

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

**Civil Appeal**  
**Case No. 19/2977 SC/CIVL**

**BETWEEN: George and Rinnah Boar**  
Appellants

**AND: National Bank of Vanuatu Limited**  
Respondent

*Date of Hearing:* 4 September 2020  
*Before:* Justice V.M. Trief  
*In Attendance:* Appellants – Mr W. Kapalu  
Respondent – Mr A. Kalmet  
*Date of Decision:* 11 September 2020

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**JUDGMENT**

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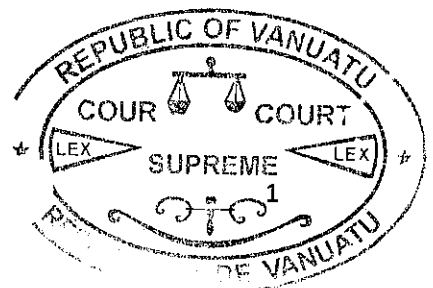
A. Introduction

1. This is an appeal against the Deputy Master's orders that an Enforcement Warrant be issued for the sale of the Appellants George and Rinnah Boar's mortgaged leasehold property title number 12/0631/647 (the 'property'), and that the warrant be stayed for parties to re-negotiate settlement terms.

B. Background

2. On 8 September 2015, the Supreme Court in Civil Case No. 104 of 2015 ('CC 15/104') issued Power of Sale Orders in favour of the Respondent National Bank of Vanuatu Limited (the 'Bank').
3. On 2 August 2016, the parties engaged in correspondence as to a full and final settlement of VT1,700,000 out of a total amount owing by Mr and Mrs Boar of VT1,932,604.
4. Mr and Mrs Boar then paid the Bank VT1,700,000 as follows:

- a. 8 August 2016 VT500,000
- b. 28 December 2016 VT1,000,000
- c. 11 May 2017 VT200,000



5. Mr and Mrs Boar have not made any further payments to the Bank. Interest has continued accruing on the loan.
6. On 10 March 2017, Mr and Mrs Boar filed in CC 15/104 an Application for the Enforcement Warrant to be Permanently Stayed on the grounds that the parties had reached agreement on the outstanding loan in August 2016 and that the loan and interest had been paid.
7. On 3 May 2017, a sworn statement was filed in support of that Application.
8. The Application and sworn statement were not served until 4 March 2019. To date, that Application has not been heard.
9. On 1 March 2019, a letter from the Bank's lawyer was handed to Mr and Mrs Boar requesting payment of the unsettled balance of VT455,561, in full, within 7 days.
10. On 4 March 2019, Mr Boar responded saying, inter alia, that no monies were owed to the Bank.
11. On 13 March 2019, the Bank confirmed by letter to its lawyer that the debt remained outstanding. On 14 March 2019, a solicitor's letter of demand was sent to Mr and Mrs Boar requesting payment within 7 days or the Bank would repossess the property.
12. On 8 May 2019, the Bank filed an Application for an Enforcement Warrant in CC 19/1076.
13. On 30 September 2019, the Deputy Master heard the Bank's Application for an Enforcement Warrant. The Deputy Master set out the following in her Minute:

**Chronology of events**

*...In an email dated 2 August 2016, [Mr Boar] made an offer of VT1,500,000 as final settlement of the arrears. On the same date, the Bank responded with a counter-offer of VT1,700,000 to be the full and final settlement. As per the Bank's email, the amount had to be paid the following morning and that upon receipt of the said amount the bank will discharge [Mr and Mrs Boar's] mortgage. In an email dated 3 August 2016, [Mr Boar] confirmed he accepts the said amount but proceeded to repay VT1,700,000 in instalments of VT500,000 on 8 August 2016, VT1,000,000 on 28 December 2016 and VT200,000 on 10 May 2017...*

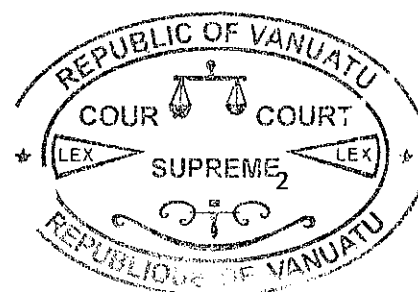
**Conclusion**

*This Court accepts the submission from counsel for the [Bank] that the VT1,700,000 had to be paid in a lump sum and not incrementally... The email correspondence dated 2 August 2016 is very clear as to when the VT1,700,000 was to be paid...* (my emphasis)

14. On 30 October 2019, the Deputy Master ordered that an Enforcement Warrant be issued for the sale of the property, and that the warrant be stayed for parties to re-negotiate settlement terms. Those Orders are appealed.

C. Grounds of Appeal

15. Mr and Mrs Boar advanced the following grounds of appeal:



- i) **Ground 1** That the Deputy Master erred in law and in fact by failing to consider Mr and Mrs Boar's Application for permanent stay of the Enforcement Warrant issued in CC 15/104, as if she had she would not have issued another Enforcement Warrant as Mr and Mrs Boar had paid all the money owed.
- ii) **Grounds 2, 3 and 5** That the Deputy Master erred in law and in fact by failing to consider that in fact, Mr and Mrs Boar had paid off VT1,700,000 of loan and interest outstanding as agreed between the parties on 11 March 2017 therefore the demands for extra amounts now amounted to unfair trading, unconscionable and oppressive conduct, unfair trading practices and an offence to common sense.
16. Mr Kapalu agreed that Ground 4 was not a ground of appeal as it complained of the Bank not responding to Mr and Mrs Boar's without prejudice offer by letter dated 14 October 2019.

D. Discussion

**Ground 1**

17. The grounds of Mr and Mrs Boar's Application for permanent stay of the Enforcement Warrant issued in CC 15/104 were that the parties had reached agreement on the outstanding loan in August 2016 and that the loan and interest had been paid.
18. Mr and Mrs Boar did not see fit to serve that Application until 4 March 2019, and that Application has not been heard.
19. Even so, because Mr Boar cited the same reasons in his letter to the Bank dated 4 March 2019, the Bank included the grounds of Mr and Mrs Boar's Application in its Application for an Enforcement Warrant filed in CC 19/1076 (at paras 6-20).
20. On 30 September 2019, the Deputy Master heard the Bank's Application. She set out in her Minute her decision and reasons. The Deputy Master considered whether or not the parties had reached an agreement in August 2016 as to the outstanding loan. She accepted counsel's submission that the VT1,700,000 had to be paid in a lump sum and not incrementally, and that the 2 August 2016 email correspondence was very clear as to when the VT1,700,000 was to be paid.
21. On 2 August 2016, Mr Boar emailed Mr Dali, the Bank's Manager Recovery that:

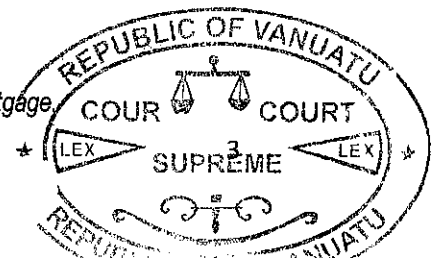
*I am prepared to make the repayment of the loans but would appreciate if we agreed an amount in the sum of VT1,500,000 and then I commence payment.... I am offering VT1.5 million as full and final payment.*

22. Mr Dali replied by return email on 2 August 2016 that:

*Our counter offer is vatu 1,700,000 as full and final settlement. Bring that money in tomorrow morning. We'll discharge your mortgage and we all walk away happy.*

23. Mr Boar replied on 2 August 2016 that:

*I accept VT1,700,000 as full and final settlement and discharge of the mortgage.*



24. There can be no doubt that the Bank's counter-offer on 2 August 2016 required payment of VT1,700,000 in full and final settlement in one lump sum, the very next day. Mr and Mrs Boar agreed with the amount of VT1,700,000 but obviously never agreed with the timing set out in the Bank's counter-offer as they instead paid the VT1,700,000 by three separate payments on 8 August 2016, 28 December 2016 and 11 May 2017. The Deputy Master also set out in her Minute the payment by way of three separate instalments. It cannot be said therefore that the parties reached an agreement in August 2016 as to the outstanding loan.
25. In the course of considering the Bank's Application for an Enforcement Warrant filed on 8 May 2019 then, the Deputy Master considered and determined the grounds of Mr and Mrs Boar's Application for permanent stay of the Enforcement Warrant issued in CC 15/104. She found in effect that the parties had not reached an agreement in August 2016 for Mr and Mrs Boar to pay VT1,700,000 in full and final settlement of the loan. The consequence of this is that the loan has not been paid in full. No error is made out on the part of the Deputy Master.

**Grounds 2, 3 and 5**

26. Mr and Mrs Boar have also not made out any error by the Deputy Master in failing to consider that in fact, Mr and Mrs Boar paid off VT1,700,000 of loan and interest outstanding as agreed between the parties. The Deputy Master did consider this and found the opposite. That is, that the parties did not reach an agreement as alleged. Therefore it follows that Mr and Mrs Boar's payment of VT1,700,000 by three separate instalments was not in full and final settlement of the loan.
27. Mr and Mrs Boar have not made any further payments to the Bank since their last payment on 11 May 2017. Interest has continued accruing on the loan, leading to the March 2019 correspondence and letter of demand from the Bank's lawyer. There is therefore no merit whatsoever in the grounds of appeal that the Bank's March 2019 demands amounted to unfair trading, unconscionable and oppressive conduct, unfair trading practices and an offence to common sense.

E. Result and Decision

28. The appeal is **dismissed**.
29. Costs should follow the event. The Appellants are to pay the Respondent's costs as agreed or taxed by the Master. Once settled, the costs are to be paid within 21 days.

**DATED at Port Vila this 11<sup>th</sup> day of September 2020**

**BY THE COURT**

*UM Trief*  
.....  
Viran Molisa Trief  
Judge

