

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁴⁴³ OF 2012

IN THE MATTER OF THE REGISTERED LAND LAW (2004 REVISION)
AND IN THE MATTER OF SPOTTS, BLOCK 24B, PARCEL 58

BETWEEN:

FIRST CARIBBEAN INTERNATIONAL
BANK (CAYMAN) LTD

PLAINTIFF

AND

LEWIS M EBANKS

AND

ELLA EBANKS

SECOND DEFENDANT



ORIGINATING SUMMONS

TO: Lewis M Ebanks and Ella Ebanks of Omega Bay, 189 Whirlwind Drive, Grand Cayman, Cayman Islands.

LET THE DEFENDANTS, Lewis M Ebanks and Ella Ebanks, 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, PO Box 495, George Town, Grand Cayman KY1-1106.

BY THIS SUMMONS which is issued on the application of the Plaintiff, FirstCaribbean International Bank (Cayman) Ltd, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (2004 Revision) as follows:-

1. On or about 28 October 2005, the Defendants as Chargors and the Plaintiff as Chargee executed a Legal Charge ("the First Charge") in respect of the property registered in the name of the Defendants at the Lands and Survey Department as Spotts, Block 24B, Parcel 58 ("Parcel 58").
2. On or about 12 August 2012, the Defendants as Chargors and the Plaintiff as Chargee executed a Third Party Collateral Second Charge ("the Second Charge") in respect of Parcel 58.

3. At all material times Parcel 58 was registered in the name of the Defendants.

4. The First Charge provided, inter alia, that:

2.1 The Chargee would lend and the Chargors would borrow the principal sum of Two Hundred and Ninety Seven Thousand Five Hundred Cayman Island Dollars (CI\$297,500) which was to be secured as a Charge on Parcel 58.

2.2 Interest on the principal sum would accrue at the rate of 1.50% per annum above the Chargee's Prime Lending Rate for CI Dollars.

5. Section 6.1 of the First Charge also provided that:-

"Section 72 of the Law shall be varied in respect of this charge and of any instrument of variation executed pursuant to this charge. Failing payment of the Secured Sums as and when they become due or other breach of the covenants and conditions on the Chargors' part contained in this charge and/or the Principal Debtor's part contained in the Credit Agreement, this security shall become enforceable and the powers conferred upon the Chargee by the Law and this charge immediately exercisable without the restrictions contained in the Law as to the giving of notice or otherwise with respect to the whole or any part of the Charged Property".

6. The Second Charge provided, inter alia, that:

2.3 The Chargee would lend and the Chargors would borrow the principal sum of Five Hundred and Seventy Five Thousand United States Dollars (US\$575,000) which was to be secured as a Charge on Parcel 58.

2.4 Interest on the principal sum would accrue at the rate of 1% per annum above the Chargee's Prime Lending Rate for CI Dollars.

7. Section 12 of the Second Charge provided that:-

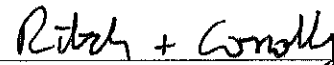
"Sections 72 and 75 of the above Law shall be varied in their application to this Charge and of any instrument of variation executed pursuant to this Charge so as to entitle the Chargee immediately upon default by the Chargor in payment of the Principal Sum or of any interest payable hereunder or in the performance or observance of any agreement expressed or implied herein to serve on the Chargor notice in writing to pay the moneys owing or due or to perform or observe the agreement as the case may be and further so as to provide that if the Chargor does not comply within one month of the date of service of such notice the Chargee may thereupon either appoint a receiver of the income of the Charged Property or sell the Charged Property by private treaty as well as by public auction or by tender or to foreclose on the Charged Property".

8. On and since September 2011 the Defendants have failed to pay the monthly instalments due in respect of the Principal Sums loaned and in respect of interest.
9. By letters dated 26 January 2012 and served on the Defendants on 27 January 2012 Messrs. Ritch & Conolly, as Attorneys for the Plaintiff, served notices on the Defendants pursuant to the provisions of Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sums secured by the Variation of Charge and Variation of Second Charge were repayable three months after the service of the Section 64(2) notice and indicating that unless the balance of the sum secured by the Charges were 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 taken.
10. The Defendants have not made any payments in respect of the Principal Sums outstanding and/or interest, or any payment.
11. 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 dated 26 January 2012 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on or after 27 April 2012.
12. 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 Charge, as the case may be.
13. 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 s72(1) notice, the Chargee may sell the Charged Property. Therefore, on or since 27 April 2012 there has accrued a right to the Plaintiff to sell Parcel 58 and the Plaintiff seeks an order that it may do so.
14. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:
 - 11.1 The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
 - 11.2 That an order for possession be made.

- 11.3 The Plaintiff shall be entitled to sell Parcel 58 either by private treaty or public auction in good faith and having regard to the interests of the Defendant.
- 11.4 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.

The Plaintiff also seeks an Order that if after any sale of Parcel 58 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 this 01 day of November 2012



RITCH & CONOLLY
Attorneys for the Plaintiff

If the Defendants do not acknowledge service, such judgment 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 service 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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FIRSTCARIBBEAN INTERNATIONAL BANK (CAYMAN) LTD
PLAINTIFF

AND

LEWIS M EBANKS
FIRST DEFENDANT

AND

ELLA EBANKS
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.**

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]

Please complete overleaf

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.

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

Edwin Gomez
Ritch & Conolly
Queensgate House
113 South Church Street
PO Box 1994
Grand Cayman KY1-1104

Ref: EG/12725

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

[Empty box for defendant's Attorney endorsement]

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.