

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO : CIV 147 OF 2011

IN THE MATTER OF THE REGISTERED LAND LAW (2004 REVISION)  
AND IN THE MATTER OF BODDEN TOWN BLOCK 43A PARCEL 158

BETWEEN:



CAYMAN NATIONAL BANK LTD.

PLAINTIFF

AND:

KENROY MILLWOOD

DEFENDANT

ORIGINATING SUMMONS



TO: Kenroy Millwood  
P.O. Box 31281  
Grand Cayman

**LET THE DEFENDANT**, Kenroy Millwood, within 14 days after service of this Summons on him, 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 National Bank Ltd., P.O. Box 1097, Grand Cayman, KY1-1102 seeks the following relief pursuant to the provisions of the Registered Land law (2004 Revision);

1. An order for sale of the property known as Bodden Town Block 43A, Parcel 158 by private treaty.
2. That the variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law are allowed.
3. 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 the property.
4. That an order for possession is made.

5. That if after any sale of the property 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.

6. Costs.

#### **Particulars**

7. By way of written acceptance of terms offered by the Plaintiff by way of letter of Offer dated July 3, 2008 for a loan in the sum of CI\$44,300 the Defendant on the 4<sup>th</sup> day of July 2008 agreed to borrow the said sum on terms as set out in the letter of Offer from the Plaintiff.

8. In accordance with the terms of the said loan agreement on the 15<sup>th</sup> July 2008 the Defendant as Chargor and the Plaintiff as the Chargee executed and filed a First Charge (the "Charge") in respect of the Defendant's property at Boddin Town Block 43A, Parcel 158 (hereinafter "the property") by way of charge over the property in the sum of CI\$44,300 (Forty Four Thousand and Three Hundred Dollars).

9. The First Charge provided, inter alia, that the Chargors interest in the parcel was subject to a charge in the sum of \$44,300 with interest at a rate as set out in the Schedule to the Charge per annum payable subject to Section 67 of the Registered Land Law (2004 Revision) and subject to the terms, conditions and stipulations as set out in the First, Second and Third Schedules attached to the said charge.

10. The Schedules to the Legal Charge set out the terms of the charge and provided as follows:

#### Second Schedule

Paragraph 3: *"The interest payable on the Principal Sum and upon any further advances or further credit given shall be four per centum (4%) per annum above the Cayman Islands Dollar Prime Rate, as determined by the Chargee from time to time, with an effective rate at present of nine per centum (9%) per annum.*

Paragraph 4: *"The Chargor hereby covenants to repay the Principal Sum on demand together with any interest then due subject to the provision herein contained and in accordance with the terms of the said facilities of loan and/or overdraft afforded to the Chargor as set out in the Chargee's Letter of Offer dated the 3<sup>rd</sup> day of July 2008, the terms of which have been accepted by the Chargor. Pending such demand for repayment as aforesaid by the Chargee the Chargor shall pay to the Chargee such monthly or other sums as*

*the Chargee shall from time to time specify which said sums shall be applied by the Chargee first in payment of interest from the date hereof at the rate or rates aforesaid and the balance shall be applied in reduction of the Principal Sum."*

*Paragraph 7: And the Chargor hereby acknowledges that he understands the effect of Section 72 of the Registered Land Law (2004) Revision.*

### Third Schedule

*Paragraph 7: "In the event that the Chargor shall fail to discharge all monies and liabilities in full accordance with the terms hereof...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 Section 72 to 75 of the said Law shall apply subject to the modifications hereinafter set forth:-*

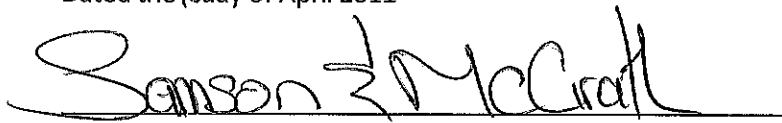
*(3) upon the exercise of the Chargee's power of sale the Chargee shall have the right and power to sell the charged property by private treaty or by public auction or part in one way and part the other;"*

*Paragraph 12: "The Chargor shall pay the fees, expenses and disbursements of the Chargee and the lawyers, servants or agents of the Chargee of and in connection with any inspection and valuation of the charged property, the examination of the title thereto and preparation of this Charge and for the protection and enforcement from time to time of the Chargee's rights (including all actions and proceedings) hereunder."*

11. Since May 31, 2010 the Defendant has failed to pay regular monthly instalments due in respect of the principal sum loaned and in respect of interest.
12. By letter dated 3<sup>rd</sup> August 2010 sent by the plaintiff and signed as received by the Defendant on the 13<sup>th</sup> August 2010, the Plaintiff duly served notices on the Defendant pursuant Section 64(2) and Section 72 of the Registered Land Law (2004 Revision) indicating that the sum secured by the Charge was repayable three months after the service of the notice and indicating that unless the balance of the sum secured by the Charge was repaid within 3 months of date of receipt of the letter that legal proceedings would be taken.

13. The notice demanded payment of the balance of the principal sum outstanding and accrued interest. At that date principal owing was \$38,262.20 and interest and other charges amounted to \$65.41.
14. 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 May 31, 2010.
15. 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 13<sup>th</sup> August 2010.
16. 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 them under Section 72(1) the Chargee may sell the Charged Property. Therefore, on or since 13<sup>th</sup> November 2010 there has accrued a right to the Plaintiff to sell the Property and the Plaintiff seeks an order that it may do so.
17. In the premises, the Plaintiff seeks the relief as set out in paragraphs 1 -6 of this Originating Summons pursuant to the provisions of the Registered Land Law as amended by the Schedules to the Charge.

Dated the <sup>16<sup>th</sup></sup> day of April 2011



**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 5<sup>th</sup> Floor Genesis Building, George Town, Grand Cayman, PO Box 446 G.T.

## Acknowledgement of service of originating summons (0.10, r.5)

### 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.



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  
5<sup>th</sup> 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.