

IN THE GRAND COURT OF THE CAYMAN ISLANDS

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

AND IN THE MATTER OF GEORGE TOWN SOUTH, BLOCK 14D, PARCEL 419H61

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:

TIMOTHY RAY HAGERTY

AND:

LINETTE MAY SCOTT

DEFENDANTS



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ORIGINATING SUMMONS

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**TO:** Timothy Ray Hagerty of PO Box 10918 APO, Grand Cayman and Linnette May Scott of PO Box 10918 APO, Grand Cayman.

**LET THE DEFENDANTS,** Timothy Ray Hagerty and Linnette May Scott, within 14 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 application of the Plaintiff, Cayman National Bank Ltd of Elgin Avenue, George Town, Grand Cayman, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (1995 Revision).

1. The Defendants applied to the Plaintiff for a loan in the sum of CI\$79,900.00 and this loan was to be secured by a First Legal Charge on the land registered at the Lands & Survey Department as George Town South, Block 14D, Parcel 419H61 ("Parcel 419H61").

2. Parcel 419H61 was at all material times registered in the names of the Defendants and on or about 23<sup>rd</sup> July 2001 the Plaintiff as Chargee and the Defendants as Chargors executed a Legal Charge in respect of Parcel 419H61.

3. The Legal Charge provided that:

3.1 The Plaintiff would lend and the Defendants would borrow the principal sum of CI\$79,900.00.

3.2 Interest on that amount would accrue at the rate of 3% above CI\$ prime per annum.

4. The Legal Charge also provided that:

*“Section 72 of the ... [Registered Land] Law shall be varied in respect of 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 money owing or to perform and 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 property the subject of the security or sell the property the subject of the security by private treaty as well as by public auction.”*

5. Since on or before May 2004 the Defendants have failed to pay the monthly instalments due in respect of the sums loaned and in respect of interest.

6. 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 repayable three months after the service of a demand in writing by the chargee.”*

7. 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;*

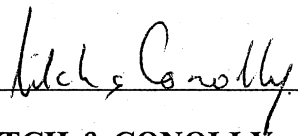
- (c) *sent by registered post to him at his last known postal address in the Islands or elsewhere and a receipt purported to have been signed by him as being received in return; or*
- (d) *service cannot be effected in one of the above-mentioned ways, by displaying it in a prominent place on the land affected and by publishing it in three consecutive issues of the Gazette.”*

8. It is understood that at the material time the first-named Defendant, Timothy Ray Hagerty, was 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 published in the Cayman Islands Gazette, issues numbered 12/2004, 13/2004 and 14/2004 and a copy of that Notice was posted at Parcel 419H61 on 8<sup>th</sup> July 2004.
9. The Notice was also served personally on the second-named Defendant, Linnette May Scott, on 9<sup>th</sup> July 2004.
10. The Notices served demanded payment of the balance of the principal sum outstanding and accrued interest.
11. The Defendants did not make payment of the balance of the principal sum outstanding and/or incurred interest or any payments.
12. The Plaintiff avers that the Notice posted at Parcel 419H61 on 8<sup>th</sup> July 2004 and Gazetted in issues numbered 12/2004, 13/2004 and 14/2004 constituted a demand in writing pursuant to Section 64(2) and that the amount outstanding became due on 12<sup>th</sup> October 2004.
13. 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.”*
14. 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 Defendants on or after 12<sup>th</sup> November 2004.
15. A Notice pursuant to the provisions of Section 72(1) of the Registered Land Law (1995 Revision) was published in the Cayman Islands Gazette issues numbered 25/2004, 26/2004 and 01/2005 and a copy of that Notice was posted at Parcel 419H61 on 20<sup>th</sup> December 2004 in respect of the first-named Defendant and on 21<sup>st</sup> December 2004 in respect of the second-named Defendant.

16. 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 sub-section (i) the chargee may ...*
- (b) sell the charged property.”*
17. However, in accordance with the Registered Land Law (1995 Revision) Section 77 the Plaintiff seeks to vary the provisions of Section 72(2) so that the Plaintiff may proceed to take steps to sell Parcel 419H61 after one month of the date of service of the Section 72(1) Notice.
18. Therefore, on and since one month after the date of Gazette 01/2005, that is 10<sup>th</sup> January 2005, 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.
19. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (1995 Revision) that:
1. The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (1995 Revision) be allowed.
  2. The Plaintiff be entitled to sell the property either by private treaty or public auction in good faith and having regard to the interests of the Defendants.
  3. For the purposes of any such sale, the Plaintiff be entitled to vacant possession of the property and that an Order for possession be made.
  4. 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.
20. The Plaintiff also seeks an Order that if after any sale of Parcel 419H61 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 22<sup>nd</sup> day of February 2005.

  
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**RITCH & CONOLLY**  
**Attorneys for the Plaintiff**

If the Defendant does not acknowledge service, judgement 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.