

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁴⁴¹ OF 2011

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

AND IN THE MATTER OF GEORGE TOWN CENTRAL, BLOCK 14CF
PARCEL 205H1, H2, H3, H4, H5, H6, H7, H8, H9, H10, H11, H12, H13, H14, H15,
H16, H19, H20, H21, H22, H23, H24, H25, H26 AND H27

AND IN THE MATTER OF GEORGE TOWN CENTRAL, BLOCK 14CF,
PARCEL 180

AND IN THE MATTER OF LOWER VALLEY, BLOCK 32B, PARCEL 25

BETWEEN:

FIRST CARIBBEAN INTERNATIONAL BANK (CAYMAN) LTD

PLAINTIFF

AND:

- (1) S & T HOLDINGS INC
- (2) WILLIAM PEGUERO
- (3) ELLEN PEGUERO

DEFENDANTS

ORIGINATING SUMMONS

TO: S & T Holdings Inc of PO Box 10001, Grand Cayman KY1-1001

AND TO: William Peguero and Ellen Peguero of PO Box 317, Grand Cayman KY1-1106

LET THE DEFENDANTS, S & T Holdings Inc, William Peguero and Ellen Peguero 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, PO Box 495, George Town, Grand Cayman KY1-1106.

BY THIS SUMMONS which is issued on the application of the Plaintiff, FirstCaribbean International Bank (Cayman) Ltd, 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. Between May 2000 and October 2006 the Defendants, further to various loans granted by the Plaintiff, borrowed the total sum of CI\$7,240,000.00 from the Plaintiff.
2. On or about 22nd May 2000 the First Defendant as Chargor 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 14CF, Parcel 205H1 to H16 and H19 to H27 ("Parcel 205").
3. Subsequently on or about the 21st July 2004 the First Defendant executed a Variation of Charge ("the Variation") in respect of Parcel 205 whereby it was agreed that the principal sum loaned by the Plaintiff would be increased to CI\$7,240,000.00 together with interest.
4. Further on or about 21st July 2004 the Second and Third Defendants executed a Charge and a Second Charge which were collateral Charges ("the Collateral Charges") over the properties registered at the Lands and Survey Department as George Town Central, Block 14CF, Parcel 180 ("Parcel 180") and Lower Valley, Block 32B, Parcel 25 ("Parcel 25") and which were collateral to Parcel 205.
5. The properties were at all material times registered in the name of the Defendants.
6. The Variation and Collateral Charges provided that the principal sum loaned by the Plaintiff would be increased to CI\$7,240,000.00 together with interest on the principal sum at the rate specified and payable in accordance with the Loan Agreement dated 30th June 2004.
7. The Schedule to the Variation and Collateral Charges also provided, inter alia, that:-

"Section 72 of the Law shall be varied in respect of this charge and of any instrument of variation executed pursuant to this charge. Failing payment of the Secured Sums as and when they become due or other breach of the covenants and conditions on the Chargor's part contained in this charge, this security shall become enforceable and the powers conferred upon the Chargee by the Law and this charge immediately exercisable without the restrictions contained in the Law as to the giving of notice or otherwise with respect to the whole or any part of the Charged Property.

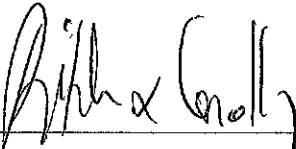
At any time after this security has become enforceable or if at any time the Charged Property appears to the Chargee to be in danger of being taken in execution by any creditor of the Chargor or to be otherwise in jeopardy, the Chargee may by writing under the hand of any officer of the Chargee and without notice to the Chargor appoint any person, whether an officer of the Chargee or not, to be a receiver of the Charged Property or any part of them.

*Where the Charged Property or any part of them are sold by the Chargee or any receiver appointed by it they may be sold either:
together in parcels,
by public auction or private contract, and
for a lump sum, a sum payable by instalments or a sum on account and a mortgage or charge for the balance. "*

8. Since from or about July 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.
9. By letters dated 20th December 2010 and served on the Defendants on 21st and 22nd December 2010 Ritch & Conolly, as Attorneys for the Plaintiff, served notices on the Defendants pursuant to the provisions of Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sum secured by Charge, Variation and Collateral 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 Charge, Variation and Collateral Charges was repaid, or the loan repayments were brought up to date and thereafter the monthly sums due under the Loan Agreement were maintained, proceedings would be taken.
10. The Defendants have failed to make the required payments in respect of the principal sum outstanding and/or interest as demanded.
11. 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 20th December 2010 and served on the Defendants on 21st and 22nd December 2010 constitute such a notice pursuant to Section 64(2) and that the total amount outstanding became due on or by 22nd March 2011.
12. The Registered Land Law (2004 Revision) by virtue of Section 72(1) provides that once there is a default in the payment of 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 Charge, as the case may be.
13. 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 22nd March 2011 there has accrued a right to the Plaintiff to sell the Charged Properties and the Plaintiff seeks an order that it may do so.
14. In the premises, the Plaintiff seeks an order pursuant to the provisions of the Registered Land Law (2004 Revision) that:-
 - 14.1 the variations in the Charge, Variation and Collateral Charges referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed;
 - 14.2 that an order for possession be made;
 - 14.3 the Plaintiff be entitled to sell the properties either by public auction or private treaty in good faith and having regard to the interests of the Defendants;
 - 14.4 the Plaintiff have leave pursuant to Grand Court Rules Order 45 Rule 3(1) and (2) to issue a Writ of Possession in respect of respect of the properties.

15. The Plaintiff also seeks an order that if after any sale of the properties there should be any shortfall in the amount due and owing to the Plaintiff, that the Plaintiff be at liberty to enter judgment for the said shortfall, together with interest and costs.

Dated this 3rd day of November 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 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.

This Originating Summons was issued by Ritch & Conolly, Attorneys at Law for the Plaintiff, whose address for service is PO Box 1994, Queensgate House, 113 South Church Street, George Town, Grand Cayman, Cayman Islands KY1-1104

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PLAINTIFF

AND:

- (1) S & T HOLDINGS INC
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- (3) ELLEN PEGUERO

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.

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

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
George Town
Grand Cayman KY1-1104

Ref:
MSB/FCIB/12245_S&THoldings

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, 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.