

IN THE GRAND COURT OF THE CAYMAN ISLANDS

6207  
CAUSE NO. OF 2010

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

AND IN THE MATTER OF GEORGE TOWN SOUTH, BLOCK 14D, PARCEL 419H85

BETWEEN:

FIRSTCARIBBEAN INTERNATIONAL BANK (CAYMAN) LIMITED

PLAINTIFF

AND

LIZA KANDLER THYNE

DEFENDANT

ORIGINATING SUMMONS

TO: LIZA KANDLER THYNE of PO Box 11981, Grand Cayman KY1-1010

LET THE DEFENDANT, LIZA KANDLER THYNE, 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 7<sup>th</sup> July 2009 the Defendant as Chargor and the Plaintiff as the Chargee executed a Charge ("the Charge") in respect of the property registered at the Lands and Survey Department as George Town South, Block 14D, Parcel 419H85 ("Parcel 419H85").
2. The Charge provided, inter alia, that:

- 2.1 The Chargee would lend and the Chargor would borrow the principal sum of One Hundred and Thirty One Thousand Five Hundred CI Dollars (CI\$131,500.00) which was to be secured as a Charge on Parcel 419H85.
  - 2.2 Interest on the principal sum would accrue at the rate of 4.0% per annum above the Chargee's Prime Lending Rate for CI Dollars.
3. The Legal Charge dated 7<sup>th</sup> July 2009 also provided that:-

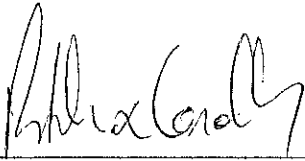
*“Sections 72 and 75 of the Statute shall be varied in respect of this Charge and of any instrument of variation executed pursuant to this Charge so as to entitle the Chargee immediately upon default by the Chargor in payment of the whole or any part of any sum payable specified in Item Four (4) of the Schedule “B” 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) in the event that the Chargee does 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.*
4. Since or about August 2009 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. By letters dated 1<sup>st</sup> October 2009 and 15<sup>th</sup> February 2010, and signed for as received by the Defendant on 6<sup>th</sup> October 2009 and 25<sup>th</sup> February 2010, the Plaintiff duly served notice on the Defendant pursuant to Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sum secured by the Charge was repayable three months after the service of the Section 64(2) notice and indicating that pursuant to Section 72(1) unless the balance of the sum secured by the Charge was repaid 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 outstanding and/or accrued interest as demanded.
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 1<sup>st</sup> October 2009 and 15<sup>th</sup> February 2010 and served on the Defendant on 6<sup>th</sup> October 2009 and 25<sup>th</sup> February 2010 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 25<sup>th</sup> May 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 the 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.
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 or since 25<sup>th</sup> May 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 The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
  - 11.2 That an order for possession be made.
  - 11.3 The Plaintiff be entitled to sell the property either by private treaty or public auction in good faith and having regard to the interests of the Defendant.
  - 11.4 The Plaintiff do 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 property.

12. The Plaintiff also seeks an Order that if after any sale of Parcel 419H85 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 26<sup>th</sup> day of May 2010



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**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 service 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:

LIZA KANDLER THYNE

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.

Please complete overleaf

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  
Queensgate House  
113 South Church Street  
PO Box 1994  
Grand Cayman KY1-1104

Ref:  
MSB/FCIB/11855\_KandlerThyne

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

