

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 651 OF 2002

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)
AND IN THE MATTER OF WEST BAY NORTH WEST, BLOCK 4E, PARCEL 571

BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: WILMA J. EBANKS FIRST DEFENDANT
CLAY F. EBANKS SECOND DEFENDANT

ORIGINATING SUMMONS

TO: Wilma J. Ebanks and Clay F. Ebanks whose address for service is PO Box 119 Hell, Grand Cayman.

LET THE DEFENDANTS, Wilma J. Ebanks and Clay F. Ebanks 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.

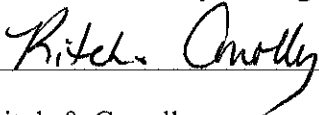
BY THIS SUMMONS which is issued on application of the Plaintiff, Cayman National Bank Ltd, the Plaintiff seeks relief pursuant to the Registered Land Law (1995 Revision).

- 1) On 15th September 1994 the Plaintiff as Chargee, and the First and Second Defendants as Chargors executed a variation of charge ("the Variation of Charge") in respect of the land and building registered at the Lands and Survey Department as West Bay North West, Block 4E, Parcel 571 ("the Property").
- 2) The Legal Charge provided, inter alia, that:
 - 2.1) The Plaintiff would lend and the Defendants would borrow the principal sum of One Hundred and Nine Thousand Five Hundred Cayman Islands Dollars (CI\$109,500.00) ("the principal sum") which was to be secured as a charge on the Property.
 - 2.2) Interest on the principal sum would accrue at the rate of 3% per annum under the Cayman Islands base rate from time to time.
 - 2.3) Should Wilma J. Ebanks cease to be employed by the Chargee the rate of interest would be varied from the date of cessation of such employment to the Bank's commercial rate prevailing from time to time in respect of unpaid balance.
 - 2.4) No demand would be made by the Chargee for repayment of the principal sum so long as the Chargors shall pay to the Chargee on the last day of each and every month, the monthly sum of CI\$786.69 or such other monthly sum as the Chargee may from time to time specify.

- 2.5) Provided always that should the Chargors make default in the payment of any monthly instalment of principal and interest on the due date thereof and remain in default for a period of 30 days or more, after notice in writing given by the Chargee to the Chargors requiring payment of the same, the whole of the unpaid balance of the principal sum and the accrued interest shall thereupon deemed to be due, owing and payable without further notice or demand.
- 2.6) Immediately upon default by the Chargors 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 Chargors 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 Chargors 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) In or about 12th July 2001, 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 13th February 2001, 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 13th February 2001, amounted to CI\$90,385.73 (principal) and CI\$13,431.03 (interest and other charges).
- 6) Subsequently on 14th June 2002 the Plaintiff served a further demand under the Registered Land Law (Revised) which confirmed that as at that date, the sums outstanding totalled (principal) CI\$88,762.76 together with interest and other charges of CI\$8,198.30.
- 7) Despite service of such notices, the Defendants have failed to pay the balance due of the principal sum, and accrued interest.
- 8) The Property consists of residential premises. It is believed that the property is occupied by the Defendants. The Plaintiff is unaware of any other party in occupation of the property.
- 9) 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 13th February 2001 served on the Defendants as aforesaid, constitutes Notice under Section 64(2) of the Registered Land Law (Revised).

- 10) 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 Variation of Charge in this action contains such a provision as set out in paragraph 2.6 above.
- 11) The relief the Plaintiff therefore seeks in these proceedings is an Order of the Court that:
- 11.1) 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;
 - 11.2) 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;
 - 11.3) that for the purposes of such sale, the Plaintiff be entitled to possession of the property;
 - 11.4) 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;
 - 11.5) 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 21st day of August 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.

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: CNB – #8784

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

[Empty box for Defendant's Attorney indorsement]