

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁴⁴³ OF 2011

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

AND IN THE MATTER OF WEST BAY NORTH WEST, BLOCK 4D, PARCEL 447

AND IN THE MATTER OF WEST BAY NORTH WEST, BLOCK 4D, PARCEL 377

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND



MIGUEL SMITH

DEFENDANT

ORIGINATING SUMMONS



TO: MIGUEL SMITH

of PO Box 214, Grand Cayman KY1-1301

LET THE DEFENDANT, MIGUEL SMITH, within 14 days after service of this Summons on him, 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 30th March 1992 the 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 West Bay North West, Block 4D, Parcel 447 ("Parcel 447").
2. The Charge provided, inter alia, that:

- 2.1 The Chargee would lend and the Chargor would borrow the principal sum of Thirty Thousand CI Dollars (CI\$30,000.00) which was to be secured as a Charge on Parcel 447.
 - 2.2 Interest on the principal sum would accrue at the rate of 6.00% per annum above the Chargee's Prime Lending Rate for CI Dollars.
3. Subsequently the Chargor and the Chargee executed Variations of Charge, most recently on or about 28th November 2008 whereby by Variation of Charge ("the Variation") the principal sum was increased to total Seventy Six Thousand Five Hundred and Ten CI Dollars (CI\$76,510.00).
4. The Variation was secured by a First Legal Collateral Charge ("the Collateral Charge") dated on or about 28th November 2008 over the property registered at the Lands and Survey Department as West Bay North West, Block 4D, Parcel 377 ("Parcel 377").
5. At all material times both Parcel 447 and Parcel 377 were registered in the name of the Defendant.
6. The Variation and Collateral Charge provided that:-

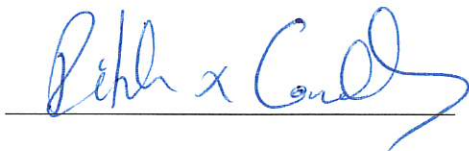
"Section 72 of the above Law shall be varied in respect of this Charge and of any instrument of variation executed pursuant to this Charge so as to entitle the Chargee immediately upon default by the Chargor in payment of the principal sum or of any interest payable hereunder or in the performance or observance of any agreement expressed or implied herein to serve on the Chargor notice in writing to pay the money owing or to perform and 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 property the subject of this security or sell the property the subject of this security by private treaty as well as by public auction.
7. Since from or about March 2011 the Defendant has failed to pay the full amount of the monthly instalments due in respect of the principal sum loaned and in respect of interest.
8. By letters dated 28th April 2011, and signed for as received by the Defendant on 10th May 2011, the Plaintiff duly served notice on the 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 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.

9. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
10. The Defendant has failed to make the required payments in respect of the principal sum outstanding and/or accrued 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 28th April 2011 and served on the Defendant on 10th May 2011 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 10th August 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 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.
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 Property. Therefore, on or since 10th August 2011 there has accrued a right to the Plaintiff to sell the Properties and the Plaintiff now 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 Legal Charge 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 shall be entitled to sell the properties either by private treaty or public auction in good faith and having regard to the interests of the Defendant.
 - 14.4 The Plaintiff shall 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.

15. The Plaintiff also seeks an Order that if after any sale of Parcel 447 and Parcel 377 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 10 day of November 2011

A handwritten signature in blue ink, appearing to read "Ritch & Conolly", written over a horizontal line.

RITCH & CONOLLY
Attorneys for the Plaintiff

If the Defendant does not acknowledge service, judgement may be given, or 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 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.

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

Attn. Marcus Baldwin
Ritch & Conolly
PO Box 1994
Queensgate House
113 South Church Street
George Town
Grand Cayman KY1-1104

Ref: MSB/CNB/12662_Smith

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.