

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## CIVIL DIVISION

### CIVIL CLAIMS LIST

VCAT REFERENCE NO. C313/2017

### CATCHWORDS

Claim for monies lent; dispute as to amount lent; claim that value of work performed by the Respondent on the Applicant's motor car be off-set against the money advanced as loans by the Applicant; dispute as to value of such work; defence of accord and satisfaction; claim of duress; whether there was an accord.

<b>APPLICANT</b>	Anna Vida
<b>RESPONDENT</b>	Tony (Antonios) Sideris
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Member B. Ussher
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	26 August 2019
<b>DATE OF ORDER</b>	16 September 2019
<b>DATE OF REASONS</b>	16 September 2019
<b>CITATION</b>	Vida v Sideris (Civil Claims) [2019] VCAT 1442

### ORDERS

#### The Tribunal orders that:

- 1 The Respondent, Tony (Antonios) Sideris must pay to the Applicant, Anna Vida, the sum of \$13,824.52.
- 2 Having regard to s115B(1) of *the Victorian Civil and Administrative Tribunal Act 1998* and being satisfied that the Applicant has substantially succeeded in her claim, the Tribunal orders that the Respondent, Tony (Antonios) Sideris, must reimburse the Applicant, Anna Vida, the application fee of \$458.60 and the hearing fee of \$362.90 being a total of \$821.50.

B. Ussher  
**Member**

**APPEARANCES:**

For the Applicant

Anna Vida, litigant in person

For the Respondent

Mr Hender, of counsel

## REASONS

- 1 This proceeding consists of a claim for money lent. The Applicant Anna Vida alleges that she loaned the Respondent Tony (Antonios) Sideris sums totalling \$33,051.44 between December 2010 and March 2014 while she and he were in a romantic relationship.

### The Loans

- 2 Ms Vida's application, filed in January 2017, sets out the following loans:

DATE	AMOUNT	PURPOSE
2.12.2010	\$2,000.00	(cash) to repay friend
8.12.2010	\$3,000.00	(cash) to repay friend
15.12.2010	\$2,000.00	(cash) to repay friend
1.3.2011	\$4,500.00	(internet transfer) to pay legal costs
16.5.2011	\$624.10	(VISA) to pay car registration
16.5.2011	\$326.80	(VISA) to pay fine
16.5.2011	\$1,450.59	(VISA) to pay for car parts
17.5.2011	\$643.15	(VISA) to pay for work wear
6.9.2011	\$1,500.00	(cash) to pay tax
26.11.2011	\$400.00	(cash) to pay contractor's wages
30.11.2011	\$3,000.00	(internet transfer) for workshop supplies
4.12.2012	\$1,000.00	(internet transfer) for workshop supplies
28.4.2013	\$250.00	(cash) for contractor's wages
11.3.2014	\$5,000.00	(internet transfer) for tax bill
12.3.2014	\$4,000.00	(internet transfer) for tax bill
13.3.2014	\$4,000.00	(internet transfer) for tax bill
<b>BALANCE</b>	<b>\$33,051.49</b>	

### The Set-Off

- 3 Mr Sideris does not dispute that some money was lent to him by Ms Vida. He has acknowledged that loans amounting to \$21,500 were received by him. However, he says that he has performed work on Ms Vida's car, as a panel-beater, and has paid other car repairers for work done on Ms Vida's motor car. The value of this repair work and the payments are set out in the table below:

<b>INVOICE</b>	<b>AMOUNT</b>
Alchemy Car Repair, 11 May, 2016	\$632.50
Eny Auto Electrics, 23 May, 2016	\$1,420.00
Joe's Classic Garage, 12 October, 2016	\$820.00
Flash Auto 13 February, 2017 -for work done in March 2014	\$5,200.25
Flash Auto 13 February 2017 – for work done in April 2016	\$3,853.30
Flash Auto 13 February 2017 – for work done in November 2016	\$495.00
Flash Auto 24 February 2017	\$250.00
Northern Auto 24 April 2017	\$660.00
Flash Auto 27 April 2017	\$2,458.50
Flash Auto 28 May 2017 – for work done in May 2014	\$3,041.50
BBE Auto 7 March 2017	\$2,864.00
<b>TOTAL</b>	<b>\$21,695.05</b>

- 4 In addition, Mr Sideris said that he had repaid a total of \$2,000 to Ms Vida in March and April 2017. Mr Sideris contends that this sum and the sums set out in paragraphs 3 above should be set-off against the loan monies.
- 5 Ms Vida accepted that Mr Sideris had worked on her car but she disputes the extent and value of the work. Ms Vida values this work at \$7,905 and is prepared to set off that sum against the loan monies owed by Mr Sideris. Further, Ms Vida acknowledged that Mr Sideris had made repayments to her totalling \$2,000. These repayments were made by way of electronic funds transfer (EFT) on 30 March, 21 April and 28 April 2017. As a result Ms Vida alleged that the balance of the outstanding loan stood at \$23,146.49 at the date of hearing.

### **The Summary Dismissal Application**

- 6 Mr Sideris brought an application pursuant to section 75 of the *Victorian Civil & Administrative Act 1998* (the “VCAT Act”) to have the proceeding summarily dismissed on the basis that the Tribunal did not have the jurisdiction to hear and determine a claim for money lent when the loan had not occurred within the context of “trade or commerce”.
- 7 This application was heard on 13 February 2019. Senior Member Vassie determined that the Tribunal did have jurisdiction to hear and determine a proceeding for the recovery of money lent, notwithstanding that the loan was not made in the course of trade or commerce.<sup>1</sup> The summary dismissal application was, accordingly, dismissed and Ms Vida’s claim proceeded to hearing.

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<sup>1</sup> *Vida v Sideris* [2019] VCAT 490 (5 April 2019)

## The Defence

- 8 At the hearing, Mr Sideris raised the following defences to the claim:
- a He denied receipt of the cash payments. These sums amounted to \$9,150;
  - b He admitted receipt of the internet transfers but did not admit that those sums were advanced as loan monies for the purposes alleged;
  - c He performed work on Ms Vida's car which had a greater value than that acknowledged by Ms Vida. Ms Vida had not paid him for this work and the proper value of this work should be set off against any monies owed by him to Ms Vida;<sup>2</sup>
  - d He had arranged for third-party mechanics to perform work on Ms Vida's car. He had paid those mechanics and those payments should be set off against any sum he might owe Ms Vida;<sup>3</sup> and finally
  - e After the issue of the VCAT proceedings, in March 2017, he and Ms Vida had come to an agreement to resolve the dispute. The terms of this agreement were as follows:
    - i he admitted that he owed Ms Vida \$21,500;
    - ii Ms Vida agreed that he had repaid \$15,000 in the last couple of weeks (that is, in early March 2017);
    - iii that he still owed \$5,500<sup>4</sup> [sic] to Ms Vida; and
    - iv he would pay the balance without the necessity of VCAT making any orders against him.
  - f He subsequently made payments totalling \$7,232.50 either to, or to the benefit of, Ms Vida between 30 March and 27 April 2017, thereby satisfying the agreement;
  - g By reason of the matters set out in sub-paragraphs (e) and (f) above Mr Sideris raised the defence of accord and satisfaction.
- 9 In reply, Ms Vida denied that there had been any accord and satisfaction with respect to the claim. She maintained all her claims but said that she only wanted relief in the sum of \$13,824.52 from Mr Sideris.

## Summary of the Relevant Evidence

### (i) Anna Vida

- 10 Ms Vida gave evidence and produced a large number of documents. Her evidence can be summarised as follows:
- a She had a romantic relationship with Mr Sideris from 2010 to 2015. She met Mr Sideris at a bar in about March 2010. At that time she had

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<sup>2</sup> See the table subjoined to paragraph 3 above.

<sup>3</sup> Ibid.

<sup>4</sup> On the basis of the facts recorded in the preamble, the proper figure should have been \$6,500.

just gone through a divorce and she considered that she was emotionally vulnerable.

- b On 2 December 2010, Mr Sideris telephoned her repeatedly throughout the day asking for money so that he could repay a debt. He said that he needed to pay a total of \$10,000 to “his ex”. She arranged to meet with Mr Sideris that night. She then made two withdrawals of \$1000. She handed this money to Mr Sideris later that night. Before doing so, she told Mr Sideris that, as she had gone through a divorce she could not afford to give him the money, the money was a loan. Mr Sideris said that he understood.
- c On 8 December 2010, Mr Sideris again telephoned her repeatedly and asked for a further loan. Ms Vida withdrew \$3000 from her account and met Mr Sideris later that day in Moorabbin. She handed the cash to Mr Sideris. She said that she would help him as much as she could but the money was a loan and that she wanted it to be repaid. Mr Sideris said that he would repay the money.
- d On 15 December 2010, Mr Sideris requested a further loan. He said that he needed the money to repay a friend. She gave him a further \$2,000 in cash. She again said that this money was a loan. Mr Sideris replied, “I will get it back to you as quickly as I can, Babe.”
- e On 1 March 2011, Mr Sideris asked for a further loan. He said that he needed \$4,500 to pay legal costs he had incurred. Ms Vida transferred that sum via the internet into Mr Sideris’ account.
- f On 16 May 2011, Mr Sideris telephoned Ms Vida and said that he needed some money to pay pressing bills. He asked her to give him her VISA card account number. She gave him the account number. Mr Sideris then said, I need the other two numbers. Look on the card and tell me the other numbers. She then found the remaining numbers and told him. When she received her Visa card account she noted that Mr Sideris had paid \$624.10 for motor car registration, \$326.80 as a penalty to Glen Eira City Council, \$1,450.59 to Brighton Toyota and \$643.15 for work apparel to TSCO Pty Ltd.
- g On 6 September 2011, Ms Vida met with Mr Sideris in Fitzroy Street, St Kilda. Mr Sideris asked for a further loan of \$1,500 to pay a tax bill. Ms Vida agreed to lend him this money. She withdrew the sum from an ATM in St Kilda at 11:26 pm that night and gave the money to Mr Sideris. Mr Sideris said, “Book a room, Baby.” They then spent the night together at an apartment in St Kilda.
- h On 25 November 2011, Mr Sideris telephoned Ms Vida and told her to book a room at the Oaks, an apartment complex in the city. She did so and Mr Sideris spent the night with her. The next morning she drove Mr Sideris back to his workshop at Moorabbin. On the way he said that he needed a loan of \$400 to pay a contractor. He directed Ms

Vida to an ATM at a homemakers centre near Moorabbin. Ms Vida withdrew the sum of \$400 and handed it to Mr Sideris. She waved the ATM receipt at him and said, “A lot of money is adding up”. He said that he would pay it all back.

- i At 8:00pm on 4 December 2011, Mr Sideris telephoned Ms Vida. She recalled the time because it was just before her son’s birthday. Mr Sideris said that he needed a loan of \$1,000 to pay for workshop supplies. He said that he needed it, “now.” Ms Vida transferred the money into his account via the internet.
  - j On 27 April 2013, Mr Sideris telephoned Ms Vida and asked her to arrange a room so that they could spend the night together. She said that she was going out to see friends that night. Mr Sideris said that he wanted to spend the night with her. She left her friends’ house at between 10:30 and 11:00pm and met Mr Sideris at his workshop in Moorabbin. They spent the night together. The next morning he asked for a loan of \$250. He said that he needed to pay a contractor. She drove to a nearby ATM and withdrew \$250 in cash. She handed the money to Mr Sideris.
  - k In early March 2014, Mr Sideris and Ms Vida spent a night together at the Buckingham Motel in Moorabbin. Ms Vida reminded him of the money he owed her. Mr Sideris said that she had nothing to worry about because he was expecting an inheritance. He said that he had assets of \$5 million tied up in his father’s estate. He said that he would pay back all the money as soon as possible. Mr Sideris then said that it was their anniversary. Ms Vida said that meant little to her. Mr Sideris then said that he needed money to pay his tax bill. He joked that he might go to gaol if he could not pay the tax. On the following days Mr Sideris continued to ask for money. On 11 March 2014, Ms Vida transferred \$5,000 into his account, the next day \$4,000 and the following day another \$4,000.
  - l After she issued the VCAT proceedings, Mr Sideris paid her \$500 on 21 April 2017, \$1,000 on 28 April 2017 and \$500 on 30 April 2017.
- 11 In relation to the work performed on her motor car by Mr Sideris, and the value of that work, Ms Vida said as follows:
- a On two occasions, Mr Sideris had repaired her car following motor vehicle accidents. These repairs were covered by her insurer. On two other occasions, Mr Sideris had done repair works on her car. This work had been done in 2016 and 2017. She had not received any invoices setting out the value of this work until 2017.
  - b In 2017, Ms Vida received an invoice from Mr Sideris for work allegedly completed in March 2014 in the sum of \$5,200.25. The invoice was dated 13 February 2017 (that is, shortly after the issue of the VCAT proceedings). Ms Vida said that the only work done on her

car in 2014 was done following the motor car accident and the costs were paid to Mr Sideris by her insurer. It was put to her that after her car was damaged in the accident, she instructed Mr Sideris to repair items that were not covered by the accident insurance. She denied that and pointed out that the accident had occurred in July 2014 and the accident repair works had been performed in August 2014. She produced the claim documents to prove these times. She said that the invoice claiming \$5,200.25 was fictitious. Mr Sideris produced photographs of Ms Vida's car which he said showed the repairs to her rear panels and boot being done in 2014. It was pointed out that the boot strut warranty label was dated 26 April 2017. Mr Sideris agreed that the photographs were not taken in 2014.

- c Mr Sideris produced an invoice dated 28 May 2017 which allegedly related to work done in May 2014. The invoice was for the sum of \$3,041.50. Ms Vida said that the only work done on her car in 2014 was done in August and was paid for by her insurer. She said that the invoice was false.
- d Mr Sideris produced an invoice dated 13 February 2017 for work done in April 2016 for the sum of \$3,853.30. Ms Vida agreed that Mr Sideris had worked on her car at that time. However, she said that he had not tinted the rear window nor detailed the interior as claimed. When these items were removed the proper value of the work came to \$3,413.30. Ms Vida said that she had off-set that sum from the loan monies owed to her by Mr Sideris.
- e Mr Sideris produced an invoice from a business called Alchemy, Cosmetic Car Repair, dated 11 May 2016, for the sum of \$632.50. Mr Sideris said that the invoice covered the removal of dents to the rear body work of Ms Vida's car. He said that he paid the invoice. Ms Vida denied that any dents had been removed from her car.
- f Mr Sideris produced an invoice from BBE Auto dated 7 March 2017 for the sum of \$2,864. Ms Vida said that BBE did not repair the ECU on her car. The firm attempted to do so but failed. The work was subsequently done by another auto-electrician. She was prepared to allow half the sum claimed for that item plus half the labour costs. She accepted the other items on the invoice. This reduced the sum to \$1,684. She said that she had off-set that sum from the balance of the loan monies.
- g Mr Sideris produced an invoice from a business called Northern Automotive dated 24 April 2017 for the sum of \$660. Mr Sideris said that this invoice covered repairs to the ECU of Ms Vida's car. He said that he had paid it. Ms Vida said that she was prepared to allow this sum to be off-set against the loan.
- h Mr Sideris produced an invoice from ENY Auto Electrics Pty Ltd dated 23 May 2016 for the sum of \$1,420. Mr Sideris said that the



invoice covered repairs to the heater of Ms Vida’s car. He said that he paid the invoice. Ms Vida denied that her car had been repaired by ENY Auto Electrics.

- i Mr Sideris produced a hand-written invoice from a business styled as Joe’s Classic Garage, dated 12 October 2016, for the sum of \$820. The invoice did not relate to Ms Vida’s motor car. Ms Vida said the registration details corresponded to a car owned by a family member and she had never requested any repair works to this car.
- j Mr Sideris produced an invoice dated 13 February 2017 for the sum of \$495. Mr Sideris said that the work had been done in November 2016. Ms Vida agreed that the work as alleged had been done and she had off-set this sum from the monies owed to her by Mr Sideris.
- k Mr Sideris produced an invoice from an unnamed towing business dated 24 February 2017 for the sum of \$250. Ms Vida said that the motor was not towed. She said that this claim was false.
- l Mr Sideris produced an invoice dated 27 April 2017 for the sum of \$2,458.50. He said that this invoice covered the final cost of repairs he performed on Ms Vida’s car. Ms Vida said that Mr Sideris had done the work covered by the invoice, save that he had not “reconditioned the headlights”. When the cost for that item was deducted the invoiced amount came to \$2255. Ms Vida was prepared to off-set that sum against the loan monies.

12 On the basis of the evidence set out above, Ms Vida was prepared to off-set against the loan monies, the sums set out in the table below:

INVOICE	AMOUNT
Flash Auto, 13 February, 2017	\$3,413.30
BBE, 7 March 2017	\$1,684.00
Northern Auto, 24 April, 2017	\$660.00
Flash Auto, 13 February, 2017	\$495.00
Flash Auto, 27 April, 2017	\$2,255.00
<b>TOTAL TO BE SET OFF</b>	<b>\$8,507.30</b>

- 13 Allowing for the sums set out in the table above and the \$2,000 repaid to her by Mr Sideris by way of EFT, Ms Vida contended that the balance of the loan monies owed to her by Mr Sideris was in the sum of \$22,544.19.
- 14 In addition to the matters above, Ms Vida also said the following under cross-examination:
  - a She had recorded the loans in a note-book. When asked to produce the book, she said that she did not have it with her. She said that by “book” she meant that she kept post-it notes and bank vouchers in a drawer.

- b She rejected the proposition that she was never in a romantic relationship with Mr Sideris. She produced photographs showing Mr Sideris embracing her. She also produced cards and notes which she said had been sent to her by Mr Sideris.
- c She agreed that her relationship with Mr Sideris had deteriorated by 2014. She agreed that she had not responded warmly when Mr Sideris reminded her that it was their anniversary in March 2014. She agreed that she, nevertheless, paid him a total of \$13,000 shortly thereafter so that he could pay a tax bill.
- d She said that in early March 2017, Mr Sideris contacted her and bullied her into agreeing to have her VCAT application struck-out. She said that he dictated an email message that said as follows:
- he owed her \$21,500;
  - he had repaid \$11,000 in the last couple of weeks;
  - he still owed her \$10,500
- e She said that she typed out this email and sent it to him at 3:23 pm on 17 March 2017, so that he could send it to her from his email address. She said that Mr Sideris wanted her to then forward the email to VCAT with a request from her that the VCAT proceeding be struck-out by consent.
- f She received an email from Mr Sideris four minutes later (3:27 pm). She forwarded the email to VCAT as requested by Mr Sideris at 3:38 pm. She did not notice that the figures in this email had been altered from the original. The changes were as follows:
- he had repaid \$15,000 in the last couple of weeks: and
  - he still owed her \$5,500
- g She said that she was very busy at work and only realised that the figures had been altered a day after she had emailed VCAT. She then received an email signed by Mr Sideris on 27 April 2017 wherein he claimed that she owed him \$1,732.50 and that he would not return her car until this sum was paid. She refused to pay that sum.
- h She said that Mr Sideris had not paid any money to her in February 2017.
- i She received another email from Mr Sideris wherein he demanded \$732.50 for the return of her car. She refused to pay that sum but collected her car from Mr Sideris' workshop. Mr Sideris repaid \$2,000 to her in late April 2017.
- j She said that she had never agreed to settle her VCAT claim. She said that Mr Sideris had not repaid any money at the time of the above emails. He did pay her sums totalling \$2,000 in April 2017.

(ii) Tony Sideris

15 Mr Sideris gave evidence as follows:

- a He was the proprietor of a panel shop. He first met Ms Vida in March 2010, through mutual friends. He denied that he had had an intimate relationship with her. He said that she was mad and that she was trying to break up his marriage. He said that he had realised that within 6 months of having met Ms Vida. He agreed that this realisation had not prevented him from maintaining contact with Ms Vida for several years nor had it prevented him from accepting loans from her.
- b He denied that he had ever taken any money in cash from Ms Vida. He denied that he had used her VISA Card. He said that he never had the card. He was reminded that the allegation was that he had used the VISA card number and other details to pay for his own bills. He denied that and said that Ms Vida had used the card to pay his registration without his knowledge. He was asked how she could do that without his registration invoice details. He said that she looked it up on the internet. He was asked how she paid the fine levied by the City of Glen Eira. He said that she had looked that up on the internet. He was asked how she could have paid the other two accounts. He said that he had given her those accounts to pay. He was asked why he had done that, particularly given that he thought Ms Vida was trying to break up his marriage. He said that he was not very smart.
- c He acknowledged that Ms Vida had transferred \$13,000 into his account in March 2014. He said that that was to pay for “vandalism”. He produced no evidence with respect to the alleged vandalism. He claimed that he could give no other details because he had lost his memory.
- d He said that he had no independent proof, that is banking records, to show that he had paid the disputed invoices from BBE Auto – Electrics, Alchemy, Joe’s Classic Cars and ENY Auto Electrics. He relied on the fact that the copy invoices had been stamped “Paid”. He said that he paid the BBE invoice in cash. He said that he paid more than \$3,000 in cash to BBE because he also paid other accounts at the same time. He did not know why he paid in cash.
- e He said that on 17 March 2017 he dictated the email to Ms Vida which contained the following details:
  - he owed her \$21,500;
  - he had repaid her \$11,000 in the last couple of weeks; and
  - he still owed her \$10,500.
- f He did not know how the second email, which contained different figures, had been created.

(iii) Alex Sideris

- 16 Mrs Alex Sideris said that she was the wife of Tony Sideris. She said that she worked at her husband's panel shop as a book-keeper. She helped prepare the invoices and she was responsible for most of the correspondence.
- 17 She could not explain why invoices were created in February 2017 for work on Ms Vida's motor car that had allegedly been carried out in 2014 and 2016.
- 18 Mrs Sideris said that her car had been vandalised in 2014. She said that a roller door had also been vandalised at that time. She said that she believed that the money paid by Ms Vida in March 2014 was to cover this damage. She said that she did not know who had caused the damage. No culprit had been prosecuted but she believed that Ms Vida did the damage. She was asked the cost of the total damage. She estimated \$9,000. She could not explain why Ms Vida had transferred \$13,000. She could not say when in 2014 the vandalism had occurred.
- 19 Mrs Sideris said that she was aware of the email sent to Ms Vida on 17 March 2017. She said that the figures in the second email (that is the email that asserted that her husband still owed Ms Vida \$5,500) was the correct email. She could not account for the figures in the other email.
- 20 She said that before any emails had been sent to Ms Vida on 17 March, 2017, she had gone through all her husband's records and had worked out that he owed Ms Vida \$21,500. This did not include any of the cash payments but did include all the money transfers, including the transfers amounting to \$13,000 in 2014. She was asked why she had determined that this money should be returned to Ms Vida when she had earlier said that Ms Vida had paid this money to her husband as compensation for criminal damage. She said that she did not understand the question. When pressed she said that she did not know why she determined that this money should be returned to Ms Vida. She denied that the \$13,000 was used to pay her husband's tax bill.

## **Findings**

### Credibility of the Parties

- 21 In matters of this sort, credibility of the respective witnesses is all important. Counsel for Mr Sideris contended that Ms Vida's evidence should be discounted. He put to Ms Vida that her evidence was fabricated to take revenge on Mr Sideris because Mr Sideris had obtained and enforced an intervention order against her. She denied that proposition.
- 22 I accept that the end of the relationship between the Applicant and the Respondent was marked by a series of mutual intervention orders and prosecutions for contraventions of an order. I accept that this indicates that emotions were very heightened. I consider that it would be remarkable if this

level of emotion did not impact upon the party's perceptions and recall of the facts. Indeed, Ms Vida gave evidence that, on occasions, she was emotionally over-wrought and/or emotionally intimidated.

23 Counsel's contention, must, however, be placed in context. On that point, I note that Mr Sideris did not deny the substance of Ms Vida's case, namely, that he was indebted for a significant sum as a consequence of loans made to him by Ms Vida. The debate was rather about the extent of the loans and the measure of the repayments. Mr Sideris:

- acknowledged an indebtedness to Ms Vida in the sum of \$21,500;
- claimed that he had repaid this debt by performing work and paying for work on Ms Vida's car which, in total, exceeded \$21,600; and
- that he had then paid instalments amounting to \$2,000 to clear the debt.

24 Despite, the history of heightened emotions, I found that Ms Vida gave forthright and detailed evidence which was corroborated by contemporaneous documents, such as the banking records. For example, she gave evidence that she had slept with Mr Sideris at his workshop on the night of 27/28 April 2013. She gave a highly detailed account of the bedding arrangements at the workshop. She said that, very early on the morning of 28 April, 2013, Mr Sideris asked her to withdraw \$250 in cash so that he could pay a contractor. Ms Vida said that she went to the nearest ATM and withdrew the cash.

25 Mr Sideris for his part denied that Ms Vida had ever stayed the night at his workshop. He also denied that he had ever received cash from her at any time. Ms Vida, however, produced an ATM voucher which recorded that she had withdrawn \$250 in cash from the ATM (near the workshop) at 7:36 am on the morning of 28 April 2013. While this does not prove that the money withdrawn was provided to Mr Sideris as a loan, it does add credence to Ms Vida's evidence whilst diminishing the credibility of Mr Sideris' denial that she was at the workshop on that morning.

26 Further, Ms Vida's evidence was given in a very open and forthright manner. She clearly believed that she had been wronged by Mr Sideris. Under cross-examination she was defensive and made some overstatements, for example, the statement that she kept "a book" which recorded all the loans. I also found her claim that she had been bullied and intimidated into sending the email of 17 March 2017 to Mr Sideris to be an exaggeration.

27 In my view, however, these observations do not markedly diminish the strength of her evidence. Overall, she gave a detailed account of each of the payments, together with details of all the surrounding events. I consider that her evidence had a fundamental ring of truth.

28 In contrast, the evidence of Mr Sideris was minimal. When he gave any detail, he was usually tripped up as the detail did not accord with some

objective fact.<sup>5</sup> Thereafter, he gave no details, claiming that he had lost his memory. Accordingly, I am not prepared to accept his evidence where it conflicts with the evidence of Ms Vida or is otherwise unsupported by independent evidence or objective fact.

29 Mrs Alex Sideris, understandably, had no actual knowledge of the loan dealings. Her evidence was given to assist her husband.

30 By reason of the above matters, I accept the evidence of Ms Vida that:

- she loaned a total of \$33,051.49 to Mr Sideris;
- the correct value of the work performed on her motor car (and to be set off against the loan) is \$8,507.30; and
- Mr Sideris repaid her the sum of \$2,000 by electronic fund transfers in 2017.

### The Accord & Satisfaction

31 Mr Sideris submitted that he could rely upon the defence of accord and satisfaction. Accord and satisfaction is the purchase of a release from an obligation by means of valuable consideration.<sup>6</sup>

32 The defence is based on two components, an “accord”, that is to say an agreement whereby the applicant promised to abandon her claim in return for a promise by Mr Sideris that he would pay her an agreed sum of money and the “satisfaction”, that is to say, the fulfilment of the promise to pay the agreed sum of money.

33 If both components are fulfilled then, that is the end of the Applicant’s claim. Accord and satisfaction is a complete defence and the Applicant cannot sustain a claim for the remainder of the loan monies.<sup>7</sup> If there is an accord but the Respondent fails to provide the satisfaction by fulfilling his promise, then the Applicant has foregone her original rights and may only enforce the settlement accord.<sup>8</sup>

34 Ms Vida contended that there was no valid accord because she had been bullied into sending the email on 17 March 2017 to Mr Sideris. She said that Mr Sideris had dictated the content and that the content was false. It was her contention that these factors proved that her will had been overborne. Accordingly, if there was an “accord” it was obtained by duress or through the exertion of undue influence.

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<sup>5</sup> See for example, the summary of his evidence on the Visa card payments in paragraph 15(b) above and see also the evidence of Ms Vida in paragraph 11(b) above disproving Mr Sideris contention that he did work to the value of \$5,200 in March 2014 on Ms Vida’s car after the car was damaged in an accident (an accident which demonstrably had occurred in July 2014).

<sup>6</sup> *British Russian Gazette & Trade Outlook Ltd v Associated Newspapers Ltd* [1933] 2 KB 616, per Scrutton LJ at 643.

<sup>7</sup> *D&C Builders v Rees* [1966] 2 QB 617.

<sup>8</sup> *FCT v Orica Ltd* (1998) 194 CLR 500.

- 35 I do not accept that Ms Vida's conduct resulted from duress. She gave no evidence of any threats by Mr Sideris to do her harm. Rather, she said that she was unsettled by his persistent pleas. I accept that Ms Vida felt under pressure and I accept that Mr Sideris spoke aggressively to Ms Vida. However, I do not accept that Ms Vida's will was so overborne by this conduct that her actions, in writing out and transmitting the email, were not voluntary.
- 36 I consider that Ms Vida acceded to Mr Sideris' demands because, at that time, she was prepared to compromise her claim to put an end to the stress and inconvenience of the VCAT proceedings. While she was under stress, that stress was no more than that commonly experienced by self-represented litigants faced with prosecuting strongly contested claims. Any "undue influence" Mr Sideris may have had during the course of the relationship had dissipated. The evidence disclosed that, by March 2017, Ms Vida had come to distrust Mr Sideris.
- 37 On the issue of duress or undue influence, I also note that Ms Vida gave evidence that she had subsequently made the following settlement offers to the solicitor engaged by Mr Sideris:
- \$18,298.87 on 27 July 2017; and
  - \$11,595 on 21 January 2019.

Ms Vida did not allege that these offers were forced from her by duress or undue influence. The final offer is in striking distance of the offer contained in the email sent by Ms Vida to Mr Sideris on 17 March 2017. This reinforces my view that Ms Vida was prepared to settle her claim in March 2017 for \$10,500. These latter offers were rejected by the Respondent prior to the determination of the summary dismissal application.

- 38 By rejecting Ms Vida's contention of duress and undue influence, I do not mean to say that an accord was reached. I note that the proposal contained in the email transmitted by Ms Vida to Mr Sideris was not the proposal returned to her. The arrangement was that Mr Sideris would retransmit Ms Vida's email from his address, without alteration, and Ms Vida would then send it to VCAT as evidence of the compromise. Both the Applicant and the Respondent acknowledged that the email was materially altered. This alteration was done quickly, so quickly that a simple arithmetic error was made by the sender. The altered email was then transmitted to Ms Vida within three minutes of her transmission.
- 39 Mr and Mrs Sideris could not explain how the alterations came about. Mr Sideris said that the email he dictated to Ms Vida, and which she transmitted to him, contained the terms discussed. Mrs Sideris, on the other hand, said that she had never seen the first email and that the details contained in the second email were correct. Neither Mr Sideris nor Mrs Sideris gave evidence that Ms Vida had actually agreed to the terms of the second email.

- 40 Ms Vida said that she had never discussed the altered terms and was not conscious of them. She assumed that the email transmitted by Mr Sideris was in the same terms that he had dictated to her. She forwarded it to VCAT on that assumption. I find that to be the case. Ms Vida was not alerted to any changes and she expected the email to be a retransmission of the email she had sent to Mr Sideris. That assumption was induced by Mr Sideris' representations and by the almost instantaneous return of the email.
- 41 I have found that Ms Vida forwarded the email to VCAT under the mistaken belief that it was a retransmission of the email she had written. I conclude that the person who altered the email, before quickly transmitting it to Ms Vida, in all probability, sought to induce that error.
- 42 The burden of proving the accord rests on Mr Sideris. Given the above matters, I cannot be satisfied that he has discharged that burden. He did not accept the settlement contained in Ms Vida's email. A counter proposal was sent under his name, from his email address which did not accord with any discussions he had had with Ms Vida. I find, as a matter of fact, that Ms Vida did not accept this counter-offer. She forwarded the email to VCAT under the mistaken belief that it was merely a retransmission of her earlier email. I find that either Mr or Mrs Sideris were complicit in inducing that error and, that being so, Mr Sideris cannot gain a benefit from that mistake.<sup>9</sup>
- 43 I find that there was no accord. That being so, I conclude that it is open to Ms Vida to maintain her full claim against Mr Sideris.
- 44 By reason of my findings set out in paragraph 27 above, Ms Vida has proved that the balance of the loan monies owing to her by Mr Sideris stands in the sum of \$22,544.19. However, Ms Vida has limited her relief to \$13,824.52 and has abandoned any claim for monies in excess of that limitation. Accordingly, I have made orders that reflect my findings and Ms Vida's claim for relief.

### **Written Reasons**

- 45 At the conclusion of the hearing, Ms Vida stated that she wanted written reasons. I expressed the view that the parties should consider carefully whether they wanted the details of this claim to be put into the public domain. Ms Vida maintained her request for written reasons.
- 46 Having considered the provisions relating to written reasons, I find that I am obliged to provide these reasons, given Ms Vida's request.

**B. Ussher**  
**Member**

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<sup>9</sup> See *Easyfind (NSW) Pty Ltd v Paterson* (1987) 11 NSWLR 98; *Mohamed v Farah* [2004] NSWSC 482.