



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 18 OF 2005

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

AND IN THE MATTER OF GEORGE TOWN SOUTH, BLOCK 14D, PARCEL 350H3

BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: LOLITA A. McLAUGHLIN FIRST DEFENDANT

AND: AUDY MURPHY POWELL SECOND DEFENDANT

ORIGINATING SUMMONS

TO: Lolita A. McLaughlin and Audy Murphy Powell whose address for service is unknown.

LET THE DEFENDANTS, Lolita A. McLaughlin and Audy Murphy Powell, within 28 days after service of this Summons on them, 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, Cayman National Bank Ltd., Elgin Avenue, George Town, Grand Cayman, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (1995 Revision) as follows:-

1. On 21st June 1994 the Plaintiff as Chargee and the Defendants as Chargors executed a Charge (“the Charge”) in respect of the land and buildings registered at the Lands and Survey Department as George Town South, Block 14D, Parcel 350H3 (“Parcel 350H3”). The said Charge was registered at the Lands and Survey Department on 30th June 1994.

2. The Charge provided, inter alia, that:
 - 2.1 The Plaintiff would lend and the Defendants would borrow the principal sum of Sixty-Three Thousand Cayman Islands Dollars (CI\$63,000.00) (“the principal sum”) which was to be secured as a charge on Parcel 350H3.
 - 2.2 Interest on the principal sum would accrue at the rate of 3% above the Cayman Islands Dollar prime rate.
 - 2.3 The Defendants 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 Defendants. Pending such demand, the Defendants would repay to the Plaintiff such monthly or other sums as the Plaintiff shall from time to time specify.
3. It was specified by the Plaintiff in the Legal Charge, that the Defendants would repay the principal sum, and accrued interest, by monthly instalments.
4. The Defendants’ loan account has been delinquent at various times since June 1994. Since September 2002 the Defendants have failed to pay the monthly instalments due in respect of the sum loaned and in respect of interest
5. The Registered Land Law (1995 Revision) provides:

“Section 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 re-payable three months after the service of a demand in writing by the chargee”
6. The Registered Land Law (1995 Revision) also provides:

“Section 153 A notice under this Law shall be deemed to have been served on or given to any person if:

 - a. *served on him personally;*
 - b. *served on an attorney holding a power of attorney whereunder such attorney is authorised to accept such service;*
 - c. *sent by registered post to him at his last known postal address in the Islands or elsewhere and a receipt purporting to have been signed by him has been received in return; or*

d. service cannot be effected in one of the above-mentioned ways, by displaying it in a prominent place on the land effected and by publishing it in three consecutive issues of the Gazette.

7. It is understood that the Defendants are no longer resident in the Cayman Islands and in the circumstances, a notice pursuant to the provisions of Section 64(2) of the Registered Land Law (1995 Revision) was posted at Parcel 350H3 on 22nd January 2004 and published in the Gazette issues numbered 3/2004, 4/2004 and 5/2004
8. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
9. The Defendants did not make payment of the balance of the principal sum outstanding and/or accrued interest or any payments.
10. The Plaintiff avers that the notice posted at Parcel 350H3 on 22nd January 2004 and Gazetted in issue numbers 3/2004, 4/2004 and 5/2004 constituted a demand in writing pursuant to Section 64(2) and that the amount outstanding became due on 8th June 2004, that is three months after Gazette issue 5/2004 dated 8th March 2004.
11. The Registered Land Law (1995 Revision) also provides that:

“Section 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.”

12. The Plaintiff avers that a notice in writing to pay the money owing pursuant to Section 72(1) of the Registered Land Law (1995 Revision) could be served on the Defendant on or after 8th July 2004.
13. A notice pursuant to the provisions of Section 72(1) of the Registered Land Law (1995 Revision) was posted at Parcel 350H3 on 11th August 2004 and published in Gazette issues numbered 17/2004, 18/2004 and 19/2004.
14. The Registered Land Law (1995 Revision) by virtue of Section 72(2), provides that:

“Section 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

... (b) sell the Charged Property.”

15. However, the Charge provides that:

“Section 72 of the above shall be varied in its application to this Charge and of any instrument of variation executed pursuant to this Charge so as to entitle the Chargee immediately upon default by the Chargor in payment of the Principal Sum or of any interest payable hereunder or in the performance or observance of any agreement expressed or implied herein to serve on the Chargor notice in writing to pay the monies owing or due or to perform or observe the agreement as the case may be and further so as to provide that if the Chargor does not comply within one month of the date of service of such notice the Chargee may thereupon either appoint a receiver of the income of the Charged Property or sell the Charged Property by private treaty as well as by public auction or by tender.”

16. The date of Gazette 19/2004 was 20th September 2004. Therefore, on and since 20th October 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.

17. In the premise, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (1995 Revision) that:

17.1 An Order for possession be made.

17.2 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.

18. The Plaintiff also seeks an Order that if after any sale of Parcel 350H3 there should be any shortfall in the amount due and owing to the Plaintiff that the Plaintiff be at liberty to enter judgment for such shortfall, together with interest and costs.

Dated the 19th day of January 2005.



RITCH & CONOLLY
Attorneys for the Plaintiff

If the Defendant does not acknowledge service, judgement may be given, or made against, or in relation to him, 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.