

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 898 of 2002 ✓

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)
AND IN THE MATTER OF SPOTTS, BLOCK 25B, PARCEL 338H49

BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: WALLING WHITTAKER FIRST DEFENDANT
MELODY WHITTAKER SECOND DEFENDANT
JOANNE GILMAN THIRD DEFENDANT

ORIGINATING SUMMONS

TO: Walling Whittaker, Melody Whittaker and Joanne Gilman whose address for service is PO Box 151, Savannah, Grand Cayman.

LET THE DEFENDANTS, Walling Whittaker, Melody Whittaker and Joanne Gilman, 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).

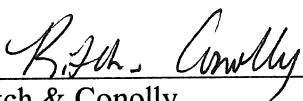
- 1) On 26th May 1988, the Plaintiff as Chargee and the Defendants as Chargor, executed a legal charge ("the Legal Charge") in respect of the land and building registered at the Lands and Survey Department as Spotts, Block 25B, Parcel 338H49 ("the Property"). The said Legal Charge was registered at the Lands and Survey Department on 24th August 1988.
- 2) On or about 29th September 1993, the Defendants executed a Variation of Charge ("the Variation of Charge") which had the effect of increasing the principal sum from CI\$87,000.00 to CI\$110,000.00
- 3) The Variation of Charge provided, inter alia, that:
 - 3.1) The Plaintiff would lend and the Defendants would borrow the principal sum of One Hundred and Ten Thousand (CI\$110,000.00) ("the principal sum") which was to be secured as a first charge on the Property.
 - 3.2) Interest on the principal sum would accrue at the rate of $\frac{3}{4}$ of 1% over the Plaintiff's Base Rate for Cayman Island Dollars lending.
 - 3.3) The Chargor would repay to the Chargee, on demand, the principal sum or such portion thereof as shall have been advanced to or be payable by the Chargor and remains due and owing together with interest at the rates mentioned.

- 3.4) Immediately upon default by the Defendants in payment of the principal sum, or of any interest payable thereunder, or in the performance or observance of any agreement, express or implied, the Plaintiff would be entitled to serve notice upon the Chargor 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 Chargor did not comply within one month of the date of service of such notice, the Chargee 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 or by tender.
- 4) It was specified by the Plaintiff in the Variation of Charge, that the Defendants would repay the principal sum, and accrued interest, by monthly instalments.
 - 5) In or about February 1999, the Defendants failed to pay the monthly instalments due in respect of the principal sum and interest.
 - 6) By a letter dated 9th September 1999, 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 9th September 1999, amounted to CI\$102,133.77 (principal) and interest and other charges of CI\$260.67.
 - 7) A further demand was served under Section 72 on 10th July 2002 claiming the sum of CI\$105,154.89 (principal) and interest and other charges of CI\$528.74.
 - 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. The Plaintiff is unaware of who occupies the Property.
 - 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 9th September 1999 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 6th day of December 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 - #8921

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

