

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CAUSE NO. 380 OF 2012

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

AND IN THE MATTER OF PROSPECT, BLOCK 23B, PARCEL 67H22
AND IN THE MATTER OF PROSPECT, BLOCK 23B, PARCEL 67H26

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND

PETER POPO
JACQUELINE LUBRUN-POPO

DEFENDANTS



ORIGINATING SUMMONS

TO: PETER POPO and JACQUELINE LUBRUN-POPO
of PO Box 10042, Grand Cayman KY1-1001

LET THE DEFENDANTS, PETER POPO and JACQUELINE LUBRUN-POPO, within 14 days after service of this Summons on them, 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 21st October 2008 the First Defendant as Chargor and the Plaintiff as the Chargee executed a Variation of First Charge (the "Charge") in respect of the property registered at the Lands and Survey Department as Prospect, Block 23B, Parcel 67H22 ("Parcel 67H22").
2. The Charge provided, inter alia, that:

- 2.1 The Chargee would lend and the Chargor would borrow the principal sum of Two Hundred and Ten Thousand Four Hundred and Twelve CI Dollars (CI\$210,412.00) which was to be secured as a Charge on Parcel 67H22.
- 2.2 Interest on the principal sum would accrue at the rate of 5.00% per annum.
3. Further on or about 21st May 2008 the First and Second Defendants as Chargors and the Plaintiff as the Chargee executed a Variation of First Legal (Third Party) Charge (the "Charge") in respect of the property registered at the Lands and Survey Department as Prospect, Block 23B, Parcel 67H26 ("Parcel 67H26").
4. The Charge provided, inter alia, that:
 - 4.1 The Chargee would lend and the Chargors would borrow the principal sum of One Hundred and Sixty Five Thousand Seven Hundred and Seventeen Thousand CI Dollars (CI\$165,717.00) which was to be secured a Charge on Parcel 67H26.
 - 4.2 Interest on the principal sum would accrue at the Cayman Islands Dollar Prime Lending Rate.
5. The Charges also provided that:-

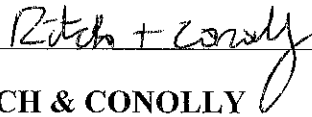
"In the event that the Chargor shall fail to discharge all monies and liabilities in full in accordance with the terms hereof or in the event that the Chargor shall be in breach of any of the Chargor's covenants or obligations herein contained whether express or implied or in the event that the Chargor commits any act of bankruptcy or makes any assignment or composition for the benefit of the Chargor's creditors 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 in writing by the Chargee) or suffers the appointment of a receiver over any part of the Chargor's assets then in any such event the whole of the Principal Sum and all interest thereon and any other sums owing hereunder to the Chargee shall become immediately due and payable and the provisions of Sections 72 to 75 of the said Law shall apply subject to the modifications hereinafter set forth:-

- (i) *The power of sale and of appointing a receiver and any other remedies available to the Chargee shall become immediately exercisable without further notice;*
- (ii) *In the event that the Chargee does appoint a receiver the Chargee shall be entitled to exercise its power of sale at any time thereafter without further notice;*

- (iii) *Upon the exercise of the Chargee's power of sale the Chargee shall have the right and power to sell the charged property by private treaty or by public auction or part in one way and part the other.*
6. Since from or about November 2011 the Defendants have failed to pay the full amount of the monthly instalments due in respect of the principal sum loaned and in respect of interest.
 7. By letters dated 9th December 2011, the Plaintiff duly served notice on the Defendants 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 by posting the notices on the properties on 20th and 21st December 2011 and publishing the notices in issue numbers 03/2012, 04/2012 and 05/2012 dated 30th January 2012, 13th February 2012 and 27th February 2012 of the Cayman Islands Gazette.
 8. The notices demanded payment of the balance of the principal sum outstanding and accrued interest.
 9. The Defendants have failed to make the required payments in respect of the principal sum outstanding and/or accrued interest as demanded.
 10. 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 demand letters constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 27th May 2012.
 11. 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.
 12. 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 27th May 2012 there has accrued a right to the Plaintiff to sell the properties and the Plaintiff now seeks an order that it may do so.

13. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:
- 13.1 The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
 - 13.2 That an order for possession be made.
 - 13.3 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 Defendants.
 - 13.4 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.
14. The Plaintiff also seeks an Order that if after any sale of Parcels 67H22 and 67H26 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 6th day of September 2012



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.