

IN THE GRAND COURT OF THE CAYMAN ISLANDS

363 ✓
CAUSE NO. OF 2003

IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)
AND IN THE MATTER OF WEST BAY BEACH NORTH, BLOCK 11D, PARCEL 31H21
AND IN THE MATTER OF WEST BAY BEACH NORTH, BLOCK 11D, PARCEL 31H55

BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: SEAN LYNE DEFENDANT

ORIGINATING SUMMONS

TO: Sean Lyne whose address for service is Unit 10, Abbeyview Business Park,
Clonroadmore, Ennis Co. Clare, Ireland

LET THE DEFENDANT, Sean Lyne, within 21 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).

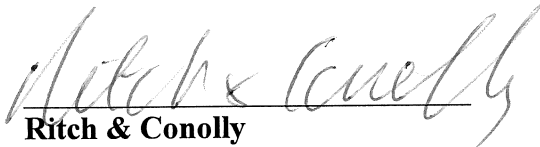
- 1) On or about 11th October 1999, the Plaintiff as Chargee, and the Defendant as Chargor executed a Collateral Charge ("the Collateral Charge") in respect of the land and building registered at the Lands and Survey Department as West Bay Beach North, Block 11D, Parcel 31H55 ("the First Property"). The said Collateral Charge was registered at the Lands & Survey Department on 1st November 1999.
- 2) The Collateral Charge provided, inter alia, that:
 - 2.1) The Plaintiff would lend and the Defendant would borrow the principal sum of One Million Forty-Six Thousand and Five Hundred United States Dollars (US\$1,046,500.00) ("the principal sum") which was to be secured as a charge on the First Property.
 - 2.2) Interest on the principal sum would accrue at the rate of 1½ % per annum above the Chargee's Prime Rate for United States Dollars.
 - 2.3) The Defendant would repay to the Plaintiff on demand the principal sum and all other obligations or liabilities, whether actual or contingent, now or hereafter due, owing or incurred to the Bank by the Chargor.
 - 2.4) At any time after the Bank shall have demanded payment of the indebtedness or any part thereof or if requested by the Chargor, the Chargee would be at liberty to exercise, without further notice or the powers conferred on Chargees by virtue of the Law and that in addition to the remedies provided by the Law, the Bank shall have the right to foreclose or enter into possession of the charged Property, or both, in the same circumstances as would allow the Bank to exercise its power of

sale or appoint a Receiver and upon the exercise of its powers of sale, the Bank shall have the right to sell the charged Property by private treaty as well as by public auction.

- 3) Thereafter, it was specified by the Plaintiff that the Defendant would repay the principal sum and accrued interest by monthly instalments.
- 4) Further, on or about 11th October 199, the Plaintiff as Chargee and the Defendant as Chargors, executed a First Legal Charge in respect of the land and building registered as West Bay Beach North, Block 11D, Parcel 31H21 ("the Second Property"). The said First Legal Charge was registered at the Lands & Surveys Department on 1st November 1999.
- 5) The First Legal Charge provided, inter alia, the same provisions as that set out in Paragraphs 2.1 to 2.4 above in support of the borrowings by the Chargor of the principal sum of One Million and Forty-Six Thousand Five Hundred Dollars United States Dollars (US\$1,046,500.00) together with interest as set out above.
- 6) On or about May 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.
- 7) By a letters dated 21st March 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 21st March 2002, amounted to CI\$1,046,500.00 (principal) and CI\$102,514.76 interest and other charges.
- 8) A further demand was served under Section 72 on the same date claiming the said sums.
- 9) Despite the service of such notices, the Defendant has failed to pay the balance due of the principal sum, and accrued interest.
- 10) The First Property and Second Property consist of residential premises. The Plaintiff is unaware of who resides in the First and Second Properties.
- 11) 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 21st March 2002 served on the Defendant as aforesaid, constitutes Notice under Section 64(2) of the Registered Land Law (Revised).
- 12) 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.

- 13) 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).
- 14) The relief the Plaintiff therefore seeks in these proceedings is an Order of the Court that:
- 14.1) 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;
 - 14.2) That the Plaintiff be entitled to vacant possession of the First and Second Properties for the purposes of a sale of the Properties;
 - 14.3) 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;
 - 14.4) 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 27th day of May 2003.


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.