

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 6-280 OF 2017

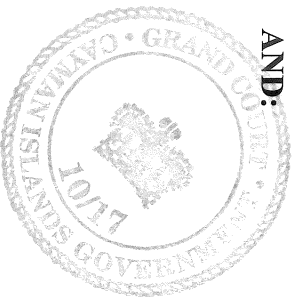
IN THE MATTER OF THE REGISTERED LAND LAW (2004 REVISION)

**BETWEEN: THE CAYMAN ISLANDS CIVIL SERVICE
 ASSOCIATION CO-OPERATIVE CREDIT UNION**

Plaintiff

AND: ANTHONY BODDEN

Defendant



ORIGINATING SUMMONS

TO: Anthony Boddén of PO Box 1807, Grand Cayman KY1-1109, Cayman Islands

LET THE DEFENDANT, Anthony Boddén, within 14 days after service of this Summons on him, 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, The Cayman Islands Civil Service Association Co-Operative Credit Union Limited (the "Credit Union"), the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (2004 Revision) as follows:

1. On 17 September 2007 the Defendant, a member of the Plaintiff Credit Union, applied to the Plaintiff for a loan which, together with the balance from a previous loan made to the Defendant, brought the total amount borrowed to CI\$237,999.24.
2. The Plaintiff and Defendant executed the Loan Agreement on 19 September 2007. The consolidated loan of CI\$237,999.24 was to be repaid by 180 monthly instalments of CI\$2,522.00 and was secured by a Variation of Charge over the property registered in the name of the Defendant at the Lands and Survey Department as Registration Section: Cayman Brac Central, Block 104A, Parcel 125 ("Parcel 125") and a Collateral Charge against the property also registered in the name of the Defendant at the Lands and Survey Department as Registration Section: Bodden Town, Block 43D, Parcel 94 ("Parcel 94").

3. Parcels 125 and 94 were at all material times registered in the name of the Defendant and on 25 September 2007 and 26 September 2007, respectively, the Plaintiff as Chargee, and the Defendant as Chargor, executed a Variation of Charge in respect of Parcel 125 (the “Variation of Charge”) and a Collateral Charge in respect of Parcel 94 (the “Collateral Charge”), (the Variation of Charge and Collateral Charge, together the “Legal Charges”).
4. The Variation of Charge provided that:
 - a. The Plaintiff would lend, and the Defendant would borrow, the principal sum of C1\$237,999.24 (the “Principal Sum”).
 - b. Interest on the Principal Sum would accrue at the rate of 0.81% per month on the reducing balance.
5. The Collateral Charge provided that:
 - a. The Plaintiff would lend, and the Defendant would borrow the Principal Sum.
 - b. Interest on the Principal Sum would accrue at the rate of 9.75% per annum.
6. The Schedule to both Legal Charges provided that Section 72 of the Registered Land Law (1995 Revision) shall be varied in respect of this Charge and of any instrument or variation executed pursuant to this Charge, so as to entitle the Chargee immediately upon default by the Chargor in payment of the principal sum or any interest payable hereunder (as defined by Section 64(2) of the Registered Land Law (1995 Revision)) or in the performance or observance of any agreement, expressed or implied herein to:
 - a. appoint a receiver of the income of the Charged Property; or
 - b. sell the Charged Property by private treaty as well as by public auction; or

- c. foreclose or enter into possession of the Charged Property, or
 - d. in the event that the Chargee does appoint a receiver or enters into possession of the Charged Property, exercise its powers of sale or foreclosure or appointment of a receiver at any time thereafter without further notice.
7. The Defendant failed to pay the monthly instalments due to the Plaintiff in respect of the Principal Sum loaned and in respect of interest.
 8. Ritch & Conolly, as Attorneys for the Plaintiff, served notices on the Defendant on 4 September 2008 pursuant to the provisions of Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sum secured by the Legal Charges were repayable 3 months after the service of the Section 64(2) notice and indicating that pursuant to Section 72(1) unless the balance of the sum secured by the Legal Charges were 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.
 9. The Defendant failed to make the required payments in respect of the Principal Sum outstanding and/or interest after service of the notices pursuant to Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision).
 10. 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 repayable 3 months after service of that notice. Therefore, the Plaintiff avers that the letter dated, 8 August 2008, and served on the Defendant on 4 September 2008, constitutes such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 4 December 2008.

11. 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 1 month, 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.
12. The Registered Land Law (2004 Revision) by virtue of Section 72(2) provides that if a Chargor has not complied, within 3 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 and since 4 December 2008 there has accrued a right to the Plaintiff to sell Parcels 125 and 94, and the Plaintiff sought an order for the same.
13. On 23 November 2009, in Cause no. 28 of 2009, the Grand Court Ordered (the “Order”), among other things, that:
 - a. pursuant to the provisions of the Registered Land Law (2004 Revision) an Order for possession be made in respect of Parcels 125 and 94, and that the Plaintiff be at liberty to sell Parcels 125 and 94 either by public auction or by private treaty, with any such sale by private treaty subject to a reserve price set by the Court, which such reserve price being in the sum of CI\$50,000.00 for Parcel 125 and the sum of CI\$200,000.00 for Parcel 94.
 - b. if the Order for Possession is executed, the Plaintiff have leave pursuant to Grand Court Rules O.45, r.3(1) and (2) to issue a Writ of Possession in this matter in respect of Parcels 125 and 94.
14. Pursuant to the Order, Parcel 125 and 94 were listed on the Cayman Islands Real Estate Brokers Association (“CIREBA”) multi-listing system through Coldwell Banker and was/is being sold by public auction. The Grand Court Practice Direction No. 5 of 2012 entitled, “Practice Direction on Applications Under Sections 72, 75 and 77 of the Registered Land Law”, provides at Section (h) that a sale by public auction does not necessarily require a formal auction with a bidding process conducted by an appointed

15. Parcel 125 which is raw land has been sold pursuant to the Order dated 23 November 2009 and the proceeds therefrom applied to the Defendant's outstanding loan balance.
16. Parcel 94 is a single storey dwelling currently listed through the CIREBA multi-listing system.
17. The Writ of Possession pursuant to the Order was not issued in respect of Parcel 94 as the Plaintiff attempted to help the Defendant by giving him a place to live while the Property was being sold, and as such, the Defendant was allowed to remain in occupation of Parcel 94.
18. A purchaser has now been found for Parcel 94 by way of public auction through the CIREBA multi-listing system and the Defendant and/or his tenants remain in occupation of the Parcel 94 and will not allow vacant possession in order that Parcel 94 may be sold.
19. The Writ of Possession pursuant to the Order is now time barred pursuant to Grand Court Rules O.46, r.2 (3) which states that where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of possession and the writ is not issued within 1 year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.
20. As at 5 December 2017, the Defendant owed the Plaintiff C1\$194,781.36 in principal and interest and the loan was 2,867 days delinquent. The Plaintiff has stopped the accrual of interest on the loan because of its delinquent status.

21. The Plaintiff now seeks a new or fresh Order for the immediate sale of Parcel 94 by public auction and leave pursuant to Grand Court Rules O.45, r.3(1) and (2) to issue a Writ of Possession in respect of Parcel 94.

Dated this 21st day of December, 2017



Woodward Terry & Company
Attorney 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 filed by Woodward Terry & Company, Attorneys-at-Law, for and on behalf of the plaintiff whose address for service is PO Box 822, Suite # 10, 2nd Floor, Jack & Jill Building, 19 Fort Street, George Town, Grand Cayman, Cayman Islands, British West Indies.

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

**BETWEEN: THE CAYMAN ISLANDS CIVIL SERVICE
 ASSOCIATION CO-OPERATIVE CREDIT UNION**

Plaintiff

AND: ANTHONY BODDEN

Defendant

**ACKNOWLEDGEMENT 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 the proceedings 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:

Please complete overleaf

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 or principal office.

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

Woodward Terry & Company
Attorneys-at-Law
PO Box 822, Suite # 10, 2nd Floor
Jack & Jill Building, 19 Fort Street
George Town, Grand Cayman
Cayman Islands
British West Indies

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

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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.