

IN THE GRAND COURT OF THE CAYMAN ISLANDS



473  
CAUSE NO. OF 2010

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

AND IN THE MATTER OF SAVANNAH, BLOCK 28C, PARCEL 479 & SAVANNAH, BLOCK 28C, PARCEL 480

BETWEEN:

CAYMAN NATIONAL BANK LTD



PLAINTIFF

AND

KERRY TATUM

DEFENDANT

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**ORIGINATING SUMMONS**

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**TO:** Kerry Tatum whose address for service is P.O. Box 547, Grand Cayman KY1-1502

**LET THE DEFENDANT,** Kerry Tatum, 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, Cayman National Bank Ltd., Elgin Avenue, George Town, Grand Cayman, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (2004 Revision) as follows:-

1. Further to a Legal Charge executed on 14<sup>th</sup> August 2009 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 Savannah, Block 28C, Parcel 479 ("Parcel 479").
2. The Charge provided, inter alia, that:

- 2.1 The Chargee would lend and the Chargor would borrow the principal sum of Eighty Thousand CI Dollars (CI\$80,000.00) which was to be secured as a Charge on Parcel 479.
3. Subsequently on 14<sup>th</sup> August 2009 the Defendant as Chargor and the Plaintiff as Chargee executed a Transfer of First Legal Charge, Variation of Charge and Second Collateral Legal Charge (Collateral to First Legal Charge over Parcel 479) ("the Variation and Collateral") in respect of the property registered as Savannah, Block 28C, Parcel 480 ("Parcel 480") in consideration of the Chargee granting the Chargor further borrowing facilities.
4. The Variation and Collateral provided, inter alia, that:
  - 4.1 The principal sum of CI\$173,793.85 would be increased to total Three Hundred and Thirteen Thousand CI Dollars (CI\$313,000.00), the new principal sum.
  - 4.2 Interest on the new principal sum would accrue at the rate of 1.75% per annum above the Chargee's Prime Rate for Cayman Islands Dollars and subject to variation by the Chargee.
  - 4.3 The Chargor shall repay the new principal sum on demand together with any interest then due.
5. Since or before April 2010 the Defendant has failed to pay the monthly instalments due in respect of the sums loaned and in respect of interest.
6. The Charge and the Variation and Collateral provided that :

*"In the event that the Chargor shall fail to discharge all monies and liabilities in full in accordance with the terms hereof pr in the event that the Chargor shall be in breach of any of the Chargor's covenants or obligations herein contained whether express 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 such event the whole of the Principal Sum and all interest thereon and any other sums owing hereunder to the Chargee shall become immediately due and payable and the provisions of Sections 72 to 75 of the said Law shall apply subject to the modifications hereinafter set forth:-*

*(a) The power of sale and of appointing a receiver and any other remedies available to the Chargee shall become immediately exercisable without further notice;*

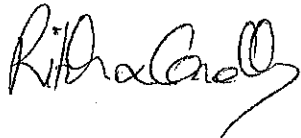
*(b) In the event that the Chargee does appoint a receiver the Chargee shall be entitled to exercise its power of sale at any time thereafter without further notice;*

*(c) Upon the exercise of the Chargee's power of sale the Chargee shall have the right and power to sell the charged property by private treaty or by public auction or part in one way and part the other".*

7. By letters dated 24<sup>th</sup> May 2010 and served personally on the Defendant on 9<sup>th</sup> June 2010, notices were served on the Defendant pursuant to the provisions of Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sums secured by the Charge, Variation and Collateral were 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 Charge, Variation and Collateral was repaid proceedings would be taken.
8. The Defendant has failed to make the required payments in respect of the balance of the sums outstanding and/or accrued interest as demanded.
9. 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 sum and interest becomes due and payable three months after service of that notice. Therefore the Plaintiff avers that the letters dated 24<sup>th</sup> May 2010 and served on the Defendant on 9<sup>th</sup> June 2010, constitutes such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 9<sup>th</sup> September 2010.
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 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 Charge, as the case may be.
11. 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 9<sup>th</sup> September 2010 there has accrued a right to the Plaintiff to sell the Charged Properties 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:
- 12.1 The variations in the Charge, Variation and Collateral referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
  - 12.2 Orders for possession be made.
  - 12.3 The Plaintiff be entitled to sell the properties either by private treaty or public auction in good faith and having regard to the interests of the Defendant.
  - 12.4 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 properties.
13. The Plaintiff also seeks an Order that if after any sale of Parcel 479 and Parcel 480 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 17<sup>th</sup> day of December 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 Notice out of the jurisdiction, 6 months*) beginning with that date, unless renewed by Order of the Court.

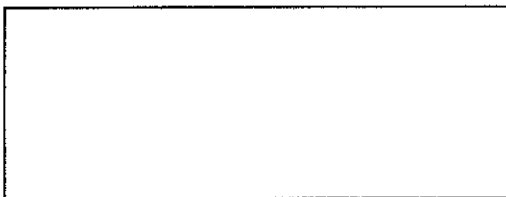
**IMPORTANT:** Directions for acknowledgement of service are given with the accompanying forms.



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  
PO Box 1994  
Queensgate House  
113 South Church Street  
George Town  
Grand Cayman KY1-1104  
  
Ref: MSB/CNB/12306\_Tatum

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



**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 495, Grand Cayman KY1-1106.

**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.