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

Civil
Case No. 24/3272 SC/CIVL

BETWEEN: BRED (VANUATU) LIMITED
Claimant

AND: GORDON ARNHAMBAT
First Defendant

AND: MARY ARNHAMBAT
Second Defendant

AND: FIONA ARNHAMBAT
Third Defendant

AND: WILLIAM ARNHAMBAT
Fourth Defendant

AND: WAIVEN ARNHAMBAT
Fifth Defendant

AND: TANSY ARNHAMBAT
Sixth Defendant

AND: FRIDAH ARNHAMBAT
Seventh Defendant

AND: ELSEN ARNHAMBAT
Eighth Defendant

Date of Hearing:	5 June 2025
Before:	Justice M A MacKenzie
Counsel:	Claimant – Ms S Mahuk
	Defendant – Mr J Boe

DECISION

The applications

1. There are two applications before the Court:

a. Bred Bank (Vanuatu) Limited's ("Bred Bank") application to strike out the counterclaim.

b. Mr Arnhambat's application to stay the eviction order.

Relevant background

2. The factual background is set out in *Bred (Vanuatu) Bank v Arnhambat* [2025] VUSC 76. Briefly, Bred Bank has a registered mortgage over leasehold title 12/0631/345 ("the lease title"). The First Defendant Gordon Arnhambat is the registered proprietor of the lease title. The mortgage fell into arrears. Bred Bank sought and obtained mortgagee sale orders under s 59 of the Land Leases Act. By an order dated 12 April 2023, Bred Bank was empowered to sell and transfer the lease title.

3. The Defendants all remain living at the property. Because Bred Bank sought vacant possession, and the Defendants failed to leave the property after trespass notices were served on them, Bred Bank filed a claim seeking eviction of the Defendants.[1] On 10 April 2025, I granted an application for summary judgment, and made an eviction order. I also made a direction listing the counterclaim for a conference to progress.

4. The counter claim is very brief. The Defendants seek compensation for the houses and residences located on the lease title. In his sworn statement filed on 15 November 2024, Mr Arnhambat says that he has spent time, effort and money to have the residences constructed on the lease title and sought compensation of VT 12.5 million. Helpfully, Mr Arnhambat attached a valuation of the land and buildings and photographs of the six buildings on the lease title to his sworn statement.

5. Bred Bank now seeks that the counterclaim be struck out on the basis that there is no reasonable cause of action.

6. The Defendants did not file an opposition or any evidence in relation to the application to strike out the counterclaim.

The strike out application

Approach to a strike out application

7. The jurisdiction to strike out a proceeding should be exercised sparingly, and only in clear cases where the Court is satisfied that it has both the material and the assistance from the parties to reach a definite conclusion.

[1] *refer to paragraphs 2 - 6 of Bred (Vanuatu) Limited v Arnhambat [2025] VUSC 76*

8. The relevant principles are discussed by the Court of Appeal in *Hocten v Wang* [2021] VUCA 53. The Court of Appeal said (at paragraphs 11-13);

> *"11. There is no jurisdiction to strike out a Claim in the Civil Procedure Rules, apart from a narrow provision in rule 9.10. However, pursuant to s 28(1)(b) and s 65(1) of the Judicial Services and Courts Act [Cap 270], the Supreme Court has jurisdiction to administer justice in Vanuatu, and such inherent powers as are necessary to carry out its functions. Rules 1.2 and 1.7 of the Civil Procedure Rules give the Supreme Court wide powers to make such directions as are necessary to ensure that matters are determined in accordance with natural justice. The jurisdiction to strike out is essential and must exist to enable the Supreme Court to carry out its business efficiently, so that hopeless or vexatious claims, causing unreasonable costs, do not prevent the Court from hearing proper claims. Such jurisdiction was recognised by this Court in Noel v Champagne Beach Working Committee [2006] VUCA 18.*
>
> *12. The basis for striking out a proceeding is recognised in jurisdictions throughout the Pacific; see the New Zealand High Court Rules, r15.1, and McNeely v Vaai [2019 WSCA 12). A pleading will be struck out:*
>
> *a) if there is no reasonably arguable cause of action;*
>
> *b) the claim is frivolous or vexatious;*
>
> *c) it is otherwise an abuse of the process of the court.*
>
> *13. The jurisdiction should be exercised sparingly, and only in clear cases where the Court is satisfied that it has both the material and the assistance from the parties required to reach a definite conclusion. A claim should only be struck out when despite this material and assistance, and the chance to amend the pleadings to reflect that material, it cannot possibly succeed".*

9. Striking out any statement of a case have been described by the Supreme Court as a "*draconian remedy*". In *Hungtali v Kalo* [2024] VUSC 136, Hastings J said at paragraph 15;

> *"Striking out any statement of a case is a "draconian remedy" (Asiansky Television plc v Bayer Rosen [2001] EWCA Civ 1792). Although striking out a claim is not inherently contrary to the Constitution's guarantee of protection of the law, and equal treatment under the law or administrative action, in Article 5, the Court must nevertheless be cautious to ensure its exercise of discretion to strike out a claim does not violate those guarantees. A claim will not be suitable for striking out if it raises a*

serious factual issue which can only be properly determined by hearing oral evidence (Bridgeman v McAlpine-Brown [2000] LTL January 19, CA). Nor should a claim be struck out unless the Court is certain that the claim is bound to fail (Hughes v Colin Richards & Co [2004 EWCA Civ 266). In short, if a pleading raises a serious contested issue, then it should not be struck out and the issue should be determined after trial".

10. Disputed issues of fact should be decided at trial not on an application to strike out which is normally dealt with on the basis that the facts pleaded in the claim can be proven: *Iririki Island Holdings v Ascension Limited* [2007] VUCA 13.

Submissions

11. For Bred Bank, Ms Mahuk filed very comprehensive submissions. Ms Mahuk submits that mortgagee powers under s 59 of the Land leases Act are not contingent on any obligation to compensate the mortgagor or third parties for structures or improvements affixed to the land.

12. Ms Mahuk contends that the common law position is that fixtures pass with the land, as per cases such as *Cockrell v Ward* [2013] NZHC 2368, *Elitestone Ltd v Morris* [1997] 1 WLR 678, *Reynolds v Ashby & Son* [1904] AC 466, *Monti v Barnes* [1901] 1 QB 205 and *Reid v Smith* (1905) 3 CLR 656.

13. Ms Mahuk further submits that the legal status of any improvement or structure as a fixture is determined by the well-established test of the degree and purpose of annexation; see *Holland v Hodgson* (1872) LR 7 CP 38 Exchequer Chamber, and *Elitestone v Morris.* Based on the principles enunciated in the cases, Ms Mahuk contends the buildings (apart from possibly the temporary structure) are fixtures which pass with the land. Therefore, Bred Bank submits there is no entitlement to compensation.

14. Ms Mahuk submits that the counterclaim is unsustainable at law because the improvements have merged with the land and passed with the lease title upon mortgagee enforcement. She contends that claim for compensation is misplaced because the Court Orders and the mortgage canvas the whole property, which is the land and the improvements, pursuant to the relevant definitions of "*land*," "*lease*" and "*mortgage*" in the Land Leases Act. Therefore, there is no merit to the defence and no reasonable chance that the defence could succeed.

15. While no opposition or evidence was filed by the Defendants, Mr Boe appeared for the Defendants at the hearing. He submitted that:

    a. Mr Arnhambat agrees to the sale of the property.

b. That Mr Arnhambat asked Mr Boe to remind the Court that at paragraph 2.3A of their submissions filed on 7 March 2025,[2] Mr Arnhambat contended that Bred Bank should compensate the Defendants for their residences by paying them VT 6 million, which Bred Bank can then recoup from the sale of the property. Mr Boe's understanding is that what Mr Arnhambat in fact seeks is to be paid the nett proceeds of sale once the mortgage and arrears and costs have been paid.

c. That Mr Arnhambat does not wish to pursue the counterclaim. Mr Boe confirmed that Mr Arnhambat did not instruct him to file any documents in opposition to the strike out application.

16. Once again, I reiterated to Mr Boe that after repayment of the mortgage and arrears, and all sale and legal costs, the balance of the sale proceeds will be paid to Mr Arnhambat. So, it is in his interests to co-operate with the sale process because the mortgage and the costs will continue to increase and Mr Arnhambat's share will correspondingly decrease.

Discussion

17. Any right to compensation depends on whether the residences which have been built on the lese title are fixtures or chattels.

18. The starting point is the Land Leases Act, which contains various relevant definitions.

19. "*Land*" is defined in the Land Leases Act as:

> *"land" includes land above the mean high water mark, all things growing on land and buildings and other things permanently affixed to land but does not include any minerals (including oils and gases) or any substances in or under land which are of a kind ordinarily worked for removal by underground or surface working;*

20. "*Improvements*" are defined as:

> *"improvements" includes the reclaiming of land from the sea, clearing levelling or grading of land, drainage or irrigation of land, reclamation of swamps, surveying and making boundaries, erection of fences of any description, landscaping of land, planting of long-lived crops, trees or shrubs, laying-out and cultivation of nurseries, buildings and structures of all descriptions which are in the nature of fixtures, fixed plant and*

[2] *the submissions were filed in opposition to the application for summary judgment*

machinery, roads, yards, gates, bridges, culverts, ditches, drains, soakaways, cesspits, septic tanks, water tanks, water, power and other reticulation systems, dips and spray races for livestock;

21. "*Lease*" is defined as:

> *"lease" means the grant with or without consideration, by the owner of land of the right to the exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease;*

22. "*Mortgage*" is defined as:

> *"mortgage" means an interest in a registered lease given as security for the payment of money or money's worth, and includes a sub-mortgage and the instrument creating a mortgage;*

23. Under the Land Leases Act, "*improvements*" includes "*buildings and structures of all descriptions which are in the nature of fixtures*" and "*land*" includes "*buildings and other things permanently affixed to land*".

24. While there do not seem to be any Vanuatu Supreme Court or Court of Appeal cases which have considered what constitutes a fixture, it has been considered in a number of Commonwealth jurisdictions.

25. A fixture is anything, once a chattel or personal property, that has become so attached to land as to form in law part of the land. See for example, Cockrell *v Ward* [2013] NZHC 2368 and *Elitestone Ltd v Morris* [1997] 1 WLR 687.

26. *In Cockrell v Ward* there was an application to strike out the counterclaim. The previous owner of the property (the Defendant), sought compensation for damage done to fixtures after the mortgagee sale of their property and the new owners (the plaintiffs) had taken possession. The Defendant claimed that certain fixtures on the property, including a hangar building and crops remained his property after the sale notwithstanding the transfer of the title to the land on which they stood. The issue for the Court was whether the fixtures were transferred from the Defendant to the Plaintiffs? The Court relevantly said:

> *"[25] Hinde, McMorland and Sim state:*
>
> > *Broadly, a fixture is anything, once a chattel or personal property, that has become so attached to*

land as to form in law part of the land and to have become property. The principle is expressed in the maxim "quicquid plantatur solo cedit" — whatever is affixed to the soil belongs to the soil. It is very difficult to say with precision what constitutes an annexation sufficient for this purpose, but the practical consequences of a chattel becoming a fixture is that property to the chattel will, by operation of the law pass from the owner of the chattel to the owner of the land.

[26] In the leading textbook on personal property in New Zealand, Garrow and Fenton's Law of Personal Property, the position is explained in the following terms:

The law of fixtures represents an intermediate zone between the law of personalty and of realty. It exists because of the self-evident fact that chattels are frequently affixed or attached to land; as such a chattel may cease to be an item of personal property in its own right and become part of the land. The question of whether a chattel has been affixed so as to become part of the land arises in a vast range of circumstances and the number of cases in the area, some of them conflicting, bears witness to the difficulties judges have had in this area.

[27] The legal position is that, in general, a transfer of the land to which the fixtures are attached results in the new owner of the land becoming the owner of the fixtures.

...

[34] [...] It is not the case that all buildings, such as houses are to be regarded as fixtures all or part of the land. I respectfully agree with the following passage from Garrow and Fenton:

Posts placed in the soil by the occupier, concrete walls, asphalt paths, concrete steps, houses built on land and the constituent parts such as the doors, windows, walls, chimneys, crates, locks and the like normally belong to the owner of the soil and cease to be personal property.

[35] In the case of Elitestone Ltd the question arose whether the house was or was not within the traditional category of attachments. In the case there was photographic evidence of the house. In his speech, Lord Lloyd said:

> *For the photographs show very clearly what the bungalow is, and especially what it is and what it is not. It is not like a Portakabin, or mobile home. The nature of the structure is such that it could not be taken down and re-erected elsewhere. It could only be removed by a process of demolition. This, as will appear later, is a factor of great importance in the present case. If the structure can only be enjoyed in situ, there is at least a strong inference that the purpose of placing the structure on the original site was that it should form part of the realty at that site and therefore cease to be a chattel.*
>
> .....

[38] The conclusion that I have reached with regard to the fixtures in this case is that irrespective of the form of contract between the defendant and the mortgagee bank, such items as were fixtures passed to the plaintiffs when they acquired their interest in the land. That is because of the doctrine I have referred to in para [25] above.

...

[45] The effect of the conclusions expressed above is that the fixtures on the property ceased to belong to the defendant after the date when the plaintiffs acquired the freehold title to the property. Because the defendant's claim relates to the point after which the plaintiffs acquired title to the property from which time they were entitled to possession, the claim has no basis and could not succeed.

27. In contending that fixtures such as the hangar building on the property did not become the property of the Plaintiffs on sale, the Defendant argued that the security the bank took over the property did not extend to fixtures. In considering this contention, the Court took into account photographs of the building included in the evidence, and that based on them, the building seemed to be a substantial one which seemed to be affixed to the ground in the traditional way and said it was plainly a fixture, and that fixtures were

secured by the mortgage.[3] As a result, the parts of the counterclaim which related to the continued ownership by the Defendant were struck out.

28. The principles enunciated in *Cockrell v Ward* are consistent with the definition of "*land*" and "*improvements*" in the Land Leases Act. As explained in *Cockrell v Ward*, the practical consequence of a chattel becoming a fixture is that property to the chattel will, by operation of law, pass from the owner of the chattel to the owner of the land.

29. In *Elitestone Ltd*, the House of Lords considered whether a bungalow, which rested on concrete pillars which were attached to the ground, formed part of the realty, or whether it remained a chattel since it was first constructed? In determining the issue, the House of Lords considered photographs of the bungalow and said:

> *" Unlike the judge, the Court of Appeal did not have the advantage of having seen the bungalow. Nor were they shown any of the photographs, some of which were put before your Lordships. These photographs were taken only very recently. Like all photographs they can be deceptive. But if the Court of Appeal had seen the photographs, it is at least possible that they would have taken a different view. For the photographs show very clearly what the bungalow is, and especially what it is not. It is not like a Portakabin, or mobile home. The nature of the structure is such that it could not be taken down and re-erected elsewhere. It could only be removed by a process of demolition. This, as will appear later, is a factor of great importance in the present case. If a structure can only be enjoyed in situ, and is such that it cannot be removed in whole or in sections to another site, there is at least a strong inference that the purpose of placing the structure on the original site was that it should form part of the realty at that site, and therefore cease to be a chattel."*

30. The House of Lords held that whether, when the bungalow was built, it became part and parcel of the land itself, and that the answer to the question depended on the circumstances of the case, but mainly on two factors, the degree of annexation to the land, and the object of the annexation:

> *" So the question in the present appeal is whether, when the bungalow was built, it became part and parcel of the land itself. The materials out of which the bungalow was constructed, that is to say, the timber frame walls, the feather boarding, the suspended timber floors, the chip-board ceilings, and so on, were all, of course, chattels when they were brought onto the site. Did they cease to be chattels when they were built into the composite structure? The answer to the question, as Blackburn J. pointed out in Holland v. Hodgson (1872) L.R. 7 C.P. 328, depends on*

[3] *Paragraphs [37] and [39]*

the circumstances of each case, but mainly on two factors, the degree of annexation to the land, and the object of the annexation.

Degree of annexation

The importance of the degree of annexation will vary from object to object. In the case of a large object, such as a house, the question does not often arise. Annexation goes without saying. So there is little recent authority on the point, and I do not get much help from the early cases in which wooden structures have been held not to form part of the realty, such as the wooden mill in Rex v. Otley (1830) 1 B. & Ad. 161, the wooden barn in Wansborough v. Maton (1836) 4 Ad. & El. 884 and the granary in Wiltshear v. Cottrell (1853) 1 E. & B. 674. But there is a more recent decision of the High Court of Australia which is of greater assistance. In Reid v. Smith [1905] 3 C.L.R. 656, 659 Griffiths C.J. stated the question as follows:

> *"The short point raised in this case is whether an ordinary dwelling-house, erected upon an ordinary town allotment in a large town, but not fastened to the soil, remains a chattel or becomes part of the freehold."*
> *The Supreme Court of Queensland had held that the house remained a chattel. But the High Court reversed this decision, treating the answer as being almost a matter of common sense. The house in that case was made of wood, and rested by its own weight on brick piers. The house was not attached to the brick piers in any way. It was separated by iron plates placed on top of the piers, in order to prevent an invasion of white ants. There was an extensive citation of English and American authorities. It was held that the absence of any attachment did not prevent the house forming part of the realty. Two quotations, at p. 667, from the American authorities may suffice. In Snedeker v. Warring, 2 Kernan 178 Parker J. said:*
>
> *"A thing may be as firmly fixed to the land by gravitation as by clamps or cement. Its character may depend upon the object of its erection."*
> *In Goff v. O'Conner, 16 Ill. 422, the court said:*
>
> *"Houses in common intendment of the law are not fixtures, but part of the land. . . . This does not depend, in the case of houses, so much upon the particular mode of attaching, or fixing and connecting them with the land, upon which they stand or rest, as upon the uses and purposes for which they are erected and designed."*

Purpose of annexation

Many different tests have been suggested, such as whether the object which has been fixed to the property has been so fixed for the better enjoyment of the object as a chattel, or whether it has been fixed with a view to effecting a permanent improvement of the freehold. This and similar tests are useful when one is considering an object such as a tapestry, which may or may not be fixed to a house so as to become part of the freehold: see Leigh v. Taylor [1902] A.C. 157. These tests are less useful when one is considering the house itself. In the case of the house the answer is as much a matter of common sense as precise analysis. A house which is constructed in such a way so as to be removable, whether as a unit, or in sections, may well remain a chattel, even though it is connected temporarily to mains services such as water and electricity. But a house which is constructed in such a way that it cannot be removed at all, save by destruction, cannot have been intended to remain as a chattel. It must have been intended to form part of the realty. I know of no better analogy than the example given by Blackburn J. in Holland v. Hodgson, L.R.7 C.P.P. 328, 335:

> *"Thus blocks of stone placed one on the top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones, if deposited in a builder's yard and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels."*

Applying that analogy to the present case, I do not doubt that when Mr. Morris' bungalow was built, and as each of the timber frame walls were placed in position, they all became part of the structure, which was itself part and parcel of the land. The object of bringing the individual bits of wood onto the site seems to be so clear that the absence of any attachment to the soil (save by gravity) becomes an irrelevance.

Finally I return to the judgment of the Court of Appeal. I need say no more about the absence of attachment, which was the first of the reasons given by the Court of Appeal for reversing the assistant recorder. The second reason was the intention which the court inferred from the previous course of dealing between the parties, and in particular the uncertainty of Mr. Morris' tenure. The third reason was the analogy with the shed in Webb v. Frank Bevis Ltd. [1940] 1 All E.R. 247, and the greenhouse in Deen v. Andrews [1986] 1 E.G.L.R. 262.

As to the second reason the Court of Appeal may have been misled by Blackburn J.'s. use of the word "intention" in Holland v. Hodgson, L.R.7 C.P. 328. But as the subsequent decision of the Court of Appeal in Hobson v. Gorringe [1897] 1 Ch. 182 made clear, and as the decision of the House in Melluish v. B.M.I. (No. 3) Ltd. [1996] A.C. 454 put beyond question, the intention of the parties is only relevant to the extent that it

can be derived from the degree and object of the annexation. The subjective intention of the parties cannot affect the question whether the chattel has, in law, become part of the freehold, any more than the subjective intention of the parties can prevent what they have called a licence from taking effect as a tenancy, if that is what in law it is: see Street v. Mountford [1985] A.C. 809.

..... "

31. The House of Lords allowed the appeal and restored the order of the assistant recorder that the bungalow formed part of the realty.

32. It is well established that the test for determining whether an improvement or structure as a fixture that forms part of the land is to consider the circumstances of the case, but the main relevant factors are the degree and purpose of annexation: See *Holland v Hodgson* (1872) LR 7 CP 38 Exchequer Chamber, *Monti v Barnes* [1901] 1 QB 205, *Elitestone v Morris* [1997] 1 WLR 687, *Halliday v Bank of New Zealand* [2013] 1 NZLR 279, Cockrell v Ward [2013] NZHC 2368.

33. As was held in *Halliday v Bank of New Zealand*[4], it is a question of law when a chattel has become part of the land and the test for determining that is an objective one. The High Court rejected a contention that the parties' subjective intentions are relevant to whether something is a chattel or part of the land.

34. Mr Arnhambat's claim for compensation can only be based on a view that all the buildings/structures are chattels and are not fixtures. There are 6 buildings/structures on the lease title. There is a photograph of each structure and there is a valuation report which Mr Arnhambat obtained. In the valuation report, it is noted that there are 6 structures on the property ranging from "*semi-permanent*" or "*permanent*".[5] Such descriptions do not assist in determining whether the buildings/structures are fixtures or chattels. What is required is to assess the degree and purpose of their annexation to the land.

35. Mr Arnhambat and his family live on the property. The purpose of all the structures, viewed objectively is to provide the family with accommodation, ablutions and everyday living.

36. The 6 structures are:

REPUBLIC OF VANUATU COUR COURT LEX SUPREME LEX REPUBLIQUE DE VANUATU

[4] *at [37]*
[5] *Paragraph 7*

a. Building 1- the main residence is a solid built concrete construction house with 3 bedrooms, a bathroom, an open lounge/kitchen and a small veranda. The floor area is 80 sqm and the veranda is 14 sqm.

b. Building 2- this is described as a residence/storage. It is an unrendered concrete building with two rooms and a small storage room. There is no bathroom. The floor area is 36 sqm.

c. Building 3- is another residence. It is constructed partly from concrete and partly from iron sheets. There are internal petitions of timber frames and timber board. It is obvious from the photograph that it is built on a concrete slab. The floor area is 30 sqm.

d. Building 4-this is an open shelter built on a concrete slab. The floor area is 60 sqm.

e. Building 5- this is described as a raised "*temporary*" structure. It is constructed from mixed materials on a raised timber floor and stands on wooden pillars. The floor area is 18 sqm.

f. Building 6- the ablution block used by the residents of the other buildings, other than the main residence. The photograph shows it is constructed on mixed materials but has concrete walls and is bult on a concrete slab. The floor area is 12sqm.

37. Having reviewed the photographs and the descriptions detailed in the valuation report, I consider that buildings 1-4, and building 6 can only be enjoyed in situ. They are solidly constructed, and have concrete slabs. None of these structures can be taken down and re-erected elsewhere. They could only be removed by demolition or significant damage. All these structures are firmly annexed to the land, and that is understandable because the purpose of annexation of these structures is to provide the family's living arrangements, communally. As Ms Mahuk notes in her written submissions, this is precisely the scenario contemplated in *Elitestone Ltd*, where the House of Lords held that a bungalow resting on concrete pillars, which could only be removed by demolition, was a fixture and part of the land. These buildings are fixtures, having regard to the degree and purpose of annexation.

38. In terms of building 5, it does not have a concrete slab. The structure is on wooden pillars, which are sunk into the ground. Is it a chattel or a fixture?

39. In *Lockwood Limited v trust bank Canterbury Limited*, a Lockwood showhome was erected on land subject to a mortgage. As part of a franchise agreement, the Lockwood showhome was to be on display on the land for a minimum of 12 months. The first showhome was removed after nearly two years and was replaced by a second

showhome until it was removed by Lockwood. The showhome was placed on wooden piles sunk into the ground. The wooden bearers supporting the structure were fixed to the piles by wire nails. There was landscaping. The Court said that while the showhome might be sold or otherwise disposed of, the way it was attached to the wooden piles, its general appearance and its landscaped setting would all suggest to an interested observer a degree of permanence in its presence on the site. The Court of Appeal held that the showhome was undoubtedly affixed to the land. No one looking at the showhome could reasonably have thought that the person affixing it to the land intended that its status was to remain as a chattel. The apparent prospect that in due course the structure might be removed from the land could not in the circumstances of the case lead to the conclusion that it remained a chattel. In *Reid v Smith*, the High Court of Australia held that a dwelling house placed on wooden blocks or piers without any greater immobility than its weight on the ground, was a fixture and not a chattel.

40. The building is one of a number of buildings on the lease title that accommodate members of the Arnhambat family. I infer that the family intended to live there permanently, given that the buildings predominantly appear permanent in nature, and as evidenced by the concerted efforts to resist the mortgagee sale process. The building is on wooden piles which have been sunken into the ground, so to be enjoyed in situ as with the other buildings. I consider that when both degree and purpose of annexation are considered in the wider context, the building is a fixture. The fact that it may be capable of being removed does not mean that it is a chattel.

41. Accordingly, I consider that all six buildings are fixtures attached to the land and not chattels. Therefore, the buildings form part of the realty. As was held in *Halliday v Bank of New Zealand,*[6] all fixtures attached to the land at the time of a sale pass to the purchaser (unless otherwise agreed). Here, under the terms of the mortgage, Mr Arnhambat agreed to mortgage his interest in the lease title as security for repayment of the facilities and payment of interest.[7] Following default under the mortgage, Bred Bank took enforcement action and obtained orders empowering it to sell and transfer the lease title. Bred Bank are empowered under the mortgagee sale orders to act in all respects in place of the proprietor for the purpose of enforcing its registered mortgage. Under the lease, Mr Arnhambat was granted the exclusive possession of the land, which includes buildings and other things permanently affixed to the land. Improvements includes buildings and structures of all descriptions which are in the nature of fixtures.[8] As I have held, I consider that all six buildings are fixtures attached to the land, which will pass to a purchaser when Bred Bank exercises the power to sell and transfer the lease title pursuant to the mortgagee sale orders dated 12 April 2023.

42. Further, Ms Mahuk submits that there is no contractual agreement between Bred Bank and the Defendants which confers any entitlement to compensation for improvements

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[6] *At [35]*

[7] *See sworn statement of Elizabeth David filed on 16 August 2022*

[8] *See the definitions of "lease", "land" and "improvements" in the land Leases Act*

to land. I agree. There is no evidence at all of any contractual agreement between Bred Bank and Mr Arnhambat conferring a right to compensation.

43. The six buildings are fixtures attached to the land for the reasons given. By operation of law, they form part of the realty. They are not chattels, so there is no right to compensation, as the buildings are not Mr Arnhambat's personal property. Further, there is no contractual entitlement to compensation. Therefore, there can be no compensation for the buildings/ structures following enforcement of mortgagee rights, including the power of sale. As such, there is no reasonably arguable cause of action contained in the counterclaim, and amendment of the claim will not cure that.

44. Accordingly, the counterclaim is struck out.

Application to stay the eviction order

45. On 12 May 2025, the Defendants filed an application to stay the eviction order pending determination of the counterclaim.

46. Mr Boe had instructions to withdraw that application.

47. The application to stay the eviction is accordingly withdrawn.

Result

48. For the reasons set out above, the counterclaim is struck out.

49. The application to stay the eviction is withdrawn.

50. Costs as agreed or taxed. Ms Mahuk seeks indemnity costs. I consider that costs should be on a standard basis and not indemnity costs. In reality, there was no opposition to the counterclaim being struck out, so there is nothing to suggest Mr Arnhambat pursued the counterclaim unreasonably. Further, the matter is not of such complexity that indemnity costs should be ordered. Finally, there are glimmers that the "*high octane*" conflict regarding Bred Bank's enforcement of the mortgage is at last de-escalating so ordering costs on an indemnity basis will not assist. That said, ongoing efforts to thwart the sale process may cause the Court to take a different view about indemnity costs.

DATED at Port Vila this 10th day of June 2025
BY THE COURT

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Justice M A MacKenzie

REPUBLIC OF VANUATU COUR SUPREME COURT LEX LEX REPUBLIQUE DE VANUATU