

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 352 OF 2003

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)  
AND IN THE MATTER OF MIDLAND EAST, BLOCK 59A, PARCEL 169

BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: ISHMAEL S. DASILVA DEFENDANT

ORIGINATING SUMMONS

TO: Ishmael S. DaSilva whose address for service is P.O. Box 4983, 111 Lake Hollingsworth Drive, Lakeland, Florida, U.S.A. 33801

LET THE DEFENDANT, Ishmael DaSilva, within 14 days after service of this Summons on him, 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 20<sup>th</sup> April 2001 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 Midland East, Block 59A, Parcel 169 ("the Property"). The said Legal Charge was registered at the Lands & Survey Department on 25<sup>th</sup> August 1998.
- 2) The Legal Charge provided, inter alia, that:
  - 2.1) The Plaintiff would lend and the Defendant would borrow the principal sum of Thirty-Five Thousand Cayman Islands Dollars (CI\$35,000.00) ("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 7.5% per annum.
  - 2.3) The Defendant 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 Defendant. Pending such demand, the Defendant 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 Defendant in payment of the principal sum, or of any interest payable thereunder, or in the performance or observance of any agreement, express or implied therein, the Plaintiff would be entitled to serve upon the Defendant notice in writing 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 Defendant did not comply within one month of the date of service of such notice, the Plaintiff would be entitled to take action immediately thereafter to, inter alia, exercise the power of sale by private treaty as well as by public auction.

- 3) It was specified by the Plaintiff in the Legal Charge, that the Defendant would repay the principal sum, and accrued interest, by monthly instalments.
- 4) In or about October 2001, the Defendant 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.
- 5) By a letter dated 31<sup>st</sup> January 2002, sent by registered post to the Defendant, the Plaintiff duly served notice on the Defendant pursuant to the Registered Land Law (1995 Revision) demanding payment of the balance of the principal sum and accrued interest which, as at 31<sup>st</sup> January 2002, amounted to CI\$40,550.55 (principal) and CI\$395.68 (interest).
- 6) A further demand was served under Section 72 on the same date claiming the same amounts.
- 7) Despite the service of such notices, the Defendant has failed to pay the balance due of the principal sum, and accrued interest.
- 8) The Property consists of residential premises. The Plaintiff is unaware of who resides in 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 31<sup>st</sup> January 2002 served on the Defendant 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 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.
- 11) 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 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).
- 12) The relief the Plaintiff therefore seeks in these proceedings is an Order of the Court that:
  - 12.1) 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 Defendant;

- 12.2) That the Plaintiff be entitled to vacant possession of the Property for the purposes of a sale of the Property;
- 12.3) 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 Defendant for the said shortfall, together with interest and costs;
- 12.4) 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 this 27<sup>th</sup> day of May 2003.



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**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.

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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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.

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2. State whether the Defendant intends to contest or otherwise participate in the proceedings (*tick appropriate box*)

Yes

No

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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**

*Endorsement 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 – #9055

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