

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

Civil Case No. 153 of 2012

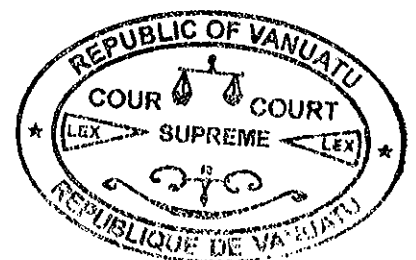
BETWEEN: ANZ BANK (VANUATU) LIMITED
Claimant

AND: NEIL SLATER
Defendant

Hearing: *17 May 2013*
Before: *Justice Robert Spear*
Appearances: *Mark Hurley for the Claimant*
No appearance for the Defendant (John Malcolm)

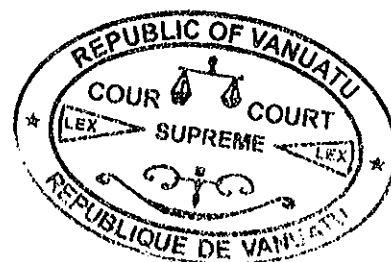
JUDGMENT

1. The ANZ Bank seeks summary judgment on part of its claim to allow it to seize and sell four properties pursuant to its rights as mortgagee. The defendant Neil Slater has been represented by Mr John Malcolm who is not in attendance today. Mr Hurley was asked by Mr Malcolm to inform the Court that Mr Malcolm is without instructions and he has been unable to obtain instructions from Mr Slater. Furthermore, Mr Malcolm proposes to file notice that he has ceased to act for Mr Slater. That notwithstanding, Mr Malcolm has forwarded copies of all documentation to Barrett and Partners who are the accountants from Mr Slater and his regular agents in Vanuatu.
2. The claim is a standard claim for orders permitting a mortgagee sale on the basis that the debt secured by the mortgage or mortgages is outstanding. The defence filed to the claim is brief in the extreme and resembles more a holding defence. Beside the averment that two of the properties secured by the mortgages have already been sold, another is not part



of the defendant's property and the fourth is not covered by a mortgage, the only real defence raised in respect of the 4 properties left are as follows:-

- a) That the defendant disputes the "accounting practices" of the ANZ Bank and denies having been provided proper accounts in the matter;
 - b) The defendant denies proper demands been made; and
 - c) He denies proper service.
3. No evidence has been filed for the defendant and so the positive assertion that there is a dispute as accounting practices is simply that – an unsubstantiated assertion.
 4. The evidence for the claimant presents the banking records which show the amount outstanding and how that has been calculated. Furthermore, there is evidence that demands have been made in respect of the debt secured by the mortgages and that there has been proper service on the defendant. It is unnecessary to go further than that when considering the defences raised so briefly by the defendant in his defence.
 5. The evidence for the claimant is by two sworn statements of Elizabeth David who is a Senior Manager with the ANZ Bank at Vanuatu. Those sworn statements are dated 4 September 2012 and 2 May 2013.
 6. It is trite law that summary judgment is available for a claimant if the Court is left satisfied that the defendant has no real prospects of defending the claim – see CPR 9.6 (7). Summary judgment is available for mortgagee sale proceedings – see *National Bank v. Tambe* [2007] VUSC 105.
 7. In the *Tambe* case, Tuohy J stated that the following was required to be proven by the claimant in order for summary judgment to be entered authorising the exercise of the powers of sale by a mortgagee:-



- a) that the defendant granted a mortgage of his property to the claimant;
 - b) that the mortgage was in default;
 - c) notice of demand in respect of the default was served on the mortgagor;
 - d) that notice of demand has not been complied with and the mortgagor remains in default.
8. The Court of Appeal recently upheld a summary judgment in similar circumstances relating to a mortgagee's power of sale – see *Traverso v. ANZ Bank (Vanuatu) Ltd* [2013] VUSA 8 at (30).
9. The defendant has raised nothing of substance that causes the Court any concern as to the correctness of the claimant's right to exercise its power of sale over the four properties covered by the mortgages. That right is well established by the evidence presented.
10. Accordingly, summary judgment is entered for the claimant permitting it to exercise its power of sale in respect of leasehold title numbers 11/OZ11/010, 11/OZ11/017, 12/0821/130 and strata title 95/SP0002 (being lot 95 in strata plan 0002 apartment 101). The detailed orders permitting the power of sale to be exercised are set out in the application for summary judgment and they will now be embodied in a draft order that Mr Hurley will present for the Court's consideration.
11. There is no order for costs as that will be recoverable under the mortgagee sale proceedings.

BY THE COURT

