

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 110 of 2002

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)  
AND IN THE MATTER OF SOUTH SOUND, BLOCK 15C, PARCEL 156

BETWEEN: CIBC BANK & TRUST COMPANY  
(CAYMAN) LIMITED

PLAINTIFF

AND: ESTHER RACKLEY  
IRVING HERNANDEZ

FIRST DEFENDANT  
SECOND DEFENDANT

ORIGINATING SUMMONS

TO: Esther Rackley and Irving Hernandez whose address for service is PO Box 149 GT, Grand Cayman.

LET THE DEFENDANTS, Esther Rackley and Irving Hernandez, 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 17<sup>th</sup> September 1996 the Plaintiff as Chargee, and the Defendants as Chargor executed a legal charge ("the Charge") in respect of the land and building registered at the Lands and Survey Department as South Sound, Block 15C, Parcel 156, ("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 and ten thousand two hundred and sixty-nine Cayman Island dollars (CI\$110,269.00) ("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 (11.25%) 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) On or about 1<sup>st</sup> December 2000, the Defendants failed to pay the monthly instalments due in respect of the principal sum and interest.
- 5) By a letter dated 7<sup>th</sup> September 2001 handed to the Defendants on 11<sup>th</sup> 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 7<sup>th</sup> September 2001, amounted to CI\$101,411.12 (principal) and CI\$1,658.27 (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. To the best of my knowledge and belief the property is occupied by the Defendants.
- 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 three months after service of that Notice. The Plaintiff avers that the letter dated 7<sup>th</sup> 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 a second notice of three months but instead, to serve a notice of one month;

- 10.2) that on the expiry of that one month period, 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;
- 10.3) that the Plaintiff be entitled to possession of the property;
- 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, 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 Defendant and be deducted from the proceeds of the sale.

Dated the 5<sup>th</sup> day of February 2002.

  
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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.

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BETWEEN: CIBC BANK & TRUST COMPANY PLAINTIFF  
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AND: ESTHER RACKLEY FIRST DEFENDANT  
IRVING HERNANDEZ SECOND DEFENDANT

**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: CIBC – #8494

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