

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>478</sup> OF 2012



IN THE MATTER OF THE REGISTERED LAND LAW (2004 REVISION)  
AND IN THE MATTER OF SAVANNAH, BLOCK 27C, PARCEL 409

BETWEEN:

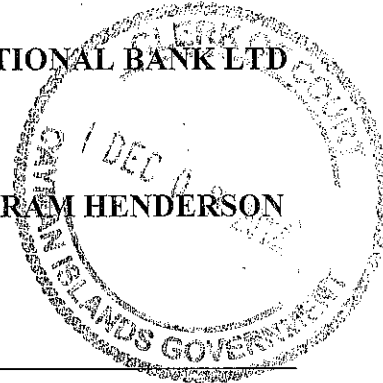
CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND

SCOTT BERTRAM HENDERSON

DEFENDANT



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**ORIGINATING SUMMONS**

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TO: **SCOTT BERTRAM HENDERSON** of P.O Box 1097, Grand Cayman KY1-1102

**LET THE DEFENDANT**, 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 April 2011, the Defendant applied to the Plaintiff for a loan which, together with the balance of previous loans made to him gave a balance of US\$369,600. This borrowing was to be paid monthly in instalments of US\$2,649 and was to be secured by a First Legal Charge ("the Charge") over the following property:
  - 1.1. Savannah, Block 27C, Parcel 409 ("Parcel 409").
2. At all material times, Parcel 409 was registered in the name of the Defendant.

3. The Charge dated 11 August 2011 provided that:-

3.1. The Principal Sum loaned to the Defendant would be US\$369,600.

3.2. Interest on the Principal sum would accrue at a rate of 2% per annum above the Chargee's Prime Rate for United States Dollars lending.

4. The Charge further provided that:-

*"7.1 At any time after the Bank shall have 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 conferred on mortgagees by virtue of the Law as hereby varied or extended and all 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."*

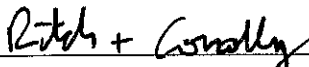
5. On or since September 2011, the Defendant has failed to make the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.

6. By letters dated 3 November 2011, the Plaintiff served on the Defendant, on 15 November 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 Charge was repayable three months after service of the notices and indicating that unless the balance of the sum secured by the Charge was repaid proceedings would be issued.

7. Since service of the Section 64(2) and Section 72(1) notices, the Defendant made one payment of US\$23,809.52, on 19 July 2012, in respect of the Principal Sum outstanding and/or interest. Nevertheless, as at 15 November 2012, the arrears amounted to US\$18,668.48.
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. Therefore the Plaintiff avers that the letters dated 3 November 2011 and served on the Defendant on 15 November 2011 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 14 February 2012.
9. 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.
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 Properties. Therefore, on or since 14 February 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.
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 409 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 this matter in respect of the Parcels.

12. The Plaintiff also seeks an Order that if after any sale of Parcel 409 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 3 day of December 2012



**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.