

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 172 of 2002

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)
AND IN THE MATTER OF WEST BAY BEACH NORTH, BLOCK 11C, PARCEL 1

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

AND: SOME FUND LTD. DEFENDANT

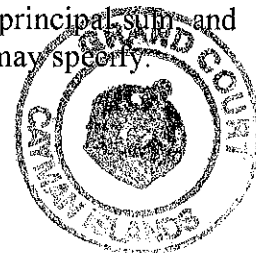
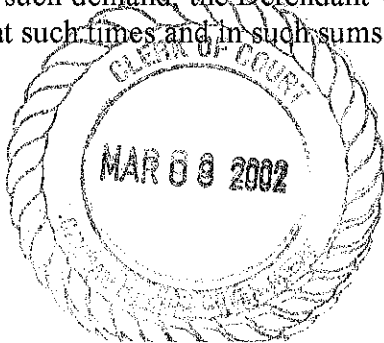
ORIGINATING SUMMONS

TO: Some Fund Ltd. whose address for service is PO Box 694GT, Grand Cayman.

LET THE DEFENDANT, Some Fund Ltd., 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 15th September 1994, the Plaintiff as Chargee, and the Defendant as Chargor executed a Legal Charge ("the First Legal Charge") in respect of the land and building registered at the Lands and Survey Department as West Bay Beach North, Block 11C, Parcel 1, ("the Property").
- 2) The Charge provided, inter alia, that:-
 - 2.1) The Plaintiff would lend and the Defendant would borrow the principal sum of three hundred thousand U.S. Dollars (CI\$300,000.00) ("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 (3%) over the prime lending rate of the Plaintiff for Cayman Islands dollars from time to time, which such prime lending rate was (10.75%) per annum at the date of the Charge.
 - 2.3) The Defendant 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 Defendant would repay the principal sum and accrued interest at such times and in such sums as the Plaintiff may specify.

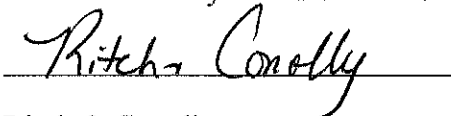


- 2.4) Immediately upon default by the Defendant in the payment of the principal sum, or of any accrued interest, the Plaintiff would be entitled to serve Notice in writing on the Defendant to pay the money owing, and if the Defendant did not comply within one month of the date of service of such Notice, the Plaintiff may, without further Notice, inter alia, sell the property by either public auction or private treaty.
- 2.5) The Defendant 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 Defendant would repay the principal sum, and accrued interest, by monthly instalments.
- 4) On or about 25th September 2001, the Defendant entered in to a Second Charge in favour of the Plaintiff. Such Charge secured the further sum outstanding from the Defendant to the Plaintiff of US\$318,969.00 together with interest as therein set out.
- 5) Since on or about 1st November 2000, the Defendant has failed to discharge sums due in respect of the principal sum and interest due under the First Legal Charge and the Second Charge.
- 6) By a letter dated 26th October 2001 handed to the Defendant on the same date, attorneys for the Plaintiff, Messrs. Ritch & Conolly served Notice on the Defendant 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 26th October 2001, amounted to US\$526,095.12 (principal and interest).
- 7) Despite service of such demand, no payments were made. As a consequence, on 28th January 2002, the Plaintiff served a further notice pursuant to Clause 9 of the First Charge and Clause 12 of the Second Charge demanding payment of the sums then due of US\$529,569.97. Despite such demand, no payments have been made.
- 8) As at the date hereof, the Defendant has failed to pay the balance due of the principal sum, and accrued interest, or indeed any other sums.
- 9) The Property consists of residential premises. It is believed that the property is occupied by Mrs. Lori LeBlanc although the basis of occupation is unknown.
- 10) 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 26th October 2001 and handed to the Defendant as aforesaid, constitutes such Notice pursuant to Section 64 (2).
- 11) 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 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 shorter notice.

- 12) Both the First Legal Charge and Second Charge contain clauses to this effect, namely, Clause 9 and Clause 12 and Notice pursuant to such clauses was served, as set out above, on 28th January 2002. There has been no response.
- 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 a Second notice of three months;
 - 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 Defendant;
 - 13.3) the Plaintiff be entitled to possession of the property;
 - 13.4) 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;
 - 13.5) 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 7th day of March 2002.



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 (CAYMAN) LIMITED PLAINTIFF

AND: SOME FUND LTD. 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.

1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.

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

Yes

No

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: DAM - CIBC #8465

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

