

CAUSE NO. 133 OF 2004

IN THE GRAND COURT OF THE CAYMAN ISLANDS
IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)
AND IN THE MATTER OF SAVANNAH, BLOCK 28C, PARCEL 461

BETWEEN:

CAYMAN ISLANDS CIVIL SERVICE ASSOCIATION
CO-OPERATIVE CREDIT UNION LTD

PLAINTIFF

AND:

DAYSTAR RISING LTD.

DEFENDANT

ORIGINATING SUMMONS

TO: Daystar Rising Ltd of and whose registered office is at Huntlaw Corporate Services Ltd PO Box 1350 GT, Huntlaw Building, Fort Street, George Town, Grand Cayman

LET THE DEFENDANT, Daystar Rising Ltd, within 14 days after service of this Summons on it, 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, the Cayman Islands Civil Service Association Co-operative Credit Union Ltd, the Plaintiff seeks relief pursuant to the Registered Land Law (1995 Revision).

1. On 6 March 2001 Jeffrey Ian Seymour, a member of the Plaintiff Credit Union, applied to the Plaintiff Credit Union for a loan in the sum of CI\$26,937.97 which, together with the balance of previous loans made to the said Jeffrey Ian Seymour, gave a total amount of borrowing of CI\$63,000.00. This borrowing was to be re-paid by 96 monthly instalments of CI\$1,024.30 and was to be secured by a first Legal Charge on the land registered at the Lands and Survey Department as Savannah, Block 28C, Parcel 461 ("the Property").
2. The Property was and remains registered in the name of the Defendant and on 8 March 2001 the Plaintiff as Chargee and the Defendant as Chargor executed a Legal Charge in respect of the Property.

3. The Legal Charge dated 8 March 2001 provided that:
 - 3.1 The Plaintiff would lend and the Defendant would borrow the principal sum of CI\$63,000.00 (“the Principal Sum”);
 - 3.2 Interest on the Principal Sum would accrue at the rate of 12% per annum on the reducing balance;
4. On and since January 2002 the Defendant has failed to pay the monthly installments due in respect of the Principal Sum loaned and in respect of interest.
5. By a letter dated 23 June 2003 and delivered to the registered office of the Defendant on 24 June 2003 Messrs Ritch & Conolly, attorneys for the Plaintiff, served Notice on the 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.
6. Neither the Defendant nor the said Jeffrey Ian Seymour made payment in respect of the balance of the Principal Sum and/or accrued interest, or any payment.
7. The Registered Land Law (1995 Revision) provides that once a Notice of Demand has been served pursuant to Section 64(2), the total amount outstanding of principal and interest becomes due and payable three months after the service of that Notice. The Plaintiff avers that the letter dated 23 June 2003 and served on the Defendant on 24 June 2003 constitutes such a Notice pursuant to Section 64(2).
8. The Registered Land Law (1995 Revision), by virtue of Section 72(1) also provides that once there is a default in the payment of principal, or of any interest, or any other periodical payments and if that default continues for one month, a Chargee may serve on the Chargor notice in writing to pay the money owing, or to perform and observe the terms of the Legal Charge, as the case may be.
9. It is averred that default occurred one calendar month after three months had elapsed since the service of the Notice pursuant to Section 64(2). In the circumstances, as at 25 October 2003 the Plaintiff was at liberty to serve on the Defendant a further notice in writing to pay the money owing.
10. By a letter dated 5 November 2003 and delivered to the registered office of the Defendant on 5 November 2003, Messrs Ritch & Conolly, attorneys for the Plaintiff, served Notice on the 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.
11. The Registered Land Law (1995 Revision) by virtue of Section 72(2), provides that if a Chargor has not complied within three months of the date of service, with a Notice served on him under Section 72(1), the Chargee may sell the Charged property. Therefore, on and since 5 February 2004 there has accrued a right in favour of the Plaintiff to sell the Charged property and the Plaintiff seeks an Order that it may do so.

12. In the premises, the Plaintiff seeks an Order pursuant to Section 77 of the Registered Land Law (1995 Revision) that:
- 12.1 An Order for possession be made;
- 12.2 The Plaintiff have leave pursuant to Grand Court Rules Order 45, Rule 3(1) and (2) to issue a Writ of Possession in this matter in respect of the Property.
13. The Plaintiff also seeks an Order that if after any sale of Parcel 461, should there be any shortfall in the amount due and owing to the Plaintiff, that the Plaintiff be at liberty to enter judgment for the said shortfall, together with interest and costs.

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

Dated the 2nd day of March 2004


Ritch & Conolly

NOTE: This Summons may not be served later than 4 calendar months (*or if leave is required to effect service 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 form.

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