

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 922 of 2000

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)
AND IN THE MATTER OF SOUTH SOUND BLOCK 15B PARCEL 292H23

BETWEEN: CIBC BANK & TRUST COMPANY
(CAYMAN) LIMITED

PLAINTIFF

AND: ELMER BODDEN
JENNIFER BODDEN

FIRST DEFENDANT
SECOND DEFENDANT

ORIGINATING SUMMONS

TO: Elmer Bodden of P.O. Box 111 GT, Grand Cayman.

AND TO: Jennifer Bodden of P.O. Box 111 GT, Grand Cayman

LET THE DEFENDANTS, Elmer Bodden and Jennifer Bodden 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, 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).

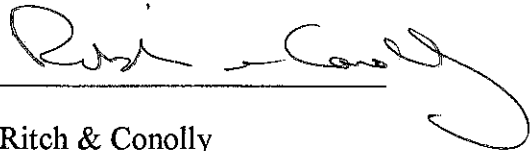
- 1) On 9th July 1997 the Plaintiff as Chargee, and the Defendants as Chargors executed a legal charge ("the Charge") in respect of the land and building registered at the Lands and Survey Department as South Sound Block 15B, Parcel 292H23 ("the Property").
- 2) The Charge provided, inter alia, that:
 - 2.1) The Plaintiff would lend and the Defendants would borrow the principal sum of One Hundred Thousand Three Hundred and Sixty Cayman Islands dollars (CI\$100,360.00) ("the principal sum") which was to be secured as a first charge on the Property.
 - 2.2) Interest on the principal sum would accrue at the rate of (3%) over the prime lending rate of the Plaintiff for Cayman Islands dollars from time to time, which such prime lending rate was 8.5% per annum at the date of the Charge.
 - 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 property 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) In or about February 2000, the Defendants failed to pay the monthly instalments due in respect of the principal sum and interest, and have failed to make any subsequent payments of either principal or interest.
- 5) By a letter dated 7th June 2000 handed to the Defendants on 14th June 2000, 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 payment of the balance of the principal sum, and accrued interest which, as at 7th June 2000, amounted to CI\$96,167.40 principal and CI\$4,858.21 interest. I would add at this point that the said demand letters incorrectly through typographical error referred to the date of the Charge as 25th March 1998. The letter was correct in every other respect. The Defendants have never queried this point.
- 6) The Defendants have failed to pay the balance due of the principal sum, and accrued interest.
- 7) The Property consists of residential premises, and it is understood a subsequent charge has been registered against the property. This charge being made between the Government of the Cayman Islands as Chargee, and the Defendants as Chargors. It is believed that the charge in favour of the Government of the Cayman Islands was registered at the Lands and Surveys Department and secures a Guarantee in favour of the Defendants of CI\$35,126.09.
- 8) 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 letter dated 7th June 2000 and handed to the Defendants as aforesaid, constitutes such Notice pursuant to Section 64 (2).
- 9) 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.

- 10) The relief the Plaintiff therefore seeks in these proceedings is an Order of the Court that:
- 10.1) 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;
 - 10.2) The Plaintiff be entitled to possession of the property forthwith;
 - 10.3) The Plaintiff be entitled forthwith on obtaining possession under sub-paragraph 17.2 to sell the property and that such sale be by either private treaty or public auction, in good faith, and having regard to the interests of the Defendants;
 - 10.4) That after the sale of the said property in accordance with the order sought herein, should there be any shortfall in the amount due and owing to the Plaintiff, that the Plaintiff be at liberty to enter Judgement for the said shortfall together with interest and costs;
 - 10.5) there be an order for costs in terms of the provision of the Charge;

Dated the 13th day of December 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.