

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

145
CAUSE NO: OF 2010

IN THE MATTER OF THE REGISTERED LAND LAW (2004 REVISION)
AND IN THE MATTER OF WEST BAY NORTH WEST BLOCK 4B PARCEL 50

BETWEEN:



CAYMAN ISLANDS DEVELOPMENT BANK

PLAINTIFF

AND:

ELLA MAE POWERY



DEFENDANT

ORIGINATING SUMMONS

TO: Ella Mae Powery

LET THE DEFENDANT, Ella Mae Powery, within 14 days after service of this Summons on her, counting the day of service, return the accompanying Acknowledgment of Service to the Courts office, P.O. Box 495, George Town, Grand Cayman.

BY THIS SUMMONS, which is issued on the application of the Plaintiff, Cayman Islands Development Bank, 36B Dr Roy's Drive, George Town, P.O. Box 2576, Grand Cayman, KY1-1103 seeks the following relief pursuant to the provisions of the Registered Land law (2004 Revision) as follows;

1. On or about 1st February 2006 the Defendant as Chargor and the Plaintiff as the Chargee executed a First Legal Charge (the "Charge") in respect of the property registered at the Lands and Survey Department as West Bay North West, Block 4B, Parcel 50 ("Parcel 4B50")
2. The Charge provided, inter alia, that:

2.1 The Chargee would lend to Presley Frederick Degen the sum of Fifty Thousand CI Dollars (CI\$50,000) and the Chargor would secure this loan by allowing a charge to be placed on Parcel 4B50.

2.2 Interest on the outstanding amount of the Principal shall be calculated at the rate of Prime plus 3.5% per annum or such other rate as the Chargee shall from time to time specify.

3. The Charge also provides that:

Para 3: *"The Chargor further hereby covenants with the Chargee that the Chargor will on demand pay or discharge to the Chargee all monies and liabilities which shall for the time being (and whether on or at any time after such demand) be due owing or incurred to the Chargee by the Chargor whether actually or contingently and whether solely or jointly with any other person and whether as principal or surety including interest discount commission or other lawful charges and expenses which the Chargee may in the course of its business charge in respect of any matters aforesaid or for keeping the Chargor's account and so that interest shall be computed and compounded according to the usual mode of the Chargee as well after as before any demand made or judgment obtained hereunder."*

Para 7: *"A demand for payment or any other demand or notice under this Charge maybe made or given by any manager or officer of the Chargee by letter addressed to the Chargor and sent by registered post to or left at the charged property or at the last known place of business or abode of the Chargor or at the option of the Chargee (if the Chargor is a company) its registered office and if sent by post shall be deemed to have been made or given at noon on the day following the day the letter was posted."*

Para 19: *"The provisions of sections 72 to 75 of the Law shall apply to the Charge subject to such modifications as may be herein contained if any other creditor of the Chargor shall proceed against the Charged property or any part thereof or of the Chargor shall commit a breach of any of the agreements or covenants on his behalf herein contained or implied and on the part of the Chargor to be keep observed and performed or if any compositions for the benefit of the Chargor's creditor or being a company goes into liquidation (other than a voluntary liquidation for the purposes of a reconstruction only the terms of which have been previously approved by the Chargee) or suffers the appointment of a receiver over any part of the Chargor's assets and in addition to all other rights conferred on the Chargee it shall be lawful for the Chargee to enter into and upon the Charged property and to receive the rents and profits thereof to or for the Chargee's own use and benefit or to make use of all or any of the Chargee's present or future securities in such order and lawful or equitable manner as the Chargee may be advised."*

Para 20: *"Section 72 of the above Law 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 of any interest payable hereunder or in the performance or observance of any agreement 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 Chargee may thereupon without further notice either: -

- (a) Appoint a receiver of the income of the Charged Property.*
- (b) Sell the Charged Property by 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 enter 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."*

4. Since 1st January 2007 the Defendant and Presley Frederick Degen have failed to pay the full amount of the monthly instalments due in respect of the principal sum loaned and in respect of interest.
5. By letter dated 25th November 2009 sent by registered mail and hand delivered to the Defendant by an officer of the Plaintiff on the 26th November 2009, the Plaintiff duly served notice on the Defendant pursuant Section 72(1) of the Registered Land Law (2004 Revision) as amended by Paragraphs 7 and 20 of the Loan agreement indicating that the sum secured by the Charge was repayable one month after the service of the notice and indicating that pursuant to Section 72(2) unless the balance of the sum secured by the Charge was repaid legal proceedings would be taken.
6. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
7. The Defendant has failed to make the required payments in respect of the principal sum and/or accrued interest as demanded and the Defendant has been in default on the terms of the loan from the 1st January 2007.
8. The Registered Land Law (2004 Revision) by virtue of Section 72(1) provides that once there is a default in the payment of the principal, or any other periodical payment and if such default 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 terms of the Legal Charge as the case may be, such notice having been served in this case on the 26th November 2009.

9. The Registered Land Law (2004 Revision) by virtue of Section 72(2) provides that if a Chargor has not complied with 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 or since 26th March 2010 there has accrued a right to the Plaintiff to sell the Property and the Plaintiff seeks an order that it may do so.
10. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:
- (a) The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law are allowed.
 - (b) That an order for possession is made.
 - (c) The Plaintiff is entitled to sell the property either by private treaty or public auction in good faith and having regard to the interests of the Defendant.
 - (d) The Plaintiff does have leave pursuant to the Grand Court Rules Order 45 Rule 3(1) and (2) to issue a Writ of Possession in this matter in respect of this property.
11. The Plaintiff also seeks an Order that if after any sale of Parcel 4B 50 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.
12. An Order for costs against the Defendant.

Dated the ^{30th} day of March 2010

Samson & McGrath

Samson and McGrath
Attorneys at Law for the Plaintiff

If the Defendant does not acknowledge service, such judgment may be given or order 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 service out of the jurisdiction, 6 months) beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

This Originating Summons was issued by Samson and McGrath, Attorney's at Law whose address for service is 5th Floor Genesis Building, George Town, Grand Cayman, PO Box 446 G.T.

Acknowledgement of service of originating summons (0.10, r.5)

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 495G, George Town, Grand Cayman.

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.

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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).....

[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.

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

Samson & McGrath
5th Floor Genesis Building
PO Box 446
Grand Cayman KY1 – 1106
Cayman Islands

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