

BETWEEN: National Bank of Vanuatu Limited

Claimant

AND: Abel Louis

Defendant

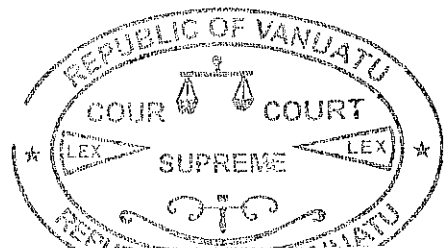
Date of CONFERENCE: *27th day of August, 2018 at 2:00 PM*

Before: *Justice David Chetwynd*

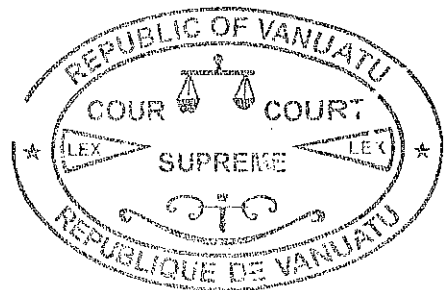
In Attendance: *Mr Hurley for Claimant
Mr Abel Louis in person*

JUDGMENT

1. In 2010 the Claimant bank ("NBV") agreed a mortgage with the Defendant. He borrowed VT9,00,000 from NBV secured by a mortgage over this property title No. 11/OH22/073. The Defendant accepts he executed a mortgage with NBV.
2. Problems began in 2013 when the Defendant's employment contract with UNELCO was terminated. Money was transferred from his savings account to the loan account. The details are set out in the sworn statement of Mr Steven Buchanan filed on 16th August 2018.
3. The Defendant took umbrage at this and the relationship between him and NBV deteriorated. The Defendant says that by transferring money from his savings account to the loan account NBV was taking responsibility for the loan.



4. The Defendant does not dispute the last payment made in respect of the mortgage was in December 2014. The Defendant also says the actions by NBV were tantamount to a notice of demand.
5. The Defendant's defence is misconceived. He always remained responsible for servicing the mortgage. He alone remained responsible for making sure the mortgage did not go into arrears. Even if the Defendant was correct that the actions of NBV constituted a notice of demand, and I do not accept the argument it was, NBV did nothing to enforce the demand at that time.
6. We then arrive at a situation is in March 2017 when a notice of demand was served on the Defendant by NBV. A copy was annexed to Mr Buchanan's sworn statement filed on 17th July 2017 at page 38. The Defendant admits receipt of the notice on 10th March 2017.
7. The Defendant accepts he has not paid the sum demanded. He accepts the last payment made was in December 2014. He accepts the mortgage is in default still.
8. The law in this regard has been well settled since Tuohy J's decision in National Bank of Vanuatu v. Tambe [2007] VUSC 105. It was also set out by Sey J in Anz Bank (Vanuatu) Ltd v. Traverso [2002] VUSC 222.
9. There are four requirements to be met before a mortgagee can exercise powers of sale in a mortgage in a standard form. First, it has to be established that the Defendant has granted a mortgage over the property the mortgagee wants to sell. Secondly, it has to be shown that the mortgage is in default. Thirdly, the mortgagee must show that a notice of demand has been served on the Defendant mortgagor. Finally, the mortgagee must prove the notice has not been complied with and that the arrears remain.
10. The Defendant admits all this. His argument is that NBV has assumed responsibility for managing the mortgage. As indicated earlier such an argument is totally misconceived.



11. Turning now to Rule 9.6(7) of the Civil Procedure Rules, if the Court is satisfied the Defendant has no real prospect of defending the claim and that there is no real need for a trial of the claim the Court may give Judgment for the Claimant. I am satisfied the Defendant has no real prospect of defending the claim. Accordingly I give Judgment for the Claimant.

12. The Claimant is entitled to:-

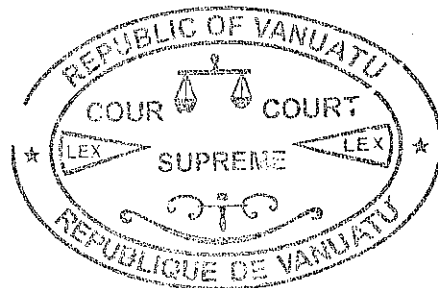
1. An order that the Claimant, as Mortgagee, be empowered to sell and transfer leasehold property contained and described in leasehold title number 11/OH22/073 by such means and in such manner as it shall deem fit.
2. An order that pending such sale and transfer the Claimant, as Mortgagee, or any agent or agents duly authorized by it in writing, be empowered to enter on the Property and act in all respects in the place and on behalf of the proprietors of the lease, and to apply in reduction of the monies due and owing to the Claimant all or any rent received in respect of the Property.
3. An order that the purchase monies to arise from the sale and transfer of the Property and the monies received (if any) by the Claimant pending such sale and transfer shall be applied:

(A) Firstly, in payment of the expenses occasioned by the sale and transfer or going into and remaining in possession (as the case may be), including the costs of this application;

(B) Secondly, in payment of the monies then due and owing to the Claimant as Mortgagee;

(C) Thirdly, in payment of subsequent registered mortgages or encumbrances (if any) in order of their priority; and

(D) Fourthly, the surplus (if any) shall be paid into this Honourable Court pending further order.



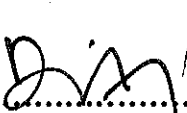
4. The Defendant give possession of the Property to the Claimant within 28 days.

5. The Claimant has leave to issue an enforcement warrant (non-money order) in respect of the Property.

13. Clause 4.21 contains a power for NBV to recover "all costs and expenses" incurred by it in enforcing the security. However, for the avoidance of doubt, the defendant is ordered to pay costs as set out in the Mortgage deed.

DATED at Port Vila this 28th day of August, 2018.

BY THE COURT


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David Chetwynd
Judge

