

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 125 OF 2005

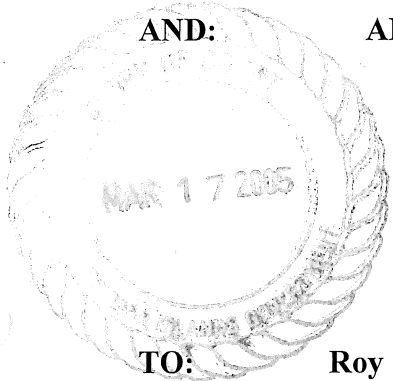
IN THE MATTER OF THE REGISTERED LAND LAW (1995 REVISION)

AND IN THE MATTER OF PROSPECT, BLOCK 22E, PARCEL 131H6

BETWEEN: CAYMAN NATIONAL BANK LTD PLAINTIFF

AND: ROY EVANS FIRST DEFENDANT

AND: ANGELINA EVANS SECOND DEFENDANT



ORIGINATING SUMMONS



TO: Roy Evans and Angelina Evans whose address for service is PO Box 2155 GT, Apt #6, Tropical Manor, Tropical Gardens, Grand Cayman, Cayman Islands.

LET THE DEFENDANTS, Roy Evans and Angelina Evans, 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 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 11th July 1997 the Plaintiff as Chargee and the First and Second Defendants as Chargors executed a Charge (“the Charge”) in respect of the land and buildings registered at the Lands and Survey Department as Prospect, Block 22E, Parcel 131H6 (“Parcel 131H6”). The said Charge was registered at the Lands and Survey Department on 2nd September 1997.
2. The Charge provided, inter alia, that:
 - 2.1 The Plaintiff would lend and the First and Second Defendants would borrow the principal sum of Seventy-Five Thousand Cayman Islands

Dollars (CI\$75,000.00) (“the principal sum”) which was to be secured as a charge on Parcel 5.

- 2.2 Interest on the principal sum would accrue at the rate of 3% above the Cayman Islands Dollar prime rate.
- 2.3 The First and Second 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 First and Second Defendants. Pending such demand, the First and Second 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 First and Second Defendants would repay the principal sum, and accrued interest, by monthly instalments.
4. In September 1997 the First and Second Defendants applied to the Plaintiff for a further loan in the sum of \$5,000.00 which, together with the balance of their then outstanding loan, gave a total amount of borrowing of CI\$80,000.00. This borrowing was to be secured by a Variation of Charge registered against Parcel 131H6.
5. On 25th September 1997 the Plaintiff as Chargee and the First and Second Defendant as Chargors executed a Variation of Charge in respect of the Property.
6. The Variation of Charge dated 25th September 1997 provided that:
 - 6.1 The principal sum borrowed by the Defendant would be varied from CI\$75,000.00 to CI\$80,000.00.
 - 6.2 Interest on the principal sum would accrue at the rate of 3% above the Cayman Islands Dollar prime rate.
7. Since 1st September 2003 the Defendants have failed to pay the monthly instalments due in respect of the principal sum loaned and in respect of interest.
8. By a letter dated 18th February 2004 and served on the Defendants on 19th February 2004 the Plaintiff, 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 and accrued interest.
9. The Defendants did not make any payment in respect of the balance of the principal sum and/or accrued interest, or any payment.

10. 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 service of that Notice. The Plaintiff avers that the letter dated 18th February 2004 and served on the Defendants on 19th February 2004 constitutes such a Notice pursuant to Section 64(2).
11. The Registered Land Law (1995 Revision) by virtue of Section 72(1) also provides that once there is 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.
12. 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 20th June 2004 the Plaintiff was at liberty to serve on the Defendants a further notice in writing to pay the money owing.
13. By a letter dated 10th June 2004 and served on the Defendants on 24th June 2004 the Plaintiff served Notice on the Defendants pursuant to Section 72(1) of the Registered Land Law (1995 Revision) demanding payment of the balance of the principal sum and accrued interest.
17. 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 (1) the chargee may

...

(b) sell the charged property.”
18. However, in accordance with the Registered Land Law (1995 Revision) Section 77, and further to paragraph 11 of the Schedule attached to the Charge dated 11th July 1997, the Plaintiff seeks to vary the provisions of Section 72(2) so that the Plaintiff may proceed to take steps to sell Parcel 131H6 after one month of the date of service of the Section 72(1) Notice.
19. Therefore, on and since 25th July 2004 there has accrued a right in favour of the Plaintiff to sell the Charged Property (Parcel 131H6) and the Plaintiff seeks an Order that it may do so.
20. In the premise, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (1995 Revision) that:

- 20.1 The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (1995 Revision) be allowed.
 - 20.2 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.
 - 20.3 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.
 - 20.4 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 Parcel 131H6.
21. The Plaintiff also seeks an Order that if after any sale of Parcel 131H6 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 15th day of March 2005.



RITCH & CONOLLY
Attorneys for the Plaintiff

If the Defendants do 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.

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 principal office.

Please complete overleaf

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:AHP/CNB/9682_Evans

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

[Empty box for defendant's Attorney endorsement]

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING SUMMONS

The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
4. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Originating Summons)".
5. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
6. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
7. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.