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CAUSE N<sup>o</sup>: OF 2003

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)  
AND IN THE MATTER OF PROSPECT, BLOCK 22D, PARCEL 241H8  
BETWEEN:

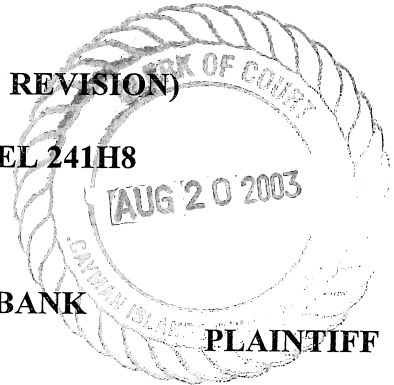
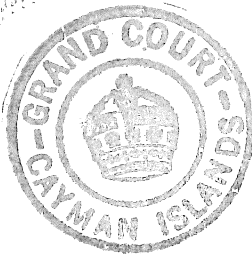
FIRSTCARIBBEAN INTERNATIONAL BANK  
(CAYMAN) LIMITED

PLAINTIFF

AND

CLIFTON SCOTT AND SHERIE SCOTT

DEFENDANTS



**ORIGINATING SUMMONS**

TO: Clifton Scott of and whose address for service is PO Box 456 GT, Grand Cayman and Sherie Scott of and whose address for service is PO Box 1989 GT, Grand Cayman.

**LET THE DEFENDANTS** Clifton Scott and Sherie Scott within fourteen days after service of this Summons on them, counting the day of service, return the accompany Acknowledgement of Service to the Courts Office, PO Box 495 GT, Grand Cayman.

**BY THIS SUMMONS** which is issued on the application of the Plaintiff, FirstCaribbean International Bank (Cayman) Limited, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (1995 Revision).

1. On 26<sup>th</sup> April 1996 CIBC Bank & Trust Company (Cayman) Limited as Chargee and the Defendants as Chargors executed a Legal Charge in respect of the land and buildings registered at the Lands & Survey Department as Prospect, Block 22D, Parcel 241H8 ("the Property").
2. The Legal Charge provided, inter alia, that

- 2.1 CIBC Bank & Trust Company (Cayman) Limited would lend and the Defendants would borrow the principal sum of CI\$96,300.00 ("the Principal Sum") which was to be secured as a First Legal Charge on the Property;
- 2.2 So long as the Second Defendant Sherie Scott remained in the employ of CIBC Bank & Trust Company (Cayman) Limited interest on the Principal Sum would accrue at the rate of 2% per annum above the prime lending rate of CIBC Bank & Trust Company (Cayman) Limited for Cayman Islands dollars or such other rate as CIBC Bank & Trust Company (Cayman) Limited shall from time to time specify with a then effective prime lending rate of 10.25% per annum;
- 2.3 In the event that the Second Defendant Sherie Scott ceased in the employment of CIBC Bank & Trust Company (Cayman) Limited then from the date of cessation of such employment interest shall be payable on the unpaid balance of the Principal Sum at the rate of 3% per annum above the prime lending rate of CIBC Bank & Trust Company (Cayman) Limited for Cayman Islands dollars or such other rate as CIBC Bank & Trust Company (Cayman) Limited shall from time to time specify during the continuation of any indebtedness of the Chargors;
- 2.4 The Defendants shall repay to CIBC Bank & Trust Company (Cayman) Limited on demand the Principal Sum or such other portion of the Principal Sum as shall have been advanced to the Defendants and remains due and owing, together with interest thereon at the rate aforementioned;
- 2.5 Pending such demand, the Defendants shall pay the Principal Sum and interest accruing in consecutive instalments of such sum or sums and at such times as CIBC Bank & Trust Company (Cayman) Limited may specify from time to time which said instalments shall be applied by CIBC Bank & Trust Company (Cayman) Limited first in payment of interest due and the balance in reduction of the Principal Sum.

- 2.6. Section 72 of the Registered Land Law (1995 Revision) shall be varied in respect of the Legal Charge to entitle CIBC Bank & Trust Company (Cayman) Limited immediately upon default by the Defendants in payment of the Principal Sum, or of any interest payable, to serve on the Defendants notice in writing to pay the money owing and if the Defendants do not comply within one month of the date of service of such notice, CIBC Bank & Trust Company (Cayman) Limited may without further notice either appoint a Receiver of the income of the Charged Property, or sell the Charged Property by way of private treaty as well as by public auction, or foreclose, or enter into possession of the Charged Property, or in the event that CIBC Bank & Trust Company (Cayman) Limited does appoint a Receiver, or enter into possession of the Charged Property, exercise its powers of sale, or foreclosure, or appointment of a Receiver, at any time thereafter without further notice.
- 2.7 The Defendants shall pay on demand all fees and expenses that may be payable together with all fees and expenses that may be incurred by CIBC Bank & Trust Company (Cayman) Limited of and incidental to the protection and enforcement from time to time of the rights of CIBC Bank & Trust Company (Cayman) Limited.
3. Thereafter it was specified by CIBC Bank & Trust Company (Cayman) Limited that the Defendants would pay the Principal Sum and accrued interest by monthly instalments.
4. During 2002 arrangements were made to consolidate the business interests of Barclays Bank plc in the Caribbean, Belize and The Bahamas with those of CIBC West Indies Holdings Limited and its' subsidiaries, which subsidiaries included CIBC Bank & Trust Company (Cayman) Limited.
5. The combination of the two businesses created, inter alia, FirstCaribbean International Bank (Cayman) Limited, that is, the Plaintiff in this action.

6. On and since October 2002 the Defendants have failed to pay the monthly instalments due in respect of the sums loaned and in respect of interest.

7. The Registered Land Law (1995 Revision) provides

*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”.*

8. By a letter dated 30<sup>th</sup> October 2002 and handed to the First Named Defendant on 10<sup>th</sup> January 2003 and by a letter also dated 30<sup>th</sup> October 2002 and handed to the Second Named Defendant on 21<sup>st</sup> January 2003 the Attorneys for the Plaintiff, Messrs Ritch & Conolly, served notice on the Defendants pursuant to Section 64 (2) of the Registered Land Law (1995 Revision) demanding payment of the balance of the Principal Sum outstanding and accrued interest.

9. The Defendants have failed to pay the balance due of the Principal Sum and accrued interest and indeed any other sums.

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 the letters dated 30<sup>th</sup> October 2002 and served on the First Named Defendant on 10<sup>th</sup> January 2003 and the Second Named Defendant on 21<sup>st</sup> January 2003

respectively constituted a demand in writing pursuant to Section 64 (2) and that in accordance with Section 72 (1) the amount outstanding became due on 22<sup>nd</sup> May 2003.

12. The Registered Land Law (1995 Revision) also provides 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:*

*Provided that a chargee who has appointed a receiver may not exercise the power of sale unless the chargor fails to comply, within three months of the date of service, with a further notice served on him under subsection (1)...*

*S.77 The provisions of sections 70 (2) and (3), 72, 73, 74 and 75 may, in their application to a charge, be varied or added to in the charge:*

*Provided that any such variation or addition shall not be acted upon unless the court, having regard to the proceedings and conduct of the parties and to the circumstances of the case, so orders.*

13. The relief the Plaintiff therefore seeks in these proceedings is an Order of the Court that

13.1 The variations in the Charge to the provisions of the Registered Land Law (1995 Revision) be allowed so that the Plaintiff is not required to serve a Notice pursuant to Section 72 (1) and (2) allowing the Defendants three months to comply with that Notice but that the Plaintiff be at liberty to serve a second Notice requiring the Defendants to comply within one month of the date of service;

- 13.2 That on the expiry of that one month notice period, the Plaintiff be entitled to possession of the Property forthwith and that the Plaintiff have leave pursuant to GCR O.45 r.3 (1) and (2) to issue a Writ of Possession in this matter in respect of the Property;
- 13.3 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 interest of the Defendants;
- 13.4 That 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 judgement for the said shortfall together with interest and costs;
- 13.5 That 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 this 20<sup>th</sup> day of August 2003

  
Ritch & Conolly

If the Defendants do not acknowledge service, judgement may be given or made against them or in relation to them 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, Attorneys-at-Law whose address for service is PO Box 1994GT, Queensgate House, 113 South Church Street, Grand Cayman, B.W.I.