

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 21 OF 2013



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

AND IN THE MATTER OF HIGH ROCK, BLOCK 64A, PARCEL 129



BETWEEN:

CAYMAN NATIONAL BANK LTD

AND

ROLAND SCHOEFER

FIRST DEFENDANT

JULIAN SCHOEFER

SECOND DEFENDANT

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ORIGINATING SUMMONS

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**TO: ROLAND SCHOEFER** P.O Box 524, Grand Cayman, KY1-1602, Cayman Islands  
**JULIAN SCHOEFER** P.O Box 524, Grand Cayman KY1-1602, Cayman Islands

**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 October 2008, the Defendants applied to the Plaintiff for a loan which, together with the balance of other loans made to them amounted to US\$310,189.03. This borrowing was to be paid monthly in instalments of US\$2,230.00 and was to be

secured by a Variation of First Legal Charge, dated 18 November 2008, over High Rock, Block 64A, Parcel 129("the Property").

2. At all material times, the Property was registered in the names of the First and Second Defendants.

3. The Variation of First Legal Charge dated 18 November 2008 provided that:-

3.1. The Principal Sum loaned to the Defendants would be decreased to US\$310,189.03 then increased by US\$169,810.97 to a total of US\$480,000.00

4. The Third Schedule of the Variation of First Legal Charge provides that:-

*"7 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:-*

*(1) the power of sale and of appointing a receiver and any other remedies available to the Chargee shall become immediately exercisable without further notice;*

*(2) 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;*

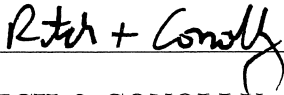
*(3) upon the exercise of the Chargee's power of sale the Chargee shall have the right and the power to sell the charged property by private treaty or public auction or part in one way and part the other;*

5. On or since September 2011, the First and Second Defendants have failed to make the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.

6. By letters dated 10 February 2012, the Plaintiff served on the First and Second Defendants on 1 March 2012, 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 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.
7. Since service of the Section 64(2) and Section 72(1) the Defendants have failed to make any payments in respect of the Principal Sum outstanding and/or interest.
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 10 February 2012 and served on the First and Second Defendants on 1 March 2012 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 1 June 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 Property. Therefore, on or since 1 June 2012 there has accrued a right to the Plaintiff to sell the Property 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 the Property 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 Property.

12. The Plaintiff also seeks an Order 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.

Dated the 18 day of January 2013



**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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2013

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

AND IN THE MATTER OF HIGH ROCK, BLOCK 64A, PARCEL 129

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND

ROLAND SCHOEFER

FIRST DEFENDANT

JULIAN SCHOEFER

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.

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2. State whether the Defendant intends to contest or otherwise participate in the proceedings (tick appropriate box)

yes

no

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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.

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: 13019

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.