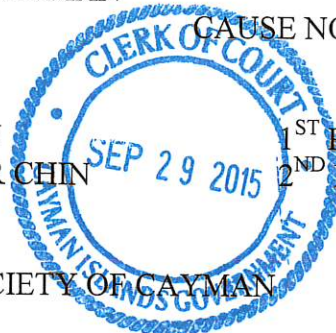
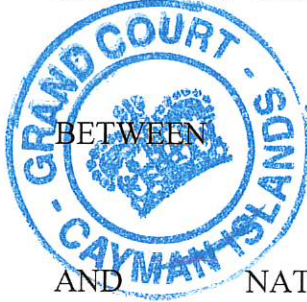


Writ of Summons (O.6, r.1)

LACVO158/2015

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. *G0170* OF 2015



BETWEEN

ROBERT ROBINSON  
THERESA ELEANOR CHIN

1<sup>ST</sup> PLAINTIFF  
2<sup>ND</sup> PLAINTIFF

AND

NATIONAL BUILDING SOCIETY OF CAYMAN

DEFENDANT

SPECIALLY ENDORSED WRIT OF SUMMONS

TO: DEFENDANT: NATIONAL BUILDING SOCIETY OF CAYMAN, 504 Grand Cayman, Cayman Islands, KY1-1106

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

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

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

Issued this    day of September 2015

NOTE - This Writ may not be served later than 4 calendar months beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

## STATEMENT OF CLAIM

1. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs were formally married on or about 29 July 1989. They have since divorced in or about 2000 but have two children together from that marriage. They still have a working relationship. The 2<sup>nd</sup> Plaintiff experienced financial difficulties and when she could not settle her debts as they fell due she sought the assistance of the 1<sup>st</sup> Plaintiff, who agreed to assist her.
2. The 1<sup>st</sup> Plaintiff entered into an agreement dated 31 August 2011 on behalf of the 2<sup>nd</sup> Plaintiff, Theresa Chin, to assist her by way of a guarantee in the amount of CI\$42,000 to secure a loan. The 1<sup>st</sup> Plaintiff agreed to put forward land known as Registration Section Spotts, Block 25B, Parcel 411 (hereafter known as the "Land") owned by him as a sole proprietor as collateral under a charge which was created and to be held by the Defendant. Both parties signed a commitment letter. The 1<sup>st</sup> Plaintiff signed a Charge document on 13 September 2011.
3. A variation of the charge was signed on 4 January 2012. The sum borrowed was increased to CI\$95,200.00. The Variation of Charge was signed on 1<sup>st</sup> February 2012. At all times the monies borrowed were to be paid back by the 2<sup>nd</sup> Plaintiff.
4. At the time that the various agreements to charge and variation of charge were entered into by the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff, neither of the Plaintiffs either singly or together were advised to seek independent legal advice.
5. The 2<sup>nd</sup> Plaintiff failed to make payments due under the charge. The chargee by letter dated 22 May 2014 notified the 1<sup>st</sup> Plaintiff that it was serving on him a formal notice of demand pursuant to section 64 (2) and 72 (1) of the Registered Land Law (2004R) (hereafter referred to as "RLL") for the immediate payment of the principle and interest. The letter only had a copy of a notice of demand served under section 64(2) of the RLL.
6. At the time that the Plaintiff signed the charge document on 13 September 2011 he did not understand the significance of the section 72 of the RLL.
7. The section 64(2) notice demanded the payment of the principle and interest owing as at that date and set out the sum owed to the bank under the charge.
8. If default is made in payment of the principle and interest pursuant to and as identified by the section 64(2) notice and continues for one month, the chargee may serve on the chargor notice in writing to pay the money owing, here the principle and interest demanded, or to observe the agreement as the case may be. That notice must served pursuant to section 72 (1) of the RLL. The Plaintiff has never been served with such a notice pursuant to section 72(1) of the RLL to either pay the money owing or to perform and observe the agreement.
9. The 1<sup>st</sup> Plaintiff had various meetings with the Defendant to see how he could perform and observe the agreement. All offers put forward in May 2015 including a lump sum payment of CI\$78K to substantially reduce the debt were refused. Such a lump sum

payment would have allowed the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff to pay back a more manageable lower monthly sum to the Defendant. However, those offers were all unreasonably refused.

10. As a result of the non-payments under the demand the Defendant has placed the 1<sup>st</sup> Plaintiff's property and the home of the 2<sup>nd</sup> Plaintiff on the market for sale. Both properties have been placed on the CIREBA multi-listing system (MLS) for sale.
11. The Plaintiffs continued to try and find a way to redeem the mortgage. The Plaintiff's had various meetings with the Defendant. The Defendant acted unreasonably in that it would not negotiate with them. The Defendant was aware of the fact that the Plaintiffs were seeking to pay off the mortgage by way of alternative financing. On 26 August the 2<sup>nd</sup> Plaintiff sought a copy of the closing statement to redeem the mortgage as at 20 September 2015. However, notwithstanding this request, the Defendant accepted an offer to purchase the 1<sup>st</sup> Plaintiff's property on 27 August 2015.
12. On 8 September 2015, Royal Bank of Canada ("RBC") agreed to process an application by the 1<sup>st</sup> Plaintiff to take over the charge held by the Defendant. They agreed with the 1<sup>st</sup> Plaintiff that they would provide the sum of CI\$78K together with his saving of CI\$17,200.00 making a total sum of CI\$95,200.00. The 1<sup>st</sup> Plaintiff would therefore have the funds available to redeem the charge. On 8 September 2015 Campbells acting on behalf of the RBC communicated with the Defendant's attorney, HSM, seeking a closing statement from them. HSM notified Campbells that they had secured a purchaser on 8 September 2015 and that the closing is scheduled to take place on 30 September 2015.
13. The Plaintiff has the funds in place to pay off the charge held by the chargee. However, notwithstanding its failure to serve a section 72 notice, the Defendant has refused to accept a payment from the 1<sup>st</sup> Plaintiff.
14. The Charge document dated 13 September 2011 and the schedule thereto at paragraph 7.1 under the heading **Powers of the Bank** provides

"In the event that the chargor and/or the Principal Debtor shall fail to discharge all or part of the indebtedness.....then in any such event the whole of the Indebtedness and all Interest thereon and any other sums owing hereunder to the Chargee shall become immediately due and payable and the provisions of Section 72 and 75 of the above Law shall apply subject to the modifications hereinafter set forth:- i. The power of sale.... shall become immediately exercisable without further notice. iv. Upon the exercise of its power of sale the Bank shall have the right to sell the Charged Premises by private treaty as well as by public auction."

15. The proviso to Section 77 RLL requires that if the chargee is to act on any variation of a provision of the RLL by the charge document then it must first obtain an order of the court. The charge document has so modified the application of the provisions under the RLL, sale without service of a section 72 notice, the power of sale shall become

immediately exercisable and sale by way auction or private treaty. Notwithstanding these modifications the Plaintiff has not sought and thus failed to obtain an order of the Grand Court for sale of the charged property.

16. The Defendant has failed to act in accordance to section 75 RLL and has failed in its duty of care to act in good faith towards the Plaintiff in that it has not acted in accordance with section 72 to 75 and section 77 of the RLL. The Defendant is selling the Plaintiff's property at an undervalue notwithstanding a valuation report in April 2015 fixing a higher price of CI\$130K and it is preventing the Plaintiff from redeeming the charge. Instead of relying on this valuation report obtained by RBC, the Defendant sought another valuation report in June wherein the valuation of the property was CI\$100K. There is no accounting for the arbitrary nature of these valuation reports as this land was valued at CI\$194K in 2013.
17. The Defendant intends, unless restrained by this Honourable Court, to continue in breach of section 77 of the Registered Land Law, the breach the Plaintiff's constitutional right to a fair hearing and property rights and its fiduciary duty to the Plaintiff.
18. The Plaintiffs seek a declaration as to whether the Land is being sold by public auction or private treaty as the methodology appears to be exactly the same. Further, and in any event, the charge document varies section 75 of the RLL. The charge documents states that the section 72 of the RLL is not applicable and that the chargor can sell immediately.
19. The Plaintiff has suffered loss and damage, particulars of which cannot yet be given.
20. Further, pursuant to The Judicature Law (1995 Revision), the Defendant is entitled to and claims interest on such sums as are found to be due at such rate and for such period as the Court shall think fit.

AND the Plaintiff claims

- (i) Injunctions restraining the defendant by himself, his servant or agents or otherwise from:
  - a. Selling the Land known as Registration Section Spotts, Block 25B, Parcel 411
  - b. Or from in anyway dealing with the Land, charging, transferring, incumbering or diminishing the value of the property.
- (ii) A declaration as to whether the property is being sold by private treaty or public auction.
- (iii) Damages and interest thereon pursuant to the statute above
- (iv) Costs



**Clyde H. Allen, Chambers**

THIS WRIT was issued by Clyde H. Allen, Chambers on behalf of the Plaintiff whose address for service is P.O. Box 31076 SMB, 2nd Floor, Suite 10, Jack & Jill Building, 19 Fort Street, KYI-1205, George Town, Grand Cayman, Cayman Islands.

Acknowledgement of service of writ of summons (0.12, r.3)

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by 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 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person)

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgement is served on the Defendant,

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after the Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidation demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make or payment of the money by instalments or otherwise.

**See over for notes for guidance**

**Please complete overleaf**

**Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of the 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.
3. Where the Defendant is sued in a name deferent 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 Writ of 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, 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

60170  
CAUSE NO. OF 2015

BETWEEN

ROBERT ROBINSON  
THERESA ELEANOR CHIN

1<sup>ST</sup> PLAINTIFF  
2<sup>ND</sup> PLAINTIFF

AND

NATIONAL BUILDING SOCIETY OF CAYMAN

DEFENDANT

**ACKNOWLEDGMENT OF SERVICE  
OF SPECIALLY ENDORSED WRIT OF 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.

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

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

Yes  No

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3. If the claim against the Defendant is for a debt or a 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 Plaintiff (*tick box*)

Yes

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Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for

Address for service:

*Please complete overleaf*