

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 106 of 2002

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)  
AND IN THE MATTER OF LOWER VALLEY, BLOCK 37E, PARCEL 18

BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: ALLAN STEVE McFIELD FIRST DEFENDANT  
JOANNE McFIELD SECOND DEFENDANT

ORIGINATING SUMMONS

TO: Allan Steve McField and Joanne McField whose address for service is PO Box 680GT, Grand Cayman.

LET THE DEFENDANTS, Allan Steve McField and Joanne McField 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, Cayman National Bank Ltd, the Plaintiff seeks relief pursuant to the Registered Land Law (1995 Revision).

- 1) On 7<sup>th</sup> April 1978 the Plaintiff as Chargee, and the Defendants as Chargor executed a legal charge ("the Legal Charge") in respect of the land and building registered at the Lands and Survey Department as Lower Valley, Block 37E, Parcel 18 ("the Property").
- 2) The Charge provided, inter alia, that:
  - 2.1) The Plaintiff would lend and the Defendants would borrow the principal sum of twenty thousand Cayman Island dollars (CI\$20,000.00) ("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 12% per annum, payable quarterly.
  - 2.3) The Defendants would repay to the Plaintiff on demand all monies and liabilities which shall for the time being be owing or incurred to the Plaintiff by the Defendants. Pending such demand, the Defendants would repay to the Plaintiff such monthly or other sums as the Plaintiff shall from time to time specify.
  - 2.4) Immediately upon default by the Defendants in payment of the principal sum, or of any interest payable thereunder, or in the performance of observance of any agreement, expressed or implied, therein, the Plaintiff would be entitled to serve on the Defendants notice in writing to pay the money owing, or to perform and observe the agreement as the case may be, and further that if the Defendants do

not comply within one month of the date of service of such notice, the Plaintiff may thereupon either appoint a receiver of the income of the property, the subject of the security, or sell the property the subject of the security by private treaty as well as by public auction.

- 3) Thereafter, it was specified by the Plaintiff, that the Defendants would repay the principal sum, and accrued interest, by monthly instalments.
- 4) On 16<sup>th</sup> December 1981 the Defendants executed a further Charge (“the further Charge”) which had the effect of advancing a further sum of CI\$14,000.00 together with interest at the rate of 2% plus the Cayman Islands dollar base rate as determined by the Chargee from time to time.
- 5) Further, on 30<sup>th</sup> April 1986, the Defendants executed a Second Charge (“the Second Charge”) to secure the payment to the Plaintiff of the principal sum of CI\$66,000.00 with interest at the rate of 6% over the Cayman Island dollar base rate, which at the date of execution of the Second Charge, was a rate of 14% per annum.
- 6) In or about April 1999, 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.
- 7) By a letter dated 15<sup>th</sup> December 1999, sent by registered post to the Defendants, the Plaintiff duly served notice on the Defendants pursuant to the Registered Land Law (1995 Revision) demanding payment of the balance of the principal sum and accrued interest which, as at 15<sup>th</sup> December 1999, amounted to CI\$78,981.75 (principal) and CI\$4,527.24 (interest).
- 8) On 4<sup>th</sup> May 2000, a further demand under the Registered Land Law (Revised) was served which confirmed that as at that date, the principal sum outstanding was CI\$73,981.75 together with interest of CI\$8,391.00.
- 9) Despite service of such notices, the Defendants have failed to pay the balance due of the principal sum, and accrued interest.
- 10) The Property consists of residential premises. It is believed that the property is occupied by the First Defendant, Allan Steve McField.
- 11) 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 three months after service of that Notice. The Plaintiff avers that the letter dated 15<sup>th</sup> December 1999 served on the Defendants as aforesaid, constitutes Notice under Section 64(2) of the Registered Land Law (Revised).
- 12) 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, the Chargee will then acquire a power to sell the property by public auction after three 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. The Legal Charge in this action contains such a provision as set out in paragraph 2.4 above. On 4<sup>th</sup> May 2001, the Plaintiff served such a notice on the Defendants as envisaged by the Legal Charge demanding payment of the full sums outstanding. No response was received.

- 13) The relief the Plaintiff therefore seeks in these proceedings is an Order of the Court that:
- 13.1) 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, having served notices under Section 64(2) of the Law and under the terms of the Legal Charge;
  - 13.2) 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;
  - 13.3) That the Plaintiff be entitled to possession of the property;
  - 13.4) 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 against the Defendants for the said shortfall, together with interest and costs;
  - 13.5) the costs of these proceedings be added to the principal and interest due from the Defendants and be deducted from the proceeds of sale.

Dated the 4<sup>th</sup> day of February 2002.



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.

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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.

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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.

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2. State whether the Defendant intends to contest or otherwise participate in the proceedings (*tick appropriate box*)

Yes

No

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Service of the Originating Summons is acknowledged accordingly.

(Signed) .....  
[Attorney] for  
[Defendant in person]  
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 or principal office.

**Please complete overleaf**

*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: CNB – #8632

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