

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 224 OF 2011

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

AND IN THE MATTER OF MIDLAND EAST, BLOCK 54D, PARCEL 46

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF



AND:

(1) MALSHAM BROWN
(2) TEFAYNE BROWN



DEFENDANTS

ORIGINATING SUMMONS

TO: MALSHAM BROWN & TEFAYNE BROWN
c/o General Delivery, Grand Cayman KY1-1600

LET THE DEFENDANTS, MALSHAM BROWN & TEFAYNE BROWN, 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, Cayman National Bank Ltd., Elgin Avenue, 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 7th August 2007 the Defendants as Chargors 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 Midland East, Block 54D, Parcel 46 ("Parcel 46").
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 Ten Thousand CI Dollars (CI\$110,000.00) which was to be secured as a Charge on Parcel 46.
- 2.2 Interest on the principal sum would accrue at the rate of 1.75% per annum above the Chargee's Prime Lending Rate for CI Dollars.
3. Subsequently on or about 18th April 2008 the Defendants as Chargors and the Plaintiff as the Chargee executed a Variation of First Legal Charge whereby the Chargee would lend and the Chargors would borrow a further sum of Twenty Eight Thousand CI Dollars (CI\$28,000.00) which was secured on Parcel 46.
4. Subsequently on or about 23rd September 2008 the Defendants as Chargors and the Plaintiff as the Chargee executed a Second Legal Charge whereby a further Twenty Five Thousand CI Dollars (CI\$25,000.00) was to be secured on Parcel 46.
5. The Charges provided that:-

"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 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 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:-


- (1) the power of sale and of appointing a receiver and any other remedies available to the Chargee shall become immediately exercisable without further notice;*
 - (2) 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;*
 - (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."*
6. Since from or about August 2010 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 letters dated 26th October 2010, and signed for as received by the Defendants on 3rd November 2010, the Plaintiff duly served notice on the Defendants pursuant to Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sums secured by the Charges 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 Charges was repaid proceedings would be taken.
8. The notices demanded payment of the balance of the principal sum outstanding and accrued interest.
9. The Defendants have failed to make the required payments in respect of the principal sum outstanding and/or accrued interest as demanded.
10. 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 dated 26th October 2010 and served on the Defendants on 3rd November 2010 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 3rd February 2011.
11. 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 Legal Charge as the case may be.
12. 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 3rd February 2011 there has accrued a right to the Plaintiff to sell the Property and the Plaintiff seeks an order that it may do so.
13. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:
 - 13.1 The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
 - 13.2 That an order for possession be made.
 - 13.3 The Plaintiff shall be entitled to sell the property either by private treaty or public auction in good faith and having regard to the interests of the Defendants.

13.4 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 property.

14. The Plaintiff also seeks an Order that if after any sale of Parcel 46 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 9th day of June 2011



RITCH & CONOLLY
Attorneys for the Plaintiff

If the Defendants do not acknowledge service, judgment 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 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.

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AND IN THE MATTER OF MIDLAND EAST, BLOCK 54D, PARCEL 46**

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:

**(1)MALSHAM BROWN
(2) TEFAYNE BROWN**

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 plaintiffs' 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/CNB/12495_Brown

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

[Empty box for defendant's attorney endorsement]

**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.