

BETWEEN: GORDON ARNHAMBAT
Appellant

AND: BRED (VANUATU) LIMITED
Respondent

Dates of Hearing: 9 August 2023

Coram: Hon Chief Justice V Lunabek
Hon Justice JW von Doussa
Hon Justice R Asher
Hon. Justice OA Saksak
Hon Justice VM Trief
Hon Justice E Goldsbrough

Counsel: Appellant in person
S Mahuk for the Respondent

Date of Decision: 18 August 2023

JUDGMENT OF THE COURT

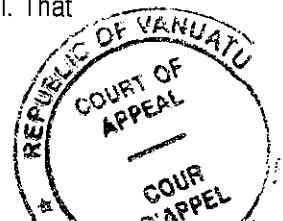
1. By an order dated 12 April 2023, Bred (Vanuatu) Limited, a local bank (Respondent), was empowered to sell and transfer leasehold property contained and described in title number 12/0631/345.

Background

2. A mortgage had been applied for and taken out by the Appellant in May 2011 to facilitate the construction of a dwelling house. It was a re-financing of an earlier facility with Westpac (Vanuatu) Limited. It began at VTVT 3,389,071 and steadily increased over time through various agreements executed between the parties to VT 4,560,000. As of 28 February 2023, the outstanding balance, including interest, was VT 4,719,720. That includes arrears of payments of VT 550,510.

The Appeal

3. This is an appeal against that order for sale. Five grounds of appeal are referred to in the Notice and Memorandum of Appeal filed on behalf of the Appellant by his then counsel. That

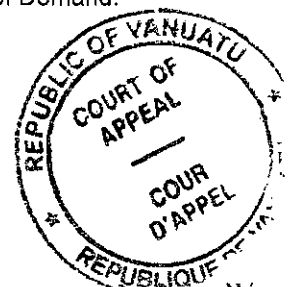


counsel filed a Notice of Ceasing to Act in May 2023, and no further Notice of Beginning to Act has been filed, and therefore the Appellant appears in this Court unrepresented. The two Appeal Books are both signed by the Appellant in person. A lawyer said to be prepared to act for the Appellant was described as unavailable for the hearing during this sitting of the Court of Appeal.

4. There seems to this Court to be no merit in adjourning these proceedings to allow counsel who still needs to file a notice of beginning to act. We determined that the appeal should proceed based on the comprehensive appeal books signed by the Appellant in person. Through those Appeal Books, a thorough picture of the matter is available to the Court.
5. In summary, the grounds of appeal complain that the Appellant needed to be allowed a more extended period to clear the arrears through his chosen methods. He was to sell assets, encourage his son to refinance the loan when confirmed in his new employment, clear off the arrears, and rely on the twenty-year term of the mortgage he maintained should still be available to him.

Discussion

6. In his oral submissions to this Court, he confirmed that the bank had done nothing wrong and agreed that he had not made payments as required, having been made unemployed some years ago. His son, who was present in Court, had recently been confirmed in his employment and was seeking finance to take over the loan with another bank. That process was, he explained, nearing completion. All he desired was further time to complete the process.
7. From the material before the Court, the Respondent bank served the Appellant with a Notice of Demand on 18 May 2022. The Appellant acknowledged service of that notice of demand. The matter came before the Supreme Court in September and October 2022, the case having been filed in August 2022; the judge was prepared to adjourn the application as the Appellant was in Malekula. By November 2022, Mrs T Harrison appeared for the Appellant and sought an adjournment. The matter appeared again before the same judge in December 2022 and then again in February 2023. A hearing in March 2023 was postponed due to the two cyclones in the country in the first week of March. The postponed hearing occurred on 3 April 2023 and finally on 12 April 2023 when Mrs Harrison sought a further adjournment to allow her client to explore the possibility of paying the outstanding arrears. The application for an adjournment was opposed and, ultimately, refused. On that day, the orders which are the subject of this appeal were made.
8. By default, the Appellant has had since 18 May 2022, when the Notice of Demand was served on him to make whatever arrangements he wished to clear the arrears and refinance his loan. It is now August 2023, and if the appeal is dismissed and the orders are put into effect, the Appellant will have had sixteen months or so since being served with the Notice of Demand.



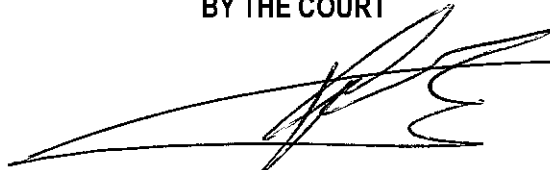
9. Once the Notice of Demand had been served under the terms of the Home Loan facility, the whole outstanding balance became due, and the 20-year loan period ceased to have any effect. This is provided in Clause 8, First Schedule of the mortgage deed dated 26 August 2011, on page 27 of the Appeal Book B.
10. That Clause 8 provision, a term of the contract which the Appellant entered into with the Respondent Bank, gives this Court no option but to dismiss the appeal. It makes no provision for further time to be given and does not permit this Court to grant such further time. The Appellant has been more than fortunate to have extended time as far as it has.

Decision

11. Nothing that the Appellant has put forward on this appeal, including an allegation that the bank was somehow negligent, for unspecified reasons but perhaps because a letter sent did not receive an immediate reply, has been made out such that this Court can interfere with the order made on 12 April authorising the Respondent Bank to exercise its power of sale and transfer.
12. Costs of and incidental to this appeal are ordered to be paid by the Appellant to the Respondent. We fix those costs at VT 50,000.

Dated at Port Vila, this 18th day of August 2023

BY THE COURT



Hon. Chief Justice Vincent Lunabek

