

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>229</sup> OF 2009

IN THE MATTER OF THE REGISTERED LAND LAW (2004 REVISION)

AND IN THE MATTER OF WEST BAY NORTH WEST, BLOCK 3D, PARCEL 164

BETWEEN:

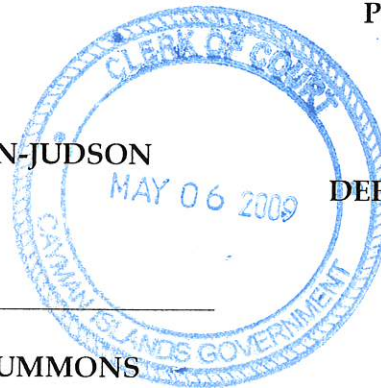
THE CAYMAN ISLANDS CIVIL SERVICE ASSOCIATION  
CO-OPERATIVE CREDIT UNION LIMITED



PLAINTIFF

AND

ELISBETH GARVIN-JUDSON



DEFENDANT

ORIGINATING SUMMONS

TO: Elisbeth Garvin-Judson of PO Box 556, Grand Cayman KY1-1602

LET THE DEFENDANT, Elisbeth Garvin-Judson, within 14 days after service of this Summons on her, counting the day of service, return the accompanying Acknowledgement of Service to the Court office, PO Box 495, George Town, Grand Cayman KY1-1106.

BY THIS SUMMONS which is issued on the application of the Plaintiff, the Cayman Islands Civil Service Association Co-Operative Credit Union Limited, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (2004 Revision) as follows:-

1. In or about September 2005 the Defendant, a member of the Plaintiff Credit Union, applied to the Plaintiff for a loan which, together with the balance of previous loans made to her, gave a balance due of CI\$197,990.23 and this loan was to be repaid by monthly instalments of CI\$2,597.88 and was to be secured by a Variation of Charge against the property registered in the name of the Defendant at the Lands and Survey Department as West Bay North West, Block 3D, Parcel 164, ("Parcel 164").

2. At all material times Parcel 164 was registered in the name of the Defendant and on 25<sup>th</sup> October 2005 the Plaintiff as Chargee and the Defendant as Chargor executed a Variation of Charge in respect of Parcel 164.
3. The Variation of Charge dated 25<sup>th</sup> October 2005 provided that:-
  - 4.1 The Plaintiff would lend and the Defendant would borrow the principal sum of CI\$197,990.23 ("the Principal Sum").
  - 4.2 Interest on the Principal Sum would accrue at the rate of 0.81% per month on the reducing balance.
4. The Variation of Charge dated 25<sup>th</sup> October 2005 also provided that:-

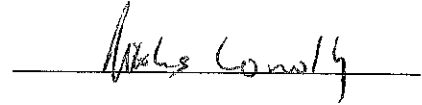
*"Section 72 of the Registered Land Law (1995 Revision) shall be varied in respect of this Charge and of any instrument or variation executed pursuant to this Charge, so as to entitle the Chargee immediately upon default by the Chargor in payment of the principal sum or any interest payable hereunder (as defined by Section 64(2) of the Registered Land Law (1995 Revision) or in the performance or observance of any agreement, expressed or implied herein to*

  - a. *appoint a receiver of the income of the Charged Property; or*
  - b. *sell the Charged Property to private treaty as well as by public auction; or*
  - c. *foreclose or enter into possession of the Charged Property; or*
  - d. *in the event that the Chargee does appoint a receiver or enters into possession of the Charged Property, exercise its powers of sale or foreclosure or appointment of a receiver at any time thereafter without further notice."*
5. On and since April 2008 the Defendant has failed to make the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.
6. By notices dated 28<sup>th</sup> October 2008, Messrs. Ritch & Conolly, as Attorneys for the Plaintiff, served notice on the Defendant pursuant to the provisions of Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision), indicating that the sums secured by the Charges were repayable three months after the service of the notices and indicating that unless the balance of the sums secured by the Charges was repaid, or the loan repayments were brought up to date and thereafter the monthly sums due under the Loan Agreement were maintained, proceedings would be issued.
7. The notices were posted at Block 3D, Parcel 164 on 4<sup>th</sup> December 2008 and gazetted in the Cayman Islands Gazettes numbered #25/2008, #26/2008 and

#01/2009 and dated 8<sup>th</sup> December 2008, 22<sup>nd</sup> December 2008 and 5<sup>th</sup> January 2009, respectively.

8. Since service of the section 64(2) and section 72(1) notices were made the Defendant has not made any payments in respect of the Principal Sum outstanding and/or interest.
9. The Registered Land Law (2004 Revision) provides that once a notice of demand has been served pursuant to Section 64(2) the total amount of outstanding principal and interest becomes due and payable three months after service of that notice. Therefore, the Plaintiff avers that the notices addressed to the Defendant dated 28<sup>th</sup> October 2008 and posted at Parcel 164 and gazetted, for the third time, on 5<sup>th</sup> January 2009 constitute such notices pursuant to Section 64(2).
10. The Registered Land Law (2004 Revision) by virtue of Section 72(1) provides that once there is a default in the payment of principal, or any other periodical payments and if such default continues for three months, the Chargee may serve on the Chargor notice in writing to pay the money owing, or to perform and observe the terms of the Legal Charge, as the case may be.
11. The Registered Land Law (2004 Revision) by virtue of Section 72(2) provides that if a Chargor has not complied, within three months after the date of service of the notice served on him under Section 72(1), the Chargee may sell the Charged Property. Therefore, on and since 5<sup>th</sup> April 2009, there has accrued a right to the Plaintiff to sell Parcel 164 and the Plaintiff seeks an order that it may do so.
12. In the premises, the Plaintiff seeks an order pursuant to the provisions of the Registered Land Law (2004 Revision) that:-
  - 13.1 an order for possession be made in terms that the Plaintiff be at liberty to sell Parcel 164 either by public auction or private treaty.
  - 13.2 the Plaintiff have leave pursuant to Grand Court Rules Order 45 Rule 3(1) and (2) to issue a Writ of Possession in respect of Parcel 164.
13. The Plaintiff also seeks an order that if after any sale of the Parcel 164 there should be any shortfall in the amount due and owing to the Plaintiff, the Plaintiff be at liberty to enter Judgment for the said shortfall, together with interest and costs.

Dated this 6<sup>th</sup> day of May 2009



**RITCH & CONOLLY**  
Attorneys for the Plaintiff

If the Defendant does not acknowledge service, judgement may be given, or made against, or in relation to him, as the Court may think just and expedient.

**NOTE:** This Summons may not be served later than 4 calendar months (*or if leave is required to effect Notice out of the jurisdiction, 6 months*) beginning with that date, unless renewed by Order of the Court.

**IMPORTANT:**

Directions for acknowledgement of service are given with the accompanying forms.



Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.

Endorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Messrs. Ritch & Conolly  
PO Box 1994  
Grand Cayman KY1-1104

Ref: RJH/CICSA/11388/Garvin-  
Judson, Elisabeth

Endorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.