

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 204 OF 2012

IN THE MATTER OF THE REGISTERED LAND LAW (2004 REVISION)
AND IN THE MATTER OF WEST BAY NORTH WEST BLOCK 4B PARCEL 402

BETWEEN:

AND:

CAYMAN ISLANDS DEVELOPMENT BANK

PLAINTIFF

ALMINA CHRISTIAN

FIRST DEFENDANT

DELL VALLE CHRISTIAN

SECOND DEFENDANT

ORIGINATING SUMMONS

TO: Almina Christian
Dell Valle Christian

LET THE DEFENDANTS, Almina Christian and Dell Valle Christian, within 14 days after service of this Summons on them, counting the day of service, return the accompanying Acknowledgment of Service to the Courts office, P.O. Box 495, George Town, Grand Cayman.

BY THIS SUMMONS, which is issued on the application of the Plaintiff, Cayman Islands Development Bank, 36B Dr Roy's Drive, George Town, P.O. Box 2576, Grand Cayman, KY1-1103 seeks the following relief pursuant to the provisions of the Registered Land law (2004 Revision) as follows;

Grounds

1. The Defendants by way of written acceptance of terms offered by the Plaintiff for the loan (the "first loan") of the sum of CI\$148,500 (one hundred and forty eight thousand and five hundred dollars) agreed on the 19th April 2005 to borrow the said sum on terms as set out in an Offer letter from the Plaintiff dated 19th April 2005.
2. On the 21st June 2005 the Defendants agreed to borrow the further sum (the "second loan") of CI\$8,000 (eight thousand dollars) from the plaintiff and this loan was on terms as attached to an Offer letter from the Plaintiff dated June 14, 2005.

3. In accordance with the terms of the first loan agreement, on the 8th February 2006 the Defendants as Chargor and the Plaintiff as the Chargee executed and filed a First Charge in respect of the Defendant's property at West Bay North West Block 4B, Parcel 402 (hereinafter "the property") by way of First Charge over the property in the sum of CI\$148,500.
4. In accordance with the terms of the second loan agreement, on the 8th February 2006 the Defendants as Chargor and the Plaintiff as the Chargee executed and filed a Second Charge in respect of the Defendant's property at West Bay North West Block 4B, Parcel 402 (hereinafter "the parcel") by way of Second Charge over the property in the sum of CI\$8,000.
5. The First Charge provided, inter alia, that the Chargors interest in the parcel was incumbered by way of charge in the sum of \$148,500 with interest at the rate of Prime plus 2.60% per annum payable monthly in arrears and subject to Section 67 of the Registered Land Law (2004 Revision) and subject to the terms as set out in the Schedule attached to the said charge.
6. The Second Charge provided, inter alia, that the Chargors interest in the parcel was incumbered by way of charge in the sum of \$148,500 with interest at the rate of Prime plus 2.60% per annum payable monthly in arrears and subject to Section 67 of the Registered Land Law (2004 Revision) and subject to the terms as set out in the Schedule attached to the said charge.
7. The defendants defaulted upon payments due and owing on the loan agreement and the plaintiff wrote to the defendants on 6th September 2010 putting them on notice under Section 64(2) and Section 72 of the Registered Land Law that should default not be cured they would seek recourse under the registered Land Law for sale of the property.
8. On the 29th June 2011 the parties entered into a variation of the First and Second Charge to consolidate the loans with the principal sum increased from CI\$156,000 by CI\$14,500 to CI\$171,000. The variation of the Charges was registered by the Registrar of Lands on the 5th July 2011 with the interest rate payable at Base plus 1.05% per annum and the term of the Charge being 16 years. The remainder of the terms of the loan were as set out in the Schedule to the Charge.
9. The Schedule to the Charge set out the remainder of the terms of the charge and provided *inter alia* as follows:

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Para 3: "The Chargor further hereby covenants with the Chargee that the Chargor will on demand pay or discharge to the Chargee all monies and liabilities which shall for the time being (and whether on or at any time after such demand) be due owing or incurred to the Chargee by the Chargor whether actually or contingently and whether solely or jointly with any other person and whether as principal or surety including interest discount commission or other lawful charges and expenses which the Chargee may in the course of its business charge in respect of any matters aforesaid or for keeping the Chargor's account and so that interest shall be computed and compounded according to the usual mode of the Chargee as well after as before any demand made or judgment obtained hereunder."

Para 8: "A demand for payment or any other demand or notice under this Charge maybe made or given by any manager or officer of the Chargee by letter addressed to the Chargor and sent by registered post to or left at the charged property or at the last known place of business or abode of the Chargor or at the option of the Chargee (if the Chargor is a company) its registered office and if sent by post shall be deemed to have been made or given at noon on the day following the day the letter was posted."

Para 19: "The provisions of sections 72 to 75 of the Law shall apply to the Charge subject to such modifications as may be herein contained if any other creditor of the Chargor shall proceed against the Charged property or any part thereof or of the Chargor shall commit a breach of any of the agreements or covenants on his behalf herein contained or implied and on the part of the Chargor to be keep observed and performed or if any compositions for the benefit of the Chargor's creditor or being a company goes into liquidation (other than a voluntary liquidation for the purposes of a reconstruction only the terms of which have been previously approved by the Chargee) or suffers the appointment of a receiver over any part of the Chargor's assets and in addition to all other rights conferred on the Chargee it shall be lawful for the Chargee to enter into and upon the Charged property and to receive the rents and profits thereof to or for the Chargee's own use and benefit or to make use of all or any of the Chargee's present or future securities in such order and lawful or equitable manner as the Chargee may be advised."

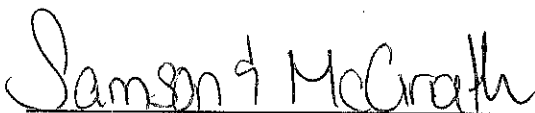
Para 20: "Section 72 of the above Law shall be varied in respect of this Charge and of any instrument or variation executed pursuant to this Charge so as to entitle the Chargee immediately upon default by the Chargor in payment of the principal sum or of any interest payable hereunder or in the performance 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 Chargee may thereupon without further notice either: -

- (a) Appoint a receiver of the income of the Charged Property.*
- (b) Sell the Charged Property by 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 enter 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."*

10. Since September 2011 the Defendants have failed to pay regular monthly instalments due in respect of the principal sum loaned and in respect of interest.
11. By letter dated 26th October 2011 delivered by hand to the Defendants on the 26th January 2012, the Plaintiff duly served notice on the Defendants pursuant Section 72(1) of the Registered Land Law (2004-Revision) as amended by Paragraphs 7, 19 and 20 of the Loan agreement indicating that the sum secured by the Charge was repayable three months after the service of the notice and indicating that pursuant to Section 72(2) unless the balance of the sum secured by the Charge was repaid legal proceedings would be taken.
12. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
13. The Defendant has failed to make the required payments in respect of the principal sum and/or accrued interest as demanded and the Defendant has been in default on the terms of the loan from September 2011. As of the 26th October 2011 the arrears were CI\$9,820.42 and the total amount outstanding under the Charge was CI\$179,867.31 with interest is accruing at a daily rate of CI\$35.79 per day.
14. 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 payment and if such default continues for one month, 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, such notice having been served in this case on the 26th January 2012.

15. The Registered Land Law (2004 Revision) by virtue of Section 72(2) provides that if a Chargor has not complied with three months after the date of service of the notice served on them under Section 72(1) the Chargee may sell the Charged Property. Therefore, on 26th April 2012 there has accrued a right to the Plaintiff to sell the Property and the Plaintiff seeks an order that it may do so.
16. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:
- (a) An order for sale of the property known as West Bay North West Block 4B, Parcel 402 ("the property") either by private treaty or public auction in good faith and having regard to the interests of the Defendants.
 - (b) That the variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law are allowed.
 - (c) The Plaintiff does have leave pursuant to the Grand Court Rules Order 45 Rule 3(1) and (2) to issue a Writ of Possession in this matter in respect of the property.
 - (d) That an order for possession is made.
 - (e) 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.
 - (f) Costs.

Dated the 20th day of April 2012



Samson and McGrath

Attorneys at Law for the Plaintiff

If the Defendant does not acknowledge service, such judgment may be given or order 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 service out of the jurisdiction, 6 months) beginning with that date unless renewed by order of the Court.

IMPORTANT

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

This Originating Summons was issued by Samson and McGrath, Attorneys at Law whose address for service is 5th Floor Genesis Building, George Town, Grand Cayman, PO Box 446 G.T.

Acknowledgement of service of originating summons (0.10, r.5)

**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 495G, George Town, Grand Cayman.

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.

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CIVIL DIVISION**

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AND IN THE MATTER OF WEST BAY NORTH WEST BLOCK 4B PARCEL 402**

BETWEEN:

CAYMAN ISLANDS DEVELOPMENT BANK

PLAINTIFF

AND:

ALMINA CHRISTIAN

FIRST DEFENDANT

DELL VALLE CHRISTIAN

SECOND 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.

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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.

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

Samson & McGrath 5 th Floor Genesis Building PO Box 446 Grand Cayman KY1 – 1106 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.

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