

IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO. ⁶²⁵ OF 2009

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

AND IN THE MATTER OF SAVANNAH, BLOCK 27C, PARCEL 772

BETWEEN:

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

PLAINTIFF

AND

JEFFERSON BODDEN

FIRST DEFENDANT

AND

ETHEL BODDEN

SECOND DEFENDANT

ORIGINATING SUMMONS

TO: Jefferson Bodden of PO Box 10505, Grand Cayman KY1-1005, Cayman Islands and Ethel Bodden of PO Box 10505, Grand Cayman KY1-1005, Cayman Islands

LET THE DEFENDANTS, Jefferson Bodden and Ethel Bodden, within 14 days after service of this Summons on them, 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 2008 the First Defendant, Jefferson Bodden, a member of the Plaintiff Credit Union, applied to the Plaintiff for a loan which, together with the balance of previous loans made to him, gave a total amount of borrowing of CI\$116,444.27. This loan was to be secured in part by a Variation of Second

Charge over the land registered in the name of the First Defendant and the Second Defendant, Ethel Bodden, at the Lands and Survey Department as Savannah, Block 27C, Parcel 772 ("Parcel 772").

2. At all material times Parcel 772 was registered in the names of the First Defendant and the Second Defendant and on 10th September 2008 the Plaintiff as Chargee and the Defendants as Chargor executed a Variation of Second Charge in respect of Parcel 772.
3. The Variation of Second Charge dated 10th September 2008 provided that:-
 - 3.1 The Plaintiff would lend and the Defendants would borrow the principal sum of CI\$94,800.00 ("the Principal Sum").
 - 3.2 Interest on the Principal Sum would accrue at the rate of 9.75% per annum on the reducing balance.
4. The Variation of Second Charge dated 10th September 2008 also provided that:

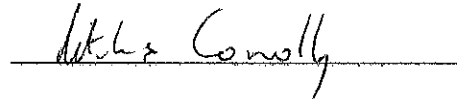
"Section 72 of the Registered Land Law (1995 Revision) shall be varied in respect of this Charge and of any instrument or variation executed pursuant to this Charge, so as to entitle the Chargee immediately upon default by the Chargor in payment of the principal sum or any interest payable hereunder (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 June 2009 the Defendants have failed to pay the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.
6. By letters dated 1st September 2009 and served on the Defendants on 4th September 2009 Messrs. Ritch & Conolly, as Attorneys for the Plaintiff served notices on the Defendants pursuant to the provisions of Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sum secured by the Variation of Second Charge was repayable three months after the service

of the Section 64(2) notice and indicating that unless the balance of the sum secured by the Variation of Second Charge 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 taken.

7. The Defendants have not made any payments in respect of the Principal Sum outstanding and/or interest, or any payment.
8. 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. The Plaintiff avers that the letters dated 1st September 2009 and served on the Defendants on 4th September 2009 constitutes such a notice pursuant to Section 64(2) and that the total amount outstanding became due on or after 4th December 2009.
9. 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 Charge, as the case may be.
10. 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 Section 72(1) notice, the Chargee may sell the Charged Property. Therefore, on or since 4th December 2009, there has accrued a right to the Plaintiff to sell Parcel 772 and the Plaintiff seeks an order that it may do so.
11. In the premises, the Plaintiff seeks an order pursuant to the provisions of the Registered Land Law (2004 Revision) that:-
 - 11.1 an Order for Possession be made in terms that the Plaintiff be at liberty to sell Parcel 772 either by public auction or by private treaty.
 - 11.2 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 772.
12. The Plaintiff also seeks an order that if after any sale of Parcel 772 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 15th day of December 2009



RITCH & CONOLLY
Attorneys for the Plaintiff

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.-

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AND

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FIRST DEFENDANT

AND

ETHEL BODDEN

SECOND DEFENDANT

**ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form **IMMEDIATELY**.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, **THIS FORM MAY HAVE TO BE RETURNED**.

1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.

2. State whether the Defendant intends to contest or otherwise participate in the proceedings (tick appropriate box)

yes

no

Service of the Originating Summons is acknowledged accordingly

(Signed).....

Please complete overleaf

[Attorney] for

[Defendant in person]

Address for service:

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.

Ritch & Conolly
Attorneys-at-Law
Queensgate House
PO Box 1994
113 South Church Street
George Town
Grand Cayman KY1-1104
Cayman Islands

Ref: RJ/11822

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

[Empty box for defendant's Attorney endorsement]

**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.