

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

**Civil**  
**Case No. 24/247 SC/CIVL**

**BETWEEN: ROBERT EDGAR SUGDEN**  
Claimant

**AND: ALFRED ROLLAND ORAH**  
Defendant

*Date of Hearing:* 5 September 2024  
*Date of Decision:* 5 September 2024  
*Before:* Justice M A MacKenzie  
*Counsel:* Mr R Sugden as the Claimant  
Mr KT Tari for the Defendant

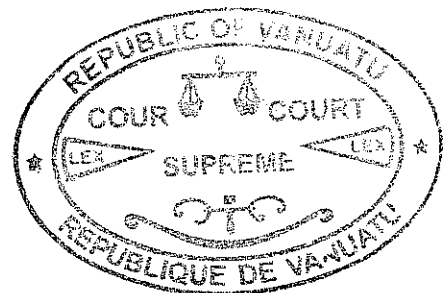
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## DECISION

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### The Application

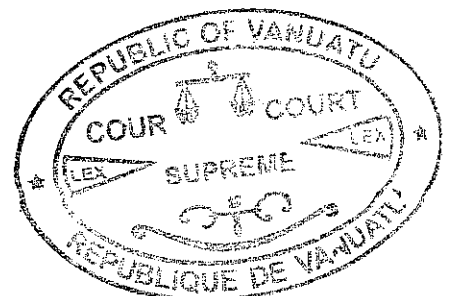
1. Mr Sugden seeks an order under section 59 of the Land Leases Act for enforcement of a mortgage granted in his favour by the Respondent, Mr Rolland. The mortgage is currently in default.
2. The mortgage is secured over leasehold title 12/0633/626. Mr Rolland is the registered proprietor of that leasehold title.
3. Mr Sugden asks the Court for an order that as mortgagee, he be empowered to sell and transfer the property contained in leasehold title 12/0633/626, together with other ancillary orders to effect the sale of the property.



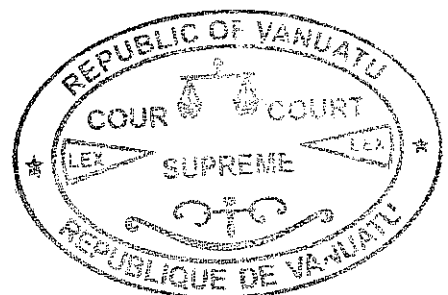
4. Mr Sugden advised the Court that there could be a postponement of the orders coming into effect for a period of 3 months. This would give Mr Rolland the opportunity to refinance the mortgage with a bank and so pay out the amount owing to Mr Sugden
5. Mr Rolland took no steps in relation to the application, beyond a response, until the day of the formal proof hearing, 5 September 2024. On 5 September 2024, a defence, along with a sworn statement, was filed.

### **Relevant background**

6. There is a long history to matters between Mr Sugden and Mr Rolland.
7. Mr Rolland owed Mr Sugden money for legal fees. Mr Sugden pursued a claim for the outstanding fees. That claim was resolved by a deed of agreement for the payment of legal fees in the sum of VT 7 million, payable by way of monthly instalments of VT 146,000, beginning on 31 December 2021.
8. Security for performance of the agreement was to be a first mortgage over Mr Rolland's property, being leasehold title 12/0633/626. Mr Sugden sought an order for specific performance of the deed of settlement requiring a mortgage to be executed. It is unnecessary for me to delve into why this did not happen following the signing of the agreement. Summary judgment was granted in favour of Mr Sugden. The orders related to the execution of the previously agreed mortgage.
9. The mortgage was eventually registered against the title on 4 October 2023. At clause 1 of the first schedule, all amount owing under the deed of settlement in schedule 3 became owing, if demand in writing was made by Mr Sugden.
10. Pursuant to clause 4 of the third schedule, if a payment of VT 146,000 remained unpaid for 2 months or, if a second payment was not made, the whole of the unpaid balance of VT 7 million became immediately due and payable.
11. Mr Rolland defaulted in the payment arrangement. There were further proceedings. On 31 August 2023, Hastings J granted another application for summary judgment, which was unopposed. Judgment was entered for the sum of VT 6,791,086 plus interest.
12. Mr Rolland did not make monthly payments at the agreed rate. Rather, he made payments at the rate of VT 60,000 per month.



13. As a result in the default under the agreement and the mortgage, demand in writing was made. On 21 November 2023, a notice of demand was delivered to Mr Rolland by email, and copied to his counsel, Mr Tari.
14. Payments of VT 60,000 were made following the service of the notice of demand. However, under the terms of the mortgage the whole amount due became repayable. The whole amount due was not repaid.
15. The claim was filed on 6 February 2024. A response was filed on 14 February 2024. Because no defence was filed, Mr Sugden sought a default judgment.
16. A hearing date was set for 5 September 2024, even though, what is sought is a default judgment. 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*”.
17. On 5 September 2024, shortly before the hearing a defence and sworn statement was filed. Mr Rolland and Mr Tari also appeared at the hearing. I had directed that Mr Rolland be served with the hearing date.
18. The defence and sworn statement set out that the agreement provided for payment over a 4 year period which has not yet elapsed and that Mr Rolland has been making efforts to pay the amount owing and has to date paid VT 805,368.
19. Pursuant to rule 4.14 of the Civil procedure Rules (“CPR”), a party may file a document out of time. It is a matter of discretion as to whether a late filed document is effective. While I bear in mind the overriding objective of rules 1.2 and 1.7 CPR, I have decided that the filing of the document is not effective. That is because there is no viable defence. As the Court of Appeal said in *Amhambat v Bred (Vanuatu) Limited* [ 2023] VUCA 33, once the notice of demand had been served under the terms of the mortgage, the whole outstanding balance became due, and the loan period ceased to have any effect. That is precisely the position here. The terms of the mortgage are clear. Once demand is made, all the money outstanding becomes due. It is irrelevant that the 4 year period has not as yet expired. The defence could not possibly succeed.

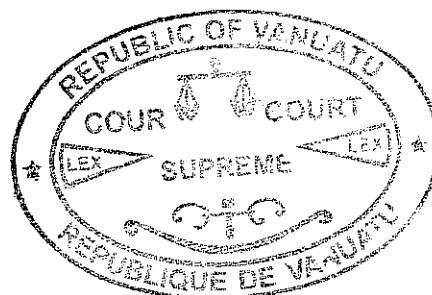


### **Should the application be granted?**

20. What must be established before an application for default judgment is granted in a mortgagee power of sale action was confirmed in *Traverso v ANZ Bank (Vanuatu) Limited* [2013] VUCA 8. What must be established is:
- i. that Mr Rolland has granted a mortgage of his property to Mr Sugden;
  - 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.

### **What does the evidence establish?**

21. On 8 February 2024, a sworn statement was filed by Mr Sugden in support of the application, and addresses what needs to be established in order for the application to be granted.
22. The evidence establishes that Mr Rolland granted a mortgage of his property to Mr Sugden. The circumstances are detailed above. A copy of the mortgage documentation is annexed as an exhibit to the sworn statement.
23. On 31 August 2023, summary judgment was entered for VT 6,791,086 with interest at VT 1678.90 per day until payment is made. As confirmed at paragraph 9 of the sworn statement, default occurred in repayment of the monies secured by the mortgage. Mr Rolland was to pay VT 146,000 per month. He did not. As a result, Mr Sugden issued a demand notice requiring repayment in full within 7 days. A copy of the demand notice dated 21 November 2023 is annexed to the sworn statement.
24. The notice of demand was served on Mr Rolland and his counsel. There is confirmation that the demand was emailed on 21 November 2003.
25. Finally, the sworn statement also confirms that the notice of demand has not been complied with and that the mortgage remains in default. In that regard, Mr Sugden notes at paragraph 9 of his sworn statement that the judgment debt had risen to VT 6,878,031.
26. Therefore, I am satisfied that the application should be granted, and judgment entered in favour of Mr Sugden.

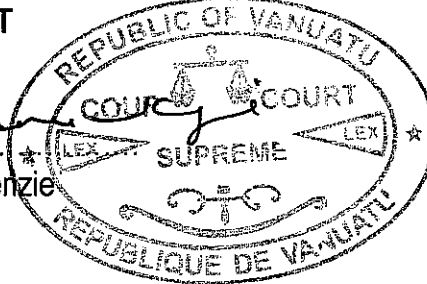


## Result

27. I will exercise the power under s 59 of the Land Leases Act [CAP 163] and grant the mortgagee, Mr Sugden, power of sale orders and related relief as sought. As per Mr Sugden's suggestion to the Court, the orders will not come into effect until 5 December 2024 (a period of 3 months). This is to enable Mr Rolland the chance to arrange a refinancing of the mortgage.
28. Mr Rolland is to pay costs as agreed or taxed.
29. A separate order will issue with this decision.

**DATED at Port Vila this 5th day of September 2024  
BY THE COURT**

.....  
Justice M A MacKenzie

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COURT SUPREME" are written, with "COURT" on either side of the central emblem. Two small triangles containing the word "LEX" are positioned on either side of "SUPREME".