

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ²⁴ OF 2018

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

BETWEEN:

WEST INDIAN HOLDINGS LTD

PLAINTIFF

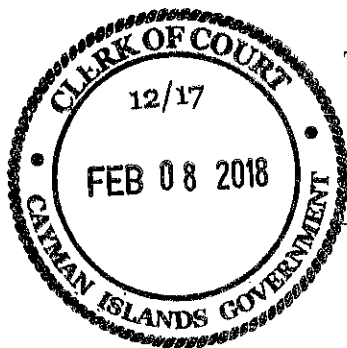
AND:

- (1) FERNANDO MENDES
- (2) MARGARET MENDES
- (3) JOE OTU



DEFENDANTS

AND:



THE ATTORNEY GENERAL

INTERESTED PARTY

ORIGINATING
SUMMONS

TO FERNANDO MENDES c/o Diamond Law Attorneys of Suite 5-1010 Governor's Square, West Bay Road, P.O. Box 2887 George Town, Grand Cayman, Cayman Islands KY1-1112

AND TO MARGARET MENDES c/o Diamond Law Attorneys of Suite 5-1010 Governor's Square, West Bay Road, P.O. Box 2887 George Town, Grand Cayman, Cayman Islands KY1-1112

AND TO JOE OTU c/o Diamond Law Attorneys of Suite 5-1010 Governor's Square, West Bay Road, P.O. Box 2887 George Town, Grand Cayman, Cayman Islands KY1-1112

AND TO THE ATTORNEY GENERAL as Interested Party of Attorney General's Chambers, P.O Box 907, George Town, Grand Cayman, KY1-1103

LET THE DEFENDANTS and THE INTERESTED PARTY attend before the Judge in Chambers, at the Law Courts, George Town, Grand Cayman on the _____ day of _____ 2018, at _____ am/pm on the hearing of an Application by the Plaintiff c/o Sinclair Corporate Services Ltd of Third Floor, Genesis Building, Genesis Close, P.O. Box 498 George Town, Grand Cayman KY1-1106 for the following orders:

1. A declaration that the Defendants are collectively Chargor or deemed to be Chargor of a Legal Charge dated 14 November 2007 [**"The Charge"**] over 4.01 acres of undeveloped land with ocean frontage on Uncle Bob's Road, West Bay, block and parcel number West Bay North East, Block 9A Parcel 428 [**"The Property"**], which Charge was registered by the Plaintiff as Chargee on 17 December 2007.

2. A declaration that the Defendants are jointly and severally liable to pay all amounts due and owing to the Plaintiff under the Charge which as at 17 June 2016 amounted to US\$860,000.00 in principal and US\$858,963.29 in interest (the aggregate arrears of principal and interest being US\$1,718,963.29) and further interest accruing at the rate of US\$282.74 per day from 18 June 2016.

3. Alternatively, all accounts and inquiries as to the amount due and owing to the Plaintiff from the Defendants under the Charge in respect of the principal loan amount of US\$860,000.00 due to be repaid on or before 22 February 2008 together with interest thereon at 12% per annum compounded, the Defendants having failed to make any payment whatsoever since 14 November 2007.

4. That the Honourable Court do sanction and permit the variation of the provisions of the Registered Land Law (2004 Revision) [**"The Registered Land Law"**] contained in the Charge so as to entitle the Plaintiff to rely on the provisions of the Charge for their full terms and effect, including the power to sell by private treaty.

5. A declaration that the Plaintiff is entitled to exercise the powers of sale under the Charge and pursuant to section 75 of the Registered Land Law acting in good faith and having regard to the interests of the Defendants, and to sell the Property by private treaty.

6. That the Honourable Court do sanction and permit the legal and valid transfer of absolute title of the Property free of any encumbrance to the independent, third party Purchaser [**"The Purchaser"**] whose offer to purchase the Property dated 11 December

2017 in the sum of US\$1,150,000.00 has been accepted by the Plaintiff subject to the approval of the Court, on 15 December 2017.

7. That the Inhibition registered over the Property on behalf of the Attorney General, the Interested Party, on 28 March 2011 pursuant to an Order of Mr Justice Quin dated 14 March 2011, be removed.

9. That the Plaintiff be granted immediate possession of the Property and that the Defendants and/ or any other person occupying the Property as undeveloped land, do within 48 hours of this order vacate the Property and that the Defendants do take all appropriate steps to give the Plaintiff vacant possession of the Property.

10. That the Plaintiff has leave to issue a Writ of Possession in relation to the Property at the expiry of the 48 hours referred to in paragraph 9 above.

11. That following the sale and transfer of the Property to the Purchaser for US\$1,150,000.00, the Plaintiff be at liberty to enter judgment against the Defendants for the outstanding amount found to due to the Plaintiff under the Charge including all compound interest since 14 November 2007, related charges and costs.

12. That the Defendants do pay all the Plaintiff's costs, charges and expenses incurred in relation to the sale of the Property as well as the costs of these proceedings on an indemnity basis pursuant to clause 14 of the Charge.

13. That the Defendants do pay the costs of the Interested Party to be taxed if not agreed.

14. Such further or other relief as this Honourable Court may deem appropriate.

AND LET THE DEFENDANTS and the **INTERESTED PARTY** within 14 days after service of this Summons on them counting the day of service, return the accompanying Acknowledgment of Service to the Courts Office, PO Box 495GT, George Town, Grand Cayman.

Dated the 8th day of February 2018

Sinclairs

SINCLAIRS

Attorneys-at-Law for the Plaintiff

NOTES -

1. This Summons may not be served later than 4 calendar months (or, if leave is required to effect service out of jurisdiction, 6 months) beginning with the above date unless renewed by order of the Court.
2. If a defendant does not attend personally or by his attorney at the time and place above-mentioned such order will be made as the Court may think just and expedient.

IMPORTANT

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

THIS ORIGINATING SUMMONS was issued by Sinclairs, Attorneys-at-Law for the Plaintiff, whose address for service is 3rd Floor, Genesis Building, Genesis Close, P.O. Box 498, Grand Cayman KY1-1106, Cayman Islands (Ref: SD/TR/).

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, PO Box 495GT, George Town, Grand Cayman.

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 "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.

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BETWEEN:

WEST INDIAN HOLDINGS LTD

PLAINTIFF

AND:

**(1) FERNANDO MENDES
(2) MARGARET MENDES
(3) JOE OTU**

DEFENDANTS

AND:

THE ATTORNEY GENERAL

INTERESTED PARTY

**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).....

Attorneys-at-Law for First Defendant, Fernando Mendes

Address for Service:

Notes on 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 be Plaintiff if suing in person) of his name, address and reference, if any in the box below.

Sinclairs

3rd Floor Genesis Building
Genesis Close
George Town
CAYMAN ISLANDS
Ref: SD/TR

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

Diamond Law Attorneys

Suite 5 -1010 Governor's Square
West Bay Road
Grand Cayman KY1 -1112
CAYMAN ISLANDS

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(3) JOE OTU**

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THE ATTORNEY GENERAL

INTERESTED PARTY

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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.
-

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).....

Attorneys-at-Law for Second Defendant, Margaret Mendes

Address for Service:

Notes on 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 be Plaintiff if suing in person) of his name, address and reference, if any in the box below.

Sinclairs
3rd Floor Genesis Building
Genesis Close
George Town
CAYMAN ISLANDS
Ref: SD/TR

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

Diamond Law Attorneys
Suite 5 -1010 Governor's Square
West Bay Road
Grand Cayman KY1 -1112
CAYMAN ISLANDS

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AND:

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INTERESTED PARTY

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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.
-

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).....

Attorneys-at-Law for Third Defendant, Joe Otu

Address for Service:

Notes on 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 be Plaintiff if suing in person) of his name, address and reference, if any in the box below.

Sinclairs

3rd Floor Genesis Building

Genesis Close

George Town

CAYMAN ISLANDS

Ref: SD/TR

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

Diamond Law Attorneys

Suite 5 -1010 Governor's Square

West Bay Road

Grand Cayman KY1 -1112

CAYMAN ISLANDS

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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.
-

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).....

Attorneys-at-Law for the Interested Party, The Attorney General

Address for Service:

Notes on 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 be Plaintiff if suing in person) of his name, address and reference, if any in the box below.

Sinclair's

3rd Floor Genesis Building
Genesis Close
George Town
CAYMAN ISLANDS
Ref: SD/TR

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

**The Attorney General's Legal
Department**

PO Box 907
Grand Cayman KY1 -1103
CAYMAN ISLANDS