

**BETWEEN: ANZ BANK (VANUATU) LIMITED**  
Claimant

**AND: CHARLES VATU**  
Defendant

**Date of hearing:** 1<sup>st</sup> day of February, 2024  
**Before:** Justice W. K. Hastings  
**Counsel:** Mr. M. Hurley for Claimant  
Defendant in person- not in attendance

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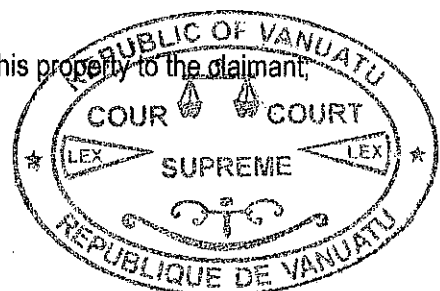
**DECISION**

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1. This is a request for default judgment. The defendant did not file a response within 14 days of service of the claim and did not file a defence within 28 days of service of the claim.
2. The claimant seeks orders that it, as mortgagee, be empowered to sell and transfer leasehold properties 03/OK94/034 and 11/OG34/089, and ancillary orders.
3. In its judgment in *Wilfred v Westpac Banking Cooperation* [2012] VUCA 31, the Court of Appeal recognised at [14] that in respect of a request for default judgment in a mortgagee power of sale action, the claimant "would have to set to the matter down for hearing, even on short notice, and have a formal trial".
4. There was no appearance by the defendant. The defendant was served with notice of today's hearing via his daughter whom he authorised to accept service on his behalf. She was also telephoned today by Mr Hurley's legal secretary and by my secretary.
5. This formal proof hearing proceeded in the defendant's absence.
6. Tuohy J set out what must be established before an application for default judgment is granted in a mortgagee power of sale action. In *National Bank of Vanuatu v Tambe* [2007] VUSC 105, Tuohy J said at [5]:

"what must be established is:

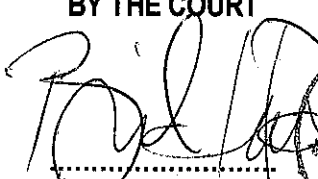
- i. that the defendant has granted a mortgage of his property to the claimant,



- ii. that the mortgage is in default;
  - iii. that the notice of demand has been served on the mortgagor;
  - iv. that the notice of demand has not been complied with and the mortgage remains in default."
7. In *Tambe's* case, Tuohy J was satisfied that the claimant had proved all of these elements by the sworn statement filed in support of the claim and granted the application for summary judgment.
8. The principles in *Tambe's* case were applied by Sey J in *ANZ Bank (Vanuatu) Ltd v Traverso* [2012] VUSC 222 at [15] and [25]; (decision upheld on appeal: *Traverso v ANZ Bank (Vanuatu) Ltd* (2013) VUCA 8).
9. In the present case, the evidence in support of the claim establishes:
  - a. The defendant granted a mortgage of the subject properties to the claimant: paragraphs 5 to 6, 10 to 11, 12 to 13, 19 to 22 of the claim and paragraphs 6 to 12 of the sworn statement of Chrissie Veremaito dated 29 September 2023; and pages 5 to 16 and 17 to 20 of exhibit **CV-1** of the Veremaito statement;
  - b. The mortgages are in default: paragraph 26 of the claim and paragraph 26 of the Veremaito statement;
  - c. The notice of demand dated 13 April 2023 was served on the defendant on 13 April 2023: paragraph 22 of the claim and paragraph 22 of the Veremaito statement; and page 52 of exhibit **CV-1** of the Veremaito statement;
  - d. The said notice of demand has not been complied with and the mortgages remain in default: paragraphs 26 of the claim and paragraph 26 of the Veremaito statement.
10. I am satisfied the claim has been formally proved. I will exercise my power under s 59 of the *Land Leases Act* [CAP 163] and grant the mortgagee power of sale orders and related relief sought.

**DATED at Port Vila this 1<sup>st</sup> day of February, 2024**

**BY THE COURT**

  
Justice W. K. Hastings

