

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 704 OF 2002

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)
AND IN THE MATTER OF WEST BAY BEACH SOUTH, BLOCK 12C, PARCEL 195

BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: CONCEPT LTD. DEFENDANT

ORIGINATING SUMMONS

TO: Concept Ltd. whose address for service is PO Box 205WB, Grand Cayman.

LET THE DEFENDANT, Concept 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, Cayman National Bank Ltd., the Plaintiff seeks relief pursuant to the Registered Land Law (1995 Revision).

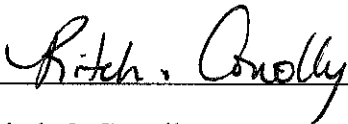
- 1) On 26th November 1985 the Plaintiff as Chargee, and the Defendant as Chargor executed a legal charge ("the Legal Charge") in respect of the land and building registered at the Lands and Survey Department as West Bay Beach South, Block 12C, Parcel 195 ("the Property").
- 2) The Charge provided, inter alia, that:
 - 2.1) In consideration of the Plaintiff granting facilities for loans and/or overdrafts and continuing to give time for payment of such facilities and/or further time and facilities to Mitzi Ebanks Lers, the Defendant, as beneficial owner, charged its freehold interest in the said land and building to secure the payment to the Plaintiff of the principal sum.
 - 2.2) The principal sum was defined as "all such sums of monies as now or shall from time to time (whether or on or at any time after demand) be owing to the Chargee in respect of facilities advanced from time to time by the Bank by way of loan and/or overdraft and/or other banking accommodation as may be agreed by the Chargee from time to time up to a maximum of US\$200,000.00 together with interest."
 - 2.3) Interest on the said sum was to accrue at the rate of 3% per annum over the London Inter-Bank offered rate as determined by the Plaintiff from time to time.

- 2.4) The Defendant and/or Mitzi Ebanks Lers covenanted to repay the principal sum on demand together with any interest then due subject to the provisions contained in the Legal Charge and in accordance with the terms of the said facilities of loan and/or overdraft afforded to the Defendant and/or Mitzi Ebanks Lers.
- 2.5) In the event that the Defendant failed to discharge all monies and liabilities in full in accordance with the terms of the Legal Charge or in the event that the Chargor was in breach of any of the covenants or obligations contained in the Legal Charge documents then in any such event the whole of the principal sum and all interest thereon and any other sums owing shall become immediately due and payable and the Plaintiff shall acquire a Power of Sale by private treaty or public auction without further notice.
- 3) The said Legal Charge was subsequently varied as follows:-
- (i) On 5th March 1990 by increasing the principal sum from US\$200,000.00 to US\$500,000.00;
 - (ii) On 6th May 1991 by increasing the principal sum from US\$500,000.00 to US\$775,000.00;
 - (iii) On 20th April 1994 by increasing the principal sum from US\$775,000.00 to a total of US\$852,400.00;
 - (iv) On 23rd June 1994 by increasing the principal sum by US\$139,600.00 to a total of US\$992,000.00.
- 4) All such variations were reflected in separate documents carrying the dates set out in Paragraph 3. Each such document specified the terms and covenants of the Legal Charge remained the same.
- 5) Further, on 14th June 1996, the Defendant charged its interest in the Property by way of a Second Charge securing a principal sum of US\$100,000.00 with interest at the rate of 2% above U.S. Prime Rate ("the Second Charge").
- 6) The Second Charge contained, inter alia, covenants including the following:-
- (i) The principal sum secured by way of the Charge comprised all such sums of monies as now or shall from time to time be owing by the Defendant in respect of facilities advanced from time to time by the Plaintiff by way of a loan and/or overdraft and/or other banking accommodation up to a maximum of US\$100,000.00;
 - (ii) The Defendant would repay to the Plaintiff on demand the principal sum or such portion thereof as shall have been advanced to the Defendant and remains due and owing together with interest;

- (iii) The Chargor further covenanted with the Plaintiff that the Defendant would, on demand, pay or discharge to the Plaintiff all monies and liabilities which shall, for the time being, be owing or incurred to the Plaintiff;
 - (iv) Pending such demand, the Defendant would pay to the Plaintiff such monthly or other sums as the Plaintiff shall from time to time specify.
- 7) In or about April 2002, the Defendant failed to pay the monthly instalments due in respect of the principal sum and interest and has failed to make subsequent regular payments of either principal or interest.
 - 8) By a letter dated 23rd April 2002, sent by registered post to the Defendant, the Plaintiff duly served notice on the Defendant pursuant to the Registered Land Law (1995 Revision), Section 64(2), demanding payment of the balance of the principal sum and accrued interest which, as at that date, amounted to US\$507,416.28 together with interest and other charges of US\$1,532.17.
 - 9) On the same date, a further demand under the Registered Land Law (Revised) was served demanding the same sums. Such demand was made pursuant to Section 72 of the Registered Land Law (Revision).
 - 10) The current sums outstanding amount to principal of US\$485,985.45 and interest of US\$984.40.
 - 11) Despite service of such notices, the Defendant has failed to pay the balance due of the principal sum and accrued interest.
 - 12) The Property consists of a parcel of land upon which there is a residential property. The Plaintiff is uncertain of who resides in the property.
 - 13) 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 23rd April 2002 served on the Defendant as aforesaid, constitutes Notice under Section 64(2) of the Registered Land Law (Revised).
 - 14) 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 treaty 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 7 of the Third Schedule. On 23rd April 2002, the Plaintiff served such a notice on the Defendant as envisaged by the Legal Charge demanding payment of the full sums outstanding. No response was received.

- 15) The relief the Plaintiff therefore seeks in these proceedings is an Order of the Court that:
- 15.1) 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;
 - 15.2) 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;
 - 15.3) for the purposes of any such sale, the Plaintiff be entitled to possession of the property;
 - 15.4) 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 Defendant for the said shortfall, together with interest and costs;
 - 15.5) the costs of these proceedings be added to the principal and interest due from the Defendant and be deducted from the proceeds of sale.

Dated the 23rd day of September 2002.



Ritch & Conolly

If the Defendant 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO.

OF 2002

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)
AND IN THE MATTER OF WEST BAY BEACH SOUTH, BLOCK 12C, PARCEL
195

BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: CONCEPT 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: CNB - #8846

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