

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO:

G0203

OF 2014

IN THE MATTER OF Section 64 (2) 72(1) and 75(1) of the Registered Land Law (2004) Revision

BETWEEN: MICHELLE DURRANT and CHRISTOPHER DURRANT PLAINTIFFS

AND: NATIONAL BUILDING SOCIETY OF CAYMAN DEFENDANT



ORIGINATING SUMMONS



TO: National Building Society of Cayman
71 Eastern Ave,
P.O. Box 504
Grand Cayman, KY1-1106
Cayman Islands

THIS ORIGINATING SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within 14 days after the service of this Originating Service on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P. O. Box 495GT. George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 8th day of September 2014

IMPORTANT

Directions for acknowledgment of service are given with the accompanying form.

NOTE: This Originating 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 the date of issue unless renewed by Order of the Court.

INDORSEMENTS

- (a) The Plaintiffs claim is for an Injunction restraining and prohibiting the Defendant whether by himself, his servants or agents or otherwise, from any and all actions, pursuant to Section 64(2) of the Registered Land Law (2004 Revision) the objective of which is to proceed to list and sell the properties more specifically identified as Registration Section- Spotts, Block 25C Parcel 493 ("**the Property**"), owned by the Plaintiffs and which Properties the Defendant holds the first Legal Charge over, as any such action on the part of the Defendant, his servants or agents; will be in breach of the Defendant's obligations under Section 75(1) of the Registered Land Law (20004 Revision) to act in good faith and is unreasonable .
- (b) The Plaintiffs seek and Order of Mandamus restraining and preventing the Defendant from listing and selling the Properties and directing the Defendant on equitable grounds, to grant to the Plaintiffs, the period of a further six months, in order that the Plaintiffs might be afforded the opportunity to continue the process of actively seeking to resolve the matter of the arrears and or acquire a mortgage takeover; by another lending institution.



MICHELLE DURRANT
PLAINTIFFS



CHRISTOPHER DURRANT
PLAINTIFF

This **Originating Summons** was prepared and issued by Dennis Brady, Attorney-at-Law for the Plaintiffs herein whose address for service is Building A3 Trinity Square, Eastern Ave, George Town, Grand Cayman, P. O. Box 11740 APO, Grand Cayman, KY1-1009, Cayman Islands

STATEMENT OF CLAIM

MICHELLE AND CHRISTOPHER DURRANT v NATIONAL BUILDING SOCIETY OF CAYMAN


1. In the year 1998 the Plaintiffs (“we”) entered into a mortgage arrangement in relation to property identified as Registration Section: Spotts, Block 25C, Parcel 493.
2. In March of 2012 the Plaintiff Christopher Durrant was diagnosed with stage 3 cancer and had to be flown off island to undergo chemotherapy treatment.
3. As a consequence he was not able to work until until March of 2014 and hence the mortgage payments fell into arrears.
4. Representations were made to the Defendants outlining this dilemma and requesting on humanitarian grounds the opportunity to facilitate the paying down of the balance outstanding, was made to Ms. Jewel Ebanks, the Senior Underwriter for mortgages employed by the Defendant.
5. The said Plaintiffs have since increased the usual monthly payments to CI\$2,500.00 per month having previously paid CI\$2,000.00 and to date, since March of 2014; has paid a total CI\$10,000.00 towards the arrears.
6. By a letter dated August 28 2014, the Defendant has written to the Plaintiffs, stating that notwithstanding the demonstration of their commitment and effort to paying off the arrears, the dwelling house in which the Plaintiffs reside with their five year old twins, has been listed for sale.
7. The Plaintiffs have also by a letter dated September 2 2014, written to the Defendants re-iterating the undertaking to pay off the arrears and also in the said letter informed that the Plaintiff Michelle Durrant is again gainfully employed, which fact would afford a further increase in the amount paid towards the arrears, as well as indicating the existence of a newly signed contract which is to earn the Plaintiffs CI\$30,000.00; further enhancing their ability to pay off the mortgage arrears.
8. Despite these undertakings the Defendant has remained inflexible in their demands.

AND THE PLAINTIFFS CLAIM:


1. The Plaintiffs claim is for an Injunction restraining and prohibiting the Defendant whether by himself, his servants or agents or otherwise, from any and all actions, pursuant to Section 64(2) of the Registered Land Law (2004 Revision) the objective of which is to proceed to list and sell the properties more specifically identified as Registration Section- Spotts, Block 25C Parcel 493, owned by the Plaintiffs and which Properties the Defendant holds the first Legal Charge over, as any such action on the part of the Defendant, his servants or agents; will be in breach of the Defendant’s obligations under Section 75(1) of the Registered Land Law (20004 Revision) to act in good faith and unreasonable .

2. The Plaintiffs seek an Order of Mandamus restraining and preventing the Defendant from listing and selling the Property and directing the Defendant on equitable and humanitarian grounds, to grant to the Plaintiffs, the period of a further six months, in order that the Plaintiffs might be afforded the opportunity to continue the process of actively seeking to resolve the matter of paying down the arrears and or acquire a mortgage takeover; by another lending institution.

3. No Order as to costs.



Christopher Durrant (Plaintiff)



Michelle Durrant (Plaintiff)

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BETWEEN: MICHELLE DURRANT and CHRISTOPHER DURRANT PLAINTIFFS

AND: NATIONAL BUILDING SOCIETY OF CAYMAN DEFENDANT

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS

Important: Read the accompanying direction 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.**

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside

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 the proceedings (tick the appropriate box)

Yes No

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the defendant intends to apply for a stay of execution against any judgment entered by the Plaintiffs (tick the appropriate box)

Yes No

Service of the Originating Summons is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

This **Originating Summons** was prepared and issued by Dennis Brady, Attorney-at-Law for the Plaintiffs herein whose address for service is Building A3 Trinity Square, Eastern Ave, George Town, Grand Cayman, P. O. Box 11740 APO, Grand Cayman, KY1-1009, Cayman Islands

Notes for Guidance

1. Each Defendant (if there is more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, an Originating Summons served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. 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)".
4. 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.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN NAME, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorized 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.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a *guardian ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

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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 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 communication for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by Plaintiffs' attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below:

Dennis Brady
Building A3 Trinity Square, Eastern Ave,
P. O. Box 11740 APO, Grand Cayman,
KY1-1009, Cayman Islands

Indorsement by Defendants' attorney (or by Defendants if suing in person) of his name, address and reference, if any, in the box below:

The **Originating Summons** was issued and prepared by Dennis Brady and Claudia Brady, the Plaintiffs herein whose address for service is Building A3 Trinity Square, Eastern Ave, George Town, Grand Cayman, P. O. Box 11740 APO, Grand Cayman, KY1-1009, Cayman Islands.