

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>60063</sup> of 2016

BETWEEN: S&T HOLDINGS INC

First Plaintiff

AND: WILLIAM PEGUERO

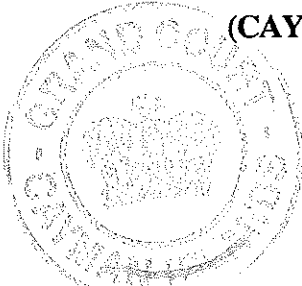
Second Plaintiff

AND: ELLEN PEGUERO

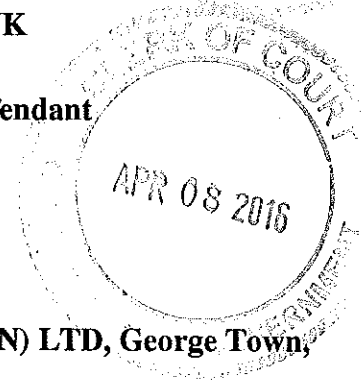
Third Plaintiff

AND: FIRST CARIBBEAN INTERNATIONAL BANK  
(CAYMAN) LIMITED

Defendant



WRIT OF SUMMONS



TO: FIRST CARIBBEAN INTERNATIONAL BANK (CAYMAN) LTD, George Town,  
Grand Cayman

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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 8<sup>th</sup> day of April 2016 .

NOTE - This Writ 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.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form



5. Between May 2000 and September 2006 the Bank provided loans in the Sum of CI\$ 7, 240,000.00 to the Plaintiffs. The said loans were secured by charges on the Land Registered at the Land Registry George Town, Grand Cayman namely, George Town General, Block 14CF, Parcel 205H16 and H19 to H27 ("Trinity Square"), George Town Central, Block 14CF, Parcel 180 ("Eastern Plaza"), and Block 32B, Parcel 25, a Dwelling house ,hereinafter collectively referred to as" the Properties". The Properties at all material times were registered in the names of the Plaintiffs.
6. Further, the Plaintiffs were required to inform the Bank in relation to accounts statements payable accounts receivable and cash flow. At all material times during the time that the Plaintiffs managed the properties they complied with all those requirements.
7. On or about 2004 during the world wide economic down turn the Plaintiffs became in default, under the terms of the Loans agreements. Loan payments began at approximately CI\$ 69,000.00 per month and were reduced to approximately CI\$ 42,000.00 per month. As a result of the said economic down turn situation, the Plaintiffs were not in a position to comply with the said financial requirements, thus unable to meet their liabilities generally as they became due.
8. The Plaintiffs were then issued with a Demand letter dated the 28 day of November 2011 for the immediate re-payment of all outstanding loans and related obligations. The sum of the outstanding loans and obligations to the bank was the sum of CI\$ 6,921,023.85. When the Plaintiffs defaulted on their payments to the Defendant, the Plaintiffs attempted to obtain more revenue from the property by trying to facilitate more rentals of units and affecting renovations in an attempt to attract business, but these efforts proved futile and the loans fell into further arrears.
9. Further, by Notice of intention to enforce its security the Bank notified the Plaintiffs that it would realize its security by taking out legal Proceedings in the grand Court and to put a manager in the Eastern Ave., property (Trinity Square) to manage the business carried on there.

10. The Bank appointed local relaters, IRG Global to market the Eastern Ave., Trinity Square property. The Bank also appointed IRG to manage the Trinity Square property at a considerable sum monthly, of approximately CI\$ 5,000.00 monthly plus lease commission, thus relieving the Second and the Third Plaintiffs from their management positions of which attracted no payment, but the Plaintiffs still had to execute Leases.
11. The reserve price of CI\$ 8,423,000.00 million was set by the Grand Court for the Trinity Square property. IRG Global began marketing the Trinity Square property at the Guide price of CI\$ 6,180,000.00 with a reinstatement value for insurance purposes of CI\$ 8,350,000.00.
12. To realize its Loan Security, the Bank decided to sell the property pursuant to its instrument of mortgage, by Legal charge.
13. The Trinity Square property was first advertised for sale on or about September 2007 at the value of CI\$ 10,500,000.00, and was subsequently advertised for sale several other times in various publications. However, marketing of the properties was done poorly with the result effect that the Trinity Square property could and did not receive its proper value. Notwithstanding that the Second Plaintiff had procured a better offer that would have realized a proper market value, the Defendant rejected the Second Plaintiff's initiative to sell that property.
14. The most recent valuation report in Respect of the Trinity Square property effected by Bould Consulting Ltd gave an appraisal of that property at CI\$ 5,250,000.00. The Bank valuation of the property stated the market value of the Trinity Square property at CI\$ 4,875,000.00. The Plaintiffs valuation was CI\$ 6,180,000.00.
15. The Trinity Square property was sold by the Bank to Mr. Robert Bodden of Grand Cayman for the sum of US\$ 3,100,000.00 on the 16 day of July 2015. That sales price was ridiculously below the market value of CI\$ 6,180,000.00 for the property. The Eastern Plaza was sold for the price of CI\$600,000.00 ridiculously low, below the market value of CI\$ 1,453,000.00. The sale of that property to Bodden at such a low price demonstrates

that the Defendant Bank was not acting in good faith in its use of its power of sale.

16. The Dwelling house property, Block 32B, Parcel 25 situated at Lower Valley, Grand Cayman is listed for sale by the Defendant Bank for the sum of CI\$ 485,000.00. This sum of CI\$ 485,000.00 is grossly below the market value for this property and by offering this Lower Valley property at this low price demonstrates that the Defendant Bank is not acting in good faith in its use of its powers of sale.
17. Similarly, Block 14CF, Parcel 180, The Eastern Plaza property was listed for sale by the Defendant Bank for the sum of US\$ 600,000.00 which is grossly below the market value demonstrates that the Defendant Bank is not acting in good faith in its use of its power of sale.
18. The most recent valuation in respect of the Lower Valley property in an appraisal of the Lower Valley property dated the 7 day of October 2012 was CI\$739,000.00 and in the valuation in respect to the Eastern Plaza property dated May 2009 was CI\$ 1,453,000.00.
19. The Defendant Bank intends, unless restrained by this Honourable Court to continue to do the wrongful acts complained of in paragraphs 17, 18 and 19 above.
20. A sale of the Eastern Plaza property and the Trinity Square property at their market value would and should realize a sum or sums that would be more than enough to pay off the Defendant Bank, the balance of the loan. There should then be no need for the Defendant Bank to sell the Plaintiffs Dwelling house.
21. The Plaintiffs are therefore aggrieved at the low sales prices of the properties and the Defendant's lack of good faith in the exercise its power of sale have caused the Plaintiffs to suffered loss and damage.

## Particulars

- a) failing to obtain the difference between the sale price and the true market value of the Trinity Square property at the time of sale to cover the amount owing by the Plaintiffs to the Defendant;
- b) failing to properly market the Trinity Square property before selling the property. Not accessing whether the property market would obtain Trinity Square's former value;
- c) failing to sell the property for a sum so as not to have caused a claim for the short fall against the Plaintiffs.
- d) Offering for sale the Eastern Plaza property and the Dwelling House property at a low price so that those properties do not realize their proper market value.


And the Plaintiffs Claim:

- 1) A declaration that the sale of the property registered in the land Registry as George Town Central Block 14CF, Parcel 205H16 and H19 to H27 by the Defendant for a consideration of US\$ 3,1000,000.00 was below the market value and a breach, of the Defendant's obligations as mortgagees for the Plaintiffs and mortgagors.
- 2) A declaration that the Defendant is under an obligation to ensure that the property registered in the Land Registry as Block 15CF, Parcel 180 is not sold below the market value and that the purchaser price be at market value.
- 3) A declaration that the sale of the property registered in the Land Registry as George Town Central Block 14CF, Parcel 205H16 and H19 to H27 ought to have been at a price, which took into account the Plaintiffs interest as mortgagors and at market value and that the Eastern Ave.,

Plaza property ought be offered for sale at a favorable property market value.

- 4) An Order to restrain the Defendant Bank by itself, its servants or agents or otherwise howsoever from selling the Eastern Plaza property below its market value.
- 5) An Order to restrain the Defendant Bank by itself, its servants or agents or otherwise from selling the Lower Valley Dwelling house property, the home of the Second and the Third Defendant.
- 6) Damages
- 7) Costs
- 8) Such other remedies deem as appropriate by this Honourable Court.

Dated this 21<sup>st</sup> day of March 2016



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**A. Steve McField & Associates  
Attorneys-at-Law for the Plaintiffs**

To: the Clerk of The Court

And To: The Defendant

First Caribbean Bank International  
(Cayman) Limited

**THIS Statement of Claim was FILED by A. STEVE MCFIELD & ASSOCIATES of P.O. Box 680 GT, Grand Cayman, KY1-1107, Cayman Islands, Suite D2, Cayman Business Park, 10 Huldah Avenue, Attorneys-at-Law, whose address for service is that of his said Attorney-at-Law.**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO.      of 2016**

**BETWEEN:      S&T HOLDINGS INC                      First Plaintiff**  
**AND:            WILLIAM PEGUERO                                  Second Plaintiff**  
**AND:            ELLEN PEGUERO                                    Third Plaintiff**  
**AND:            FIRST CARIBBEAN INTERNATIONAL BANK  
                    (CAYMAN) LIMITED                              Defendant**

**ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form **IMMEDIATELY.**

**Important.** Read the accompanying                      Delay may result in judgment being entered  
directions and notes for guidance carefully              against a Defendant whereby he may have to  
before completing this form. If any information      pay the costs of applying to set it aside.  
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 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.*

*Please complete overleaf*

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

A. Steve McField & Associates  
Attorneys-at Law  
P.O. Box 680 GT,  
George Town, Grand Cayman

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

**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 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 Acknowledgment 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 judgment 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 a 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 liquidated 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 a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for 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 Acknowledgment of Service and return it to the Courts Office.
2. 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.
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 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 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.
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.