

IN THE GRAND COURT OF THE CAYMAN ISLANDS

70148  
CAUSE NO. OF 2010

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

AND IN THE MATTER OF LOWER VALLEY, BLOCK 32C, PARCEL 175

BETWEEN:

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

PLAINTIFF

AND

DOMINIQUE POWELL

FIRST DEFENDANT

AND

MARGARET POWELL

SECOND DEFENDANT

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ORIGINATING SUMMONS

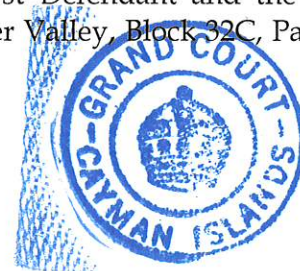
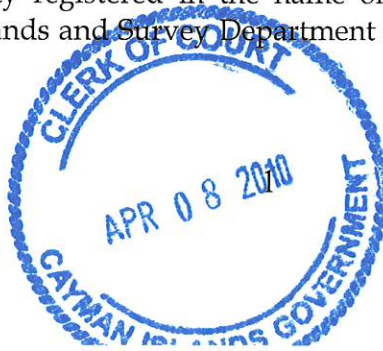
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TO: Dominique S. Powell of PO Box 156, Grand Cayman KY1-1501 and Margaret L. Powell of PO Box 156, Grand Cayman KY1-1501

LET THE DEFENDANTS, Dominique Powell and Margaret Powell, 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 August 2007 the First Defendant, a member of the Plaintiff Credit Union, applied to the Plaintiff for a loan of CI\$41,700.00 which, together with the balance of previous loans made to him, gave a balance due of CI\$46,200.00 and this loan was to be repaid by monthly instalments of CI\$605.00 and was to be secured by a Legal Charge against the property registered in the name of the First Defendant and the Second Defendant at the Lands and Survey Department as Lower Valley, Block 32C, Parcel 175 ("Parcel 175").



2. Parcel 175 was at all material times registered in the name of the First Defendant and the Second Defendant and on 6<sup>th</sup> September 2007 the Plaintiff as Chargee and the First Defendant and Second Defendant as Chargors executed a Legal Charge in respect of Parcel 175.
3. The Legal Charge dated 6<sup>th</sup> September 2007 provided that:-
  - 3.1 The Plaintiff would lend and the Defendants would borrow the principal sum of CI\$46,200.00 ("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 Legal Charge dated 6<sup>th</sup> September 2007 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 or before November 2009 the First Defendant and the Second Defendant have failed to make the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.
6. By letters dated 11<sup>th</sup> December 2009 and served on the First Defendant on 22<sup>nd</sup> December 2009 and on the Second Defendant on 16<sup>th</sup> December 2009, Messrs. Ritch & Conolly, as Attorneys for the Plaintiff, served notice on the First Defendant and on the Second Defendant 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 Legal Charge was repayable three months after the service of the notices and indicating that unless the balance of the sum secured by the Legal 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 issued.

7. Since service of the section 64(2) and section 72(1) notices were made the Defendants have not made any payments in respect of the Principal Sum outstanding and/or interest.
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. Therefore, the Plaintiff avers that the letters dated 11<sup>th</sup> December 2009 and served on the First Defendant on 22<sup>nd</sup> December 2009 and on the Second Defendant on 16<sup>th</sup> December 2009 constitute such notices pursuant to Section 64(2) and that the total amount outstanding became due on 22<sup>nd</sup> March 2010.
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(s) notice in writing to pay the money owing, or to perform and observe the terms of the Legal 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 notice served on him under Section 72(1), the Chargee may sell the Charged Property. Therefore, on and since 22<sup>nd</sup> 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.
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 175 either by public auction or 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 175.
12. The Plaintiff also seeks an order that if after any sale of the Parcel 175 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 7 day of April 2010.

  
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.

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SECOND DEFENDANT

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ACKNOWLEDGEMENT OF SERVICE  
OF ORIGINATING SUMMONS

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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.**

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

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

Yes

No

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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 Defendants are 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 or 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

RHJ/11386/CICSA v Dominique  
Powell and Margaret Powell

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