

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0406 OF 2009

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

AND IN THE MATTER OF SAVANNAH, BLOCK 28C, PARCEL 113 AND SPOTTS, BLOCK 24B, PARCEL 200

BETWEEN:

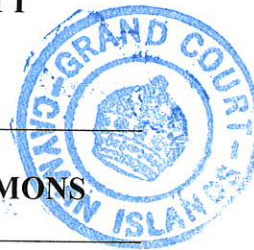
FIRSTCARIBBEAN INTERNATIONAL BANK (CAYMAN) LIMITED

PLAINTIFF

AND:

JEANNE MOFFITT

DEFENDANT



ORIGINATING SUMMONS

TO: Jeanne Moffitt whose address for service is PO Box 371, Grand Cayman KY1-1502.

LET THE DEFENDANT, Jeanne Moffitt 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, P. O. Box 495, George Town, Grand Cayman KY1-1106.

BY THIS SUMMONS which is issued on the application of the Plaintiff, FirstCaribbean International Bank (Cayman) Limited, PO Box 68, FirstCaribbean House, 25 Main Street, George Town, Grand Cayman KY1-1102, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (2004 Revision) as follows:-

1. On or about 15th December 2005 the Defendant as Chargor and the Plaintiff as Chargee executed a Legal Charge in respect of the property registered at the Lands and Survey Department as Savannah, Block 28C, Parcel 113 ("Parcel 113"). Subsequently on or about 3rd August 2007 the Defendant as Chargor and the Plaintiff as Chargee executed a Variation of Second Charge in respect of the

property registered at the Lands and Survey Department as Savannah, Block 28C, Parcel 113 and a Variation of Charge in respect of the property registered at the Lands and Survey Department as Spotts, Block 24B, Parcel 200 (“Parcel 200”) (“the Charges”) together with a Collateral Second Charge (“the Collateral Charge”) in respect of the property registered at the Lands and Survey Department as Spotts, Block 24B, Parcel 200.

2. The Charges and the Collateral Charge provided, inter alia, that:
 - 2.1 The Chargee would lend and the Chargor would borrow, and for and on behalf of Furniture by C.J'.s Ltd, the principal sums of:
 - 2.1.a One Hundred and Forty Five Thousand CI Dollars (CI\$145,000.00) which was to be secured as a Charge on Parcel 113 and One Hundred and Fifty Thousand CI Dollars (CI\$150,000.00) which was to be secured by a Variation of Second Charge on Parcel 113 and a Collateral Charge on Parcel 200.
 - 2.1.b Five Hundred and Fifty Thousand CI Dollars (CI\$550,000.00) which was to be secured as a Variation of Charge on Parcel 200.
 - 2.2 Interest on the principal sum would accrue at the rate of 1.00% per annum above the Chargee's Prime Lending Rate for Cayman Islands Dollars in respect of the Charge over Parcel 113 and Variation of Charge over Parcel 200 and 3.00% per annum above the Chargee's Prime Lending Rate for Cayman Islands Dollars in respect of the Variation of Second Charge over Parcel 113 and the Collateral Second Charge over Parcel 200 and subject to variation by the Chargee.
3. It was specified by the Chargee in the terms and conditions of the Charges and the Collateral Charge, that the Defendant would repay the principal sum, and accrued interest, by monthly instalments.
4. Since in or about December 2008 the Defendant has failed to pay the full amount of the monthly instalments due in respect of the principal sum loaned and in respect of interest.
5. The Registered Land Law (2004 Revision) provides:

“Section 64(2) A date for the repayment of the money secured by a charge may be specified in the charge instrument and, where no such date is specified or repayment is not demanded by the chargee on the date specified, the money shall be deemed to be re-payable three months after the service of a demand in writing by the chargee”

6. By a letter dated 13th May 2009 and served personally on the Defendant on 25th May 2009, the Plaintiff duly served Notices on the Defendant pursuant to Section 64 of the Registered Land Law (2004 Revision) demanding payment of the balance of the principal sum and accrued interest.
7. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
8. The Defendant did not make payment of the balance of the principal sum outstanding and/or accrued interest as demanded.
9. The Plaintiff avers that the notice served on the Defendant on 25th May 2009 constituted a demand in writing pursuant to Section 64(2) and that the amount outstanding became due on 25th August 2009.
10. The Registered Land Law (2004 Revision) also provides that:

“Section 72(1) If default is made in payment of the principal sum or of any interest or any other periodical payment or of any part thereof, or in the performance or observance of any agreement expressed or implied in any charge, and continues for one month, the chargee may serve on the chargor notice in writing to pay the money owing or to perform and observe the agreement as the case may be.”

11. A notice pursuant to the provisions of Section 72(1) of the Registered Land Law (2004 Revision) was served personally on the Defendant on 25th May 2009.
12. The Registered Land Law (2004 Revision) by virtue of Section 72(2), provides that:

*“Section 72(2) If the Chargor does not comply within **three** months of the date of service, with a notice served on him under subsection (1) the Chargee may*

... (b) sell the Charged Property.”

13. However, paragraph 12 of the Charges and the Collateral Charge provides that:

“Sections 72 and 75 of the Statute shall be varied in respect of this Charge and of any instrument of variation executed pursuant to this Charge so as to entitle the Chargee immediately upon default by the Chargor in payment of the whole or any part of any sum payable specified in Item Four (4) of the Schedule “B” (principal and interest) or whenever there shall be any breach or non-observance of any covenants or conditions expressed or implied herein to serve on the Chargor notice in writing to pay the money owing or to perform and observe the agreement as the case may be and further so as

to provide that if the Chargor does not comply within one month of the date of service of such notice the Chargee may thereupon without further notice either:-

(a) Appoint a receiver of the income of the Charged Premises; or

(b) Sell the Charged Premises without further notice by private treaty as well as by public auction; or

(c) Enter into possession of the charged property; or

(d) In the event that the Chargee does not appoint a receiver or enter into possession of the charged property, exercise its powers of sale or appointment of a receiver at any time thereafter without further notice.

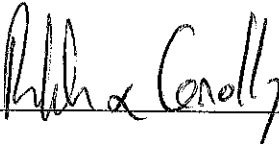
14. Therefore, on and since 25th August 2009 there has accrued a right in favour of the Plaintiff to sell the Charged properties and the Plaintiff seeks an Order that it may do so.

15. In the premise, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:
 - 15.1 The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
 - 15.2 The Plaintiff be entitled to sell the properties either by private treaty or public auction in good faith and having regard to the interests of the Defendant.
 - 15.3 For the purposes of any such sale, the Plaintiff be entitled to vacant possession of the properties and that an Order for possession be made.
 - 15.4 The Plaintiff have leave pursuant to Grand Court Rules, Order 45, Rule 3(1) and (2) to issue a Writ of Possession in this matter in respect of the properties.

16. The Plaintiff also seeks an Order that if after any sale of Parcels 113 and 200 there should be any shortfall in the amount due and owing to the Plaintiff that the

Plaintiff be at liberty to enter judgment for such shortfall, together with interest and costs.

Dated the 26th day of August 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 her, 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.

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS

The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, George Town, Grand Cayman KY1-1106.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
4. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Originating Summons)".
5. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
6. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
7. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.