

CAUSE NO: 916 OF 2002

IN THE GRAND COURT OF THE CAYMAN ISLANDS

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)

AND IN THE MATTER OF LOWER VALLEY, BLOCK 32C, PARCEL 211

BETWEEN

THE CAYMAN ISLANDS CIVIL SERVICE ASSOCIATION
CO-OPERATIVE CREDIT UNION LTD

PLAINTIFF

AND

WALLING WHITTAKER AND MELODY WHITTAKER DEFENDANTS

ORIGINATING SUMMONS

To Walling Whittaker and Melody Whittaker whose addresses for service are PO Box 151 SAV, Savannah, Grand Cayman

LET THE DEFENDANTS Walling Whittaker and Melody Whittaker within 14 days after service of this Summons on them, counting the day of service, return the accompanying Acknowledgement of Service to the Courts Office, PO Box 495 GT, George Town, Grand Cayman.

BY THIS SUMMONS which is issued on the application of the Plaintiff, the Cayman Islands Civil Service Association Co-operative Credit Union Ltd, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (1995 Revision).

1. On 5th January 2001 the Defendants applied to the Plaintiff for a loan in the sum of CI\$35,000.00 which, together with the balance outstanding of previous loans made to the Defendants, gave a total amount of borrowing of CI\$64,831.59. This borrowing was to be repaid by 96 monthly payments of CI\$1,053.45 and was to be secured partly by a Legal Charge on the land registered at the Lands & Survey Department as Lower Valley, Block 32C, Parcel 211 ("the Property").
2. On 17th January 2001 the Plaintiff as Chargee and the Defendants as Chargors executed a Legal Charge in respect of the Property.
3. The Legal Charge dated 17th January 2001 provided that:
 - 3.1 The Plaintiff would lend and the Defendants would borrow the principal sum of CI\$49,500.00 (the "Principal Sum");
 - 3.2 Interest on the Principal Sum would accrue at the rate of 12% per annum.

4. On and since June 2001 the Defendants have failed to pay the monthly instalments due in respect of the Principal Sum and in respect of interest.

5. The Registered Land Law (1995 Revision) provides that

"s.64 (2) A date for the repayment of the money secured by a charge may be specified in the charge instrument and, where no such date is specified or repayment is not demanded by the chargee on the date specified, the money shall be deemed to be repayable three months after the service of a demand in writing by the chargee".

6. By a letter addressed to the first named Defendant and dated 31st January 2002, which such letter was hand delivered to the first named Defendant on 26th March 2002, Messrs Ritch & Conolly as Attorneys for the Plaintiff served a notice in writing on the first named 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.

7. By a letter addressed to the second named Defendant and dated 31st January 2002, which such letter was hand delivered to the second named Defendant on 22nd March 2002, Messrs Ritch & Conolly as Attorneys for the Plaintiff served a notice in writing on the second named 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.

8. The Defendants did not pay the balance due of the Principal Sum and accrued interest.

9. The Plaintiff avers that the letters dated 31st January 2002 and served on the first named Defendant and second named Defendant on 26th March 2002 and 22nd March 2002 respectively constituted a demand in writing pursuant to Section 64 (2) and that the amount outstanding became due on or before 27th June 2002.

10. The Registered Land Law (1995 Revision) also provides that

"s.72 (1) If default is made in payment of the principal sum or of any interest or any other periodical payment or of any part thereof, or in the performance or observance of any agreement expressed or implied in any charge, and continues for one month, the chargee may serve on the chargor notice in writing to pay the money owing or to perform and observe the agreement as the case may be".

11. The Plaintiff avers that a notice in writing to pay the money owing pursuant to s.72 (1) of the Registered Land Law (1995 Revision) could be served on the Defendants on or after 27th July 2002.

12. By a letter addressed to the first named Defendant and dated 8th August 2002, which such letter was hand delivered to the first named Defendant on 27th August 2002, Messrs Ritch & Conolly as Attorneys for the Plaintiff served a notice in writing on the first named Defendant pursuant to Section 72 (1) of the Registered Land Law (1995 Revision) demanding payment of the balance of the Principal Sum and accrued interest.

13. By a letter addressed to the second named Defendant and dated 8th August 2002, which such letter was hand delivered to the second named Defendant on 27th August 2002, Messrs Ritch & Conolly as Attorneys for the Plaintiff served a notice in writing on the second named Defendant pursuant to Section 72 (1) of the Registered Land Law (1995 Revision) demanding payment of the balance of the Principal Sum and accrued interest.
14. Again the Defendants failed to comply with the notice in writing to pay the money owing.
15. The Plaintiff avers that the letters dated 8th August 2002 and served on the first named Defendant and second named Defendant on 27th August 2002 constituted notice pursuant to Section 72 (1) of the Registered Land Law (1995 Revision).
16. The Registered Land Law (1995 Revision) goes on to provide that

"s.72 (2) If the chargor does not comply within three months of the date of service with a notice served on him under subsection (1) the chargee may

 - (a) *appoint a receiver of the income of the charged property; or*
 - (b) *sell the charged property".*
17. The Plaintiff avers that as at 28th November 2002 the Plaintiff was at liberty to take steps to realise its' security on the Property in the appropriate manner.
18. In the circumstances the relief the Plaintiff seeks in these proceedings is an Order of the Court that the Plaintiff be entitled to sell the Property forthwith.

Dated this 17th day of December 2002

Ritch & Conolly
Ritch & Conolly

If the Defendant does not acknowledge service, judgement may be given or made against him or in relation to him as the Court may think just and expedient.

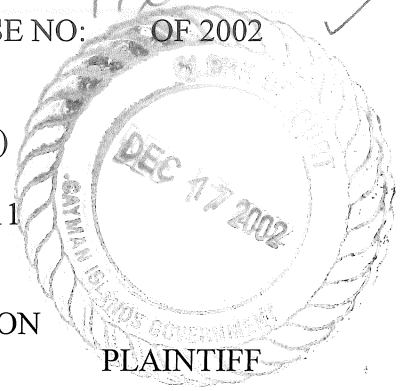
NOTE - This Summons may not be served later than four calendar months (or if leave is required to effect service out of the jurisdiction, six months) beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

This Originating Summons was issued by Messrs Ritch & Conolly as Attorneys-at-Law for the Plaintiff and whose address for service is PO Box 1994GT, Queensgate House, 113 South Church Street, Grand Cayman, B.W.I.

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WALLING WHITTAKER AND MELODY WHITTAKER DEFENDANTS

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 the proceedings (*tick appropriate box*)

yes

no

Service of the Originating Summons is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

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 principal office.

Please complete overleaf

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

Ritch & Conolly
PO Box 1994 GT
Queensgate House
113 South Church Street
Grand Cayman

Ref: RHJ/CICSA-M.Whittaker/8639

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

Acknowledgement of Service of Originating Summons (O.10, r.5)

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF ORIGINATING SUMMONS**

The accompanying form of *Acknowledgement of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495 GT, George Town, Grand Cayman.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, an Originating Summons served on the Defendant personally is treated as having been served on the day it was delivered to him/her.
3. Where the Defendant is sued in a name different from his own, the form must be completed by them with the addition in paragraph 1 of the words “sued as (*the name stated on the Originating Summons*)”.
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description “Partner in the firm of (.)” after his/her name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN THEIR OWN, the form must be completed by him/her with the addition in paragraph 1 of the description “trading as (.)” after his/her name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.

7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.