

IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU

Civil Appeal
Case No. 18/2397 CoA/CIVA

BETWEEN: Abel Louis
Appellant

AND: National Bank of Vanuatu Limited
Respondents

Date of Hearing: 8 November 2018

Date of Judgment: 16 November 2018

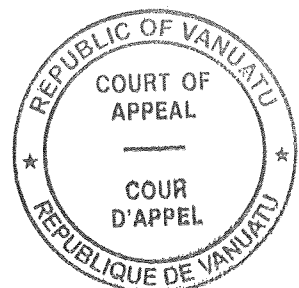
Before: Chief Justice V. Lunabek
Justice J. von Doussa
Justice R. Young
Justice D. Fatiaki
Justice O. Saksak
Justice D. Aru
Justice G.A. Andrée Wiltens

In Attendance: Mr E. Molbaleh for the Appellant
Mr M. Hurley for the Respondent

JUDGMENT

A. Introduction

1. This is an appeal against a bank seeking to enforce a mortgage default.



B. The Issues at trial and being appealed

2. Summary Judgment was entered against Mr Louis in August 2018. The basis for that was that there was no substance to the defence filed by Mr Louis against the National Bank of Vanuatu Limited's ("NBV") claim, or to his counter-claim, which was summarily dismissed.
3. Mr Louis sought to rely on the fact that when he lost his former employment NBV the took VT1.2m of his redundancy payout as future mortgage payments without his authority and outside the terms of his mortgage. The counter-claim dealt with basically the same contentions.

C. The facts

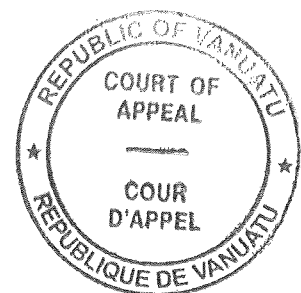
4. The Claim was based on a mortgage registered against Mr Louis' property to secure an advance in 2010. Payments under the mortgage fell into arrears, resulting in a notice of demand being made by NBV and served on Mr Louis in March 2017 – he accepted as much. The sum demanded has not been paid. Indeed, the last payment towards the mortgage was back in December 2014. The mortgage therefore continues to be in arrears.

D. The Judge's decision

5. The four matters required to be established by NBV were not only established by sworn statements in support of the Claim and the accompanying exhibits, but they were all admitted by Mr Louis before the primary Judge.

E. Appellant's submissions

6. Mr Louis initially filed his appeal papers without the assistance of counsel. Mr Molbaleh has been only very recently instructed, and he has attempted to perfect the grounds of appeal and he has filed supporting submissions. The submissions relate to alleged errors by the primary Judge in law and fact such that summary judgment ought not to have been given.
7. However, Mr Molbaleh quite properly conceded that while Mr Louis' complaints regarding what NBV allegedly did might found an action against NBV, they cannot constitute a valid defence to NBV's Claim, nor found a good counter-claim. He has attempted to negotiate with NBV on behalf of Mr Louis as to an alternative way forward, and will continue to do so.
8. We consider that even if Mr Louis' contention is correct, at no time did NBV agree that he could cease to make regular payments under the mortgage agreement. His default led to the notice being issued; and, without the defaults being made good, NBV is entitled under the laws of Vanuatu to enforce their security by way of mortgagee sale – if the proposed negotiations do not end satisfactorily by way of some other compromise.
9. There is no merit in the appeal.



F. Conclusion

10. The appeal is dismissed.

11. Costs ordinarily follow the event, and Mr Hurley indicated they are sought. Accordingly Mr Louis is to pay NBV's costs, as agreed between counsel or following taxation if agreement cannot be reached.

Dated at Port Vila this 16th day of November 2018
BY THE COURT

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Chief Justice V. Lunabek

