

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

Civil Case No. 213 of 2007

BETWEEN: WESTPAC BANKING CORPORATION
Claimant

**AND: JEAN MARCEL GOISET AND THI TAM
GOISET**
Defendants

AND: MR. AND MRS. HANNAM
Third Party

Coram: Justice N. R. DAWSON

Date of Hearing: 18th June, 2009

Date of Decision: 18th June, 2009

Counsel:

<u>Claimant:</u>	Mr. M. Hurley
<u>Defendants:</u>	Mr. R. Warsal
<u>Third Party:</u>	Mr. J. Ozols

ORAL RULING

1. An application has been made on behalf of Mr. and Mrs. Goiset to stay or suspend the proceedings in this Court and to allow an appeal to proceed to the Court of Appeal. Today in Court Mr. Warsal who appears for Mr. and Mrs. Goiset has asked for an amendment to be made to his proposed orders. He has not been good enough to file an Amended Application for Stay or Suspension so it will need to be recorded in this decision. The amendment he seeks is to include a new order which should be numbered 1 and which is as follows:-

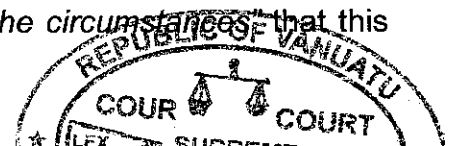
- 1) An Order seeking leave for the Defendants to file an appeal in respect of the Judgment dated 19th May 2009.

The orders sought in the original Application for Stay/ Suspension numbered 1, 2, and 3 are now numbered 2, 3 and 4. There is no objection to the additional order sought and the variations in numbering from counsel for the Westpac

Banking Corporation. The addition and variation to the Application is granted accordingly.

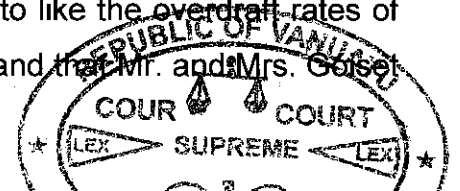
2. It is submitted on behalf of Mr. and Mrs. Goiset that the Supreme Court has authority to grant leave the Goisets to appeal to the Court of Appeal, the Judgment of 19th May 2009. It is accepted that was an interlocutory judgment and for any such appeal, leave of this Court is required prior to it going to the Court of Appeal. It is submitted that this Court has a discretion to grant the appeal and that this Court should take into consideration all the circumstances of the case. It is also submitted that for leave to be granted then there should be some reasonable prospects of the appeal succeeding. In addition it is submitted that there must be some detriment to the substantive rights of the defendants not remediable through the trial process. It is also submitted that there must be some matter for importance at issue for leave to appeal to be granted. In this case it is submitted that it is the quantum of the debt claimed by Westpac against Mr. and Mrs. Goiset. Counsel for Mr. and Mrs. Goiset confirms that is the only matter at issue and for which leave is being sought for the matter to go to the Court of Appeal.

3. In the Notice of Appeal filed in Court by counsel for Mr. and Mrs. Goiset it refers to *"Further Evidence to be adduced by the appellants at the hearing herein"*. The Court is advised today that the evidence to be adduced before the Court of Appeal relates to the capitalisation of interest and refers to evidence not heard by this Court at the hearing which resulted in the decision dated 19th May 2009. Counsel for Mr. and Mrs. Goiset accept that these calculations which apparently they have from Mr. and Mrs. Goiset have never been filed in this Court by way of a sworn statement and nor have Mr. and Mrs. Goiset ever put these calculations to Westpac notwithstanding their dispute with Westpac is a matter of longstanding. Counsel advises that this evidence of his clients will be filed by way of a sworn statement with the Court of Appeal if leave to appeal is granted. It did not occur to counsel to file this information with this Court so that such evidence as might be adduced by way of the sworn statement to the Court of Appeal could be taken into account as some of *"all the circumstances"* that this



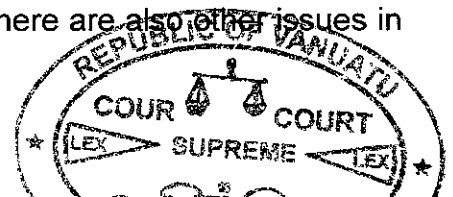
Court can take into account when considering whether or not to grant leave to appeal. Counsel for Mr. and Mrs. Goiset advises this Court that his clients accept that a minimum amount of VT 75 million is owed by his clients to Westpac but they do not have the means to pay this amount at this time.

4. This Court needs to consider what reasonable prospect of success an appeal might have. For any appeal by Mr. and Mrs. Goiset to proceed leave has to be granted. No new evidence has been produced to this Court that would indicate that either this Court or the Court of Appeal would make any different findings from that which has already been made by this Court.
5. With respect to the submission that it would be detrimental to the substantive rights of Mr. and Mrs. Goiset not to grant leave to appeal, this Court must also balance the likelihood of detriment occurring to Westpac should any further delay be countenanced. It is obvious that the longer it takes for Westpac to be repaid such amounts as are owing to it by Mr. and Mrs. Goiset, the amount will increase as interest continues to accrue and the security that they have over the properties belonging to Mr. and Mrs. Goiset will become less likely to provide sufficient funds to repay Westpac.
6. It is difficult to see how proceeding with mortgagee sales will be to the detriment of Mr. and Mrs. Goiset when they accept that a large amount of money is owed by them to Westpac which they presently did not have the means to pay, and interest continues to accrue on such amounts. This Court also needs to consider whether there is an issue of importance before granting leave so that this matter could go to the Court of Appeal. It is accepted that the only matter at issue is the quantum of debt claimed by Westpac against Mr. and Mrs. Goiset.
7. In the Decision dated 19th May 2009 this Court concluded that the Bank lending facilities to Mr. and Mrs. Goiset recorded the principle amounts lent and the interest rates applicable to the amounts owed by Mr. and Mrs. Goiset. It was concluded that the fact that Mrs. Goiset claimed not to like the overdraft rates of interest was not a matter that put the debt in dispute and that Mr. and Mrs. Goiset



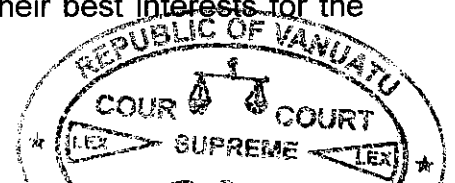
were not in a position to unilaterally change any amount of interest that the bank was entitled to claim under the financial facilities entered into with Mr. and Mrs. Goiset. The amounts in dispute appear simply to be an arithmetical exercise and as already noted Mr. and Mrs. Goiset have not produced any evidence before this Court to indicate otherwise.

8. There is no new evidence and the submissions to this Court are not persuasive that Leave to Grant Appeal to the Court of Appeal should be granted. This Application for Leave to Appeal has all the hallmarks of simply being a delaying exercise. The bank is entitled to obtain the fruits of its judgment. The Application for Leave to Appeal is declined.
9. It is accepted by counsel for Mr. and Mrs. Goiset that if the Application for Leave to Appeal is declined then the Application for a Stay/ Suspension must also be declined as it is only applicable if the Leave to Appeal was granted. The Application for Stay and Suspension is therefore also declined.
10. An application has been made by Mr. Terrence Hanam and Mrs. Philipa Hanam to be joined as Third Party to this matter. Mr. and Mrs. Hanam are the occupants and lessees of the Fish Shop in the Cyber café, one of the properties that the Westpac Corporation wishes to sell in order to return the amount owing to them by Mr. and Mrs. Goiset.
11. The application to be joined as third parties is based on an assurance that the applicants allege they were given by an officer of Westpac saying that it was in order for them to enter into a lease with Mr. and Mrs. Goiset and acting on that assurance they did so. That assurance is disputed by the Westpac Bank Corporation. It is accepted by the applicants as third parties that their claim has no basis in contract but in equity only. The alleged discussions that have taken place between the Applicants, the officer of Westpac Banking Corporation and the land agent would all require a hearing so that the evidence of the witnesses can be assessed and a finding made accordingly. There are also other issues in



law that would need to be considered that would require proper and full submissions for the Court to consider.

12. The application for Mr. and Mrs. Hannam to join as third parties is granted. The Third Parties are to file and serve any Sworn Statements they wish to submit to the Court by 31st July 2009. The Westpac Bank Corporation are to file and serve any Sworn Statements in response by 20th August, 2009 and the matter is set down for a hearing in Court at 9 am on 16th September, 2009 with one day being allowed for this hearing.
13. An application has been made for Enforcement Orders by the Westpac Bank Corporation against Mr. and Mrs. Goiset. Draft Enforcement Orders were filed in February of this year. The Court has now added a Third Party to these proceedings and the Draft Orders are no longer appropriate but can be easily amended. Counsel for Westpac is to file a new Enforcement Warrant in the same terms as the previous enforcement warrant but amend it to exclude the premises of the Sea Food business owned and operated by Mr. and Mrs. Hannam thus to allow them to remain in possession and to continue to conduct their business. The amended orders will be sealed by the Court once they are filed by Counsel for Westpac.
14. The Third Party has made enquiry as to how and where the rental should be paid by the Third Party with respect to their lease with Mr. and Mrs. Goiset. The Court has had a discussion with counsel for Mr. and Mrs. Goiset and it is agreed that an Order be made that all rental presently owing and future rental owing by Mr. and Mrs. Hannam under the lease are to be paid by them to the Westpac Banking Corporation and such funds are to be received by Westpac in reduction of any amount owed to it by Mr. and Mrs. Goiset until a further order of this Court. This Order is made taking into account that if the funds were to be paid into the Court then the interest earned on those funds would be substantially less than the overdraft rates of interest claimed against Mr. and Mrs. Goiset by Westpac and it would appear in all the circumstances to be in their best interests for the money to be paid to Westpac in this way.



15. The Draft Enforcement Warrant of February 2009 is also to be amended so that the Sheriff is to provide a detail report not only to the solicitors for the Claimant in this matter in writing but also to the Court. Issues relating to the Enforcement Warrant will be reconsidered at a conference in Chambers to be held at 8:30 am on 31st July, 2009.
16. An Order for costs is made in favour of Westpac Banking Corporation against Mr. and Mrs. Goiset with respect to the application to appeal, the Application for Stay/ Suspension, and the Enforcement Orders. Costs will be on a standard basis and as agreed by the parties and failing agreement then as taxed by the Court.
17. In respect of the matters between the Third Party and Westpac Banking Corporation, costs will be in the cause.

Dated at Port Vila, this 18th day of June, 2009

