

IN THE GRAND COURT OF THE CAYMAN ISLANDS

90344

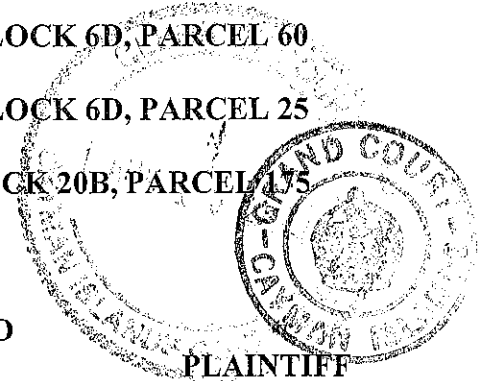
CAUSE NO. OF 2012

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

AND IN THE MATTER OF GEORGE TOWN SOUTH, BLOCK 6D, PARCEL 60

AND IN THE MATTER OF GEORGE TOWN SOUTH, BLOCK 6D, PARCEL 25

AND IN THE MATTER OF GEORGE TOWN EAST, BLOCK 20B, PARCEL 175



BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND

THE NEW COCONUT HARBOUR LIMITED

FIRST DEFENDANT

MICHAEL A. BROWN

SECOND DEFENDANT

JO-ANNE BROWN

THIRD DEFENDANT

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ORIGINATING SUMMONS

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**TO:** THE NEW COCONUT HARBOUR LIMITED c/o H&J Corporate Services  
(Cayman) Ltd PO Box 866, Fifth Floor, Anderson Square Building, Grand Cayman  
KY1-1103

**MICHAEL A. BROWN** of PO Box 10598, Grand Cayman KY1-1005

**JO-ANNE BROWN** of PO Box 10599, Grand Cayman KY1-1005

**LET THE DEFENDANTS**, 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 12 April 2011, the Defendants applied to the Plaintiff for a loan which, together with the balance of previous loans made to them gave a balance of US\$5,160,210. This borrowing was to be paid monthly in instalments of US\$26,446.00 and was to be secured by Collateral Charges (“the Charges”) over the following properties:
  - 1.1. Variation of Collateral Charge: George Town South, Block 6D, Parcel 60 (“Parcel 60”);
  - 1.2. Variation of Third Party Collateral Charge: George Town South, Block 6D, Parcel 25 (“Parcel 25”); and
  - 1.3. Collateral Third Party Third Charge: George Town East, Block 20B, Parcel 175 (“Parcel 175”)
2. At all material times, Parcel 60 was registered in the name of First Defendant, Parcel 25 was registered in the name of the Second Defendant and Parcel 175 was registered in the name of the Second and Third Defendants.
3. The Variation of Collateral Charge over Parcel 60 and the Variation of Third Party Collateral Charge over Parcel 25, dated 18 July 2011 provided that:-
  - 3.1. The Principal Sum loaned to the First Defendant would be increased to US\$5,160,210.00.
  - 3.2. Interest on the Principal sum would accrue at a rate of 2% per annum above the London Interbank Offered Rate (“LIBOR”) with the rate calculated daily and payable monthly in arrears.
4. The Collateral Third Party Collateral Charge over Parcel 175, dated 18 July 2011 provided that:-
  - 4.1. The Principal Sum of US\$5,160,210.00 would be secured over Parcel 25;
  - 4.2. Interest on the Principal sum would accrue at a rate of 2% per annum above the London Interbank Offered Rate (“LIBOR”) with the rate calculated daily and payable monthly in arrears.

5. 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.*

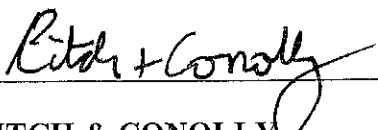
*7.2 In addition to the remedies provided by Section 72 of the Law the Bank shall, whether or not a receiver has been appointed, have the right to foreclose or enter into possession of the Charged Property or both in the same circumstances as would allow the Bank to exercise its power of sale or appoint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

6. On or since August 2011, the First Defendant has failed to make the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.
7. By letters dated 8 September 2012, the Plaintiff served on the First, Second and Third Defendants on 14 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 Charges 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.
8. Since service of the Section 64(2) and Section 72(1) notices were made the Defendants have not made any payments in respect of the Principal Sum outstanding and/or interest.
9. 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 8 September 2011 and served on the First, Second and Third Defendants on 14 September 2011 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 13 December 2011.

10. 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.
11. 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 13 December 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.
12. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:
  - 12.1. an order for possession be made in terms that the Plaintiff be at liberty to sell Parcels 60, 25 and 175 either by public auction or private treaty.
  - 12.2. 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 Parcels.
13. The Plaintiff also seeks an Order that if after any sale of Parcel 60, 25 and 175 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 8 day of August 2012

  
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**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.