

BETWEEN: ANZ Bank (Vanuatu) Limited
Claimant

AND: Seth and Stephery Massing
First Defendants
Seth Massing
Second Defendant

Date: 31 March 2020
Before: Justice G.A. Andrée Wiltens
In Attendance: Mrs L. Matariki for the Claimant
Mr E. Moibaleh for the Defendants

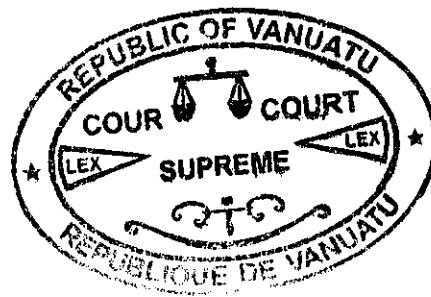
JUDGMENT

A. Introduction

1. This is an application for summary judgment on the basis that the defence filed does not show a viable defence to the Claim.

B. Background

2. This matter involves a bank loan secured by a registered mortgage. It is alleged that the Defendants have fallen into arrears with their payments. Accordingly the bank is looking to avail itself of its legal contractual remedies under the mortgage.
3. The Claim was filed in December 2016, with two lengthy sworn statements in support setting out the factual basis for the Claim.



4. The initial loan was secured by way of an "all monies" registered mortgage against Leasehold Title No. 12/0633/717 in October 2006. Over time, at the request of the Defendants, the loan was varied by increasing the sums secured.
5. Following default in the repayments, the bank wrote to the Defendants on 1 February 2016 demanding the sum then owing of VT 28,509,306. There has no compliance with that demand letter, and accordingly the bank commenced this action on 6 December 2016.
6. Initially it seems Mr Kapalu acted for Seth Massing and Mr Napuati acted for Stephery Massing. Although neither counsel has filed a notice of discontinuing to act, Mr Molbaleh commenced to act for both defendants as of 20 March 2019. By then, namely on 17 May 2017, a Statement of defence had been filed on behalf of Stephery Massing.
7. Seth Massing appears to have no steps to defend the case.

C. Application

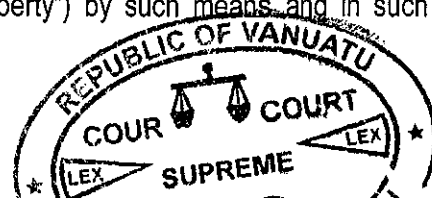
8. The present application was filed on 4 March 2019 – one assumes that it is this that prompted the defendants to take the action of instructing Mr Molbaleh. The application is for summary judgment on the basis that the Statement of defence discloses no viable defence to the Claim.
9. The defence filed partly denies the Claim.
10. It goes on to allege that Stephery Massing's husband died, and she was subsequently compelled to register the leasehold title in her and her former brother-in-law's name, for the benefit of Stephery Massing's children. Subsequently, relations are alleged to have soured, resulting in Stephery Massing and her children vacating the property at certain times and for certain periods.
11. It is alleged that Stephery Masing was forced to sign documents by Seth Massing without knowing their legal effect. It is pleaded that she first came to know she had signed a mortgage when the current proceedings were served on her. It is further alleged that she received no benefit from the loan; and she does not want the property sold as it connected to her late husband and her children.
12. I note that there is no sworn statement in support of this defence. All the Court has are these pleadings.

D. Discussion

13. Mr Molbaleh readily concedes, as he must, that the Statement of Defence does not set out a viable defence to the Claim.

E. Decision

14. Summary Judgement is granted, in the following terms:
 - ANZ Bank (Vanuatu) Limited is empowered to sell and transfer the leasehold property comprised and described in Leasehold Title No 12/0633/717 ("the property") by such means and in such manner as it shall deem fit;



- Pending such sale and transfer, ANZ Bank (Vanuatu) Limited, as mortgagee, or an agent or agents duly authorised by it in writing, be empowered to enter on the said property and act in all respects in the place of and on behalf of the proprietor of the lease, and to apply in reduction of the money due and owing to ANZ Bank (Vanuatu) Limited all or any rent received in respect of the said property;
 - The purchase money to arise from the sale and transfer of the property and the money received (if any) by ANZ Bank (Vanuatu) Limited pending such sale and transfer shall be applied:
 - (a) Firstly, in payment of the expenses occasioned by the sale and transfer of going into and remaining in possession (as the case may be), including the costs of this application;
 - (b) Secondly, in payment of the money then due and owing to ANZ Bank (Vanuatu) Limited as mortgagee;
 - (c) Thirdly, in payment of subsequent registered mortgages or encumbrances (if any) in order of their priority; and
 - (d) Fourthly, the surplus (if any) shall be paid into the Supreme Court pending further order.
15. ANZ Bank (Vanuatu) Limited is entitled to the costs of this application and the Claim. If not agreed between counsel, those costs are to be taxed.

Dated at Port Vila this 31st day of March 2020
BY THE COURT

