

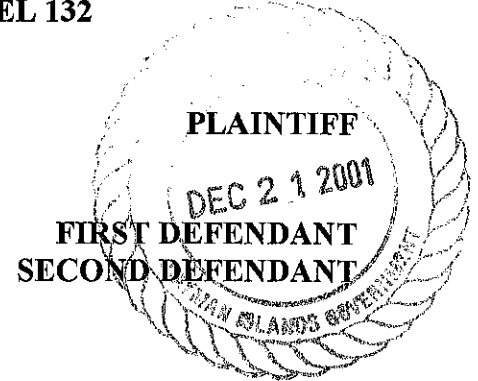
IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 817 of 2001

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)
AND IN THE MATTER OF BREAKERS, BLOCK 48C, PARCEL 132

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

**AND: GODFREY ROBB
DONNA ROBB**



ORIGINATING SUMMONS

**TO: Godfrey Robb and Donna Robb whose address for service is PO Box 1522
GT, Grand Cayman.**

LET THE DEFENDANTS, Godfrey Robb and Donna Robb, 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 9th August 1996 the Plaintiff as Chargee, and the Defendants as Chargors executed a Variation of Charge ("the Charge") in respect of the land and building registered at the Lands and Survey Department as Breakers, Block 48C, Parcel 132, ("the Property").
- 2) The Charge provided, inter alia, that:
 - 2.1) The Plaintiff would lend and the Defendants would borrow the principal sum of Seventy-Six Thousand Cayman Island dollars (CIS\$76,000.00) ("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 (2%) 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.
 - 2.4) At any time after the Bank shall have demanded payment of the Indebtedness or any part thereof or if requested by the Chargor the Bank may exercise without further notice all the powers conferred on mortgagees by virtue of the Law as hereby varied or extended and all the powers and discretions hereby conferred

either expressly or by reference on a receiver appointed hereunder and the date of such demand shall (without prejudice to the equitable right to redeem) the redemption date. Nothing that shall be done by or on behalf of the Bank or a receiver appointed by it shall render it or him liable to account as a mortgagee in possession for any sums other than actual receipts.

- 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 June 1997, the Defendants failed to pay the monthly instalments due in respect of the principal sum and interest.
- 5) By a letter dated 5th September 2001 handed to the First and Second Defendants on 11th September 2001, 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 5th September 2001, amounted to CI\$65,483.09 (principal) and CI\$1,355.74 (interest).
- 6) The Defendants have failed to pay the balance due of the principal sum, and accrued interest, or indeed any other sums.
- 7) The Property consists of residential premises.
- 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 5th September 2001 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 shorter notice.
- 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 any further notice;

- 10.2) that the Plaintiff be entitled to possession of the property forthwith;
- 10.3) the Plaintiff be entitled 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 Judgment for the said shortfall together with interest and costs;
- 10.5) the costs of these proceedings be added to the principal and interest due from the Defendants and be deducted from the proceeds of the sale.

Dated the 17th day of December 2001.

Ritch & Conolly

If the Defendant does not acknowledge service, Judgment 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.

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

Messrs. Ritch & Conolly

PO Box 1994 GT

Grand Cayman

Ref: CIBC – #8493

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

