

IN THE GRAND COURT OF THE CAYMAN ISLANDS

861
Cause No. of 2002 ✓

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)
AND IN THE MATTER OF LOWER VALLEY, BLOCK 32C, PARCEL 174

BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: BERNADETTE TIBBETTS FIRST DEFENDANT
ALLAN EDEN SECOND DEFENDANT

ORIGINATING SUMMONS

TO: Bernadette Tibbetts and Allan Eden whose address for service is PO Box 11007APO, Grand Cayman.

LET THE DEFENDANTS, Bernadette Tibbetts and Allan Eden, 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 the application of the Plaintiff, Cayman National Bank Ltd, the Plaintiff seeks relief pursuant to the Registered Land Law (1995 Revision).

- 1) On 8th May 2000 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 32C, Parcel 174 ("the Property"). The said Legal Charge was registered at the Lands and Survey Department on 27th June 2000.
- 2) The Charge provided, inter alia, that:
 - 2.1) The Plaintiff would lend and the Defendants would borrow the principal sum of Ninety-Four Thousand Three Hundred (CI\$94,300.00) ("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 1% over the CI Prime Lending Rate as determined by the Plaintiff from time to time, per annum.
 - 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, express or implied, the Plaintiff would be entitled to serve notice upon the Defendants to pay the money owing or to perform and observe the Agreement as the case may be and further so as to provide 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 this security or sell the Property the subject of the security by private treaty as well as by public auction.

- 3) On 4th July 2001, the Defendants entered into a Variation of Charge whereby the principal sum was increased to CI\$101,577.00. The said Variation of Charge was registered with the Lands & Survey Department on 19th July 2001.
- 4) It was specified by the Plaintiff in the Legal Charge, that the Defendants would repay the principal sum, and accrued interest, by monthly instalments.
- 5) In or about March 2002, the Defendants failed to pay the monthly instalments due in respect of the principal sum and interest, and has failed to make any subsequent payments of either principal or interest.
- 6) By a letter dated 31st May 2002, 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 31st May 2002, amounted to CI\$101,577.00 (principal) and CI\$106.68 (interest).
- 7) A further demand was served on the same date claiming the same sums.
- 8) Despite the service of such notices, the Defendants have failed to pay the balance due of the principal sum, and accrued interest.
- 9) The Property consists of residential premises. It is believed that the property is occupied by the Defendants.
- 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 31st May 2002 served on the Defendants as aforesaid, constitutes Notice under Section 64(2) of the Registered Land Law (Revised).
- 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, the Plaintiff will then acquire a power to sell the property by public auction after three months have elapsed, from service on the Defendant of a second notice demanding payment. Such provisions are subject to variation with the approval of the Court to allow the Plaintiff to sell by either private sale or public auction, without the service of a second notice.
- 12) The Legal Charge in this action contains such a variation to the Statutory procedure and by this Originating Summons, the Plaintiff seeks the approval of the Court to the exercise of the powers under those provisions in the Legal Charge. The Plaintiff asserts that, in

any event, it has served the appropriate notices under Section 64(2) and Section 72 of the Registered Land Law (Revision).

- 13) The relief the Plaintiff therefore seeks in these proceedings is an Order of the Court that:
- 13.1) 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;
 - 13.2) That the Plaintiff be entitled to vacant possession of the Property for the purposes of a sale of the Property;
 - 13.3) 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;
 - 13.4) 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 18th day of November 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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**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/has
CNB - #8897

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