

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

Civil
Case No. 19/2196 SC/CIVL

BETWEEN: APMA Financial Investment Centre
Claimant

AND: Tony Nicholls & Lily Nicholls
Defendants

Date of Hearing: 1 April 2020
Before: Justice V.M. Trief
In attendance: Claimant – Mr A. Godden
Defendants – Mr C. Leo

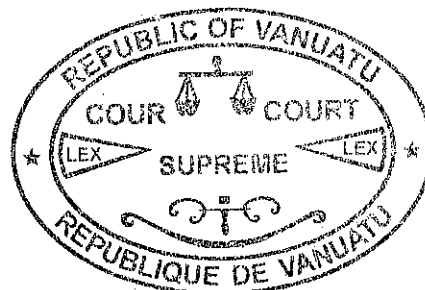
JUDGMENT

A. Introduction

1. This is an application for summary judgment on the basis that on the admissions made in the defence filed, the Defendants have no real prospect of defending the Claim. The Claimant filed the Sworn statement of Hillary Waqanitoga in support of its application.

B. Background

2. This matter involves a loan secured by a cash deposit and a leasehold property registered mortgage. It is alleged that the Defendants have failed to repay the loan as agreed. Accordingly the Claimant is seeking to avail itself of its legal contractual remedies under the loan agreement.
3. The Claim was filed in August 2019. Ms Waqanitoga's sworn statement sets out the factual basis for the Claim.



4. The loan was secured by way of a VT3,000,000 guarantee deposit and Property title 11/OH21/019 – first registered mortgage Tony Nicholls & Gladys Nicholls located at Manples area.
5. Following default in the repayments, the Claimant wrote to the Defendants on 16 March 2018 demanding the sum then owing of VT16,050,482. On 30 April 2018, the Claimant's lawyers wrote to the Defendants demanding the sum owed of VT15,809,922. There is a subsequent trail of correspondence between the parties showing that they agreed repayment at lesser amounts than what was in the loan agreement, but ultimately the Defendants could not make even these payments. Accordingly the Claimant commenced this action on 21 August 2019.
6. On 13 September 2019, Lily Nicholls filed the Defendants' Defence.
7. On 11 November 2019, Mr Leo commenced acting for the Defendants.

C. Application

8. The present application was filed on 2 December 2019. The application is for summary judgment on the basis that on the admissions made in the Defence, the Defendants have no real prospect of defending the Claim.
9. The Defence filed admits that there was a loan facility and that the loan was secured by a VT3,000,000 guarantee deposit and leasehold property 11/OH21/019 (paras 3 and 5 of the Defence). It also admits that a term of the loan agreement was that the Claimant could call on the securities upon the Defendants' failure to repay the loan in accordance with the loan agreement (para. 6 of the Defence).
10. There is no sworn statement in support of the Defence.

D. Discussion

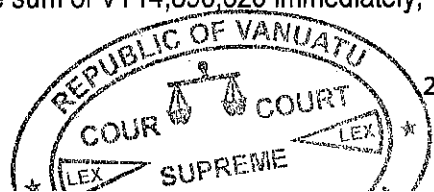
11. After discussion with his clients prior to the commencement of the hearing, when the hearing began Mr Leo informed the Court that the Defendants consent to summary judgment.
12. This is as it should be considering the admissions made in the Defence filed.

E. Decision

13. Summary judgment is granted, in the following terms:

WHEREUPON the Defendants have defaulted and are in breach of the loan agreement dated 22 March 2017, and the Claimant is legally entitled to call on the security as contained in the loan agreement, IT IS ORDERED THAT:

1. The Defendants pay to the Claimant the sum of VT14,890,620 immediately;



2. The Defendants vacate the land contained in leasehold title number 11/OH21/019 located at Tebakor/Manples area in Port Vila, within 7 days; and
 3. The Sheriff of the Supreme Court seize the land contained in leasehold title number 11/OH21/019 located at Tebakor/Manples area in Port Vila and put it up for sale, and repay the Claimant's money and the costs of these proceedings from the proceeds of the sale of the property.
14. The Claimant is entitled to the costs of this application and the Claim. These I fix at VT75,000. The costs are to be paid by the Defendants within 28 days.
- F. Enforcement
15. Pursuant to rule 14.3(1) of the *Civil Procedure Rules*, I now schedule a Conference **at 8.30am on 29 April 2020** at Hearing Room 1, to ensure the judgment has been executed or for the judgment debtors to explain how it is intended to pay the judgment debt. For that purpose, this judgment must be personally served on the Defendants.

**DATED at Port Vila this 1st day of April 2020
BY THE COURT**

V.M. Trief
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V.M. Trief
Judge

