

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 119 OF 2012

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

AND IN THE MATTER OF WEST BAY NORTH WEST, BLOCK 1C, PARCEL 38

BETWEEN:

THE CAYMAN ISLANDS CIVIL SERVICE ASSOCIATION
CO-OPERATIVE CREDIT UNION LIMITED

PLAINTIFF

CHAZ POWERY

DEFENDANT



ORIGINATING SUMMONS



TO: Chaz Powery of PO Box 30000, Grand Cayman KY1-1201

LET THE DEFENDANT, Chaz Powery, 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, PO Box 495, George Town, Grand Cayman KY1-1106.

BY THIS SUMMONS which is issued on the application of the Plaintiff, The Cayman Islands Civil Service Association Co-Operative Credit Union Limited, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (2004 Revision) as follows:-

1. In or about July 2009 Chaz Powery, a member of the Plaintiff Credit Union, applied to the Plaintiff for a loan in the sum of CI\$40,050.00 and this loan was to be repaid by monthly instalments of CI\$460.00 and was to be secured by a Legal Charge over the property registered in the name of the Defendant at the Lands and Survey Department as West Bay North West, Block 1C, Parcel 38 ("Parcel 38").
2. Parcel 38 was at all material times registered in the name of the Defendant and on or about 5th August 2009 the Plaintiff as Chargee and the Defendant as Chargor executed a Legal Charge ("the Charge") in respect of Parcel 38.

3. The Legal Charge dated 5th August 2009 provided that:-
 - 3.1 The Defendant would charge his interest in Parcel 38 in order to secure payment of the principal sum of CI\$40,050.00 ("the Principal Sum").
 - 3.2 Interest on the Principal Sum would accrue at the rate of 6.75% per annum on the reducing balance.
4. The Legal Charge also provided that:

"Section 72 of the Registered Land Law (2004 Revision) shall be varied in respect of this Charge and of any instrument or 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 any interest payable hereunder (as defined by Section 64(2) of the Registered Land Law (2004 Revision) or in the performance or observance of any agreement, expressed or implied herein to

 - a. appoint a receiver of the income of the Charged Property; or*
 - b. sell the Charged Property to private treaty as well as by public auction; or*
 - c. foreclose or enter into possession of the Charged Property; or*
 - d. in the event that the Chargee does appoint a receiver or enters into possession of the Charged Property, exercise its powers of sale or foreclosure or appointment of a receiver at any time thereafter without further notice."*
5. From or since January 2011 the said Defendant has failed to make the required monthly instalments due in respect of the Principal Sum loaned and in respect of interest.
6. By letters dated 22nd March 2011 and served on the Defendant on 24th March 2011 Messrs. Ritch & Conolly, as Attorneys for the Plaintiff, served notice on the Defendant 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 the Legal Charge was repayable three months after the service of the notices.
7. Since service of the section 64(2) and section 72(1) notices the Defendant has not made the required payments in respect of the Principal Sum outstanding and/or interest sufficient to bring the account up to date.
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. The Plaintiff avers that the letters to the Defendant dated 22nd March 2011 and served on the Defendant on 24th March 2011 constitute such notices pursuant to Section 64(2).

9. 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 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 and since 24th June 2011, that is, three months after the service of the notices on the Defendant, there has accrued a right to the Plaintiff to sell Parcel 38 and the Plaintiff 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 Parcel 38 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 respect of Parcel 38.

12. The Plaintiff also seeks an order that if after any sale of the Parcel 38 there should be any shortfall in the amount due and owing to the Plaintiff, the Plaintiff be at liberty to enter Judgment for the said shortfall, together with interest and costs.

Dated this 6th day of March 2012

Ritch & Conolly

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.-

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PLAINTIFF

AND:

CHAZ POWERY

DEFENDANT

ACKNOWLEDGEMENT 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 Defendants are 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.

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
Attorneys-at-Law
Queensgate House
PO Box 1994
113 South Church Street
George Town
Grand Cayman KY1-1104
Cayman Islands

MB/12424/CICSA v POWERY

Endorsement by Defendants' 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.