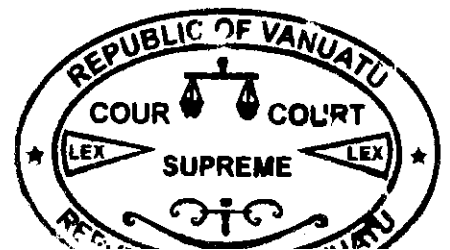
C. Background

13. Mr and Mrs Wyllie commenced a “gardening” business in 1993. It was in fact 3 operations run as one under the general banner of RGL. In 2007 - 8, Mr and Mrs Wyllie separated the businesses into three: RGL (nursery and ornamental plants), Vanuatu Direct Limited (“VDL”) (food export/import and processing), and a market gardening operation at their home.
14. In early 2008 Mr and Mrs Wyllie decided to sell the now stand-alone RGL business together with a sub-lease (yet to be created) for the land that the business occupied. They utilised a local Real Estate company to advertise the property, which resulted in the proposition coming to the attention of Mr and Mrs Fisher in or about May 2009.
15. The initial position was that Mr and Mrs Fisher wanted to purchase both the sub-lease and the business for a total investment of VT 140 million. However this did not eventuate, primarily it appears for lack of immediately available funds as Mr and Mrs Fisher needed to convert overseas assets into liquid funds. Once Mr and Mrs Fisher’s interest in the purchase diminished in July/August 2009, Mr and Mrs Wyllie took the sale of the business off the market and went on a long-planned overseas trip to Europe. It was partly a purchasing trip for stock for RGL, and partly holiday.
16. Mr and Mrs Fisher decided in any event to migrate to and reside in Vanuatu. In mid-2009 they purchased a home at Bellevue.
17. Some months subsequently, after Mr and Mrs Wyllie had returned from overseas, Mr and Mrs Fisher agreed to purchase the RGL business only (without the lease) for VT 70 million plus the cost of stock in transit from the European purchasing trip, utilising vendor finance of VT 15 million.
18. Mr Gee, a principal of GGP, acted as solicitor for Mr and Mrs Wyllie in the sale; while Mr Thornburgh, a newly recruited solicitor working for GGP, acted for Mr and Mrs Fisher in the purchase. GGP maintained a “Chinese wall” between Mr Gee and Mr Thornburgh to enable them to act for both sides of the transaction without a conflict of interest arising.
19. Both purchaser and vendor were initially content with that arrangement. However, Mr and Mrs Fisher raised several concerns regarding this at trial.



D. The Contract

20. The Sale and Purchase Agreement ("S&P Agreement") is dated 15 September 2009. It records that what is involved in the transaction is the sale of the shares and the business of RGL **as a going concern**. There was provision for a deposit of VT 55 million to be paid into GGP's Trust Account, with VT 15 million being "...forthwith paid to the Vendors for their own use upon date of payment...". The balance of the deposit was to be retained in trust until the agreement became unconditional. The only pre-condition to the contract becoming unconditional was that Mr and Mrs Fisher needed to obtain formal VIPA approval.
21. The remainder of the purchase price was made up of the vendor finance of VT 15 million available for a period of one year from the date of settlement of the contract, which was to be on 30 September 2009, or 5 days after the contract became unconditional – whichever date was the later.
22. I set out below the other significant particulars of the contract as they relate to the issues in dispute.
23. Clause 3 of the contract recorded:
- "SHARES
At completion date the **Vendors shall do all things and complete all documents necessary to achieve registration of the Purchasers ... as the owners of the shares and to instate the Purchasers... as directors and/or Secretary of the Company**" (my emphasis).
24. Clause 4 recorded that at the completion date the vendors were to hand over resignations of the current officers of the company, and **"...shall do all things to ensure..." that all the company records were handed over** (my emphasis).
25. Clause 7 recorded that the company had provided accounts to the purchasers "...who have inspected the accounts and **are satisfied with them for the purpose of this purchase and the price paid**" (my emphasis).
26. Clause 12 made provision for 20 working days written notice to be given requiring completion of the contract in the event of default. It also dealt with the ability of either party to cancel the contract in the event of default.
27. Clause 13 provided that the schedule of stock provided was only a general outline and that no valuation of stock was required. The purchasers had **the right to inspect the stock on site up to 4 days prior to completion**, and to challenge any alleged variation (my emphasis).



28. Clause 14 provided that the vendors would grant the purchasers a 5-year lease over that part of the title that RGL occupied, with 2 further rights of renewal for a further 5 years each. The rental to be paid for the lease was set at VT 270,000 per month.
29. Clause 15 provided for a 3-year restraint of trade period as against Mr and Mrs Wyllie.
30. Clause 21.1 (e) recorded: "The parties will do all things reasonably necessary to carry out the provisions hereof".
31. Clause 22.1 set out that the vendor would provide finance "...as set out in Schedule C." As there was no Schedule C to the contract, everyone has accepted this to be a typographical error – it should read Schedule B. Clause 22.2 recorded that such vendor finance would not exceed VT 15 million.
32. Schedule B is headed "Vendor Finance". It recorded the amount as VT 15 million, which was to be advanced for a period of 12 months; with interest at 8% per annum paid monthly in arrears, but if not paid in time then at 12% per annum. Paragraph 4 of this Schedule recorded that **the shares being sold were to be held as security in escrow by GGP until the vendor finance is fully repaid**. Paragraph 5 recorded that GGP would draft the appropriate resolutions and **all parties would do all things necessary and execute all documents to enable the transfer of the shares to the purchaser [u]pon the full repayment of the monies and interest"** of the vendor finance. (my emphasis)

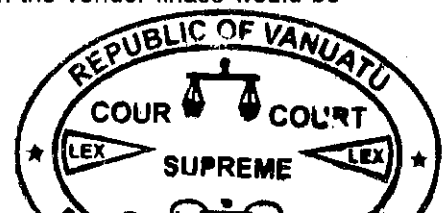
E. Settlement and Beyond

33. The transaction settled on 1 October 2009. Mr and Mrs Fisher then commenced to operate the business of RGL as owners. Mrs Wyllie assisted from time to time, when asked during the agreed initial 3-month hand-over period.
34. Mr Gee had prepared transfers of the shares into the names of Mr and Mrs Fisher, which were signed by both vendors and purchasers. He had also prepared, and had signed, resignations as Directors by Mr and Mrs Wyllie. These documents were held in escrow in the RGL property file at GGP as security for Mr and Mrs Wyllie for the vendor finance.
35. Mrs Fisher, and to a lesser extent Mr Fisher, obviously had their own ideas about the business and sought to expand it by undertaking a number of initiatives. However, they ran into difficulties in terms of payments due to Mr and Mrs Wyllie for the monthly rent and the vendor finance. There is more than a suggestion that Mr and Mrs Fisher also owed money to other creditors in Port Vila.
36. Mrs Wyllie's proffered advice was apparently heeded less over time, and relations between the parties became more difficult. Mr Fisher was less involved in the business than Mrs Fisher, and he had certain unspecified illnesses in early 2010. More seriously, Mrs Fisher, who had taken the lead in running the business, fell badly ill with fish poisoning in April/May 2010,



resulting in a lack of management at RGL. RGL's business suffered as a result of these occurrences.

37. Mr and Mrs Fisher eventually decided it was best to try and sell RGL. Accordingly, in June 2010, they put the business of RGL on the open market for VT 50 million. Mr and Mrs Green from Australia were initially interested in buying RGL, but they wanted the past 3-years' financial records to be able to undertake due diligence on the sustainability and profitability of the business. Mr and Mrs Fisher had, it seems, no financial records of their own at that point in time although they were apparently being prepared; and they persistently sought more records from Mrs Wyllie.
38. Mrs Wyllie maintained that she had provided all the accounts available, and reminded Mr and Mrs Fisher of the history of the matter, namely that there was no separate RGL entity prior to 2008; and therefore there were no additional accounting records over and above that already disclosed. She pointed too to the fact that all the records had been left with Mr and Mrs Fisher when they took over the running of the RGL business.
39. Eventually Mr and Mrs Green lost enthusiasm for the purchase, even after the sale price was further reduced to A\$ 500,000. Mr and Mrs Fisher laid a large degree of the blame for Mr and Mrs Green's loss of interest in purchasing RGL on Mr and Mrs Wyllie's non-provision of further financial records.
40. There is evidence of some "bigfulla" sales at RGL in August 2010, with products being sold at less than optimum prices, as well as the sale of RGL assets – with an allegation that the funds so obtained did not find their way into RGL's accounts. Mr Fisher gave evidence that an earthquake on 10 August 2010 also did a lot of damage to the business premises and assets. There is also the suggestion that RGL's opening hours reduced, and that the business was faring less well than it had previously. That evidence fits well with the reduced price for the business sought by Mr and Mrs Fisher.
41. These events occurred at the same time as relations between Mr and Mrs Fisher and Mrs Wyllie became more fractious, especially as there were an escalating number of defaults by Mr and Mrs Fisher in terms of the monthly rent and vendor finance payments. Further evidence of RGL's declining fortunes can be seen from the fact that Mr and Mrs Fisher borrowed additional funds from their bank, secured against their home property at Bellevue in an attempt to make ends meet; and also sought to source the finance they required to settle the vendor finance owing to Mr and Mrs Wyllie from local banks. The issue of non-payments led to Mr Thornburgh ceasing to act for Mr and Mrs Fisher as he and Mr Gee foresaw potential conflict of interest arising.
42. On 13 September 2010, Mr Fisher wrote to Mr and Mrs Wyllie a hand-written letter seeking to defer the repayment of the vendor finance by a month to the end of October 2010. Despite having been given a number of explanations as to how and when the vendor finance would be paid, Mrs Wyllie agreed to this extension.

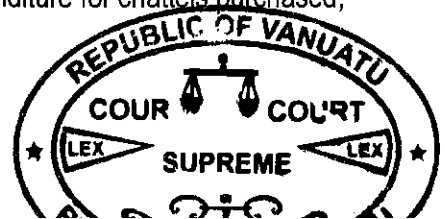


43. Then on 27 September 2010, a matter of only 3 days before final settlement of the S&P Agreement was due to occur, Mr Sugden as legal representative for Mr and Mrs Fisher, wrote a letter to Mr and Mrs Wyllie alleging numerous breaches of contract by them and ostensibly repudiating the S&P Agreement. The letter demanded repayment of the VT 55 million paid by Mr and Mrs Fisher as part of the purchase price and indicated damages would be sought for other incurred losses.
44. Mr Gee responded to Mr Sugden's letter on behalf of Mr and Mrs Wyllie, refuting all the allegations made and, in summary, demanding instead completion of the transaction by means of payment of the vendor finance still owing in exchange for the shares and Directorship resignations.
45. On 28 September 2010, Mr and Mrs Fisher stripped the RGL offices and abandoned the premises. This was without warning to staff, the public or Mr and Mrs Wyllie.
46. On 11 October 2010, Mr and Mrs Wyllie made formal demand of Mr and Mrs Fisher to pay the vendor finance, being the balance of the purchase price. By then Mrs Wyllie had stepped back into the business in an attempt to cut RGL's losses and to protect the inherent value remaining in the stock and plant.
47. Mrs Wyllie continued to operate the business in an attempt to preserve it as an on-going business and with an end view to selling it and returning some of Mr and Mrs Fisher's capital outlay. However, a sale proved beyond Mrs Wyllie, and after struggling on for some time, the devastating effects of Cyclone Pam resulted in Mrs Wyllie simply giving up and walking away from the business in or about March 2015.
48. In the meantime, the legal proceedings had commenced.

F. The Final Amended Claim

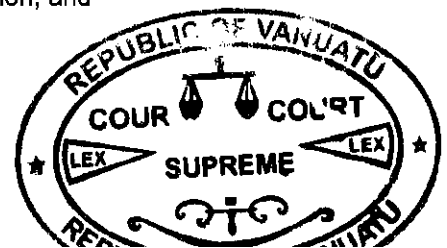
49. As against Mr and Mrs Wyllie the following is a summary of the Claim:

- Firstly, that Mr and Mrs Wyllie had knowingly made **fraudulent misrepresentations** regarding RGL's profitability, with a view to inducing Mr and Mrs Fisher to purchase the business, and in reliance of which Mr and Mrs Fisher entered into the S&P Agreement;
- Mr and Mrs Fisher claimed as losses, arising in Vanuatu:
 - VT 55 million as part of the purchase price; and
 - VT 58.92 million of Mr and Mrs Fisher's own funds brought from Australia, less VT 289.163. There was a schedule of expenditure for chattels purchased,



explaining that the deduction of VT 289,163 related to some of the chattels being taken back to Australia in 2010.

- Mr and Mrs Fisher claimed other losses, as follows:
 - relating to "Other expenditure" listing freight at VT 3 million and the costs of transporting animals to and from Vanuatu at VT 2.1 million;
 - the purchase of the home at Bellevue, totalling VT 20 million;
 - loss of earnings in Australia: 2x A\$ 175,000, less living expenses of VT 8.8 million, a total of VT 24.2 million; and
 - loss of interest on the capital invested in RGL: interest of 7% p.a. on VT 55 million, totalling VT 21.367 million as at the date of the Claim, with daily increases of VT 21,847.
- Finally, Mr and Mrs Fisher claimed the legal fees expended in relation to their purchase of RGL, amounting to VT 904,406.
- Secondly, that there was a **breach of contract** by Mr and Mrs Wyllie in that they had not, among other alleged transgressions:
 - done all things and completed all documents necessary to achieve the registration of Mr and Mrs Fisher as the RGL shareholders;
 - handed over resignations as directors and completed all things necessary to enable Mr and Mrs Fisher to become the directors;
 - handed over to Mr and Mrs Fisher all documents, share registers, account books, in particular the 2007, 2008 and 2009 RGL financial records;
 - provided Mr and Mrs Fisher with a registrable sub-lease;
 - adhered to the restraint of trade clause in that they continued to sell cut flowers from their home;
 - paid all outstanding RGL outgoings, contrary to warranty, in that VNPF payments relating to staff remained outstanding;
 - conserved the stock to the date of completion; and



- operated RGL in compliance with the registered Agricultural Lease 12/0631/020 in that they had run craft workshops and seminars, operated a café, operated a Bunnings-type home retail business and conducted tours of the premises.
- In relation to the breach of contract aspect of the Claim, Mr and Mrs Fisher claimed the same losses as earlier set out in relation to the fraudulent misrepresentation aspect of the Claim.

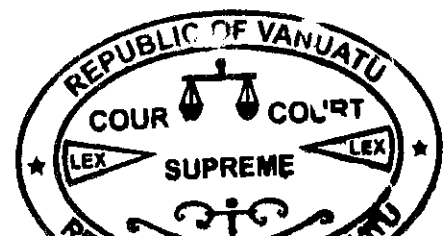
50. As against GGP the following is a summary of the Claim:

Breach of Contract

- GGP was in breach of the retainer for the provision of legal services entered into with Mr and Mrs Fisher in that GGP intended from the beginning to act for Mr and Mrs Wyllie if there was a conflict of interest;
- GGP did not advise Mr and Mrs Fisher against entering into the transaction, and despite knowing Mr and Mrs Fisher's circumstances and the unprofitability of RGL, GGP encouraged them to borrow the necessary funds to complete the purchase. GGP was accordingly not acting with the due skill and care of an experienced solicitor, which was a breach of an implied term of the contract;
- GGP did not retain the VT 55 million deposit on trust pending completion of the transaction;
- GGP did not advise Mr and Mrs Fisher of all the various breaches of contract listed earlier in paragraph 49 hereof by Mr and Mrs Wyllie, in breach of the retainer;
- GGP at all times breached their retainer by failing to perform their obligations, and accordingly was unjustly enriched by VT 901,946;
- For the alleged breaches of contract, the same losses as referred to above were claimed. Additionally, Mr and Mrs Fisher claimed VT 159.189 million by way of special damages, plus interest at VT 21,847 per day and costs.

Negligence

- GGP did not act with the due skill and care of an experienced solicitor in their dealings with Mr and Mrs Fisher;
- GGP should not have acted for both vendor and purchaser, due to potential conflict;



- The matters referred to under the breach of contract head were largely repeated under this head, with the same claim made in respect of the alleged resultant losses.

Exemplary Damages

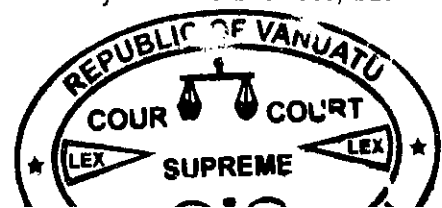
- Pleading the very same matters as previously, and in reliance of the alleged breaches of the retainer, Mr and Mrs Fisher further claimed as against GGP the sum of VT 100 million by way of exemplary damages, plus costs.

G. Evidence

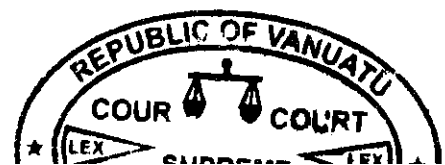
51. The credibility and accuracy of witnesses' evidence is not to be assessed solely by how the witness appears in Court. The clues that might be relied on to gauge such matters are not obvious simply based on appearance or conduct. Of course those observations are a part of the process of evaluation, but they play only a small part.
52. What is of more significant is to look for consistency of accounts. I looked for consistency within a witness' account. I looked for consistency also when firstly, comparing that account with the accounts of other witnesses, and secondly when comparing the account of a witness with the relevant documentary exhibits. On that basis I formed certain views as to the reliability and veracity of the witnesses.
53. I also had regard to the inherent likelihoods of the situation then prevailing. I also had due regard to the passage of time, bearing in mind that some of the events were a decade old, and the effect of that on memory.
54. I reminded myself that this was a civil trial. Accordingly the claimants and cross-claimants were required to establish their cases on the balance of probabilities – namely that their assertions were more likely than not to be correct. There was no onus on the defendants to establish facts or their non-liability – and equally so the counterclaim defendants.
55. I now set out my summary of the relevant evidence of each of the witnesses, and my assessment of what weight should be given to that particular evidence.

(i) The Claimants' Witnesses

56. Mr Fisher relied on his sworn statement of 29 March 2019. He corrected the amounts he and his wife had earned in Australia prior to arriving in Vanuatu – the amount claimed was halved as a result. He told the Court that he and his wife had gone to several accountants in Australia; and the advice received was that the proposed purchase of RGL "looked pretty good. It was a good business to buy." The accountants confirmed the business would support the proposed debt servicing. Mr Fisher told the Court that initially he drew a salary from the business, but that later that became unfeasible.



57. Mr Fisher agreed with the matters set out in his wife's lengthy statement of 29 March 2015. He stated that establishing a café as part of RGL's business was of interest to his wife and to him, as it meant the business could also accommodate their daughter. He produced a number of documents to show the expenses incurred in developing the café, and reported the funding for that came from taking out a bank loan secured against the Bellevue home. There were other borrowings as well required to upgrade and "restore" RGL's business. I noted that all of these matters were self-incurred, and had little impact on the core issues at trial.
58. Mr Fisher stated that it was quickly discovered that the RGL cash flow was insufficient to meet the outgoings – that evidence begged the question as to why the several accountants consulted were not being sued.
59. Mr Fisher was critical of Mrs Wyllie for not permitting Mr and Mrs Fisher to further inspect the RGL business while Mr and Mrs Wyllie were overseas. At that stage, Mr and Mrs Fisher had not agreed to purchase the business – indeed Mr and Mrs Wyllie had taken the business off the market while they undertook their trip to Europe. The criticism was accordingly unjustified and misplaced. Mr Fisher made the same complaint in respect of their dealings after Mr and Mrs Wyllie had returned from overseas. However, the S&P Agreement, willingly signed, indicates to the contrary, in particular clauses 7 and 13.
60. Mr Fisher complained that Mr Thornburgh at no stage advised them to take more time and thoroughly investigate the premises, the stock and the legalities. This complaint is of no assistance in deciding the case. Mr Thornburgh's role was to provide legal advice. The apparent haste in purchasing RGL stemmed entirely from Mr and Mrs Fisher, as admitted by Mr Fisher in cross-examination.
61. Mr Fisher stated that the verification of RGL stock was "completely inadequate". However, Clauses 7 and 14 of the S&P Agreement undermined this evidence. It was the purchasers' obligation to attend to such matters. Mr Fisher produced aerial photographs he considered to demonstrate this point. He also considered the RGL premises had borer, was in disrepair, and described the office equipment was "outdated and useless". Mr Fisher blaming Mr Thornburgh and/or Mr and Mrs Wyllie for this was simply fatuous. No one forced Mr and Mrs Fisher's hand to purchase the business. These complaints, if correct, should have persuaded them to not go ahead with the purchase. To complain about these matters subsequently only seems to demonstrate poor decision-making initially. Further, in cross-examination, Mr Fisher agreed there was correspondence some four months after the purchase in which he and his wife indicated they were satisfied with their purchase, and that in their view RGL had great potential. The inconsistency between these positions affected Mr Fisher's veracity.
62. Mr Fisher stated that he was concerned that he was unable to get independent legal advice until after 13 September 2010. He does not explain why independent legal was unobtainable. However, he maintained that it was at around that time that he first became aware that he and his wife held no shares, had no management rights, and had received no benefit for the VT 55 million they had paid towards the business. In his view, they had obtained no reward for their



hard work and energy in running and improving the business. This evidence does not sit well with the true position. Mr and Mrs Wyllie had pulled out from running the business, had signed their resignations as directors, and had signed the transfers of shares. Those documents were held by GGP, on behalf of both parties, pending completion of the transaction. I noted also that all funds earned from the operation of RGL while Mr and Mrs Fisher were in charge went to their benefit. Mr and Mrs Wyllie did not derive any benefit from RGL post 1 October 2009.

63. Mr Fisher told me further that under their stewardship, not only were RGL staff now being properly paid, but the July 2020 stock-take demonstrated significant improvements in the state of the business. I noted also that no members of staff were called to substantiate their earlier so-called improper or inadequate salary payments when employed by and working for Mr and Mrs Wyllie.
64. Mr Fisher's evidence flies in the face of the dire financial position Mr and Mrs Fisher were then in. They had tried to sell off the business, even reducing the asking price. They had tried to arrange for other funding to be able to pay off the vendor finance, and they had failed. They had written to Mrs Wyllie seeking further time to pay the vendor finance. They had been in default in paying the rent due and interest on the vendor finance on a number of occasions. By September 2010, the fortunes of RGL were at a low ebb. Mr and Mrs Fisher were the cause of much of that. I see Mr and Mrs Fisher's financial situation as the principal catalyst for attempting to repudiate the contract two days short of final completion of the contract.
65. The independent legal advice Mr and Mrs Fisher received in September 2010 must have been an enormous relief. It enabled Mr and Mrs Fisher to claim that every expenditure from the time they left Australia until over a year later could be attributed to Mr and Mrs Wyllie, as well as damages being available to them due to the inadequate, perhaps incorrect, legal advice they had been given by GGP.
66. Mr Fisher's claims are misconceived. He seeks to attribute to Mr and Mrs Wyllie the loss of his and his wife's previous salaries in Australia. When Mr and Mrs Fisher moved to Vanuatu, they had not purchased RGL. They went to Vanuatu for other reasons as admitted in cross-examination, none of which can be laid at the feet of Mr and Mrs Wyllie. To purchase the Bellevue home, Mr Fisher forwent 7% p.a. interest on his investments in Australia. Somehow, with thinking that can only really be described as contortionist, Mr and Mrs Wyllie are said to be legally responsible for the future loss of the interest on investments no longer existing. I noted that whenever questions as to causation for any of the heads of damages claimed were put to Mr Fisher, he was at a complete loss to explain his position.
67. Mr Fisher complains of Mr Thornburgh not advising whether VT 70 million was a fair price for RGL, whether VT 270,000 was a fair annual rent, that the sub-lease to be created as part of the purchase had to be registered, that the sub-lease in order to be registered had to be properly surveyed with plans drawn up of the area involved, and that if there was any dispute between the parties that Mr Thornburgh would immediately step aside. In particular, Mr Fisher reported that he was "very concerned" about the shares being held in escrow. He stated that Mr



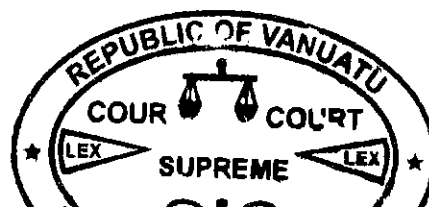
Thornburgh assured him that this was a kind of a mortgage and that the shares, the Directorships and the business were completely theirs. Mr Fisher stated that he had relied on Mr Thornburgh to take care of all the legalities.

68. Despite this, Mr Fisher admitted in cross-examination that it was his suggestion that aerial photographs would be sufficient to enable the sub-lease to be registered. He proposed that in order to avoid further expense. There was accordingly, in this instance, no reliance on Mr Thornburgh's advice at all – it was Mr Fisher taking charge.
69. I considered it strange that Mr Fisher, being so concerned, had not sought a second opinion at the time, if he was unable to read the plain language that is set out in the S&P Agreement. I noted that Mr Fisher was a licensed Real Estate agent in Australia, and therefore well versed in understanding S&P Agreements. Mr Fisher agreed in cross-examination that he did not consult GGP for financial advice – he already had received such from the accountants consulted.
70. Further, it is difficult to imagine, in the absence of other supporting evidence in the form of letters and/or e-mails, that a qualified solicitor would give the assurances attributed to Mr Thornburgh. After all, the business could not be entirely Mr and Mrs Fisher's, until the vendor finance was paid off. The shares were to be transferred at that point in time, as were the transfers of the Directorships. If Mr Fisher were to be believed, Mr Thornburgh would have abrogated all his professional qualifications and obligations, and left his common sense somewhere outside the office. The allegations are very serious. In order to give some weight to them, some very clear and direct evidence was required. I found none in all the evidence produced.
71. In cross-examination, Mr Fisher agreed with Mrs Fisher's allegations of interference by Mrs Wyllie in their running of the RGL business. However, he had to concede when taken to the relevant correspondence that even 10 months after taking over the running of RGL he and his wife were thanking Mrs Wyllie for her assistance. Again, the inconsistency in the evidence was unhelpful to Mr Fisher.
72. It follows that I consider Mr Fisher has embellished his evidence to such an extent that he is not believable as a witness, save for where there is compelling confirmatory evidence.
73. Mrs Fisher produced a voluminous sworn statement of 24 February 2015. She was emphatic that the financial figures provided, especially those for the 2008 year, were "false and inflated". This caused me concern, as I was unaware of what other financial figures she had been given; and more importantly, as Mrs Fisher stated, the accountant they consulted had advised that the VT 70 million was reasonable for the business.
74. Mrs Fisher was particularly upset at the entry in the accounts entitled "natural increase" which she described as "purely fictitious". She is unsupported in that characterisation of the entry by any expert evidence. Further, seemingly her accountant did not pick up on it and caution her

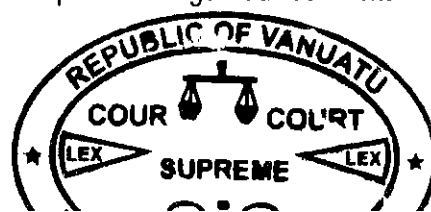


regarding it. This strikes me very much as an after-thought, a justification in hindsight for Mr and Mrs Fisher's inadequate due diligence.

75. Mrs Fisher stated that she and her husband wanted to borrow funds to achieve the purchase due to capital being tied up in other investments. Westpac Bank wanted to see the financial records of the business before considering the proposal, but rather than supply such figures, Mrs Wyllie suggested that vendor finance might be a better way. Mrs Fisher stated that Mr Gee strongly supported that.
76. I do not accept this evidence. Mrs Fisher's continuing dissatisfaction with the lack of financial records ignores the reality; namely, that there were none for Mrs Wyllie to hand over. As previously recounted, Mr and Mrs Wyllie only separated out the business of RGL from their other commercial activity in 2007 – 8. Accordingly, Mrs Wyllie had provided the only financial figures for RGL that had ever been prepared. The source of that information was held on the computers at RGL, and was no longer available for Mrs Wyllie. Further, it is plain from the correspondence between Mr Gee and Mrs Wyllie, that Mr Gee was less than enthusiastic about vendor finance – in fact he urged Mrs Wyllie against this.
77. Mrs Fisher stated that, after their initial trip to Vanuatu, she and her husband eventually returned to Port Vila in July 2009. She stated that they "...foolishly signed off on the plant stock and tools/equipment, without proper inspections". Incredibly, she somehow attributes that state of affairs to Mr and Mrs Wyllie – despite the conditions in the contract that allow for proper inspection in good time.
78. Mrs Fisher too attributes a number of contentious statements to Mr Dane Thornburgh. That evidence is entirely hearsay, unsupported by anything in writing. Mrs Fisher stated that she and her husband expressed "great concern" about the RGL shares being held in escrow. There is nothing in writing to support that – and given the vast amount of correspondence produced in relation to this matter, had this really been a live issue I am satisfied there would have been reference to it in correspondence.
79. Mrs Fisher reported Mr Thornburgh as having assured them that they would not be unpaid managers, but that they would be owners of the business after settlement. I fail to see how this assists the claimants.
80. Mrs Fisher mentioned at several times the impact Mrs Wyllie is said to have had on the way RGL was run after Mr and Mrs Fisher took over the business. Mrs Wyllie was described as "extremely pushy and over-bearing". She was said to have interfered in the business in a number of ways – and Mrs Fisher detailed some 12 examples. If any were true, one wonders why it was permitted to continue? The correspondence produced demonstrates a different picture – one of Mrs Wyllie standing on the sidelines, willing to assist if needed due to her experience and her generous nature as well as her desire that Mr and Mrs Fisher succeed in the business; and being thanked in writing by Mr and Mrs Fisher for her assistance.



81. By late June 2010, Mrs Fisher had become ill, which contributed largely to the decision to sell off the business. Mrs Fisher stated that Mr and Mrs Green were very keen to purchase RGL; but they were insistent on seeing the previous 3 years financials. Mrs Fisher stated that Mr and Mrs Wyllie "refused to release" that information. Accordingly, Mr and Mrs Green enthusiasm waned to the point they lost interest, even after the selling price was reduced A\$ 0.5 million. Mrs Fisher stressed that the financials were essential and that she pushed hard to get them. She was disappointed to recount that Mr Thornburgh declined to assist in this endeavour before ceasing to act for Mr and Mrs Fisher altogether.
82. Mrs Fisher appears to have been oblivious to reality. There were no financials for RGL for the previous 3 years for Mr and Mrs Wyllie to release. Those that existed, had been given to Mr and Mrs Fisher prior to their purchasing the business, and that information was stored on the computers left behind at RGL. Mrs Wyllie had explained that she and her husband did not operate RGL as a separate business prior to 2008; and accordingly, there were no RGL financials for the period sought. This appeared to be another easy allegation to further smear Mr and Mrs Wyllie's standing, but it lacked foundation.
83. It was accepted that Mrs Fisher became gravely ill in 2010. However, there may well have been other factors at play in the decision to put RGL on the market in mid-2010, such as the fact that RGL was late in paying creditors, including Mr and Mrs Wyllie's monthly rent and interest on the vendor finance. Mr Fisher obviously had little appetite for the business, and when Mrs Fisher was unable to continue due to her declining health, the reality of their parlous situation was the more likely cause for Mr and Mrs Fisher to place RGL on the market.
84. Mrs Fisher stated that she was shocked when in late July 2010 Mrs Wyllie was openly stating that "she and Bob were still the owners of RGL". Following Mr Thornburgh's ceasing to act for them, Mrs Fisher stated that she became concerned regarding the question as to whether the business was actually theirs. She recounted that she was "having trouble getting legal advice" until finally able to talk to Ms Ferrieux Patterson and Mr Sugden on 27 or 28 August 2009. The evidence of Mrs Wyllie stating RGL was still hers is deliberately over-stated. Mrs Wyllie merely pointed out that the sale and purchase of RGL was incomplete until the vendor finance was paid. Until that was done, Mr and Mrs Wyllie did retain a legal interest in the business in the form of security for the vendor finance.
85. The fact that Mr Thornburgh ceased to act cannot have been the catalyst which caused the concerns stated. Either those concerns already existed or someone else subsequently put them in Mrs Fisher's mind. Mr Thornburgh ceased to act due to a conflict which arose between Mr and Mrs Fisher and Mr and Mrs Wyllie such that GGP were well advised to cease acting for both parties. It is difficult though to follow the logic of Mr Thornburgh pulling back due to a conflict over the provision of financial records leading to genuine concerns over true ownership. That is a stretch too far on Mrs Fisher's part. Port Vila had numerous legal practitioners at the time – providing one was prepared and able to pay, legal advice was readily available. The suggestion that Mrs Fisher was having trouble getting independent legal advice lacks credibility.



86. In mid-September 2010, Mrs Fisher had "found out" that the shares and directorships had not been transferred, and that she and her husband did not own RGL. Accordingly she instructed Mr Sugden to send the letter of repudiation of contract of 28 September 2010. She accepted that GGP had written by return disputing that.
87. Mrs Fisher produced a number of documents as appendices to her sworn statement. It is necessary to go to some of those appendices and demonstrate how her evidence in relation to those documents was manipulated to suit her ends.
88. The first of significance was the RGL Profit & Loss Statement for the 2008 calendar year. This was tendered to demonstrate that Mr and Mrs Wyllie had overstated the RGL earnings by means of the entry as income of "Natural Increase: VT 17,789,158". This figure was said to be creative accounting and criticised as fictional, and it was that single entry which falsely enabled a net profit of VT 17,874,855.38 for that financial year to be recorded.
89. In making this point, Mrs Fisher has ignored other evidence such as the fact that several of the entries on this statement were one-offs applicable only to that financial year, such as the entries for building maintenance of more than VT 4.7 million. Further, the statement also records management wages of over VT 2 million, Rental income of VT 1.9 million which was RGL paying Mr and Mrs Wyllie for the site, and equipment rental of VT 1.4 which involved RGL paying Mr and Mrs Wyllie for the use of their tractor. Once Mr and Mrs Fisher took over the business, those items would no longer be payable; and accordingly the profitability of RGL would be more positive.
90. Lastly, this criticism falls flat when Mr and Mrs Fisher's own accounts for RGL for October 2009 to July 2010 also includes a figure for Natural Increase - of VT 65,593,858!
91. The next document is an e-mail of 21 May 2009 from Mrs Wyllie to GGP. This was said to support Mrs Fisher's evidence of Mrs Wyllie proposing vendor finance, and that suggestion being actively supported by Mr Gee. The correspondence refers to the inaccuracy of the Profit & Loss statement in so far as it would be better once Mr and Mrs Fisher had taken over the business, and was sent by Mrs Wyllie to Mr Gee indicating that she thought the business could support the vendor finance proposed. It is obvious from the correspondence that Mr Gee was not keen on that idea.
92. There was an e-mail of 12 July 2010 produced from Mrs Fisher to Mrs Wyllie. It records that innuendo was being spread regarding the ability of Mr and Mrs Fisher to pay their debts to Mr and Mrs Wyllie. The response from Mrs Wyllie denies such innuendo being spread, but points out the regular defaults by Mr and Mrs Fisher and re-iterates her willingness to assist them.
93. Mrs Fisher produced an e-mail of 13 July 2010 as evidence supporting her contention that Mr Thornburgh had effectively abandoned them as clients. In fact the e-mail demonstrates that Mr and Mrs Fisher agreed there was a conflict and that it was best for them to arrange alternative representation. The reason for the conflict was not related to the issue of the sought-after



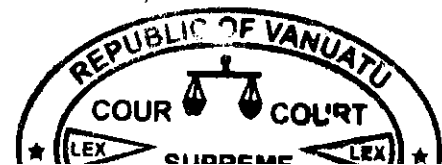
financial records for RGL, but instead was because Mr Gee was going on leave and Mr Thornburgh was going to take over Mr Gee's clients over the next 3 months. There was a perceived potential for conflict of interest to arise over the non-payments.

94. An e-mail of 22 July 2010 from Mrs Wyllie to Mr and Mrs Fisher and Mr Green was produced. This was intended to show the non-cooperation by Mr and Mrs Wyllie in the attempt by Mr and Mrs Fisher to sell RGL to Mr and Mrs Green. In fact it indicates a very helpful response by Mrs Wyllie to a number of queries Mr and Mrs Green had when considering the purchase of RGL. She had no obligations to them, but generously responded to their questions. Again Mrs Wyllie's position is set out regarding the shares being held in escrow – she states: "Once the shares are fully paid out our involvement ceases with the business."
95. Mrs Fisher appended an e-mail of 23 July 2010 thanking Mrs Wyllie for her reply to Mr and Mrs Green, but again seeking financial records. She goes on to record: "We are, and always have been so grateful for your assistance and knowledge." The statement is a far cry from her evidence of Mrs Wyllie's interference in the operations of the business.
96. The next document is an e-mail of 21 August 2010 from Mrs Fisher to Mrs Wyllie. This was produced to show the worsening relations between the parties. It also demonstrates that RGL was then intent on avoiding further expenses, and that it was then in arrears to Mr and Mrs Wyllie.
97. Mrs Fisher produced an e-mail of 23 August 2010 from Mrs Wyllie to herself. This was to support her evidence that Mr and Mrs Wyllie had not given them a sub-lease for the area RGL operated on, among other complaints. However, the correspondence also indicates that Mr and Mrs Fisher "...have always appreciated your assistance, and told you so." Further, it acknowledges that Mr and Mrs Fisher were in arrears to Mr and Mrs Wyllie. Lastly, it reflects Mrs Wyllie's position regarding the shares being held in escrow, and, until the vendor finance has been paid, the retention of a legal interest in the business. It does not show Mrs Wyllie as maintaining herself to be RGL's owner.
98. Mrs Fisher produced other documents of significance also.
99. In this regard, I point to the hand-written letter of 13 September 2010 from Mr and Mrs Fisher to Mrs Wyllie, asking "...to allow us some leeway. We are having difficulty meeting the deadline for payment at the end of this month but believe that we should be able to pay everything by the middle of October or at the latest, the end of October." The letter asks Mrs Wyllie to please advise quickly whether the request will be allowed, and also what was intended to be done about the VT 55 million already paid.
100. The next is a letter from Hudson & Co to Mr and Mrs Wyllie of 28 September 2010. The letter advised that the S&P Agreement due to be completed on 30 September 2010 was terminated; and that Mr and Mrs Fisher were seeking damages for breaches of the contract by Mr and Mrs Wyllie and for their repudiation of the contract. The letter spells out the alleged



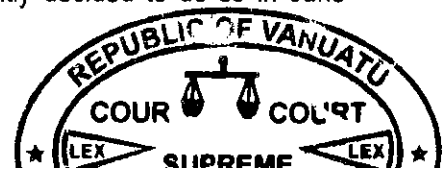
breaches by Mr and Mrs Wyllie as failing to give ownership and control of the business to Mr and Mrs Fisher, failing to give them a 15-years lease over the premises, and breaching the restraint of trade provisions. There was said to be a complete failure of consideration. The letter went on to detail clauses of the contract having been breached, as clauses 3, 4, 14, and 15. In so doing, it was said that Mr and Mrs Wyllie had repudiated the contract, which was accepted by Mr and Mrs Fisher.

101. GGP wrote a reply letter of 30 September 2010, disputing all the claims, pointing out the escrow arrangements, and the assistance provided by Mrs Wyllie, as well as the need for the vendor finance to be settled so that the shares and resignations of Directorships could be released.
102. There is a further relevant letter of 11 October 2010 from Mrs Wyllie to Mr and Mrs Fisher demanding payment of the vendor finance loan, due 10 days earlier. What is of particular note is that the repayment is recorded as being in "...exchange for release of the signed Share Transfers and Directors Resignations which were held by agreement pending final repayment of the loan advanced..."
103. I wish to emphasise that the documents described above are but some of the many exhibits produced. The fact that many, but not all, are mentioned should not be taken as an indication that they were not considered.
104. Mrs Fisher produced a further sworn statement of 12 June 2019. In it she stated that aside from the VT 55 million expended on the purchase of RGL, she and her husband had brought over considerably more funds from Australia – almost VT 59 million for which recompense was sought. She also appended the S&P Agreement to this statement – I have dealt with the salient details previously.
105. Mrs Fisher relied on a third sworn statement of 29 March 2019, supporting a statement made by Mr Fisher regarding the bill for the replacement costs of the electrical switchboard at RGL. She appended a copy of the invoice – which came to VT 147,451, for which she sought recompense.
106. Mrs Fisher was cross-examined firstly by Mrs Wyllie.
107. Mrs Fisher confirmed that at the outset, prior to purchasing RGL, she and her husband had sought independent accountancy advice, which was to the effect that they were assured RGL's income was such that "...we should be able to make a go of the nursery." She confirmed that such accounting advice did not take into account any café earnings or any Bunnings-type income, as those matters were not part of the 2008 Profit & Loss accounts.
108. When asked what was fraudulent about the accounts provided Mrs Fisher responded it was, according to the advice given, due solely to the natural increase component. Mrs Fisher related the accountant was in Australia, but did not mention his/her name, or the name of the



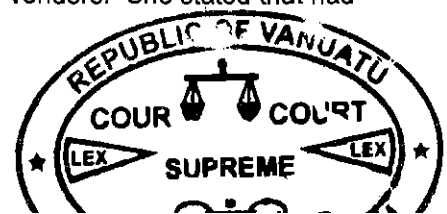
firm – nor was there any documentary evidence produced as to this, such as an invoice for which payment was claimed.

109. Mrs Fisher maintained that she realised a number of things she had been told by Mr and Mrs Wyllie were not correct, and that included the condition of the plant stock. She related that the advising accountant did not come to Vanuatu, and that she came to her realisations of fraud by herself – she thought natural increase had been “plucked out of the air”. The longer she was at RGL the more she realised this to be so.
110. Mrs Fisher confirmed that when her husband first came to Vanuatu they decided they wanted to live in Vanuatu. They returned to Australia, but were determined to return to Vanuatu, which they shortly afterwards. They later found a cute little house at Bellevue and bought it. Subsequently, after Mr and Mrs Wyllie returned from their overseas trip, “...we got a contract and a lease done.”
111. Mrs Wyllie suggested that Mr and Mrs Fisher had run into financial difficulty. Although that was not accepted, Mrs Fisher was unable to give any evidence about RGL’s income once it had been taken over by her and Mr Fisher. Instead Mrs Wyllie had to put specific matters to her, with which she reluctantly agreed. She agreed that PKF had done some accounts for RGL but could not recall any details; and also that VAT returns were not filed as they should have been May to September 2010. Mrs Fisher accepted further that significant investment was put into setting up the coffee shop, which ultimately failed.
112. When asked about Mr Thornburgh ceasing to act, Mrs Fisher related that from the time she and her husband took over RGL they were treated as if they were not the owners. Time and again Mrs Wyllie told them what to do. Then rumours started about Mr and Mrs Wyllie still owning RGL and that they were going to take it over again. It was put to Mrs Fisher that the conflict which led to Mr Thornburgh no longer being able to act arose as a result of non or late payment of rent and vendor finance payments to Mr and Mrs Wyllie. Mrs Fisher denied that. She did so in an unconvincing manner – she was evasive and unwilling to discuss any specifics. She was unable to offer any plausible alternative.
113. There was an abundance of evidence showing the financial straits of Mr and Mrs Fisher – but Mrs Fisher was not prepared to accept that as causative of the falling out with Mr Thornburgh, or ultimately Mr and Mrs Wyllie.
114. A further indication of Mrs Fisher’s evading of questions arose when asked about telling Mr and Mrs Green that RGL was “a great business”. Instead of addressing that aspect, Mrs Fisher raised the fact, again, of Mr Green wanting the past 3-years financials, which she maintained Mrs Wyllie wouldn’t provide, and that caused Mr and Mrs Green to ultimately not go ahead with the purchase. Mrs Fisher did not return to address the question asked.
115. Mrs Fisher accepted that she and her husband had moved out of RGL on 27 September 2010, without giving any notice. They had apparently decided to do so in June



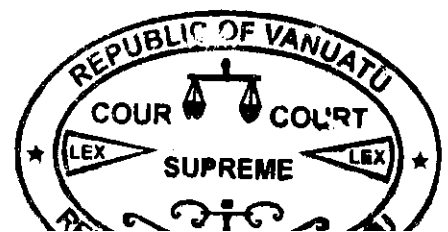
2010, when Mrs Fisher was very ill. She also reported having had a heart attack in March 2010 – there was no evidence produced to support that statement. Mr Fisher was also ill in July 2010 – no specifics were offered. It was accepted that by 28 September 2010, Mr and Mrs Fisher had removed all their personal effects from the RGL premises. Mrs Fisher agreed all capital items had been removed, but attributed that to attempting to fund the VT 15 million owed to Mr and Mrs Wyllie. There is no evidence as to what happened to those funds.

116. She accepted, after a long pause, that she "...did not think..." she or her husband had ever made a formal demand for the RGL shares. When it was put to her that she had not done so as she knew the shares were being held in escrow, Mrs Fisher replied: "No. We were told they had been transferred to us by Mr Thornburgh in an e-mail." No such e-mail was before the Court.
117. This evidence also flew in the face of Mrs Fisher's own e-mail of 18 January 2020 in which she stated she was aware of the shares being held in escrow.
118. Mrs Fisher was also cross-examined by Mr Finnigan. He put to her that her letter of 1 February 2010 to Mrs and Mrs Wyllie, some 4 months after taking over the business was to the effect that RGL was a great investment with good prospects. Mrs Fisher resiled from that – saying those comments were "not the full truth", but explained that that was how she communicated.
119. She maintained that Mrs Wyllie had interfered in the running of the business right back from when Mr and Mrs Fisher took over. When it was put to her that there were clear contradictions between what she was telling the Court and her previous correspondence and even the Claim, she said; "Absolutely."
120. Mrs Fisher confirmed she had written RGL was a great investment – the thing which had altered her view was Mrs Wyllie's interference, and she referred to paragraph 40 of her first sworn statement where all her allegations were listed.
121. Mrs Fisher accepted the suggestion that her allegations included GGP knowing RGL's profits were too low to support the servicing of the debts, but that in any event GGP encouraged Mr and Mrs Fisher to use the offered vendor finance. She maintained GGP had acted with that knowledge and deliberately not advised her and her husband of RGL's lack of profitability. She acknowledged this was an allegation of dishonesty on the part of GGP, but she maintained that was the case. Mrs Fisher agreed she had taken accountancy advice; and then she agreed that she had never sought advice as to the figures from GGP; and further, that prior to settlement of the S&P Agreement that Mr and Mrs Fisher had not sought accountancy advice from GGP.
122. Mrs Fisher had no recollection of Mr Gee explaining the legal implications of Mr Thornburgh acting for the purchasers while Mr Gee acted for the vendors. She stated that had

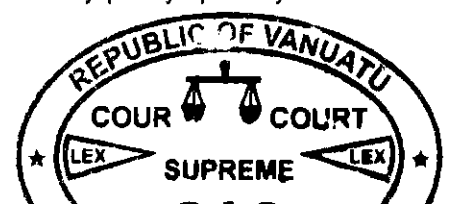


that been done she would have remembered it. What she did recall was that by pursuing that course it would save both sides a lot of money.

123. One of the Claim contentions was that Mr and Mrs Fisher had been told by Mr and Mrs Wyllie that RGL encompassed a café, and even a Bunnings-type operation. In cross-examination, Mrs Fisher agreed there is no mention in the S&P Agreement about a café. She was at a loss to explain how she held GGP responsible for such omission; and eventually she agreed she could not. She also accepted that she had never raised the Bunnings-type operation with Mr Gee; but maintained she had done so with Mr Thornburgh. She agreed there was no such Bunnings enterprise at RGL when she took over the business. It was put to her that there was no documentation to show this aspect was ever raised; but Mrs Fisher insisted it had been raised with Mr Thornburgh. I considered this evidence to be fanciful.
124. Another allegation centred on the failure by Mr and Mrs Wyllie and GGP to give Mr and Mrs Fisher a sub-lease over the land occupied by RGL. There were suggestions that certified plans were too expensive to contemplate; and aerial photographs were suggested By Mr and/or Mrs Wyllie as an alternative. There was much evidence about who had suggested this alternative. Mr Finnigan suggested to Mrs Fisher that this was done by mutual agreement – she agreed, but maintained it was suggested by Mr and Mrs Wyllie. She agreed this was not discussed with Mr Gee, but again insisted it had been discussed with Mr Thornburgh. Mrs Fisher did not accept it would have been reasonable, if this was a concern, to have asked Mr and Mrs Wyllie for a formal lease. Mrs Fisher maintained that although it had been discussed, there was simply no co-operation with Mr and Mrs Wyllie in this regard. She added that she believed "...it had all been done – the shares transferred, and the lease issued.
125. Mrs Fisher was asked to look at a number of documents attached to Mr Gee's supplementary statement, namely the signed share transfers, the RGL Minutes dealing with the same, the signed resignations as Directors by Mr and Mrs Wyllie, and the declarations regarding escrow. Mrs Fisher found fault with each document - this one was not dated, this one was not registered. When next taken to condition no. 4 of the vendor finance clauses, Mrs Fisher reluctantly agreed that the shares were to be held in escrow pending payment of the vendor finance. When it was put to her that the shares had been signed over to her and her husband in 2009, she stated: "No. Held in escrow by Wyllies, not signed over to us. The shares never left the Wyllie's control. We had nothing. That was my understanding."
126. When asked why the vendor finance was not repaid on 1 October 2010, Mrs Fisher replied: "We were paying for something we did not own." She further explained that she was acting on legal advice. However, there is an inescapable fact omitted from Mrs Fisher's evidence – the simple fact that all the evidence points to a financial inability to meet that obligation. When that aspect of the matter was put to her, Mrs Fisher resorted to very short responses, without explanations and giving the impression that it was distasteful for her to have to admit that.

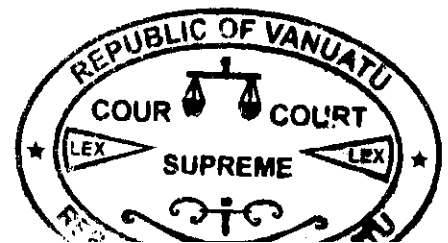


127. Next Mr Finnigan addressed the issue of the conflict which compelled Mr Thornburgh to cease acting. As previously recorded, there were two factors – firstly, Mr Gee was going on leave and leaving Mr Thornburgh with his clients/files; and secondly, as there was at that time a dispute brewing between Mr and Mrs Wyllie, who wanted their payments to be regularised, and Mr and Mrs Fisher who were making alternate allegations. However, Mrs Fisher could only say, rather weakly, that she was unable to recall the source of the conflict that made Mr Thornburgh cease to act. There is no doubt that she well knew that it was the lateness of the payments that created the problem for GGP to act for both sides, but she would not admit to that.
128. Mrs Fisher was asked to justify on what basis the numerous heads of Claim as against GGP could be maintained, such as loss of earnings in Australia, loss of interest on the investments sold to purchase the home in Bellevue, and the repairs and improvements made to the Bellevue home before they moved in. While stating that those Claims were maintained, Mrs Fisher could not point to any legal basis for attributing them to GGP. Her understanding of the Claim was rather similar to that of Mr Fisher – namely minimal, and most likely imposed on her by her legal advisors.
129. When specifically asked what escrow meant, so far as she understood the term, Mrs Fisher said it was like a mortgage, the shares being held as security for the payment. If that was her understanding, then her continual statements to the effect that she and her husband had paid for nothing were untruthful.
130. Mrs Fisher was a desperate woman by late 2010. She had certainly endured a very difficult time, with both herself and Mr Fisher having been ill and under constant financial pressure. Some of that pressure was largely self-imposed. The due diligence preceding the purchase of RGL was likely minimal and but definitely inadequate. The taking of personal drawings from the business, over and beyond a reasonable level given the financial health of the business affected the ability of the business to continue. The development of the café did not alleviate, and in fact added to, the financial stress on the business. All advice was unfortunately seemingly ignored. Stock was over-priced, and additional staff were taken on. The time for repayment of the vendor finance came ever closer, and at a time when the debt burden was increasing. All attempts to sell the business, and then the house at Bellevue, were proving problematic and ultimately impossible.
131. However, there was then a sudden light at this end of the dark tunnel. If the contract could be somehow rendered null and void, then the obligation to pay the debt burden would be alleviated. The legal advice given was that in certain situations contracts could be brought to an end. As a result, it became very easy to turn on Mr, and more particularly Mrs, Wyllie by alleging that she was responsible for all the troubles they were in. She had falsely inflated the purchase price of the business; she had not given them a sub-lease, she had interfered with their running of RGL and all this in turn prevented Mr and Mrs Fisher making RGL into an even better business. Accordingly it was claimed that she should pay for every penny spent by Mr



and Mrs Fisher in Vanuatu in 2009 and 2010. Hence the magnitude of the final form of the Claim.

132. Further, not only would all debts disappear, but a handsome reward might be possible through also suing the lawyers involved. In thinking this way, not only did GGP give inadequate and/or incorrect advice, they were responsible for Mr and Mrs Fisher initially entering into the poor deal and accepting the vendor finance; and later still GGP ceased to act for them without good cause. They had not looked after Mr and Mrs Fisher's affairs adequately, and had given preference to the interests of Mr and Mrs Wylie. As a result, it was fair that the lawyers pay VT 100 million exemplary damages, as well as the other losses claimed.
133. Mrs Fisher's distress had advanced to a kind of desperate greed. The Claim, with the able assistance of her advocate, became an omnibus Claim with every conceivable cause of action included. It appears the sworn statements were prepared with that mind set. When tested on the basis for such claims, there was no clear rational recognition by the claimants that matters had got out of hand. It was only at the conclusion of the claimant's case, that Mr Sugden made a concession that could have been made years sooner – namely for example that the claimants' were no longer pursuing the aspects relating to Mr and Mrs Fisher's purchase of the house at Bellevue. In my view, similar concessions could and should have been made prior to trial, some of which were finally addressed during closing submissions.
134. The point remains that unfortunately Mrs Fisher could not see any need to make any concessions when giving her evidence. This may have coloured my views. The documentary exhibits produced however clearly undermined her credibility and her accuracy. I determined it was unsafe to rely on Mrs Fisher's evidence where it was unsupported by other independent material. I did not find such support for her version of events in the evidence of Mr Fisher as his evidence simply echoed hers. While their evidence complemented each other's, neither was a satisfactory witness in my view.
135. Mr Sugden further relied on the evidence of Cynthia Garaemwala and Sean Fisher, both of whom had supplied sworn statements setting out their evidence.
136. Shaun Fisher, the son of the claimants, in his sworn statement of 29 March 2019, set out his experience and expertise as a Licensed Construction manager. He stated he travelled to Vanuatu in early 2020 to assess the residence at RGL, which he considered to be unfit for human habitation. He reported rust and water damage, rot, and the fact that the building was detached from the foundations. His inspection of the buildings and structures of RGL showed clear signs of neglect and severe lack of maintenance.
137. Shaun Fisher's evidence did not address the issues I had to determine. I accepted his evidence, as there was no challenge to these things, but it did not assist me in determining the case.

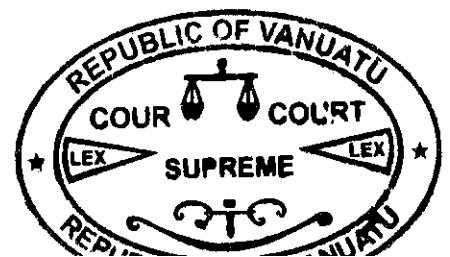


138. Ms Garaemwala provided two sworn statements, dated 10 April 2018 and 3 April 2019. Her evidence went no further than accumulating numerous documentary exhibits and producing them as having been located by her or received by way of disclosure. Her second sworn statement dealt with documents she accessed after searching the Companies Registry. The documentary exhibits she produced were of great assistance to the Court. There was no challenge to her evidence.
139. One of the documents exhibited is an e-mail of 14 September 2009 from Mrs Wyllie to GGP. It sets out that by agreement between them, a series of photos taken from a helicopter could be seen to delineate the area of the RGL sub-lease. It records that both sides had the same inventory list and commercial lease documents. It concludes: "Staff have traded well in our absence and the place is tidy. There has not been any unusual trading. As a matter of courtesy we will have the vehicle serviced, office equipment cleaned and be happy to allow the buyers access on signing." This shows quite a different picture of Mr and Mrs Wyllie's conduct and attitude to the sale of RGL to what Mr and Mrs Fisher paint.
140. There is an e-mail of 21 November 2009 from Mrs Wyllie to GGP. Mrs Wyllie is advising her solicitors that a cheque payment from Mr and Mrs Fisher for rent for October and November plus interest on the vendor finance had been dishonoured. Further Unelco was still invoicing Mr and Mrs Wyllie, instead of the new owners – Mrs Wyllie wanted that changed to reflect the true position.
141. A further e-mail of 24 November 2009 from GGP to Mrs Wyllie in reply is relevant. It seeks to mollify Mrs Wyllie's concerns stating: "However, the shares are still held untransferred although we hold share transfers pending payment of all interest and principal under the Vendor Finance. You are also still Directors as I have not yet taken you off for the same reason." This demonstrates only that GGP was holding the completed documents in escrow as security on behalf of Mr and Mrs Wyllie – as contemplated by the S&P Agreement. It does not reflect that Mr and Mrs Fisher are not the owners of RGL.
142. An e-mail of 18 January 2010 from Mrs Fisher to Mrs Wyllie is also relevant. In it Mrs Fisher wrote regarding some VAT registration difficulties: "We understand that the shares are being held in Escro (I hope that is the spelling)." Mrs Wyllie stepped in to assist the VAT registration, as evidenced in her e-mail of 19 January 2010 to Mrs Fisher recording what steps she had taken on behalf of the new purchasers – without any obligation on Mrs Wyllie's part to do so. This again demonstrates that Mrs Wyllie is doing what she can to assist Mr and Mrs Fisher, but also that she desires the true ownership details to be known.
143. There is a further e-mail of 9 February 2010 from Mrs Wyllie to GGP of significance. In it she recorded that finally a cheque to clear the arrears of VT 690,000 had been received. She further recorded that Mr and Mrs Fisher had not met deadlines and were openly talking of selling their house to settle the RGL purchase, provided they could live on site. Mrs Wyllie was concerned for Mr and Mrs Fisher, for the business, and for the fact that they would not accept her advice. The profitability of the business was concerning to Mrs Wyllie, as staff numbers



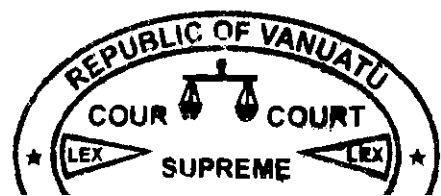
had been increased, prices pushed up and RGL customers alienated. This document is entirely consistent with Mrs Wyllie's evidence, and quite contrary to that of Mr and Mrs Fisher.

144. Mrs Wyllie again wrote to GGP by e-mail of 6 March 2010. It starts "It is with deep regret that I am having to write this letter." Mrs Wyllie believed it was necessary to start a paper trail to remind Mr and Mrs Fisher of their obligations, as they were again behind with rent and vendor finance payments. She believed the situation was worsening, and that the time might come when she would have to take back the shares and operation of RGL – she set out 9 reasons for arriving at that conclusion. She recorded that she continued to offer and give advice free of charge, but that it did not appear to be taken on board. Mrs Wyllie sought Mr Gee's advice as to what she should do.
145. Mrs Wyllie again wrote to GGP by e-mail of 8 March 2010. Mrs Wyllie forwarded an e-mail from Mrs Fisher and added her own comments. Mrs Fisher's e-mail advised that the lease payment would be paid that afternoon, but that the vendor finance interest payment would not – the bank would not advance the funds. Mrs Fisher wrote: "Are we able to pay interest on the interest and pay a.s.a.p?" Mrs Wyllie instructed GGP to draft a letter to capitalise the interest until 1 October 2020 when the balance should be paid out in full.
146. Mrs Wyllie again wrote to GGP by e-mail of 22 March 2010. Mrs Wyllie advised GGP she had sighted a financial spreadsheet indicating the basis on which Mr and Mrs Fisher were applying for further bank loans. She was shown it as assurance that repayment of the vendor finance was possible. However, rather than being placated, Mrs Wyllie was unconvinced. She had asked for a meeting with Mr and Mrs Fisher to discuss the spreadsheet, but that had not occurred. She wanted GGP to demand monthly Profit and Loss statements from RGL. Mrs Wyllie would not have needed to do that if she were still the owner of RGL.
147. The next relevant document is an e-mail of 29 June 2010 from Mrs Wyllie to GGP. Mrs Wyllie appended a spreadsheet prepared by Mr and Mrs Fisher demonstrating their arrears for the vendor finance interest, and in which Mr and Mrs Fisher said they could not repay the vendor finance even if they sold their house in July 2010. The financial stress is obvious.
148. Mrs Fisher wrote to Mr Thornburgh by e-mail of 6 July 2010. She sought legal advice in relation to an e-mail received from Mrs Wyllie in which Mrs Wyllie set out certain proposals to alleviate Mr and Mrs Fisher's financial predicament.
149. Included with Ms Garaemwala's second statement were copies of the RGL Annual Returns with Mrs Wyllie signing as Caretaker rather than as Director. That was significant in pointing to the actual position Mrs Wyllie believed to then exist – which was certainly not that she still owned the business of RGL.



(ii) Mrs Wyllie's Defence and Counter Claim Evidence

150. Mrs Wyllie relied on her sworn statements of 26 February 2018 and 11 April 2019. Mr Sugden objected to parts of both briefs of evidence of Mrs Wyllie mainly on the basis of lack of relevance and hearsay. Mr Sugden was of the view that Mrs Wyllie's "attack on the Claimants' running of RGL" was not relevant. I disagree. Mr and Mrs Fisher alleged they had been "sold a pup" to put it colloquially. The fact that they were unable to successfully run the business, as Mrs Wyllie was contending, undermined that proposition and was accordingly relevant. I accept that Mrs Wyllie included hearsay in her statements – however she was a litigant in person, and accordingly some latitude needed to be afforded so that she could present her case fully. Mr Sugden objected throughout Ms Wyllie's oral evidence, again mainly on the same basis, but I allowed Ms Wyllie to fully express herself while being careful about which parts of her evidence were strictly relevant and admissible.
151. Mrs Wyllie set out her experience and expertise in horticulture. It was extensive, and was not in any way challenged. She detailed the progress of RGL as a business between 1993 and 2008, when she and her husband decided to separate out their business interests and make RGL a separate business. She detailed the various steps taken by Mr and Mrs Fisher to purchase RGL and the land; and later, to purchase the business only of RGL – these matters have been set out earlier in this decision.
152. Mrs Wyllie produced a timeline of events setting out various milestones in the relationship with Mr and Mrs Fisher. She related how Mr and Mrs Fisher were late in making payments, almost from the time they took over running RGL. She noted the cheque for November 2009 rent and vendor finance interest had been made out late and then was rejected by the Bank for insufficient funds. She commented on her observations of Mr and Mrs Fisher's inexperience with horticulture and on the unnecessarily extravagant manner in which the business was run. Her account detailed a slowly declining business, poorly managed – quite different to how RGL had operated previously. She recounted that in June 2010, Mr and Mrs Fisher put RGL up for sale – at VT 50 million. There was no sale.
153. Mrs Wyllie stated that on 13 September 2010, Mr and Mrs Fisher asked for an extension of time to repay the vendor finance. Mrs Wyllie granted that, as she understood the house at Bellevue was to be sold which would enable the repayment to be made. However, on 27 September 2010, Ms Ferrieux Patterson gave Mrs Wyllie a letter of repudiation of contract. When Mrs Wyllie next went to RGL she found the office stripped of all equipment and records. Mrs Wyllie testified that Mr and Mrs Fisher had walked out of RGL on 28 September 2010. Accordingly she consulted GGP and arranged for a letter of demand to be sent. That was ignored.
154. Mrs Wyllie decided to step back in, at considerable cost to herself, as a caretaker in the interim to salvage could be saved. She arranged for Stephen Jessop to do a current valuation. However, there was no interest in purchasing the business, even at VT 25 million;



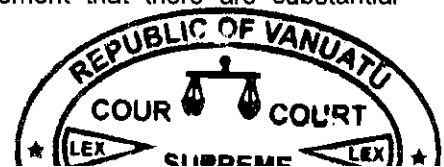
and eventually Mrs Wyllie simply closed the business. The problems created by Mr and Mrs Fisher, according to Mrs Wyllie, were insurmountable.

155. Mrs Wyllie commented that it ill behove Mr and Mrs Fisher to allege fraud on her part when including Natural Increase of VT 17.78 million in RGL's assets, when less than a year later Mr and Mrs Wyllie were claiming that it amounted to VT 65.59 million. She commented on the expenses recorded in the accounts, which she considered to be excessive, as were the personal drawings on RGL's funds by Mr and Mrs Fisher. She pointed to the expenditure by Mr and Mrs Fisher in setting up the coffee shop as part of RGL, which was a significant drain on limited resources. She also detailed the various late payments in relation to rent and vendor finance interest owed by Mr and Mrs Fisher.

156. The latter parts of the second sworn statement are Mrs Wyllie's responses to allegations contained in the statements of Mrs Fisher, Mr Fisher, Shaun Fisher (their son) and Sophie Burie (their daughter). She countered each of their complaints and allegations.

157. Appended to Mrs Wyllie's first and second sworn statements were a number of relevant documentary exhibits, some of which have not earlier been discussed. Included in that material was:

- The sporadic VAT returns filed by Mr and Mrs Fisher, showing delinquency of payments;
- 13 July 2010 e-mail from Mrs Wyllie to Mrs Fisher giving instructions and advice relating to accounting matters;
- Letter dated 1 November 2010 to Mr and Mrs Fisher, setting out history and reporting that Mrs Wyllie was intending to attempt to sell RGL and on what basis. The letter put Mr and Mrs Fisher on notice and gave them 7 days to object. It appended a short note of losses Mrs Wyllie was intending to claim, at VT 148.9 million;
- Invoices relating to expenses allegedly incurred by Mr and Mrs Fisher but not paid by them; invoices for accounting services provided to Mr and Mrs Fisher still owing in 2011; and Profit & Loss statements for the periods after Mrs Wyllie stepped back in;
- PKF Profit & Loss accounts for RGL for the period 1 October 2009 to 31 July 2010 when Mr and Mrs Fisher were operating RGL. This document records as a credit the item "Stock Mvmt (natural increase) VT 65, 593,858"; and
- A letter from Maxell McGill dated 11 April 2019 in which a number of comments are recorded relating to RGL's accounts while Mr and Mrs Fisher were operating RGL. Included in the comments is the statement that there are substantial



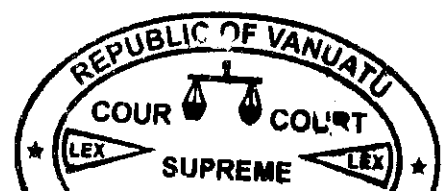
unexplained entries and a clear mixing of personal and corporate expenses, with RGL funds banked into private accounts and personal expenses charged to RGL.

158. Mrs Wyllie gave oral evidence. Mr Sugden objected to her adding to her statements at the commencement of her evidence. I allowed her to make her statements as she was unrepresented and needed to feel as if her case was being properly considered, not constrained by rules of which she had little knowledge. I also knew she was about to be cross-examined about much of what she wanted to say in any event.
159. Mrs Wyllie made her point about handing over all the financial records then available at the time of the sale; and reminded us that RGL was broken out of the Wyllie business interests in 2007 - 8. She denied withholding financial information. She specifically denied any inflation or falsehood in setting out RGL's financial position – there was no fraud involved. She pointed out that RGL's VAT returns for May, July, August and September 2010 were not paid on time – there was no challenge to that.
160. Mrs Wyllie agreed that Mrs Fisher became very ill, but she queried the other maladies mentioned by the Claimants as there was no medical proof to support such. She stressed that e-mails from Mr and Mrs Fisher referring in glowing terms to the new business they had recently acquired were not just sent to her, but also to other recipients. Mrs Wyllie re-iterated that the conflict of interest between Mr and Mrs Fisher and Mr Thornburgh arose as a direct result of the late and non-payments to Mr and Mrs Wyllie by Mr and Mrs Fisher. Mrs Wyllie was not challenged on that, or any alternative reason for Mr Thornburgh ceasing to act proffered.
161. When questioned by Mr Finnigan, Mrs Wyllie advised that Mr Gee did not encourage the vendor finance aspect of the S&P Agreement transaction. She re-iterated that photos of the property for the purposes of arranging the sub-lease was not her idea, but that of the Claimants. Mrs Wyllie was taken though the various late payments made by Mr and Mrs Fisher and agreed this was the issue that led to Mr Thornburgh ceasing to act. Mrs Wyllie confirmed that when operating RGL prior to the sale there was no coffee shop, and the business did not run as a Bunnings store. She had not made mention of either of those matters at any time to Mr and Mrs Fisher.
162. Mr Sugden challenged Mrs Wyllie regarding the provision of financial information. She denied holding it back to prevent Mr and Mrs Fisher being able to sell the business. She was challenged also regarding the Profit & Loss accounts entry for "natural increase". It was put that the accounts showed without that entry, RGL made no profit that year. Mrs Wyllie agreed, but pointed to other one-off expenses incurred that year which gave a distorted picture.
163. Mr Sugden attempted to get Mrs Wyllie to accept that the RGL shares and Directorships had not changed hands. He failed. Mrs Wyllie had a good understanding of what in escrow meant, as well as the effect of execution of the resignations as Director and transfer of shares. Mrs Wyllie was clear that the running of RGL was entirely in the hands of Mr and



Mrs Fisher, the new owners of the business subject to finalisation of the S&P Agreement by the payment over of the vendor finance after 12 months and the exchange of the documents held in escrow.

164. Mrs Wyllie agreed that Mr and Mrs Fisher had made initial improvements to RGL and significantly increased the stock. She denied always expecting Mr and Mrs Fisher to fail.
165. Mrs Wyllie pointed to her signing a Company Office's form as Director of RGL but recording also that the shares were held in escrow for Mr and Mrs Fisher. A further form was executed by her as caretaker rather than Director, to reflect the fact that she had divested herself of ownership.
166. Mrs Wyllie's evidence as to the failure of the transaction to be completed by the payment of VT 15 million vendor finance was accepted by all. Her evidence relating to stepping back into the business to salvage what she could, on behalf of Mr and Mrs Fisher was not challenged in any way. Mrs Wyllie's counter-claim went ahead on the basis that if the agreement was validly repudiated, then it must fail; but if the repudiation was not valid, then there was no real defence to it.
167. Mrs Wyllie was a compelling witness. Her account was entirely supported by the documentary exhibits produced by both sides of this dispute. She was consistent and made concessions an honest person would make. I believed it was safe to rely on her account as being both credible and accurate.
168. Ms S. Kaltiliu was also called briefly, interposed during Mrs Wyllie's evidence. She did not produce a sworn statement. Her very brief evidence was of no assistance to me in determining this case. She was not cross-examined. That was an opportunity scorned. Here was a chance to get confirmation of some of Mr and Mrs Fisher's allegations about the manner in which Mr and Mrs Wyllie had treated their staff, and whether they had paid them appropriately. Those allegations remain unsupported.
169. Mrs Wyllie additionally relied on the evidence of Mr Jessop, which had been tendered in the form of a sworn statement dated 29 March 2019. Mr Sugden objected to numerous parts of the brief of evidence of Mr Jessop as being not relevant. Mr Finnigan indicated that he intended to call Mr Jessop, and disagreed with the assessment as to the relevance of the evidence. In the end result, Mr Jessop was not called. I agree with Mr Sugden that as Mr Jessop was not called to give evidence and explain more fully what he had to say, much of his statement was of limited relevance.
170. Mr Jessop related his horticultural background and experience, particularly in Vanuatu. He knew RGL well from many visits. He was aware the business was for sale in 2008. When he learnt it had sold for VT 70 million he considered that to be a fair price. From his observations he considered Mrs Wyllie to be a dedicated and knowledgeable operator of the



business. On occasions Mrs Fisher asked for Mr Jessop's advice in relation to some aspects of the RGL business, mainly to do with the plants.

171. At around Easter 2010 Mrs Fisher approached Mr Jessop with an offer to manage RGL as she was ill and intending to return to Australia. Mr Jessop declined the offer; he had existing obligations and considered that RGL was not then operating at its optimal level.

172. Subsequently Mr Jessop learnt that Mr and Mrs Fisher had abandoned RGL. In October 2010 he was asked to do a valuation of RGL by Mrs Wyllie. He prepared his report after being on site for 3 days, counting the stock row by row. He concluded that the stock then was of a value of around VT 41 million; which he considered was less than half of what it had been when Mr and Mrs Fisher initially took over the business in 2009.

173. Although Mr Jessop's evidence was not tested in any way, I determined that it did not advance the case, for or against either of the parties.

(iii) The Geoffrey Gee & Partners Evidence

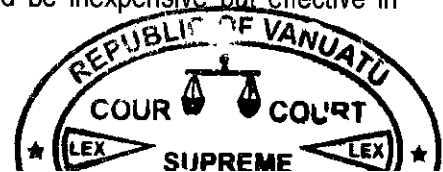
174. Mr Gee relied on his sworn statements of 29 March 2019 and 10 May 2019. Mr Sugden objected to parts of the briefs of evidence of Mr Gee as being submission rather than evidence. He objected to Mr Gee describing what certain correspondence related to, rather than simply appending the document. Mr Sugden submitted that Mr Gee cannot have known what instructions were given to Mr Thornburgh. I took these matters into account when considering what weight, if any, to give to Mr Gee's oral and written evidence.

175. Mr Gee was admitted in 1978. He has practised here in Port Vila since 1985, and as GGP since 1991. He stated the firm employed Mr Thornburgh as a Senior Associate between 2009 and 2012. He produced a number of relevant documents from his conveyancing file for Mr and Mrs Wyllie in respect of this matter, and also from Mr Thornburgh's file in respect of Mr and Mrs Fisher.

176. Mr Gee has acted for Mr and Mrs Wyllie since around 2000.

177. Mr Gee related the history of the negotiations in relation to the first proposed sale of RGL, and later the firm's first dealings with Mr and Mrs Fisher in relation to their application for residency and other matters which would enable their purchase of RGL. He was very conscious to set up a "Chinese Wall" in relation to GGP acting for both vendor and purchaser. He explained carefully what that entailed to Mr and Mrs Fisher both orally and in a later e-mail of 13 May 2009; and they accepted his proposal that GGP act for both the purchaser and the vendor in the S&P Agreement.

178. Mr Gee related the events leading up to the S&P Agreement, which he drafted after the parties had negotiated the contract between themselves. He explained the nature of holding the RGL shares in escrow, and that in his view that would be inexpensive but effective in



providing some security for Mr and Mrs Wyllie, while also protecting Mr and Mrs Fisher's interests. Mr Gee noted that Mr Thornburgh did not deal with Mr and Mrs Fisher signing the S&P Agreement – that was done by Mr Malcolm, another solicitor at the firm. Mr Gee went through the stages of settlement and arranging for the transfer of shares and resignation as Directors documents to be signed and held in escrow by GGP in it's Deeds system. The transaction settled on 30 September 2009. Mr Gee further noted that Mrs Fisher was aware of the "in escrow" aspect of the transaction as she made mention of that to Mr Thornburgh in an e-mail of 19 January 2010.

179. Mr Gee first heard of issues between Mr and Mrs Fisher and Mr and Mrs Wyllie in November 2009 – he received correspondence from Mrs Wyllie to the effect that Mr and Mrs Fisher were late in paying rent and vendor interest payments. That same issue was raised again in February and March 2010. Mrs Wyllie was concerned at that stage, as she stated in her e-mail to Mr Gee about 9 issues relating to how RGL was being run, and worrying about the likelihood of being repaid the vendor finance on 1 October 2010. In June 2010, Mr Gee came to learn that Mrs Wyllie's concerns had grown due to RGL's increasing liabilities and the general decline of the business.
180. On 11 June 2010, in light of the growing issues between the parties, Mr Gee spoke with Mr Thornburgh regarding the need for independence of legal advice for Mr and Mrs Fisher. Accordingly, Mr Thornburgh ceased to act for Mr and Mrs Fisher. Mr Gee received many further communications from Mrs Wyllie as she grew more concerned about the state of RGL, the arrears of payments due, and the need for Mr and Mrs Fisher to repay the vendor finance.
181. Mr Gee was asked to respond to the letter of 28 September 2010 purporting to repudiate the contract, which he did with a letter of his own the next day. He disagreed strongly with the suggestion by Mr and Mrs Fisher that a survey was to be done of the land occupied by RGL – it was agreed between the two sides that aerial photographs would suffice, and he was instructed accordingly.
182. Mr Gee denied any professional negligence on his part in relation to the S&P Agreement, or by GGP in relation to the whole transaction. He denied any breach of contract with Mr and Mrs Fisher. At no stage did he personally give any legal or other advice to Mr and Mrs Fisher.
183. Mr Gee produced a supplementary sworn statement dated 10 May 2019. In that he dealt with the numerous aspects of the Claim raised in the final Amended Claim and in the supporting sworn statements made by Mr and Mrs Fisher. The tenor of his responses was a complete denial of all the allegations.
184. The broad basis for the Claim against GGP is summarised by Mr Gee as due to proper legal advice not being given by GGP Mr and Mrs Fisher entered into the transaction to purchase RGL and ultimately suffering losses (damages). Mr Gee responded that GGP was



not involved with the negotiations leading up to the S&P Agreement – that all took place between the vendors and the purchasers.

185. The losses claimed totalled VT 113,621,837, which figure was arrived at by seeking to have refunded the VT 55 million initially paid to Mr and Mrs Wyllie, plus an additional almost VT 59 million brought by Mr and Mrs Fisher from Australia to Vanuatu, less the value of some assets purchased. Mr Gee disputed the amount, and questioned that if that was correct, why had there been need for vendor finance? He was concerned that if GGP were found to have been negligent or in breach of contract, that only consequential losses be attributed to GGP. He also referred to Mr and Mrs Fisher's obligations to take reasonable steps to mitigate their losses, and commented that their abandonment of the business had been imprudent and costly. Mr Gee further noted the evidence relating to the poor manner in which the business of RGL had been operated, which he considered must have contributed to the losses. He was concerned that GGP should not be held responsible for those losses.
186. Mr Gee's evidence was to the effect that the S&P Agreement was due to complete, only 3 days after Mr Sugden's letter of purported repudiation, by the payment of the vendor finance to Mr and Mrs Wyllie. GGP was ready and willing to deliver over the signed transfer of the RGL shares and to register the resignation as Directors on payment of the vendor finance. Those documents had been held in escrow as completed documents and GGP had instructions to settle the transaction. It was Mr and Mrs Fisher's choice to abandon the business and not complete the transaction.
187. Mr Gee gave evidence that the expenditure to set up the café within RGL was never in anyone's contemplation when GGP first became involved in the legal documenting of the agreement between the parties. Accordingly, he questioned how it was GGP should be held liable for such expenditure. Mr Gee further questioned how GGP could be held responsible for the cost of bringing Mr and Mrs Fisher's dogs/cats to and from Vanuatu – another part of the losses claimed against GGP. He noted that Mr and Mrs Fisher purchased their home at Bellevue prior to signing any documentation relating to RGL – yet GGP was being sued to recover the VT 20 million costs of Mr and Mrs Fisher's purchase of the home. Mr Gee knew nothing of the purchase of the home at Bellevue; and from a perusal of Mr Thornburgh's file, it appears he also had no correspondence relating to that.
188. Mr Gee also commented on the Claim for loss of earnings. Mr and Mrs Fisher maintained that had they remained in Australia they would have each earned A\$ 175,000 p.a. which they claimed as against GGP less their living expenses in Vanuatu of VT 8.8 million. Mr Gee queried on what basis GGP could possibly be held liable for that.
189. Mr Gee denied recommending to Mrs Fisher to seek vendor finance. In fact, on the information made known to him, Mr Gee would have advised Mrs Wyllie against such a move in May 2009. He referred to his 22 May 2009 e-mail to Mrs Wyllie pointing out the risk of offering vendor finance, on the transaction then being discussed. When the transaction was subsequently reduced to RGL only, without any land being purchased, Mr Gee was instructed



by Mrs Wyllie that vendor finance was part of the agreement. He accepted that instruction and acted accordingly – but he maintained that he had not spoken to Mrs Fisher regarding that aspect at any time.

190. Mr Gee appended the following further relevant documents:

- the completed Share Transfers, which had been held in escrow;
- a Minute of the Directors Meeting of 14 October 2009 recording the completed Transfers be “held on file” pending repayment of the vendor finance;
- the signed resignation of the RGL Directors, also held in escrow; and
- A Declaration by Mrs Wyllie recording the holding of the shares in escrow for the beneficiaries Mr and Mrs Fisher.

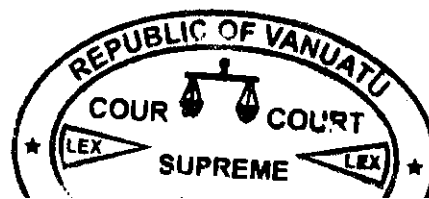
191. Mrs Wyllie elected to not cross-examine Mr Gee.

192. Mr Sugden spent some time with Mr Gee on the RGL 2008 Profit & Loss Accounts, dealing in particular and at some length with the entry for “Natural Increase”. Eventually Mr Sugden conceded that Mr Gee was not an accountant and was most probably unaware of the effect of that entry on the bottom line. The fact that Mr and Mrs Fisher utilised the same accounting entry in their subsequent RGL Profit & Loss Accounts for a substantially larger amount was not referred to by Mr Sugden.

193. Mr Sugden questioned Mr Gee about when Mr Thornburgh came to know the share transfers were held by GGP on file. The response was that Mr Thornburgh was aware “...all along”. Mr Thornburgh was said to have known that that would be the position until the vendor finance was repaid.

194. Mr Sugden also spent some time questioning Mr Gee about land transactions, on the basis of comparing land acquisitions with the acquisition of the RGL shares. Mr Gee saw no real similarity between the two, and explained why in a rational manner. I found this to be an unhelpful discussion between them.

195. The central theme of the claimants' case was that GGP had not dealt with Mr and Mrs Fisher appropriately. Namely, that Mr and Mrs Fisher had not been given, as Mr Sugden maintained was required under the S&P Agreement, the RGL shares transferred into their names; and they had also not been made the Directors of RGL. What was claimed is that they had, in effect, been running the RGL operation on behalf of Mr and Mrs Wyllie with no rights of their own as to ownership of the business or assets. It was this that was said to be a fundamental breach of the S&P Agreement contract entitling repudiation. That state of affairs was said to be entirely GGP's responsibility due to the manner in which Mr Gee had structured



the transaction; and therefore it was claimed that all Mr and Mrs Fisher's resultant losses were to be made good by GGP.

196. In response to that proposition, which was outlined in Court in a much more detailed manner than the brief summary above, Mr Gee responded with constant denials. The more telling of his answers summarises his position:

"...they [Mr and Mrs Fisher] still took over the business. They had VIPA, they had VAT registration, they ran the business accounts, had they made a profit for the year, that would have been theirs. It was their business."

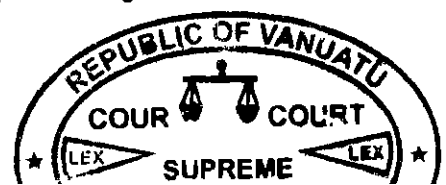
197. Mr Gee maintained that the "escrow" provisions were for the benefit of both the vendors and the purchasers; that the mechanics of the transaction were appropriate, and also stated that GGP had previously utilised this type of structure in similar situations. He specifically disagreed with Mr Sugden that other steps should have been put in place. Mr Gee considered nothing amiss in GGP acting for both the vendor and the purchaser.

198. In my assessment, the cross-examination of Mr Gee did little to undermine the GGP defence – indeed Mr Gee's denial of all negligence on the part of GGP was not significantly challenged. The cross-examination did not enhance the claimants' case. Much of the cross-examination was simply debate between Mr Sugden and Mr Gee as to what was the best way to legally structure the agreement reached between Mr and Mrs Fisher and Mr and Mrs Wyllie, each being entrenched in their views.

199. My assessment of Mr Gee is that he was a straight-forward no-nonsense witness who answered all questions put to him succinctly without any evasiveness. He did not appear to be comfortable in the Court surroundings, but given the nature of the allegations against him and his firm and the time lapse between the events occurred and the trial, that was perhaps understandable. The aggressive and unstructured manner of the cross-examination would not have put the witness at ease. Despite Mr Gee's discomfort I had no doubts that he was honest and doing his best to assist the Court. He had a good grasp of the facts relating to the transaction, aided no doubt by the copious documentary evidence available to him. I considered him to be an accurate and honest reporter of the events that he was privy to.

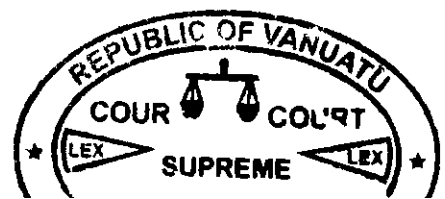
200. Mr Nalyal provided a sworn statement dated 29 March 2019 which he relied on. Mr Sugden indicated that he did not need to cross-examine Mr Nalyal, on the proviso that he was not later criticised for not doing so. Mr Sugden set out his understanding as to the legal position created by the S&P Agreement in his written objections, which differed from Mr Nalyal's opinion. Mr Sugden did not want to be seen as agreeing with the legal opinions of the witness simply because he did not challenge them by means of cross-examination.

201. Mr Nalyal set out his legal résumé. His legal experience comprises some 20 years of legal practice in Vanuatu, much of it dealing with commercial matters. He was asked to comment on whether a separate survey plan is required to support the registration of a sub-



lease of part of an underlying lease. His view was that such is not ordinarily required or desirable in Vanuatu. Having seen the aerial photographs used in this instance, Mr Nalyal considered that more than sufficient to accurately delineate the affected area.

202. Mr Sugden decided not to let his opportunity to question Mr Nalyal slip. However, in my view the questioning did not advance matters further.
203. In my final conclusion, the question as to whether Mr Nalyal or Mr Sugden was correct is immaterial. Nothing turned on the point.
204. Mr Darlow gave his evidence via video-link from Auckland. He relied on his sworn statement of 29 March 2019. As in his approach to Mr Nalyal's evidence, Mt Sugden did not see the need to cross-examine Mr Darlow as Mr Sugden's position was as stated in his memorandum, which was clearly that he did not accept Mr Darlow's evidence.
205. Mr Darlow is a New Zealand solicitor with significant conveyancing experience and expertise, both of which were not challenged. He had been provided with a large volume of the material in relation to this case to assist him with his evidence. This evidence centred on the standard of care expected of competent solicitors acting reasonably as the law requires that to be considered: *Bannerman Brydone Folster & Co v Murray* [1972] NZLR 411 and *Cavell Leitch Pringle & Boyle v Thornton Estates Ltd* [2008] NZLR 637. His evidence as to this went unchallenged.
206. Looking at the agreement reached between the parties, Mr Darlow considered that alternative methods of settling the transaction were possible. He gave the examples of Mr and Mrs Wyllie taking a mortgage over the RGL shares or a debenture over RGL's assets. However, he could see nothing inherently prejudicial to the parties with the approach taken by Mr Gee.
207. Mr Darlow did not agree with the statement in the final Claim that there was no valid lease as he considered the aerial photographs to sufficiently delineating the relevant area. He further considered that not obtaining a registered survey of the sub-lease area did not equate to GGP falling below the requisite level of competence of a reasonable solicitor.
208. Mr Darlow considered the claimed breach of the escrow provisions as put by Mr Sugden in the Claim, and concluded that GGP had in fact acted appropriately.
209. Mr Darlow went on to consider whether Mr and Mrs Fisher's alleged losses would have accumulated even if (i) GGP had not acted for both vendor and purchaser, and (ii) Mr and Mrs Fisher had engaged an independent legal advisor to represent them in the transaction. He concluded that an independent lawyer would likely not have advised Mr and Mrs Fisher against the transaction and the manner it was structured to be completed; and further, that such a solicitor would have had no qualms with the way the transaction was structured.



210. Mr Sugden tested each of Mr Darlow's opinions and suggested Mr Darlow was incorrect as he was relying on New Zealand rather than Vanuatu law. To a certain degree, Mr Sugden was correct – in particular regarding whether there needed to be a registered survey. However on the issues of negligence and independent legal advice, Mr Darlow was unshakable in his views.

211. I accepted Mr Darlow as both an honest and accurate witness, whose evidence and opinions could be relied on within his areas of competence and experience. That said, overall his evidence was not significantly determinative.

212. Mr Maurice Phung, a registered Surveyor also produced a sworn statement in support of GGP's defence dated 31 January 2019. He was not called as a witness, but the statement was relied on. In it he was asked if he was able to produce a survey of the proposed sub-lease from the aerial photos actually used. He stated that he was so able.

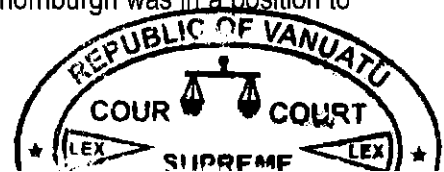
213. Nothing turned on this evidence.

H. The Witness Not Called

214. Very serious allegations were made by Mr and Mrs Fisher regarding the legal work done for them by Mr Thornburgh. They attributed a number of oral statements to him, on which they heavily relied in order to establish negligence on the part of GGP. The following examples were attributed to Mr Thornburgh by Mr and Mrs Wyllie:

- On any issue – “this is what happens in Vanuatu”;
- Aerial photographs would suffice for the purposes of the sub-lease;
- The holding of the share transfers and resignation of Directorships “in escrow” was akin to those documents being held on mortgage;
- It was safe to pay the VT 55 million deposit immediately because the release of VT 15 million, regardless of what the S&P Agreement recorded, would be refunded if the transacted did not complete;
- The shares would be transferred to Mr and Mrs Fisher on payment of the deposit; and
- Mr and Mrs Fisher would be the Directors of RGL as from their payment of the deposit.

215. Accordingly, Mr Thornburgh was a hugely important witness for the claimants as they held the burden of proof, and these attributed statements required a rather tortuous interpretation of the relatively plain wording of the contract. Mr Thornburgh was in a position to



give highly pertinent evidence on the issue of whether he did so advise Mr and Mrs Fisher, as they have alleged.

216. The fact that Mr Thornburgh was not called leads to an adverse inference being available due to his absence at the hearing. The inference is available against the Claimants relying on the authority of *Jones v Dunkel* [1959] HCA 8.

217. I consider that authority relevant in this instance.

218. I infer that had Mr Thornburgh been called as a witness for the Claimants his evidence would have (i) undermined the Claim, and (ii) supported the defence presented by GGP. On the same basis, I anticipate his evidence would also have assisted Mr and Mrs Wyllie's defence, but to a lesser extent.

219. The Claimants' failure to call Mr Thornburgh was a material factor in my ability to fairly determine the issues between the parties. Mr Sugden pointed out that it was open to the Defendants to have called Mr Thornburgh, which was true. There was however no obligation on the Defendants' part to adopt that course of action; nor was there any onus on their part to establish non-liability. I further noted that Mr Gee had indicated a willingness to call Mr Thornburgh, but that this was thwarted by Mr Thornburgh's reluctance to complete even a sworn statement of the evidence he could give.

220. The lack of any supporting evidence by Mr Thornburgh weakened the case presented by the claimants. This was one factor in my overall assessment of the claimants' case.

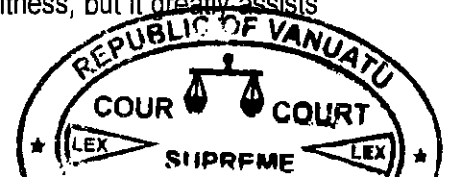
I. The Rule in *Browne v Dunn*

221. In New Zealand this old (1894) common law rule has now been codified and enlarged in the Evidence Act 2006 as set out below. I consider this to clearly set out the position as it applies to all jurisdictions based on the United Kingdom legal system, which includes Vanuatu:

"92. Cross-examination duties

- (1) In any proceeding, a party must cross-examine a witness on significant matters that are relevant and in issue and that contradict the evidence of the witness, if the witness could reasonably be expected to be in a position to give admissible evidence on those matters.
- (2) If a party fails to comply with this section, the Judge may –
 - (a) grant permission for the witness to be recalled and questioned about the contradictory evidence; or
 - (b) admit the contradictory evidence on the basis that the weight to be given to it may be affected by the fact that the witness, who may have been able to explain the contradiction, was not questioned about the evidence; or
 - (c) exclude the contradictory evidence; or
 - (d) make any other order that the Judge considers just."

222. Essentially, what must be done is to put contradictory matters to all witnesses, so that they have the opportunity to respond. That is not only fair to the witness, but it greatly assists



the fact-finder in determining which version is to be accepted. I note that the obligation is mandatory.

223. Mr Sugden relied on this proposition to support his clients' hearsay assertions of what Mr Thornburgh had told them by way of legal advice. Mr Sugden was correct in submitting that Mr Finnigan had not specifically challenged either Mr or Mrs Fisher regarding that evidence. He submitted that such a lack of cross-examination gave greater credibility to their evidence as it was unchallenged. However, Mr Gee's correspondence in opposition to Mr Sugden's letter of purported repudiation of the contract, the various statements of Defence filed with the Court and also Mr Gee's two briefs of evidence made it perfectly plain that these hearsay allegations were not accepted as being accurate or truthful.

224. As Mr Sugden had indicated he did not intend to call Mr Thornburgh, it is fair to assume that Mr Finnigan saw no benefit in cross-examining Mr and Mrs Fisher as to this, thereby merely giving them the opportunity to re-state the allegations. I did not see the lack of cross-examination as harmful to GGP's defence. It was certainly not supportive of the contention that the lack of challenge indicated the Court should accept the accuracy and veracity of either Mr or Mrs Fisher in this regard.

225. As previously explained, my assessment of the veracity and reliability of Mr and Mrs Fisher is that both had questionable motives for giving the evidence they did, and that both were unreliable. Mr Sugden's attempts to bolster the weight that could be attached to Mr and Mrs Fisher's evidence on this basis failed.

226. I do not rely on this evidential rule in relation to Mr Sugden's brief cross-examinations of Mr Nalyal and Mr Darlow, as he explained his position prior to the witnesses giving their evidence.

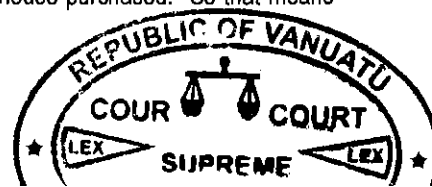
J. Changing Nature of the Claim

227. I have commented earlier on the several versions of the Claim. I would describe the amendments as a moveable feast - a feast in that every aspect of perceived loss was made part of the final Amended Claim. It was moveable in that it went through a large number of iterations.

228. In fact the amended Claim covered no less than 47 pages. It is correct, as Mr Sugden lamented, that the Court had insisted on some of the amendments. However, the majority of the changes made cannot be made attributable to the Court.

229. It is pertinent that at the conclusion of the claimant's evidence and prior to any defence evidence being led, Mr Sugden made the following concession:

"My clients concede that they can't claim as part of proper restitution, restitution the purchase of the house. The reasonable restitutio begins from the period they were here with the house purchased. So that means



the restitutio is restricted to the money they spent on the running of the business and the time that was spent there.”

230. It is further pertinent that in his closing submissions Mr Sugden accepted there was no duty on GGP to advise Mr and Mrs Fisher regarding financial matters – why then the cross-examination of Mr Gee as to this? Further than that, the whole issue of the sub-lease was not relevant to my final determinations as there was no resultant loss to Mr and Mrs Fisher – a matter again only accepted by Mr Sugden at the very end of the case. Again, why then the substantial amount of evidence relating to this aspect?

231. Regrettably, the answer to those questions lies in the omnibus approach adopted – throw in every allegation in the hope that something sticks and only concede where absolutely necessary. Such conduct greatly undermined the genuineness of the Claim.

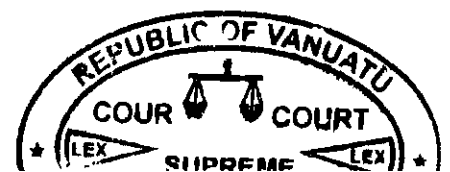
K. Summary of Issues that Required Determination.

232. Mrs Wyllie did not falsely inflate the RGL purchase price. She did not adversely interfere in the running of the RGL operation. She assisted Mr and Mrs Fisher as much as she could, and often against their strong resistance. This resistance seemed to be founded on a belief of their innate superior ability, their poor business management skills and a lack of appropriate knowledge of what the business entailed. Mrs Wyllie did all she could to assist Mr and Mrs Fisher to succeed in running the business of RGL, and with good reason for doing so as she and her husband were still owed a further VT 15 million.

233. I do not accept that Mrs Wyllie was responsible for the loss of interest in purchasing RGL by Mr and Mrs Green. Mrs Wyllie had previously given such financial accounts as there were for RGL to Mr and Mrs Fisher. She had supplied all the electronic facilities to be able to re-produce that information. There were no further accounts available to be provided. In any event, even if that were not the position, this would have had no impact on the final decisions required to determine this case.

234. I do not consider that Mr and Mrs Fisher had any justification to repudiate the S&P Agreement. The escrow arrangements were clearly explained to them in advance of the transaction, and over the course of the following approximately 12 months. Those arrangements are clearly spelled out in the contract, such that any business person would comprehend the implications. I do not accept that Mr Fisher with his experience and expertise in Real Estate, and Mrs Fisher whom I assessed as being commercially literate and intelligent, could have been in any way confused regarding what was to occur with their deposit, and further when they would finally become the sole owners of the business. Their purported reliance on statements attributed by them to Mr Thornburgh to the contrary is rejected as their evidence as to this is unsupported fiction.

235. I do not accept that Mr and Mrs Fisher did not get the bargain they entered into. All that was required to complete their bargain was to pay the outstanding vendor finance in order



to receive in return the RGL shares and resignations. They would then have been in a position to register Mr and Mrs Wyllie's resignations of Directorship and register themselves as the Directors of RGL. As Mr Gee stated, they already had VIPA and VAT registrations in their name, and all profits derived while Mr and Mrs Fisher were operating the business certainly did not go anywhere near Mr and Mrs Wyllie.

236. No blame for the manner in which the transaction unravelled is attributable to GGP. I do not accept Mr Gee made negligent errors in his handling of the matter or that GGP acted in breach of their retainer. I also do not accept the evidence suggesting that Mr Thornburgh gave the incompetent advice attributed to him by Mr and Mrs Fisher, such that the advice could be held against GGP.

237. As the purported repudiation of the agreement was not justifiable, Mrs Wyllie's counterclaim for the VT 15 million vendor finance was effectively undefended.

238. However, her stepping back into the business and attempting to salvage what she could was carried out of her own volition. Mr and Mrs Fisher had abandoned the business, and the costs of Mrs Wyllie's actions cannot be legally attributed to Mr and Mrs Fisher. Mrs Wyllie had no obligation to step back in; and Mr and Mrs Fisher had no legal obligation to recompense Mrs Wyllie for doing so. Mrs Wyllie ran the business as a business, and was entitled to give herself wages and pay any expenses incurred. She is however not entitled to claim such matters back from Mr and Mrs Fisher.

239. Mr and Mrs Fisher are not victims here. They did have some adverse operating conditions against them, but they can also be seen to have caused many of their own problems. They undoubtedly did not undertake sufficient due diligence prior to entering into this transaction. Thereafter, they did not help themselves by their loose controls of the business, their poor financial oversight and their perhaps naïve and enthusiastic development of the business.

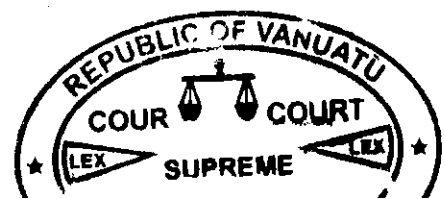
240. Mr and Mrs Fisher do not accept that the failure of RGL as a business is any of their own making and want to instead place blame on Mr and Mrs Wyllie and GGP. In reality, the apportionment of blame lies with the couple for the unfortunate consequences of this undertaking.

L. Result

241. The claim by Mr and Mrs Fisher as against Mr and Mrs Wyllie fails and is dismissed.

242. The claim by Mr and Mrs Fisher as against GGP fails and is dismissed.

243. The counterclaim by Mr and Mrs Wyllie as against Mr and Mrs Fisher succeeds in so far as Mr and Fisher must pay the vendor finance owing of VT 15m, plus interest from 1

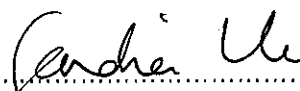


October 2010 at the rate set out in the contract namely 8% per annum for the period up to 1 October 2010 and at 12% per annum thereafter until the date of this judgment.

244. The counterclaim as to VT 10.5m stock was abandoned by Mrs Wyllie during the trial.
245. In so far as the counterclaim seeks payment for services supplied largely by Mrs Wyllie to RGL, following the departure from the premises by Mr and Mrs Fisher, that claim fails and is dismissed.
246. Mr and Mrs Fisher's claim as against GGP having failed, there is no need for the Court to go on to consider GGP's indemnity or contribution claim as against Mr and Mrs Wyllie. That is also dismissed.
247. GGP is entitled to costs. I invite GGP to file and serve written submissions as to the appropriateness or otherwise in their view that I should, or have the ability to, award indemnity costs against Mr and Mrs Fisher. The submissions are to be filed and served within 14 days from the date of this judgment. Mr Sugden then has a further 14 days in which to respond. I intend to deal with the matter on the basis of the written submissions received, unless either party wishes to additionally make oral submissions. Counsel should make that known in their written submissions so that an appropriate time can be allocated in the near future.
248. Mrs Wyllie has not been legally represented throughout the proceedings, and she is therefore not entitled to costs in the same way – see Civil Procedure Rules Rule 15.4. However, I am satisfied that I retain a discretion to award her costs on the basis of her loss of opportunity to undertake paid work while devoting herself to defending the claim against her. Mrs Wyllie is also able to claim by way of costs her actual disbursements paid out in her defence and counter-claim. I invite Mrs Wyllie to file and serve written submissions in support of any claim by her for costs. The submissions are to be filed and served within 14 days from the date of this judgment. Mr Sugden then has a further 14 days in which to respond. I intend to deal with the matter on the basis of the written submissions received, unless either party wishes to additionally make oral submissions. That should be made known in the submissions filed.

Dated at Port Vila this 5th day of August 2020

BY THE COURT


Justice G.A. Andrée Wiltens

