

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *66* OF 2011

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

AND IN THE MATTER OF GEORGE TOWN CENTRAL, BLOCK 13D, PARCEL 197 AND IN THE MATTER OF GEORGE TOWN CENTRAL, BLOCK 13D, PARCEL 198

BETWEEN:

FIRSTCARIBBEAN INTERNATIONAL BANK (CAYMAN) LIMITED

PLAINTIFF

AND:



**(1) ALLEN KENNEDY EBANKS
(2) HILLARY A. FOSTER**



DEFENDANTS

ORIGINATING SUMMONS

**TO: ALLEN KENNEDY EBANKS and HILLARY A. FOSTER of PO Box 2323,
Grand Cayman KY1-1106**

LET THE DEFENDANTS, ALLEN KENNEDY EBANKS and HILLARY A. FOSTER, 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, 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 4th April 2002 the Defendants as Chargors 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 Central, Block 13D, Parcel 198

("Parcel 198"), which was collateral to a Charge ("the Collateral Charge") over the property registered at the Lands and Survey Department as George Town Central, Block 13D, Parcel 197 ("Parcel 197").

2. The Charge provided, inter alia, that:

2.1 The Chargee would lend and the Chargors would borrow the principal sum of One Hundred and Forty Thousand CI Dollars (CI\$140,000.00) which was to be secured as a Charge on Parcel 197 and Parcel 198.

2.2 Interest on the principal sum would accrue at the rate of 4.5% per annum above the Chargee's Prime Lending Rate for CI Dollars.

3. The Legal Charge dated 4th April 2002 also provided that:-

"Sections 72 and 75 of the above law shall be varied in their application to 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 Principal Sum or of any interest payable hereunder 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 moneys owing or due or to perform or 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 either appoint a receiver of the income of the Charged Property or sell the Charged Property by private treaty as well as by public auction or by tender or to foreclose on the Charged Property."

4. Subsequently on or about 3rd October 2005 the Charge and the Collateral Charge over Parcel 197 and Parcel 198 were increased to total One Hundred and Fifty Four Thousand, Four Hundred and Fifty Three CI Dollars and Seventy Four Cents (CI\$154,453.74). The provisions as set out in paragraph 3 above were repeated.

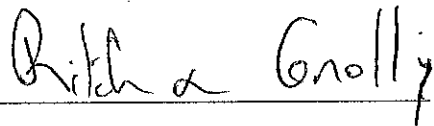
5. Since or from about July 2009 the Defendants have failed to pay the full amount of the monthly instalments due in respect of the principal sum loaned and in respect of interest.

6. By letters dated 27th October 2009 and signed for as received by the First Defendant on 10th November 2009, the Plaintiff duly served notice on the First 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 and the Collateral 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 and Collateral Charge was repaid proceedings would be taken.

7. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
8. The First Defendant has failed to make the required payments in respect of the principal sum outstanding and/or accrued interest as demanded.
9. By notices published in the Cayman Islands Gazette in issue numbers 08/2010, 09/2010, 10/2010 on 12th April 2010, 26th April 2010 and 10th May 2010 , and notice displayed on the Properties, the Plaintiff duly served notice on the Second 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 and Collateral 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.
10. The notices demanded payment of the balance of the principal sum outstanding and accrued interest.
11. The Second Defendant has failed to make the required payments in respect of the principal sum outstanding and/or accrued interest as demanded.
12. 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 served on the First Defendant and published in the Cayman Islands Gazette in respect of the Second Defendant constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due by 10th August 2010.
13. 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 Chargors notice in writing to pay the money owing, or to perform and observe the terms of the Legal Charge as the case may be.
14. 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 Properties. Therefore, on or since 10th August 2010 there has accrued a right to the Plaintiff to sell the Properties and the Plaintiff seeks an order that it may do so.
15. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:

- 15.1 The variations in the Charges referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
 - 15.2 That an order for possession be made.
 - 15.3 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 Defendants.
 - 15.4 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.
16. The Plaintiff also seeks an Order that if after any sale of Parcel 197 and Parcel 198 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 2nd day of March 2011



RITCH & CONOLLY
Attorneys for the Plaintiff

If the Defendants do not acknowledge service, judgement may be given, or made against, or in relation to them, 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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CAUSE NO. OF 2011

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

**AND IN THE MATTER OF GEORGE TOWN CENTRAL, BLOCK 13D, PARCEL 197
AND IN THE MATTER OF GEORGE TOWN CENTRAL, BLOCK 13D, PARCEL 198**

BETWEEN:

FIRSTCARIBBEAN INTERNATIONAL BANK (CAYMAN) LIMITED

PLAINTIFF

AND:

(1)ALLEN KENNEDY EBANKS

(2)HILLARY A. FOSTER

DEFENDANTS

**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.

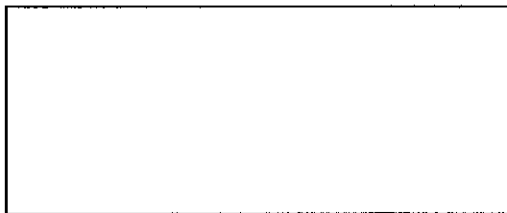
Please complete overleaf

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/11874_Ebanks/Foster

Endorsement by defendants' 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, George Town, 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.