

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION



270
CAUSE NO OF 2011

IN THE MATTER OF: SECTION 77 OF THE REGISTERED LAND LAW (2004 REVISION)

AND IN THE MATTER OF: AN APPLICATION BY SCOTIABANK & TRUST (CAYMAN) LTD AS CHARGEES OVER CERTAIN PROPERTY FOR AN ORDER DIRECTING THAT IT BE PERMITTED TO SELL THE PROPERTY BY WAY OF PRIVATE TREATY

BETWEEN: SCOTIABANK & TRUST (CAYMAN) LTD



AND: JOHN BORDEN

1st DEFENDANT

AND: ANGEL BORDEN

2nd DEFENDANT

ORIGINATING SUMMONS

LET THE DEFENDANTS attend before the Judge in Chambers, at the Law Courts, George Town, Grand Cayman on the day of 2011 at o'clock on the hearing of an application by the Plaintiff for Orders that:-

1. This Honourable Court hereby sanctions the variation/addition of section 75 of the Registered Land Law (2004 Revision) thereby permitting the Plaintiff to rely upon the terms of the charge executed by the Defendants and registered in the Land Registry 27 March 1997, as varied from time to time, (the "Charge") over the property registered as West Bay North East, Block 9A, Parcel 299 (the "Property") including the power to sell the Property by private treaty (the "Power of Sale").
2. The Property be marketed for no less than three months (the "Marketing Period") at a price of not less than CI\$953,000 and that a minimum reserve price of CI\$667,000 (the "Minimum Reserve Price") be fixed in respect of the sale of the Property.
3. [] of [] (the "Realtor") shall have conduct of the sale of the Property in accordance with the Power of Sale.
4. The Defendants or the occupants of the Property shall co-operate with the Realtor in showing the Property upon a minimum of 24 hours' notice to the Defendants of a request for same.

5. After the Marketing Period and after any offer is accepted in respect of the Property pursuant to the Power of Sale, the Defendants or the occupants of the Property shall, if requested by the Plaintiff, immediately vacate the Property and take all appropriate steps to give the Plaintiff or purchaser of the Property vacant possession of the Property. If the Defendants or any other person occupying the Property do not vacate the Property upon such a request, the Plaintiff or purchaser of the Property shall thereafter be at liberty to enter the Property and take possession thereof. The Plaintiff is hereby granted leave to issue a Writ of Possession commanding the Bailiff to enter the Property and to cause the Plaintiff to have possession of it after the expiry of the Marketing Period and after the acceptance of any offer pursuant to the Power of Sale.

6. The proceeds of any sale of the Property in accordance with this Order shall be paid to the attorneys for the Plaintiff, Charles Adams Ritchie & Duckworth ("CARD"), on their undertaking that such proceeds shall be applied in the following order of priority: -
 - i. Payment of the Realtor's fees in respect of the sale of the Property;
 - ii. Payment of CARD's legal fees;
 - iii. Payment of all sums due to the Plaintiff from the Defendants including principal, interest and fees;
 - iv. Payment of the costs of these proceedings; and
 - v. The balance of any sums remaining shall be paid to the Defendants.


7. The Minimum Reserve Price be kept confidential as between the parties hereto and the Realtor.

8. The Plaintiff be awarded its cost of this application from the proceeds of sale of the Property.

9. The Plaintiff be at liberty to apply to vary this Order.

AND LET THE DEFENDANT 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, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands.

Dated the 14th day of July 2011



CHARLES ADAMS RITCHIE & DUCKWORTH
Attorneys-at-Law for the Plaintiff

NOTE – This Summons may not be served later than 4 calendar months beginning with the above date unless renewed by order of the Court.

If the Defendants do not attend personally or by their attorney at the time and place above-mentioned such order will be made as the Court may think just and expedient.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

TO: **The Clerk of the Court**

AND TO: **The 1st Defendant**
John Borden
P.O. Box 30531
Grand Cayman KY1-1203

AND TO: **The 2nd Defendant**
Angel Borden
P.O. Box 30531
Grand Cayman KY1-1203

TIME ESTIMATE: The estimated length of the hearing of this motion is 1 hour.

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BETWEEN: SCOTIABANK & TRUST (CAYMAN) LTD PLAINTIFF

AND: JOHN BORDEN 1st DEFENDANT

AND: ANGEL BORDEN 2nd 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.

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2. State whether the Defendant intends to contest 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 or 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.

Charles Adams Ritchie & Duckworth
2nd Floor Zephyr House
122 Mary Street
PO Box 709
George Town
Grand Cayman KY1-1107
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.

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
FOR 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, George Town, PO Box 495, Grand Cayman, KY1-1106, Cayman Islands.

1. Each Defendant (if there is 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.