

BETWEEN: WESTPAC BANKING CORPORATION
Claimant

AND: TCG PROPERTIES LIMITED
Defendant

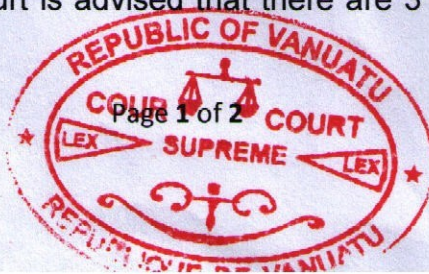
Claimant: Mr. Hurley
Defendant: Mr. Nalyal

DECISION

Today was set down to hear an Application to Strike out the Counterclaim and also an Application for Summary Judgment. On the commencement of the hearing today the Court was advised by counsel that Defendant has now admitted that the Claimant has the right to a power of sale over the Defendant's properties. The properties concerned are a farm which is situated on two titles and a house that is situated on one title. The power of the sale over these properties is therefore granted.

The Defendant has asked for a stay of the powers of sale for six months to enable Mrs. West, a director of TCG Properties to first attempt to obtain a sale of the farm property on two titles. There are no up to date valuations on these properties but it is estimated the farm property might be worth approximately VT42 million and the house might be worth approximately VT61 million. The amount owing to the Claimant as at 17th March 2009 was a sum of up to VT50 million. Once again that is an approximate figure and some interest would have accrued since that time. However the Defendant is concerned that the figure of approximately VT50 million may include interest at a very high rate of interest as recorded in loan agreements that the Defendant has up to now disputed the validity of. The Claimant has indicated that a settlement with the Defendant would not necessarily involve the Claimant claiming interests at the higher rate but is not able to advise the Court today whether the amount owed as at 17th March 2009 includes interest at a high or lower rate. That amount will need to be relooked at by the Claimant when the point is reached when properties are sold and repayment is made to the Claimant.

The Defendant has requested a stay of 6 months in order to obtain a sale of farm property. The Court is advised that there are 3 interested purchasers, 2



of which will be looking at the farm property in February 2010 and one is expected to be looking at the property in March 2010.

The Court has a concern with granting a stay. If for example the Defendant accepted a sale at a very low price then the Claimant would be prejudiced in having its security reduced if the property was to be sold well under value. It clearly that is not in the interests of the Defendant but it is nevertheless a possibility the Court must take into account when making its decision. The Court will grant the stay for the power of sale until 31st March 2010. That stay is granted on the strict understanding that no contract for the sale of any properties by the Defendant which have the security registered over them in favour of the Westpac Banking Corporation are sold without first having the Claimant's consent to that sale as it is necessary to protect the Claimant's security position. It would be appropriate that should the Defendant obtain a sale of the farm property that counsel for the Defendant would advise counsel for the Claimant of the terms of the sale in order to obtain that consent.

Given the history of this matter between Mrs. West and Westpac Banking Corporation it is a matter that be best dealt with through counsel rather than between Mrs. West and Westpac direct.

This matter will go to a conference on 31 March 2010 at 10.15 a.m. At that conference progress with respect to the sale of the farm property will be reviewed and also at that conference the Claimant is requested to update the amount it says is owed to it by the Defendant setting out the principal amount the interest in this claim and the dates that is appropriate to the charging of that interest.

The costs in this matter at this stage will be remained in the cause.

DATED at Port Vila, at 18th day of February, 2010.

BY THE COURT


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N. R. DAWSON
Judge

