

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 363

BETWEEN:

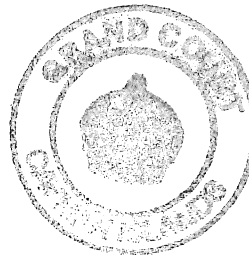
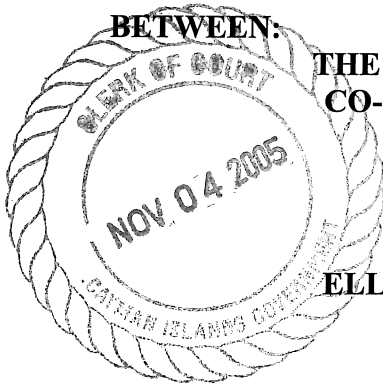
THE CAYMAN ISLANDS CIVIL SERVICE ASSOCIATION  
CO-OPERATIVE CREDIT UNION LTD

PLAINTIFF

AND

ELLEN WHITTAKER

DEFENDANT



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ORIGINATING SUMMONS

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**TO:** Ellen Whittaker whose address for service is PO Box 109GT, 16A Tempest Way, Windsor Park, George Town, Grand Cayman.

**LET THE DEFENDANT**, Ellen Whittaker, within 14 days after service of this Summons on her, 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) as follows:-

1. On 20<sup>th</sup> February 2001 the Defendant, a member of the Plaintiff Credit Union, applied to the Plaintiff Credit Union for a loan in the sum of CI\$8,050.00 which, together with the balance of previous loans made to the Defendant, gave a total amount of borrowing of CI\$12,791.59. This borrowing was to be repaid by 48 monthly instalments of CI\$336.85 and was to be secured by a Second Legal Charge on the land registered at the Lands & Survey Department as George Town South, Block 14D, Parcel 363 ("Parcel 363").

2. The property was and remains registered in the name of the Defendant and on 21<sup>st</sup> February 2001 the Plaintiff as Chargee and the Defendant as Chargor executed a Second Legal Charge in respect of the property.
3. The Legal Charge dated 21<sup>st</sup> February 2001 provided that:
  - 3.1 The Plaintiff would lend and the Defendant would borrow the principal sum of CI\$8,000.00 (“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 June 2002 the Defendant has failed to pay the monthly instalments due in respect of the Principal 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 re-payment 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 that:

*“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 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 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.”*
7. It is understood that the Defendant is 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 the property on 26<sup>th</sup> June 2003 and published in the Gazette, issues numbered #2 of 2003, #3 of 2003 and #4 of 2003.

8. The Notice demanded payment of the balance of the Principal Sum outstanding and accrued interest but 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 posted at the property on 26<sup>th</sup> June 2003 and gazetted in issue numbers #2 of 2003, #3 of 2003 and #4 of 2003 constituted a demand in writing pursuant to Section 64(2) and that the amount outstanding became due on 27<sup>th</sup> September 2003.
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 26<sup>th</sup> October 2003.
12. A Notice pursuant to the provisions of Section 72(1) of the Registered Land Law (1995) was posted at the property on 6<sup>th</sup> November 2003 and published in the Gazette, issues numbered #23 of 2003, #24 of 2003 and #25 of 2003.
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 sub-section (1) the Chargee may*

*... (b) sell the Charged property.”*

14. Therefore, on and since 15<sup>th</sup> March 2004, that is, three months after the date of Gazette issue number #25 of 2003, 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 premises, the Plaintiff seeks an Order pursuant to the provisions 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 the property 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 4<sup>th</sup> day of November 2005.

  
\_\_\_\_\_  
**Ritch & Conolly**

If the Defendant does not acknowledge service, such judgement may be given, or order made against, or in relation to her, 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 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 forms.

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AND IN THE MATTER OF GEORGE TOWN SOUTH, BLOCK 14D, PARCEL 363

BETWEEN:

THE CAYMAN ISLANDS CIVIL SERVICE ASSOCIATION  
CO-OPERATIVE CREDIT UNION LTD PLAINTIFF

AND

ELLEN WHITTAKER DEFENDANT

**ACKNOWLEDGMENT 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**.

- 
1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.
- 
2. State whether the Defendant intends to contest or otherwise participate in the proceedings (tick appropriate box)  

yes
 no
- 

Service of the Originating Summons is acknowledged accordingly

(Signed).....

[Attorney] for

[Defendant in person]

Address for service:

Notes on address for service

Attorney: where the Defendant is 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 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: RJH/CICSA-Ellen Whittaker

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.