

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 432 OF 2013

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

AND IN THE MATTER OF GEORGE TOWN CENTRAL, BLOCK 13E,  
PARCEL 169

BETWEEN:

FIRSTCARIBBEAN INTERNATIONAL BANK (CAYMAN) LTD

PLAINTIFF

AND:

BENJAMIN WRIGHT

DEFENDANT

ORIGINATING SUMMONS

TO: BENJAMIN WRIGHT, PO Box 1025, George Town, Grand Cayman

LET THE DEFENDANT, Benjamin Wright 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, PO Box 68, FirstCaribbean House, 25 Main Street, George Town, Grand Cayman KY1-1102, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (2004 Revision) as follows:-

1. At all material times:
  - a. the Plaintiff provided banking services, including the provision of credit facilities, to City Lakes Development Ltd ("City Lakes")
  - b. the Defendant was a director of City Lakes.
  - c. the Defendant was the registered proprietor of Block 13E Parcel 169 ("the Property")

2. By an agreement dated 11 May 2012, the Plaintiff agreed to renew City Lakes' demand loan facility ("the Loan") on the following terms:
  - a. Loan Amount: CI\$746,395.52
  - b. Interest Rate: Prime plus 4.5%, effective rate 7.75% per annum
  - c. Repayment: 6 monthly payments of CI\$7,665.00 ending 5<sup>th</sup> November 2012. Thereafter regular blended monthly payments of CI\$8,723.42.
  
3. As part of the security provided for the Loan, Plaintiff held a Legal Charge over the Property ("the Charge"). The Charge was most recently varied by a Variation of Charge dated 28<sup>th</sup> February 2011 to CI\$770,000. The Charge provides, inter alia:
  - a. At any time after the Principal Debtor shall have defaulted in payment of the principal Sum or any part thereof or if the Principal Debtor or the Chargor is/are in breach of the Commitment Letter or if requested by the Chargor the Chargee may exercise without further notice all the powers conferred on mortgagees by virtue of the Law as hereby varied or extended and 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 Chargee 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.
  - b. In addition to the remedies provided by Section 72 of the law of Chargee shall, whether or not a receiver has been appointed, have the right to foreclose or enter into possession for the Charged Property or both in the same circumstances as would allow the Chargee to exercise its power of sale to appoint a receiver.
  - c. Upon the exercise of its power of sale the Chargee shall have the right to sell the Charged Property by private treaty as well as by public auction.
  
4. The Defendant has failed to pay the full amount of the monthly instalments due in accordance with the terms of the Loan.

5. By letters dated 4<sup>th</sup> March 2013 and served on the Defendant on 6<sup>th</sup> March 2013 Ritch & Conolly, as Attorneys for the Plaintiff, served notices on the Defendant pursuant to the provisions of Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision).
6. 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 4<sup>th</sup> March 2013 and served on the Defendant on 6<sup>th</sup> March 2013 such a notice pursuant to Section 64(2) and that the total amount outstanding became due on or by 6<sup>th</sup> June 2013.
7. 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.
8. 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 6<sup>th</sup> June 2013 there has accrued a right to the Plaintiff to sell the Charged Property and the Plaintiff seeks an order that it may do so.
9. The Defendant has failed to make the required payments as demanded. As at 2<sup>nd</sup> December 2013, the arrears were CI\$23,027 and the total balance of the Loan, including interest and charges, was CI\$773,554.
10. In the premises, the Plaintiff seeks an order pursuant to the provisions of the Registered Land Law (2004 Revision) that:-
  - 14.1 the variations in the Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed;
  - 14.2 that an order for possession be made;
  - 14.3 the Plaintiff be entitled to sell the properties either by public auction or private treaty;

14.4 the Plaintiff have leave pursuant to Grand Court Rules Order 45 Rule 3(1) and (2) to issue a Writ of Possession in respect of respect of the properties.

Dated this 9<sup>th</sup> day of December 2013

Ritch + Conolly.

**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.

This Originating Summons was issued by Ritch & Conolly, Attorneys at Law for the Plaintiff, whose address for service is PO Box 1994, Queensgate House, 113 South Church Street, George Town, Grand Cayman, Cayman Islands KY1-1104

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BETWEEN:

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PLAINTIFF

AND:

BENJAMIN WRIGHT

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]

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.

Ritch & Conolly  
Queensgate House  
113 South Church Street  
PO Box 1994  
George Town  
Grand Cayman KY1-1104  
  
Ref: MJD/FCIB/13157\_Wright,  
Benjamin

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

## **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.