

(CIVIL JURISDICTION)

In the matter of a Mortgage, dated 8th day of
April, 1987

AND :

In the matter of the Land Leases Act 1983

BETWEEN : WESTPAC BANKING CORPORATION an
Overseas company duly registered in the
Republic of Vanuatu and having its
established places of business in Port
Vila, Efate and Luganville, Santo in the
Republic of Vanuatu

Plaintiff

AND : WILLIE JIMMY of P.O. Box 684, Port Vila,
Efate in the Republic of Vanuatu.

Defendant

JUDGEMENT

By Originating Summons dated 20 November 1990 the Plaintiff Bank applied to this Court for an Order to permit it to exercise the power of sale of leasehold properties contained and described in Title Numbers 11/OH23/050 and 11/OH23/051 contained in a Mortgage Agreement dated 8 April 1987. The Plaintiff Bank was represented by George Vasaris. The Defendant appeared in person. He was not represented.

At the date of hearing the Defendant owed the Plaintiff 6,193,180 vatu. The Defendant admitted that he had defaulted in repaying his loan. He told the Court of the reasons for his default.

Although initially the Defendant told the Court that he was ready for the case to proceed, later in the proceedings he told the Court of his concern about the lack of legal representation. He indicated that he wanted to speak to a lawyer because he did not understand the mortgage document. He had not seen a lawyer before this hearing.

His application, if it could be called such, for an adjournment to seek legal advice was not accepted by the Court, for these reasons. He should have seen a lawyer after receiving the Summons and before attending court. A lawyer in explaining what the mortgage document said could not alter the fact of default and the Defendants financial situation. Indeed legal advice would only put the Defendant in a worse financial state.

The facts relied on by the Plaintiff being agreed by the Defendant, this Court made the Orders sought in the Originating Summons. The Orders were suspended for twenty eight days beginning with the date written judgement is served on the Defendant.

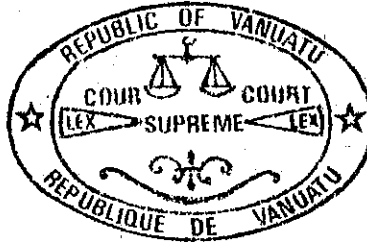
THE ORDERS MADE HEREBY ARE:

1. THAT the Plaintiff, as Mortgagee, be empowered to sell and transfer the leasehold properties contained and described in Title Numbers 11/OH23/050 and 11/OH23/051 by such means and in such manner as it shall deem fit.
2. THAT pending such sale and transfer the Plaintiff, as Mortgagee, or any agent or agents duly authorised by it in writing, be empowered to enter on the said leasehold properties and act in all respects in the place and on behalf of the proprietor of the leases.
3. THAT the purchase monies to arise from the sale and transfer of the said leasehold properties and the monies received (if any) by the Plaintiff pending such sale and transfer shall be applied:
 - a) Firstly, in payment of the expenses occasioned by the sale and transfer or going into and remaining in possession (as the case may be), including the costs of this application;
 - b) Secondly, in payment of the monies then due and owing to the Plaintiff as Mortgagee;
 - c) Thirdly, in payment of subsequent registered mortgages or encumbrances (if any) in order of their priority;
 - d) Fourthly, the surplus (if any) shall be paid into this Honourable Court pending further order.

Dated this 28th February 1991.

Prepared and signed this 23rd day of April, 1991.

E.P. Goldsbrough
E.P. GOLDSBROUGH
ACTING CHIEF JUSTICE



Served on the Defendant this day of 1991

Process Server

Recipient