

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 296 OF 2021

BETWEEN: **WESTBUS (FIJI) PTE LIMITED** a limited liability company having its registered office at Nadi Back Road, Nadi.

FIRST PLAINTIFF

A N D: **VIJENDRA KUMAR** of 10 Ram Deo Street, Martintar, Nadi, Managing Director.

SECOND PLAINTIFF

A N D: **BSP FINANCE (FIJI) PTE LIMITED** a limited liability company having its registered office at Level 12, BSP Suva Central Building, Corner of Renwick Road and Pratt Street, Suva.

DEFENDANT

Appearances: Ms. Radhia for the Plaintiffs
 Ms. Devan S. for the Defendant
Date of Hearing: 16 October 2023
Date of Ruling: 06 February 2026

JUDGMENT

INTRODUCTION

1. The background to this case is set out in the ruling of Master Azhar (as Justice Azhar then was) in **Westbus (Fiji) Ltd v BSP Finance (Fiji) Pte Ltd** [2023] FJHC 197; HBC296.2021 (31 March 2023).

2. In 2016 or 2017, the Marriott Resort advertised for tenders for the provision of transport services for hotel staff. Westbus (Fiji) Pte Limited ("**Westbus**") submitted a tender. Around the same time, Westbus applied to the BSP Finance (Fiji) Limited ("**BSP**") for a loan of \$876,000. Westbus planned to invest the funds in expanding and strengthening its fleet by purchasing and importing four 61-seater Hino buses.
3. On 19 January 2017, Westbus received a notice that its tender to Marriot was not successful.
4. Exactly two weeks later, on 02 February 2017, BSP approved Westbus' loan application (the "**2017-loan**"). The approval was communicated to Westbus *vide* an Offer Letter – which Westbus accepted on the same day.

Third-Party Mortgage & Guarantee

5. Westbus was not in a position to provide adequate security at the time. The company already had two existing loans with BSP. These were secured by a bill of sale over four buses which were, at the time, already in active use for the company's public transport operations.
6. It also had loan accounts in other banks. Its assets were all tied up in these debts.
7. Mr. Vijendra Kumar ("**Vijendra**"), the second plaintiff, then offered to put up one of his properties to secure the loan. Vijendra is a director and a shareholder of Westbus. The property which he put up as collateral is comprised in Certificate of Title No. 16233 being Lot 16 on D.P No. 4068 ("**property**"). It is said to be valued at over FJD \$3.9 million dollars as of 2019.
8. Additional security was provided through the personal guarantee of Vijendra and the other director, Mr. Mukesh Kumar ("**Mukesh**").
9. Thus, the 2017-loan was secured by:
 - (i) a first registered mortgage (Mortgage No. 839720) ("**2017-mortgage**") over Certificate of Title No. 16233 being Lot 16 on D.P No. 4068 ("**property**") and,
 - (ii) a personal guarantee limited to \$876,000 by Vijendra and Mukesh.

Swapping Securities/ "Securitization"

10. To limit the exposure over his property, Vijendra would have insisted that the mortgage operate only as an interim security, until Westbus was able to provide an alternative collateral. In that context, Westbus and BSP entered into an arrangement where:

- (i) BSP undertook to discharge Vijendra’s mortgage once Westbus was able to arrange for alternative security.
 - (ii) the alternative security was to be in the form of a charge over the four 61-seater Hino buses which were to imported by Westbus. The charge was to be registered under the Personal Properties Securities Act 2017 in favor of BSP.
 - (iii) Westbus was to ensure that the four 61-seater buses would arrive in Fiji within **three months** of the execution of the Letter of Offer.
 - (iv) Westbus was to maintain a comprehensive insurance cover over four 61-seater buses for the entire seven-year term of the 2017 loan.
11. All this meant that, once the four 61-seater Hino buses arrived in Fiji, Westbus was to immediately arrange for their “securitization” on the above terms.

Westbus breaches the Securitization Conditions

12. As it turned out, Westbus failed to comply with the above terms in the following ways:
- (i) Westbus did not import four 61-seater Hino buses. Rather, it imported four 31-seater buses and one 61-seater bus.
 - (ii) the buses did not arrive in Fiji within three months of the execution of the Letter of Offer. Rather, they arrived here in October 2017, eight months after drawdown.
13. I gather that Westbus has been unable to register a charge in favor of BSP under the Personal Properties Securities Act 2017. I understand this was due largely to a dispute with BSP as to whether the four imported buses conform to the description and quality set out in the formal documentation.

Arrears & Default Notices

14. Notably, Westbus was already in default of its loan repayment obligations by the time the buses arrived in Fiji. It was also in arrears on the other two BSP loan accounts (the “**older accounts**”). In October 2018¹ and 25 January 2019², BSP issued default notices to Westbus³ in respect of the 2017 loan. On 11 January 2019, two weeks before the last notice, Vijendra and BSP’s Manager West, Mr. Shainesh Lal (“**Lal**”) had a

¹ see Annexure **SL-10** of the Affidavit of Shainesh Lal sworn on 23 February 2022.

² see Annexures **SL-11**, **SL-12** and **SL-13** of the Affidavit of Shainesh Lal sworn on 23 February 2022.

³ and its guarantors.

meeting⁴ where Vijendra requested BSP to consider a loan -restructure and extending its term.

15. BSP declined the request.
16. On 8 February 2019⁵, Westbus' solicitors wrote to BSP's solicitors accusing BSP of having breached the securitization arrangement by failing to release the mortgage. In the same letter, Westbus gave an undertaking to clear the arrears⁶ by **21 February 2019**.

BSP threatens Mortgagee Sale

17. By letter dated **21 February 2019**, BSP's solicitors highlighted the bank's intention to proceed with a mortgagee sale⁷. However, on 28 February 2019, BSP emailed to advise Westbus that the bank was deferring the mortgagee sale in order to allow Westbus some time to update payment on all three loan accounts. On 15 March 2019, Westbus paid \$14,538-48 in loan repayment. However, the account remained in substantial arrears. On 14 June 2019, Westbus informed BSP by email of its plans to sell one of its properties and apply part of the proceeds towards regularizing the loan account⁸.

Default-Notice on 2017-Loan Account

18. On 08 October 2021, Neil Shivam Lawyers sent the following default notice⁹ with regards to the 2017- loan:

You are in default under the Commercial Loan Contract and the account number: L11552 in the sum of \$127,500.72as of 3rd March 2012, inclusive of 8.00% variable interest.

⁴ see paragraph **SL-17** (iii) to (v) of the Affidavit of Shainesh Lal sworn on 23 February 2022.

⁵ the letter was written some sixteen months after the consignment of five (5) Hino buses had arrived in Fiji in October 2017.

⁶ the arrears was stated to amount to \$29,075.92.

⁷ on the following premise:

- (i) the 2017-mortgage was given subject to the securitization of four (4) brand new 61-seater Hino buses.
- (ii) the buses were to arrive in Fiji within three months of the facility. During this time, Westbus was to pay off the loan interest.
- (iii) the buses however arrived almost two (2) years into the term of the facility.
- (iv) clearly, Westbus was utilizing the facility during that time.
- (v) BSP thus reserves the right to recover dues by Mortgagee sale.
- (vi) in any event, Westbus has failed to pay the entire default sum on or before 21 February 2019 – as it had promised.

⁸ see annexure **SL-18** of the Affidavit of Shainesh Lal sworn on 23 February 2022.

⁹ see annexure **SL-20** of the Affidavit of Shainesh Lal sworn on 23 February 2022.

To remedy the default.. [BSP].. must receive a sum of \$127,500.72....as of 3rd March 2021, inclusive of 8.00% variable interest, within 30...days from the date of service of this Notice to you.

.....

(a) make or all of the monies payable under the Contract immediately due and payable and require their immediate payment. This will include amounts that, but for your default, would not have been payable under the Contract until their respective due dates in the future.

The amount received to pay out the contract if this default occurs is in the sum of \$694, 150 -00 exclusive of accruing interest and other bank fees.

Rejection of Westbus' Proposed Arrangement/ Advertisement for Mortgage-Sale

19. On 20 December 2021, Vijendra sent the following email¹⁰ to BSP to offer a solution:

Hi Shainesh

After the first Mortgagee Sale notice in the paper we have been in desperate search for funds.

My wife through her family in Australia has managed to raise \$150,000 AUD.

She can give me the money on condition the house is discharged in substitute for 5 buses worth \$910,000 taken as security.

Valuation Attached.

The balance of the arrears will be cleared from using our home, once discharged.

Please advise urgently as my wife has done everything to raise this fund and is extremely unwell due to the mortgage sale.

Please need your urgent consideration, as I want to stay with the bank and move forward.

Please.

VJ

MD/CEO

20. BSP however refused to accede to the above request for the following reasons¹¹:

(i) Westbus had been in default and in arrears of all three loan accounts¹²

¹⁰ see annexure **SL-22** of the Affidavit of Shainesh Lal sworn on 23 February 2022.

¹¹ see paragraph 18 of the Affidavit of Shainesh Lal sworn on 23 February 2022.

¹² as follows:

Loan Account #	Account Name	Outstanding Balance	Arrears
L11552 (2017 – loan)	Westbus (Fiji) Pte Limited	\$695,225.94	\$171,116.16
L10411	Westbus (Fiji) Pte Limited	\$293,364.07	\$ 97,718.40
L10824	Westbus (Fiji) Pte Limited	\$315,901.92	\$ 90,495.16
TOTAL		\$1,304,491.93	\$359,329.72

- (ii) BSP has had to suspend interest on the loan accounts from March 2021.
- (iii) Westbus imported four 31-seater buses and one 61-seater bus instead of four 61-seater buses – and without informing BSP.
- (v) the agreement projected a certain value of units to be imported. However, the actual imports fell short of that expectation.
- (vi) it was not feasible for BSP to accept \$127,500.72 in exchange for the release of the mortgage. The mortgage is BSP's prime security.
- (vii) the entire loan is now due and payable on account of the default on all three loan accounts (see footnotes).
- (viii) Westbus may exercise its right of redemption by paying a total sum of **\$695,225.94** together with accumulated interest in respect of the 2017-loan¹³.
- (ix) other secured creditors of Westbus such as HFC Bank have also advertised for a mortgagee-sale.
- (x) **Westbus has not provided any latest financial statement to show that the company is solvent.**
- (xi) as of 23 February 2022 (date Shainesh Lal swore his affidavit), Westbus had been in default on all three accounts for four years.

21. At paragraphs 34 and 35 of his affidavit, Lal opines that BSP:

"...is no longer under any contractual or legal obligation "to swap the securities as sought by the Plaintiffs".

because:

"..[BSP] is no longer in a position to sustain the debt and is under a duty as a financial institute to realize the security.

22. BSP then acted on its power of sale and, on 11 and 18 December 2021, three months after Neil Shivam Lawyers' default notice, BSP proceeded to advertise for mortgagee sale¹⁴.

ORIGINATING SUMMONS

23. What is before me now is the Originating Summons filed by Westbus and Vijendra on 28 April 2023. The Summons is supported by an affidavit of Kumar sworn on 17 December 2021 and filed on 23 December 2021. Westbus and Kumar seek the following relief:

- (i) a declaration that Westbus has a right to redemption.

¹³ see paragraph 18 of the Affidavit of Shainesh Lal sworn on 23 February 2022 and annexure **SL-23** thereof.

¹⁴ see annexure **SL-21** of the Affidavit of Shainesh Lal sworn on 23 February 2022.

- (ii) a declaration that the BSP acted unconscionably in failing to honor Westbus' right to redemption to discharge Mortgage No. 839720 on Certificate of Title No. 16233 by refusing to settle and discharge the mortgage after advising the Reserve Bank of Fiji that BSP will settle and close the file in the sum of \$785,452 -00 and later demanded the sum of \$1,477,186.41.
 - (iii) an Order to direct the BSP to forthwith accept Westbus' right of redemption and discharge the mortgage in question based.
24. Westbus and Vijendra also filed an *ex-parte* Notice of Motion on 28 April 2023, pursuant to which the Learned Master Azhar granted the following Orders:
- (i) an Order restraining BSP from entering into an agreement to sell the property and to preserve Westbus' and Vijendra's right of redemption, and
 - (ii) an Order directing Westbus to deposit the outstanding sum into court (this being the amount owing on the 2017 loan debt, which is tied to the mortgage in question).

(I do note that West bus has since made two deposits into Court. The first one was made on 23 December 2021 in the sum of \$263,301-01¹⁵. The second one was made on 16 May 2023 in the sum of \$522,150.99¹⁶).

ISSUES

25. The question is, whether Westbus did breach any term of Mortgage No. 839720 and/or the securitization agreement tied to it, and if so, whether or not the breach is sufficient to extinguish its right to redeem the mortgage? Related to this, is the question as to whether the 2017- mortgage is tied specifically to the 2017-loan debt, which loan debt Westbus is willing to redeem – or whether the mortgage is also tied to the other two old loans?

DO WESTBUS & VIJENDRA HAVE A RIGHT TO REDEMPTION?

26. A borrower has a right to redeem his mortgaged property by repaying the entire mortgage debt, which includes the principal sum, any accrued interest, and all associated costs.
27. This right endures until the mortgagee has lawfully exercised its power of sale and sold the property to a *bona fide* purchaser for value, or until the mortgagee forecloses on the property.

¹⁵ High Court Receipt Number 357268.

¹⁶ High Court Receipt Number 357293.

28. A mortgaged property is deemed “sold” once the mortgagee has entered into a binding contract of sale. In this regard, both conditional and unconditional acceptance of a tender have been held sufficient to give rise to such a contract.

29. Section 72 (l) of the Property Law Act Cap. 130 provides:

A mortgagor is entitled to redeem the mortgaged property at any time before the same has been actually sold by the mortgagee under his power of sale, on payment of all moneys due and owing under the mortgage at the time of payment.

30. In **Vere v NBF Asset Management Bank** [2004] FJCA 50; ABU0069.2003S (11 November 2004), the Fiji Court of Appeal held that entry into a contract of sale merely suspends the equity of redemption (i.e. it does not extinguish the equity). This is because the equity revives if the contract fails to proceed to completion.

31. To restrain a mortgagee from entering into a contract, the mortgagor must demonstrate that he is immediately able to pay the full amount claimed by the mortgagee. This ensures that equitable relief is not granted unless the mortgagor can discharge the debt without delay.

32. In **Alam v Colonial National Bank** [2017] FJSC 32; CBV6.2017 (15 December 2017), Calanchini JSC referred to the Court of Appeal judgment in **Strategic Nominees Limited (in receivership) -v- Gulf Investments Fiji Limited** (ABU 39 of 2009; 10 March 2011) as:

... authority for the proposition that a Court will not restrain a mortgagee from its remedy of sale pending litigation that may or may not provide additional funds to a mortgagor. **The only way that a mortgagor “can buy time” is by immediately paying to the mortgagee the full amount owing under the mortgage or by at the very least demonstrating that he is immediately able to pay the full amount claimed by the mortgagee.** That was never the position in this case.

(emphasis added)

33. In this case, BSP had confirmed that the amount owing on the 2017- loan account, and for which the mortgage in question was granted, was **\$695,225.94**¹⁷. As stated above, Westbus has deposited this sum into court as directed by the Master.

34. However, BSP is adamant that Westbus lost its right to redeem when it breached the securitization arrangement. Furthermore, and in any event, the old loans are also in arrears and remain unpaid.

¹⁷ see paragraph 18 of the Affidavit of Shainesh Lal sworn on 23 February 2022 and annexure **SL-23** thereof.

DID WESTBUS BREACH 2017-MORTGAGE? (No. 839720)

35. A contract is breached when a party, without lawful excuse fails to fulfill a legal obligation under the agreement; fails to perform an obligation within the time stipulated; fails to perform the obligation altogether; or performs an obligation in an improper or defective manner.
36. In this case, Westbus was obligated to:
- (i) import four new 61-seater Hino buses.
 - (ii) procure the delivery of the buses to Fiji within **three months** of the date of execution of the Letter of Offer.
 - (iii) effect the immediate securitization of the buses upon their arrival in Fiji.
 - (iv) maintain comprehensive insurance over the four 61-seater Hino buses for the full seven-year term of the 2017 loan.
 - (v) maintain punctual payment of the loan's principal and interest as agreed
37. As stated, Westbus defaulted on all five obligations. I am not persuaded by Westbus' contention that the foregoing constituted changes which BSP had pre-approved. There is no evidence to substantiate that contention.

WERE THE BREACHES SUFFICIENT TO EXTINGUISH THE RIGHT TO REDEEM THE MORTGAGE?

38. A mortgagee may sell or foreclose a mortgaged property when the mortgagor defaults. This means that the right to sell or foreclose is triggered by mortgagor-default.
39. However, these rights do not extinguish the mortgagor's equity of redemption.
40. Rather, the equity of redemption exists alongside the mortgagor's right to sell or foreclose and ensures that the mortgagor retains a residual opportunity to reclaim the property. In other words, the equity of redemption is designed to temper the mortgagee's power of sale or foreclosure, even after he has defaulted. Any other interpretation would amount to a clog on the equity of redemption.
41. As Lord Parker said in **Kreglinger v New Patagonia Meat and Cold Storage Co Ltd** [1914] AC 25 at 48

The rule may be stated thus: the equity which arises on the failure to exercise the contractual right cannot be fettered or clogged by any stipulation contained in the mortgage or entered into as part of the mortgage transaction.

42. There is authority that a clause which limited the period within which a mortgagor may redeem was void. This was because it fettered the mortgagor's right of equity of redemption (Salt v Marquess of Northampton [1892] AC 1)¹⁸; Samuel v Jarrah Timber and Wood Paving Corporation Ltd [1904] AC 323).
43. I am of the view that a failure to pay the principal or interest on time, or a failure to import the vehicles on time, or the failure to import the vehicles specified – are essential breaches. However, even if one were to accept that these breaches did lower the collateral value of the buses, and thereby undermined BSP's interest as mortgagee, they still do not, in any way whatsoever, erode Westbus' statutory and common law right of redemption. That right is extinguished only upon completion of foreclosure or the occurrence of a valid sale of the mortgaged asset (as per section 72 (1) of the Property Law Act).

IS THE 2017- MORTGAGE ALSO TIED TO THE OTHER TWO OLD LOANS?

44. It appears that one of the real reasons for BSP's reluctance to discharge the mortgage is that the debts in the other two accounts are also due and owing.
45. Does the mortgage extend in scope to the other two loan accounts?
46. Notably, the other two loan accounts were secured by bills of sale which BSP held over other buses within the Westbus fleet. I gather that BSP had seized those other buses at some point pursuant to its rights under the Bill of Sale.
47. At the hearing, Ms. Devan stated that she was unclear as to the date of the seizure, though she believed that it would have occurred around August 2023. As of the hearing date, Ms. Devan also could not confirm whether BSP had proceeded to sell the buses, or, if BSP had in fact sold the buses, whether the proceeds of sale had discharged the two older debts, in whole or in part.
48. However, even if the sale of these assets have left a deficit, a mortgagee cannot roam beyond the four corners of a mortgage to enforce a debt, which is not expressly secured by the mortgage. This applies notwithstanding that the unsecured-debt is owed by the same mortgagor.
49. However, a mortgage may extend to cover a pre-existing and/or even a future debt, if the parties had agreed so. Such an agreement is, typically expressed in an *all-monies clause*?

¹⁸ See Willmot & Duncan - CLOGGING THE EQUITY OF REDEMPTION: AN OUTMODED CONCEPT? - Vol 2 No 1 QUTLJJ.

50. Such a clause will allow a mortgagee to secure all other debts of the same borrower under various other loan agreements - in addition to the loan debt tied to that specific mortgage (see **Van den Heuvel v Perpetual Trustees Victoria Ltd; Registrar General of NSW v Van den Heuvel** [2010] NSWCA 171 (23 July 2010) **Perpetual Trustees Victoria Limited v English & Anor** [2010] NSWCA 32 (12 March 2010); **Commercial First Business Ltd v Munday & Anor** [2014] EWCA 1296).
51. In **In the Bankrupt Estate of Cheryl Ann Murphy Max Christopher Donnelly v Commonwealth Bank of Australia Limited** [1996] FCA 1795 (23 September 1996), the Federal Court of Australia (as per Hill J) said:

13. The most recent decision of Santow J is to be found in **Burke v State Bank of New South Wales** (1995) 37 NSWLR 53. In that case a husband and wife had mortgaged their house as security for a guarantee given to a bank of a loan that had been made to their son. The mortgage contained an all-moneys clause. Subsequently they signed further documents, the contents of which were not disclosed to them, acknowledging that the loan had been increased. An issue in the case was whether the all-moneys clause should be construed so as to extend to the subsequent unauthorised advances. Santow J held that it should not. In so doing his Honour set down (at 70-72) a number of propositions. In summary his Honour accepted that the guidelines were generally applicable in Australia, albeit that the resolution of a particular case depended upon the construction of the individual mortgage. A liberal interpretation of a widely drawn mortgage should, however, in his Honour's view, be questioned where such an approach would yield absurdities. It is his Honour's fifth proposition which has the greatest relevance in the present case. His Honour said (at 72):

"... If there is an all monies mortgage the Bank will not be able to claim it is secured to a debt that neither party could sensibly say as at the date of the time the mortgage was taken it was contemplated should be included in the wide words': see **Australia and New Zealand Banking Group Ltd v Cromer** (1993) 5 BPR 11,748, cited by Young J in **Williams v State Bank of New South Wales** (7 April 1993, unreported) at 9.

In that case, a wife had (with her husband) given a guarantee over the jointly owned family home and was held not to be liable for a loan made without her knowledge to her husband to on-lend to a third party, at a time when the amount originally secured under the mortgage had been repaid. This was notwithstanding that the mortgage was in the form where it operated not only on the original loan but also, as paraphrased by Young J, secured 'all monies which might be advanced by the Bank to the mortgagors or any of them at any time'(.). Young J, while deciding the case on a different basis, observed that despite this wide wording 'it may well be able to be argued as a matter of construction' that her interest was not affected."

52. Suffice it to say that, while "all monies" clauses are generally enforceable, the court may intervene to declare a particular one unenforceable if it is seen to be a clog so as to render redemption unduly difficult for the mortgagor.

53. Having said that, I must say that the affidavits filed on behalf of BSP do not even identify any provision in the 2017 mortgage that appears capable of operating as an *all-monies clause*.

IN THE ABSENCE OF AN “ALL MONIES-CLAUSE”, IS THERE ANY OTHER BASIS UPON WHICH BSP MAY USE THE MORTGAGE TO SECURE THE OTHER DEBTS?

54. As stated, Westbus had three loan accounts with BSP. The total amount advanced under all three accounts exceeded FJD \$1.5 million, of which the sum outstanding on the 2017 account is FJD \$695,000.00, together with accrued interest. Westbus defaulted on all three accounts.
55. As I have found, the 2017-loan is the only one which is specifically tied to the mortgage. There is no “all-monies” clause to tie the other two debts to the mortgage.
56. Meanwhile, BSP is insisting on selling the mortgaged property despite the fact that Westbus has deposited the balance owing under the 2017-account into court (though other charges may be added to this as I gather).
57. I also observe that BSP has already taken into possession the other four buses (not the ones imported in 2017) over which it held a bill of sale as security for the other two loan accounts.
58. In my view, an all-monies clause must be expressed with clarity. Even where such clauses are clearly worded, they have been struck down as unconscionable if oppressive in effect, as the body of case law appears to demonstrate.
59. It follows *ipso facto* that there is no scope for entertaining a poorly drafted “all monies” clause — let alone, implying such a clause into a mortgage where none exists.
60. In the circumstances of this case — where BSP has acted upon the bills of sale securing the two earlier loan debts, where the mortgage in question contains no “all monies” clause, and where Westbus has demonstrated its present ability to redeem the 2017 loan and mortgage by paying into court the balance sum as directed by the Master — BSP’s conduct is simply untenable and a clog on Vijendra’s right of redemption.
61. In addition to the foregoing, I take into account that the security in question is a third-party mortgage granted by Vijendra. Although he is a director of Westbus, Vijendra is not himself the borrower. Rather, his company, Westbus is the borrower (**Salomon v A Salomon and Co Ltd** [1897] AC 22).

62. As I have said, the arrangement to swap securities upon the arrival of the four 61-seater Hino buses in Fiji, if anything, demonstrates Vijendra's intention that the third-party mortgage he granted to BSP was to operate only as a temporary measure.
63. In the absence of a specific "all monies" clause in the mortgage, clearly, Vijendra only intended that his third-party mortgage should be confined to the particular debt or facility acquired by Westbus in 2017.
64. Vijendra did not wish his property to be unduly exposed. Clearly, he did not intend that his property should be burdened with liabilities extraneous to the 2017 facility.
65. In my view, equity cannot be allowed to permit a third-party mortgagor's assets to be subjected to risks beyond those expressly undertaken, nor to have his right of redemption fettered by obligations outside the scope of the agreed debt.

CONCLUSIONS

66. In the result, I grant the following relief:
- (i) a Declaration that Westbus has a right to redemption.
 - (ii) an Order directing the BSP to discharge Mortgage No. 839720 after payment of all monies (principal plus all accrued interest) due to BSP on Loan Account No. L11552.
67. Parties at liberty to apply. I am of the view that the Plaintiffs are entitled to costs on a higher scale which I summarily assess at \$5,500 (five thousand and five hundred dollars only).



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Anare Tuilevuka

JUDGE

06 February 2026