

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

Civil  
Case No. 19/1137 SC/CIVL

**BETWEEN: NATIONAL BANK OF VANUATU**

**Claimant**

**AND: WATER MILL INVESTMENTS LTD**

**Defendant**

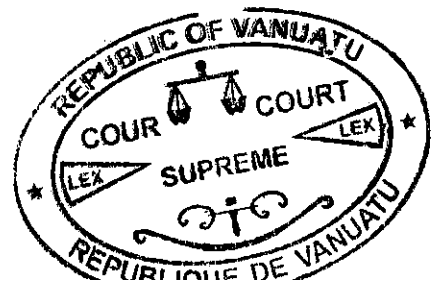
**Date of HEARING:** 5<sup>th</sup> August 2020  
**Before:** Justice Oliver. A. Saksak  
**In Attendance:** Mr Mark Hurley for the Claimant  
No appearance for the Defendant

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**SUMMARY JUDGMENT**

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1. The claimant filed an application for summary judgment on 21<sup>st</sup> July 2020 pursuant to Rule 9.6 of the Civil Procedure Rules No. 49 of 2002 ( the Rules). The application was supported by the sworn statements of Ben Dick Dali.
2. The application, sworn statement and the orders of 23<sup>rd</sup> June 2020 were served on the Defendant's Director on 21 July 2020. Christine Esau deposed to a sworn statement as to service on 5<sup>th</sup> August prior to the hearing.
3. The defendant, despite service did not file any response to the application. Their previous lawyer Mr Sugden, ceased acting from 23<sup>rd</sup> June 2020 when he filed a notice of ceasing to act. The application is therefore unopposed.
4. I heard Mr Hurley orally in relation to the submissions contained in a memorandum counsel handed up at the hearing of the formal proof.
5. The claimant filed his proceeding on 15<sup>th</sup> May 2019.
6. The defendant through Mr Sugden filed a defence on 14<sup>th</sup> June 2019 and a response earlier on 5<sup>th</sup> June 2019. It is a bare defence without any evidence filed in support.
7. The defence is basically that the claimant has not advanced any loan of VT 35.500.000 since 30/12/2011.



8. The claimant believes the defendant has no real prospect of defending the claim. The claimant relies on the evidence of Ben Dick Dali and the case authorities of **NBV v Tambe** [2007] VUSC 105 and **ANZ Bank ( Vanuatu) Limited v Traverso** [2012] VUSC 222 as upheld on appeal in **Traverso v ANZ** [2013] VUCA 8. I accept these cases are sufficient authorities for granting summary judgment in favour of the claimant.
9. The Court is satisfied from the evidence that the defendant has no real prospect of defending this claim. The evidence shows the moneys claimed were loaned. The defendants entered into mortgage agreements mortgaging its Leasehold Titles 12/0913/312 ( Ellouk) 12/0913/310 and 12/0913/311 ( Ellouk) as security for the loan.
10. The mortgage dated 30<sup>th</sup> December 2011 and 16<sup>th</sup> January 2012 and the various Letters of Offers and Acceptances annexed to the statement of Mr Dali filed on 15<sup>th</sup> May 2019 show that VT 35,500,000 had been advanced as loan by the claimant to the defendant, on the balance of probabilities. And further, a Notice of Demand was issued dated 6<sup>th</sup> November 2018 showing the account balance of VT 104,305,588. This amount is consistent with the Bank statement ( Annexure " BDD3) in the statement of 21/7/2020.
11. I am therefore satisfied as to the claimant's claims. I am further satisfied that the claimant's application for summary judgment has been properly filed under Rule 9.6 of the Rules and that all the criteria or requirements under that rule have been met by the claimant.
12. Accordingly I allow the application and enter summary judgment in favour of the claimant. I have issued the orders granting powers of mortgagee sale to the claimant as mortgagee as a separate order.

DATED at Port Vila this 5<sup>th</sup> day of August 2020

BY THE COURT

  
OLIVER A. SAKSAK  
Judge

