

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 278 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:

JOSPEH WELCOME

SHARON WELCOME



FIRST DEFENDANT

SECOND DEFENDANT

ORIGINATING SUMMONS

TO: Joseph Welcome
Sharon Welcome

LET THE DEFENDANTS, Joseph Welcome and Sharon Welcome, within 14 days after service of this Summons on them, 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 19th April 2007 the Plaintiff and the Royal Bank of Canada registered a transfer of charge over parcel North East Coast, Block69A, Parcel 102 (" the Parcel"), the said parcel being owned by the Defendants whereby the Plaintiff in consideration of the sum of CI\$169,450.35 was granted a charge over the parcel in that amount and replaced the Royal Bank of Canada as lender to the Defendants.
2. Also on the 19th April 2007 the Defendants as Chargor and the Plaintiff as the Chargee registered a Variation of Charge in respect of the parcel to increase the Principle sum secured by way of charge over the property to CI\$203,010 with the interest rate at Base plus 2.6% per annum.

3. As at the 19th April 2007 there existed a Schedule to a previous Charge filed with the Land Registry, having been filed on the 3rd January 2006 and still operative over the charge subject to any variations stated on the subsequent variations of the charge.
4. That further on the 27th June 2007 the Defendants as Chargor and the Plaintiff as the Chargee registered a Variation of Charge (the "Charge") in respect of the parcel to increase the Principle sum secured by way of charge over the property from CI\$203,010 to CI\$213,263 with the Interest Rate at Base plus 2.6% per annum.
5. The Schedule to the Variation of Legal Charge filed 3rd January 2006 set out the terms of the charge and provided as follows:

Para 12: "in the event that the Chargor shall fail to discharge all monies and liabilities in full in accordance with the terms hereof or in the event that the Chargor shall be in breach of any of the Chargor's covenants or obligations herein contained whether expressed or implied or in the event that the Chargor commits any act of bankruptcy or makes any assignment or composition for the benefit of the Chargor's creditors 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 in writing by the Chargee) or suffers the appointment of a receiver over any part of the Chargor's assets then in any event the whole of the Principal Sum and all interest thereon any other sums owing hereunder to the Chargee shall become immediately due and payable and the provisions of Section 72 to 75 of the above Law shall apply subject to the modifications hereinafter set forth:-

- (i) The power of sale and appointing a receiver and any other remedies available to the Chargee shall become immediately exercisable without further notice.*
- (ii) in addition to the remedies provided by Section 72 of the above Law the Chargee shall have the right to foreclose or enter into possession off the charged premises or both in the same circumstances as would allow the Chargee to exercise its power or appoint a receiver.*
- (iii) In the event that the Chargee does appoint a receiver or enter into possession of the Charged Premises the Chargee shall be entitled to exercise its power of sale or foreclosure at any time thereafter without further notice.*
- (iv) upon the exercise of its power of sale the Chargee shall have the right to sell the Charged Premises by private treaty as well as by public auction.*

PROVIDED ALWAYS and it is hereby expressly declared and agreed that in any case where any such modification of the above law (or any other modification provided for in this Charge) shall require the sanction of the Court the Chargee shall have the right at its option to waive any modification where it is in favour of the Chargee to do so or to seek the sanction of the Court thereto and should the Chargee fail to obtain the sanction of the Court to any particular modification or should the Chargee elect to waive its rights under any modification then the original provisions of the above Law shall apply without modification.

6. Since August 2008 the Defendants have failed to pay the full amount of the monthly instalments due in respect of the principal sum loaned and in respect of interest.
7. By letter dated 31st March 2010 sent by registered mail to the Defendants, the Plaintiff duly served notice on the Defendant pursuant Section 72(1) of the Registered Land Law (2004 Revision) as amended by Paragraph 12 of the Schedule to the Charge 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.
8. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
9. 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 August 2008.
10. 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.
11. 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.

12. 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.

13. 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.

14. An Order for costs against the Defendant.

Dated the 2nd day of August 2010



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, Attorneys at Law whose address for service is 5th Floor Genesis Building, George Town, Grand Cayman, PO Box 446 G.T.

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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PLAINTIFF

AND:

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FIRST DEFENDANT

SHARON WELCOME

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).....

[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.