

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 21 OF 2005

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

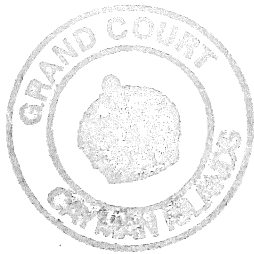
AND IN THE MATTER OF WEST BAY BEACH SOUTH, BLOCK 12C, PARCEL 352H24

BETWEEN: CAYMAN NATIONAL BANK LTD

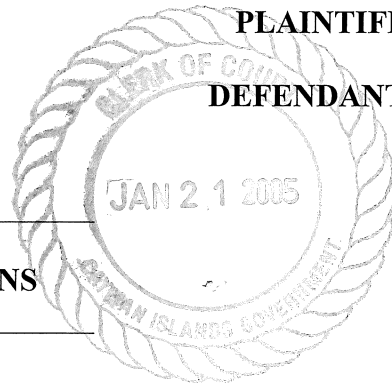
PLAINTIFF

AND: ANDRES HAYES

DEFENDANT



ORIGINATING SUMMONS



TO: Andres Hayes whose address for service is unknown.

LET THE DEFENDANT, Andres Hayes, within 28 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., 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 30<sup>th</sup> June 2000 the Plaintiff as Chargee and the Defendant (an employee of the Plaintiff) as Chargor executed a Charge ("the Charge") in respect of the land and building registered at the Lands and Survey Department as West Bay Beach South, Block 12C, Parcel 352H24 ("Parcel 352H24"). The said Charge was registered at the Lands and Survey Department on 26<sup>th</sup> September 2000.
2. The Charge provided, inter alia, that:
  - 2.1 The Plaintiff would lend and the Defendant would borrow the principal sum of Two Hundred and Fifty Thousand Cayman Islands Dollars (CI\$250,000.00) ("the principal sum") which was to be secured as a charge on Parcel 352H24.

- 2.2 Interest on the principal sum would accrue at the rate of 3% below the Cayman Islands Dollar prime rate with a minimum rate of 5% per annum (Preferential rate of interest for employees of the Plaintiff).
- 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. The Defendant's loan account became delinquent on 31<sup>st</sup> January 2003 and the last payment made by the Defendant on the account was on 14<sup>th</sup> May 2003 in the sum of CI\$1,900.00. Since that date the Defendant has 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.*
5. The Defendant left the Plaintiff's employment on 31<sup>st</sup> August 2001 and sometime shortly after left the Cayman Islands. It is understood that the Defendant went to live and work in Paris but despite efforts to contact the Defendant the Plaintiff has been unable to obtain any further information about where the Defendant may now be living.
6. In the circumstances, a notice pursuant to the provisions of Section 64(2) of the Registered Land Law (1995 Revision) was published in the Cayman Islands Gazette issues numbered 25/2003, 26/2003 and 1/2004 and posted at Parcel 352H24 on 30<sup>th</sup> April 2004.
7. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
8. The Defendant did not make payment of the balance of the principal sum outstanding and/or accrued interest or any payments.
9. The Plaintiff avers that the Notice published in the Cayman Islands Gazette in issue numbers 25/2003, 26/2003 and 1/2004, 15<sup>th</sup> and 29<sup>th</sup> December 2003 and 12<sup>th</sup> January 2004 and posted at Parcel 352H24 on 30<sup>th</sup> April 2004 constituted a demand in writing pursuant to Section 64(2) and that the amount outstanding became due on 30<sup>th</sup> August 2004.
10. 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."*
11. 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 28<sup>th</sup> March 2004.

12. A notice pursuant to the provisions of Section 72(1) of the Registered Land Law (1995 Revision) was published in Gazette issues numbered 9/2004, 10/2004 and 11/2004 and posted at Parcel 352H24 on 20<sup>th</sup> December 2004

13. 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.”*

14. Therefore, on and since the date of Gazette 11/2004, 31<sup>st</sup> May 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.

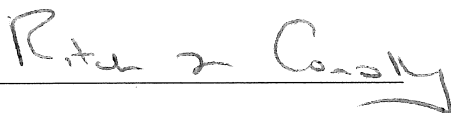
15. In the premise, the Plaintiff seeks an Order pursuant to Section 77 of the Registered Land Law (1995 Revision) that:

15.1 An Order for possession be made.

15.2 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.

16. The Plaintiff also seeks an Order that if after any sale of Parcel 352H24 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 21<sup>st</sup> 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.

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BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: ANDRES HAYES DEFENDANT

**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:

**Please complete overleaf**

*Notes on address for service*

Attorney: where the Defendants are 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.

*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/9291/Hayes, Andres

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