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IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(Civil Jurisdiction)

CIVIL CASE No.23 OF 2009

IN THE MATTER OF:

A Third Party mortgage dated 25th day of April 2006 over leasehold title Nos.: 11/OH22/059 and

11/OH22/060

AND IN THE MATTER OF:

A Collateral Mortgage dated 25th day of April 2006 over leasehold title No.11/0G31/001 and a Collateral mortgage dated the 25th day of April 2006 over leasehold title No. 12/0643/009 and a Collateral Third Party Mortgage dated over leasehold title No.03/0103/004 and a Third Party Mortgage dated the 28th day of November 2007

over leasehold title No.12/0641/001

AND IN THE MATTER OF:

The Land Leases Act 1983 [CAP.163], as

amended

BETWEEN:

ANZ BANK (VANUATU) LIMITED

Claimant

AND:

JEAN PAUL VIRELALA

Defendant

Mr Mark Hurley for the Claimant Mr George Boar for the Defendant

JUDGMENT

Two applications are heard and dealt with together today 1 June 2010. The First application is an Amended Urgent Application filed by Mr Boar on behalf of the Defendant on 24 March 2010. It seeks to stay and/or set aside an (default) Order entered by the Supreme Court on 16 July 2009.

The second Application is filed on 12 April 2010 by Mr Hurley on behalf of the Claimant. It seeks orders:

To join Ranch De La Falaise as the second Defendant to this proceeding;

To vary the Supreme Court Orders dated 16 July 2009 to delete the reference to

title 03/I103/004; and



 For leave for the Claimant to forthwith file and serve the Amended Supreme Court claim.

Both applications are supported by various sworn statements filed in support.

At the outset, Mr Boar concedes that the Claimant's application to have Ranch De La Falaise Limited added as a Party (second Defendant) be allowed; and that leave be granted to the Claimant to file and serve his Amended Supreme Court claim.

The only difference between the parties is whether or not the Supreme Court Order of 16 July 2009 should be set aside.

Mr Boar submits that the Order of 16 July 2009 should be set aside. Mr Hurley submits to the contrary for the reasons contained in the sworn statements of Elizabeth David filed 18 February 2009.

On 16 July 2009, the Supreme Court issued a default judgement against the Defendant Jean Paul Virelala. The claim was filed on 19 February 2009. It was served on the Defendant with a response form and a sworn statement of Elizabeth David filed 18 February 2009. There was no response nor defence filed.

Mr Boar concedes during the submissions and upon the Court queries that the Defendant could not show reasonable cause for not defending the claim. This means that the Defendant could not satisfy the Court as to delay for filing a defence and the reasons for it.

Mr Boar's submissions that the Defendant has an arguable defence for the claim must fail. The reasons are set out below. There is no dispute that loans agreements were made between the ANZ Bank (Vanuatu) Limited and the Defendant, Jean Paul Virelala involving Ranch De La Falaise Limited.

The details of such loan arrangements are contained in the sworn statement of Elizabeth David filed on 18 February 2009 with and Annexures [ED1, ED2, ED3, ED 4, ED5, ED 6, ED7, ED8, ED9].

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As at 15 April 2010, the Defendant Mr Jean Pierre Virelala's total loan due and owning to the Claimant Bank is VT15,769,170 and the total loan of the Defendant's Company, Ranch De La Falaise Limited due and owing to the Claimant, ANZ Bank (Vanuatu) Limited is VT82,415,631.

Annexure ED9 of the sworn statement of Elizabeth David contained a copy of the Notice of Demand from the ANZ Bank (Vanuatu) Limited to the Defendant, Jean Paul Virelala, dated 29 December 2008.

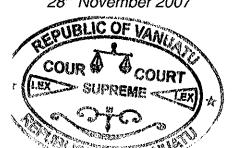
Schedule 2 of ED9 provides the list of the nature of the Security given by the Defendant, Jean Paul Virelala to the Claimant, ANZ Bank (Vanuatu) Limited. It is reproduced below:

"THE SECOND SCHEDULE

Nature of Security		Date of Security
1.	Third Party Mortgage over title #11/OH22/059 & 060 given by Jean Paul Virelala	25 th April 2006
2.	Collateral Mortgage over title #11/OG31/001 given by Jean Paul Virelala	25 th April 2006
3.	Collateral Mortgage over title #12/0643/009 given by Jean Paul Virelala	25 th April 2006
4.	Third Party Mortgage over title #03/0103/004 given by Ranch de la Falaise Limited	25 th April 2006
5.	Deed of Charge given by Ranch De La Falaise Limited	28 th November 2007
6.	Guarantee given by Jean Paul Virelala in favour of Ranch De La Falaise Limited support by Mortgage Debenture over Assets of Company, Mortgage over title #12/0641/001, 11/OH22/059, 11/OH22/060, 11/OD33/023, 12/0643/009 & 03/OI03/007.	

7. Third Party Collateral Mortgage over title

28th November 2007



#120643/001 given by Jean Paul Virelala in favour of Ranch De La Falaise Limited.

Dated at Port-Vila this 29th day of December 2008.

FOR ANZ BANK (VANUATU) LIMITED

Elizabeth David Asset Management Officer"

On the basis of the above material, there is no justification to set aside the default judgment issued against the Defendant, Jean Paul Virelala on 16 July 2009. The Order of 16 July 2009 was regularly issued and there is no defence shown by the Defendant to have the Order set aside.

The Court, thus, makes the following ORDERS:

- THAT pursuant to Rules 3.1 and 3.2 Ranch De La Falaise Limited be joined as the Second Defendant to this proceeding.
- 2. THAT the Supreme Court Orders dated 16 July 2009 be varied to delete the reference to title No.03/I103/004.
- THAT leave be granted to the Claimant to forthwith file and serve the Amended Supreme Court claim in the Form attached to the Claimant's Application filed 12 April 2010.
- 4. The Application of the Defendant's Amended Urgent Application filed 24 March 2010 is dismissed.
- 5. The Claimant, ANZ Bank (Vanuatu) Limited, is entitled to her costs assessed at Vatu 50,000 against the Defendant. Such costs of Vatu 50,000 shall be paid by 28 June 2010.

6. The matter is listed for conference on Friday 2 July 2010 at 8.30AM o'clock.

DATED at Port-Vila this 1st day of June 2010

BY THE COVIR

Vincent LUNABEK Chief Justice

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