

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

Cause No. <sup>253</sup> of 2000

**IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)  
AND IN THE MATTER OF CAYMAN BRAC EAST, BLOCK 111E, PARCELS 8, 11  
AND 12**

**BETWEEN: CIBC BANK & TRUST COMPANY  
(CAYMAN) LIMITED**

**PLAINTIFF**

**AND: JOSEPH DARNLEY BRYAN  
MERRELL LILLIAN BRYAN**

**FIRST DEFENDANT  
SECOND DEFENDANT**

**ORIGINATING SUMMONS**

**TO: Joseph Darnley Bryan and Merrell Lillian Bryan whose address for service is  
PO Box 121, Cayman Brac, Cayman Islands.**

**LET THE DEFENDANTS, Joseph Darnley Bryan and Merrell Lillian Bryan within 14 days  
after service of this Summons on them, counting the day of service, return the accompanying  
acknowledgement of service to the Court office, P. O. Box 495 GT, George Town, Grand  
Cayman.**

**BY THIS SUMMONS which is issued on application of the Plaintiff, CIBC Bank and Trust  
Company (Cayman) Limited, the Plaintiff seeks relief pursuant to the Registered Land Law  
(1995 Revision).**

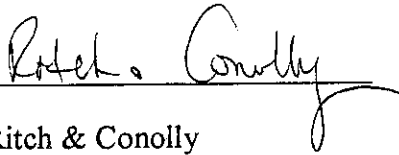
- 1) On 1<sup>st</sup> December 1994 the Plaintiff as Chargee, and the Defendants as Chargor executed three legal charges ("the Charges") in respect of the land and buildings registered at the Lands and Survey Department as Cayman Brac East, Block 111E, Parcels 8, 11 and 12 ("the Properties").
- 2) The Charges provided, inter alia, that:
  - 2.1) The Plaintiff would lend and the Defendants would borrow the principal sum of eighty-five thousand dollars (CI\$85,000.00) ("the principal sum") which was to be secured as a first charge on the Properties.

- 2.2) Interest on the principal sum would accrue at the rate of (3.5%) over the prime lending rate of the Plaintiff for Cayman Islands dollars from time to time, which such prime lending rate was 7.5% per annum at the date of the Charges.
- 2.3) The Defendants would repay to the Plaintiff on demand the principal sum, or such portion of the principal sum which remained outstanding, together with accrued interest. Pending such demand, the Defendants would repay the principal sum, and accrued interest at such times and in such sums as the Plaintiff may specify.
- 2.4) Immediately upon default by the Defendants in the payment of the principal sum, or of any accrued interest, the Plaintiff would be entitled to serve Notice in writing on the Defendants to pay the money owing, and if the Defendants did not comply within one month of the date of service of such Notice, the Plaintiff may, without further Notice, inter alia, sell the properties by either public auction or private treaty.
- 2.5) The Defendants shall pay, on demand, all fees and expenses incurred by the Plaintiff of, and incidental to the protection and enforcement from time to time of the Plaintiff's rights.
- 3) Thereafter, it was specified by the Plaintiff, that the Defendants would repay the principal sum, and accrued interest, by monthly instalments.
- 4) Subsequently, the Plaintiff again as Chargee and the Defendants as Chargors, executed two Variations of Charge ("First Variations"). The First Variations, both dated 6<sup>th</sup> February 1995, were of two of the three properties namely, Cayman Brac East, Block 11E, Parcels 11 and 12.
- 5) The First Variations secured the sum of one hundred and fifteen thousand Cayman Island dollars (CI\$115,000.00), being an increase in borrowing by the Defendants in the principal sum of CI\$30,000.00.
- 6) The First Variations specified that all other terms and conditions of the Charges would remain the same.
- 7) Further, on 30<sup>th</sup> May 1995, as a consequence of a further increase in the principal sum from CI\$115,000.00 to CI\$145,000.00, the Defendants executed further variations of Charge ("Second Variations") varying the amount secured by the Charges over the properties. Again, the Second Variations stated that all other terms and conditions of the Charges were to remain the same.
- 8) In or about July 1999 the Defendants failed to pay the monthly instalments due in respect of the principal sum and interest due and owing, and have failed to make any subsequent payments of either principal or interest.

- 9) By a letter dated 17<sup>th</sup> November 1999 handed to Darnley Bryan on 19<sup>th</sup> November 1999 and to Merrell Bryan on 24<sup>th</sup> November 1999 respectively, Attorneys for the Plaintiff, Messrs. Ritch & Conolly, served Notice on the Defendants pursuant to Section 64 (2) of the Registered Land Law (1995 Revision) demanding payments of the balance of the principal sum, and accrued interest which, as at 17<sup>th</sup> November 1999, amounted to C\$122,792.81 principal and C\$7297.10 interest.
- 10) The Defendants have failed to pay the balance due of the principal sum, and accrued interest, or indeed any other sums.
- 11) The Plaintiff believes that the Properties consist of residential premises on parcel 8 and two recent lots on parcels 11 and 12. The Plaintiff is unaware of anyone else residing at the Properties (other than the Defendants). Further, the Plaintiff is unaware of any other Charges registered against the Properties.
- 12) The provisions of the Registered Land Law (1995 Revision) provide that once a Notice of Demand has been served, pursuant to Section 64 (2) the total amount of principal and interest becomes payable 3 months after service of that Notice. The Plaintiff avers that the letters dated 17<sup>th</sup> November 1999 and handed to the Defendants as aforesaid, constitutes such Notice pursuant to Section 64 (2).
- 13) The provisions of the Registered Land Law (1995 Revision) also provide that if default is made in payment of the principal sum or any interest, and continues for one month, a Chargee will then acquire a power to sell the property by public auction, after 3 months have elapsed, from service on the Chargors of a second notice demanding payment. Such provisions are subject to variation with the approval of the Court to allow the Chargee to sell by either private sale, or public auction and to serve a second shorter notice period.
- 14) The relief the Plaintiff therefore seeks in these proceedings is an Order of the Court that:
  - 14.1) the variations in the Charge to the provisions of the Registered Land Law (1995 Revision) be allowed so that the Plaintiff is entitled to avoid the requirement to serve a second notice of three months but instead to serve a notice of one month;
  - 14.2) that on the expiry of the one month notice sought above, the Plaintiff be entitled to possession of the properties forthwith,
  - 14.3) the Plaintiff be entitled forthwith on obtaining an Order under paragraph 14.2 to sell the properties and that such sale to be by either private treaty or public auction, in good faith, and having regard to the interests of the Defendants,

14.4) there be an order for costs in terms of the provision of the Charges.

Dated the 31<sup>st</sup> day of March 2000.

  
Ritch & Conolly

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 issued by Ritch & Conolly, Attorneys-At-Law for the Plaintiff, whose address for service is P O Box 1994 GT, Queensgate House, 113 South Church Street, George Town, Grand Cayman, Cayman Islands, BWI.