

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 260 OF 2010

IN THE MATTER OF THE REGISTERED LAND LAW (2004 REVISION)
AND IN THE MATTER OF GEORGE TOWN EAST BLOCK 20D PARCEL 26

BETWEEN:

CAYMAN ISLANDS DEVELOPMENT BANK



PLAINTIFF

AND:

SANGELA NOVELET HAYE

DEFENDANT



ORIGINATING SUMMONS

TO: Sangela Novelet Haye

LET THE DEFENDANT, Sangela Novelet Haye, 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 28th June 2008 the Defendant as Chargor and the Plaintiff as the Chargee executed a Variation of Charge (the "Charge") in respect of the property registered at the Lands and Survey Department as George Town East, Block 20D, Parcel 26 (" the Parcel") which was registered at the Cayman Islands Land Registry on the 18th July 2008.

2. The Variation of Charge provided, inter alia, that:

2.1 The Chargee would consolidate a first charge over the parcel in the sum of \$154,000 and a second charge over the parcel in the sum of \$187,000 to a total sum of CI\$341,000 and then increased this sum by CI\$9,484 to a total charge of CI\$350,484 over the parcel.

2.2 That the interest rate for the said secured loan was to be Base plus 3.5% per annum, with the effective rate to be 9.95% at the date of signing.

2.3 The method of repayment of the loan was to be as provided in the attached Schedule to the Charge.

2.4 That the term of the Charge was 20 years.

The Schedule to the Legal Charge set out the terms of the charge and provided as follows:

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 8: *"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."*

3. Since 2nd February 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.
4. By letter dated 31st March 2010 sent by registered mail to the Defendant by an officer of the Plaintiff, 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.
5. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
6. 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.

7. 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 31st March 2010.
8. 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 30th June 2010 there has accrued a right to the Plaintiff to sell the Property and the Plaintiff seeks an order that it may do so.
9. 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.
10. The Plaintiff also seeks an Order that if after any sale of the Parcel 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.
11. An Order for costs against the Defendant.

Dated the 16 day of July 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.

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.