

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 379 OF 2012

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

AND IN THE MATTER OF SAVANNAH, BLOCK 27C, PARCEL 569

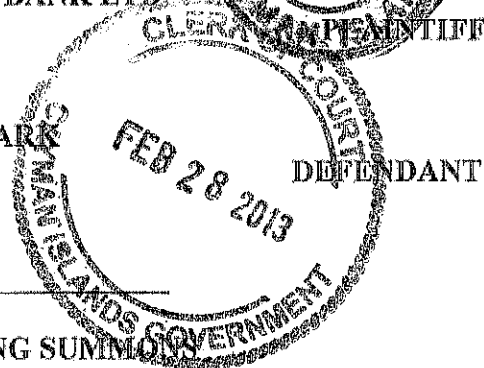
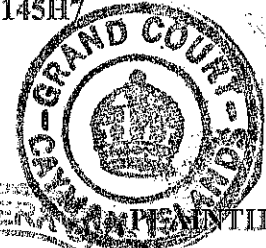
AND IN THE MATTER OF SPOTTS, BLOCK 24B, PARCEL 145H7

BETWEEN:

CAYMAN NATIONAL BANK LTD.

AND

KENNETH CLARK



AMENDED ORIGINATING SUMMONS

TO: KENNETH CLARK P.O. Box 10471, Grand Cayman, KY1 1004, Cayman Islands
Suite 207, 101-1865 Dilworth Drive, Kelowna, British Columbia, V1Y 9T1, Canada

LET THE DEFENDANT, within 14 days after service of this Summons, 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. In or about May 2009, the Defendants applied to the Plaintiff for a loan which, together with the balance of previous loans made to them amounted to CI\$47,048. This borrowing was to be paid monthly in instalments of CI\$542.00 and was to be secured by a Legal Charge, dated 19 July 2006, over Bodden Town, Block 43A, Parcel 139

("the Property"). The Legal Charge was varied on 4 June 2009 and again on 9 February 2010 ("the Charge").

2. At all material times, the Property was registered in the names of the First and Second Defendants.

3. The Variation of First Legal Charge dated 9 February 2010 provided that:-

3.1. The Principal Sum loaned to the First Defendant would be decreased by CI\$2,193 then increased by CI\$5,000 to a total of CI\$49,855.00

4. The Charges further provided that:-

"7.1 At any time after the Bank has demanded payment of the Indebtedness or any part thereof or if requested by the Chargor the Bank may exercise without further notice all the powers and discretions hereby conferred either expressly or by reference on a receiver appointed hereunder and the date of such demand shall (without prejudice to the equitable right to redeem) be the redemption date. Nothing that shall be done by or on behalf of the Bank or a receiver appointed by it shall render it or him liable to account as a mortgagee in possession for any sums other than actual receipts.

7.2 In addition to the remedies provided by Section 72 of the Law the Bank shall, whether or not a receiver has been appointed, have the right to foreclose or enter into possession of the Charged Property or both in the same circumstances as would allow the Bank to exercise its power of sale or appoint a receiver.

7.3 Upon the exercise of its power of sale the Bank shall have the right to sell the Charged Property by private treaty as well as by public auction."

5. On or since August 2011, the First and Second Defendants have failed to make the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.

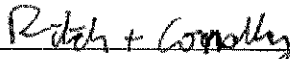
6. By letters dated 13 September 2011, the Plaintiff served on the First and Second Defendants on 20 September 2011, Notices pursuant to Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision), indicating that the sum secured by the Charge was repayable three months after service of the notices and indicating that unless the balance of the sum secured by the 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 issued.

7. Since service of the Section 64(2) and Section 72(1) the Defendants made partial payments in respect of the monthly sums due. However, since January 2012, the Defendants have failed to make any payments in respect of the Principal Sum outstanding and/or interest.
8. 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 13 September 2011 and served on the First and Second Defendants on 20 September 2011 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 19 December 2011.
9. 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.
10. 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 19 December 2011 there has accrued a right to the Plaintiff to sell the Property and the Plaintiff now seeks an order that it may do so.
11. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:
 - 11.1. an order for possession be made in terms that the Plaintiff be at liberty to sell the Property either by public auction or private treaty.
 - 11.2. the Plaintiff 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.

12. The Plaintiff also seeks an Order 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.

~~Dated the 14 day of August 2012~~

Dated the 28 day of February 2013



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.