

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**  
*(Civil Appellate Jurisdiction)*

Civil Appeal  
Case No. 25/1818 COA/CIVA  
[2025] VUCA 34

**BETWEEN: GORDON ARNHAMBAT**  
First Appellant

**AND: MARY ARNHAMBAT**  
Second Appellant

**AND: FIONA ARNHAMBAT**  
Third Appellant

**AND: WILLIAM ARNHAMBAT**  
Fourth Appellant

**AND: WAIVEN ARNHAMBAT**  
Fifth Appellant

**AND: TANSY ARNHAMBAT**  
Sixth Appellant

**AND: FRIDAH ARNHAMBAT**  
Seventh Appellant

**AND: ELSEN ARNHAMBAT**  
Eighth Appellant

**AND: BRED (VANUATU) LIMITED**  
Respondent

**Date of Hearing:** 8 August 2025

**Before:** Hon Chief Justice Vincent Lunabek  
Hon Justice Mark O'Regan  
Hon Justice Anthony Besanko  
Hon Justice Oliver Saksak  
Hon Justice Dudley Aru  
Hon Justice Viran Molisa Trief  
Hon Justice Edwin Goldsbrough

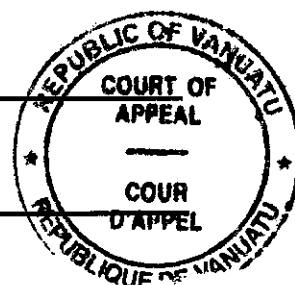
**Counsel:** Mr J Boe for the Appellants  
Ms S Mahuk for the Respondent

**Date of Decision:** 14 August 2025

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**JUDGMENT OF THE COURT**

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## Introduction

1. The first appellant, Gordon Arnhambat, is the registered proprietor of leasehold title 12/0631/345. Mr Arnhambat was indebted to the respondent BRED (Vanuatu) Limited (the Bank) and had granted a mortgage over the leasehold title in favour of the Bank as security for the loan. Mr Arnhambat defaulted in making payments due under the mortgage and the mortgage fell into arrears. The Bank sought and was granted mortgagee sale orders under section 59 of the Land Leases Act [Cap 163].
2. However, the appellants did not vacate the property, which led the Bank to apply to the Court for an order to evict the appellants. The eviction order was granted by the Supreme Court on 10 April 2025 (*BRED (Vanuatu) Ltd v Arnhambat* [2025] VUSC 76).
3. The appellants' Defence to the Bank's claim for an eviction order included a counterclaim in the following terms:

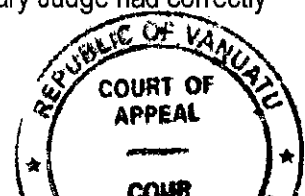
The Defendants counterclaim for compensation of their houses and residences located on the leasehold title 12/0631/345 referred to in the Defendants' sworn statements.
4. The Bank applied to strike-out the counterclaim. In a decision dated 10 June 2025, the Supreme Court upheld the Bank's application and struck out the appellants' counterclaim (*BRED (Vanuatu) Ltd v Arnhambat* [2025] VUSC135).
5. The appellants appeal against the strike-out decision to this Court.

## Supreme Court decision

6. In the Supreme Court decision, the primary Judge referred to the decision of this Court in *Hocten v Wang* [2021] VUCA 53, in which this Court confirmed that the Supreme Court has jurisdiction to strike out a claim if, among other things, it discloses no reasonably arguable cause of action. This Court said that the jurisdiction should be exercised sparingly, and the primary Judge in the present case adopted that approach.
7. The primary Judge noted that any right to compensation on the part of the appellants depended on whether the residences on the leasehold property were fixtures or chattels. She undertook an extensive review of case law from Australia, New Zealand and England and Wales and, having determined the legal test to be applied, applied that test to the six buildings on the leasehold property. She considered the evidence relating to those properties and concluded that all were fixtures and, therefore, formed part of the realty that was subject to the Bank's mortgage. She therefore struck out the appellants' counterclaim.

## Appeal

8. In the hearing in this Court, Mr Boe for the appellants accepted that the primary Judge had correctly



stated the law and correctly applied that law to the facts of the case. In other words, he accepted that there was no error in the primary Judge's decision.

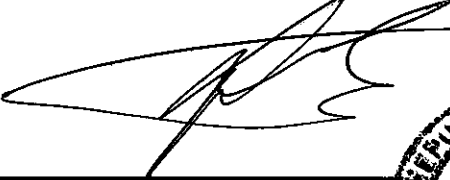
9. Having done so, he nevertheless urged this Court to intervene, asserting (without evidence) that Mr Arnhambat and his son were prepared to pay the Bank and that Mr Arnhambat needed money so that he could house himself and his family after vacating the leasehold property. Neither of those points have any relevance to the present appeal.
10. As we pointed out at the hearing of the appeal, when the property is sold by way of mortgagee sale the Bank will be entitled to the amount owed to it and the costs of sale, and the balance will be payable to Mr Arnhambat. On the evidence before the Court it seems clear that the value of the leasehold estate exceeds the amounts payable to the Bank and, if that is correct, the excess will be received by Mr Arnhambat after the sale. As the primary Judge pointed out in her decision, further delay in the sale and increasing the costs of realising the sale only serve to reduce the amount of the excess that Mr Arnhambat will ultimately receive. If Mr Arnhambat and his son were prepared to pay out the Bank and actually did so, no doubt the Bank would redeem the mortgage immediately. There was, however, no evidence that a payment was in prospect.
11. The appellants have not identified any error in the Supreme Court judgment and, in fact, have confirmed its correctness. In those circumstances the appeal must be dismissed.

### **Result**

12. The appeal is dismissed.
13. We make no order for costs, as these will be able to be recovered by the Bank under the terms of its mortgage.

**DATED at Port Vila, this 14<sup>th</sup> day of August 2025**

**BY THE COURT**

  
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Hon Chief Justice Vincent Lunabek

