

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>124</sup> OF 2006

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

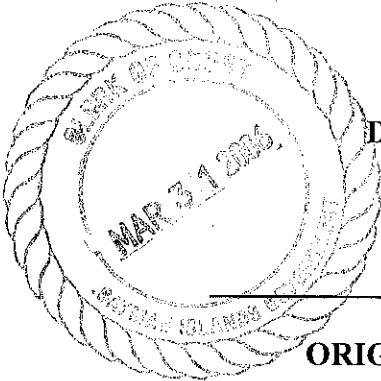
AND IN THE MATTER OF SPOTTS, BLOCK 25B, PARCEL 338H112

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:



DWIGHT CARTER



DEFENDANT

ORIGINATING SUMMONS

**TO: Dwight Carter whose address for service is unknown.**

**LET THE DEFENDANT, Dwight Carter,** within 14 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 of Cayman National Building, Elgin Avenue, PO Box 1097, Grand Cayman, the Plaintiff claims against the Defendant relief pursuant to the Registered Land Law (1995 Revision) as follows: -

1. The Defendant applied to the Plaintiff for a loan in the sum of CI\$25,000.00 and this loan was to be secured by a Charge on the land registered at the Lands and Survey Department as Spotts, Block 25B, Parcel 338H112 ("Parcel 338H112").
2. Parcel 338H112 was at all material times registered in the name of the Defendant and on or about 12<sup>th</sup> September 2002 the Plaintiff as Chargee and the Defendant as Chargor executed a Legal Charge in respect of Parcel 338H112.
3. The Charge provides, inter alia, that:
  - 3.1 The Plaintiff would lend and the Defendant would borrow the principal sum of Twenty Five Thousand Cayman Islands Dollars (CI\$25,000.00) ("the principal sum"), which was to be secured as a charge on Parcel 338H112.

- 3.2 Interest on the principal sum will accrue at the rate of 6% per annum above the Cayman Islands Dollar Prime Rate as determined by the Plaintiff from time to time.
- 3.3 The Defendant will repay to the Plaintiff on demand the principal sum together with any interest then due. Pending such demand, the Defendant will repay to the Plaintiff such monthly or other sums, as the Plaintiff shall from time to time specify.
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 September 2004 the Defendant has failed to pay the monthly instalments due in respect of the sums loaned and in respect of interest and has failed to make any subsequent payments of either principal or 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 Defendant, Dwight Carter, 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 16/2005, 17/2005 and 18/2005 and a copy of that Notice was posted at 338H112 on 29<sup>th</sup> July 2005.

10. The Notice demanded payment of the balance of the principal sum outstanding and accrued interest which, as at that date, amounted to CI\$19,788.89 (principal) and CI\$1,911.06 (interest and other charges).

11. The Defendant 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 338H112 on 29<sup>th</sup> July 2005 and Gazetted in issues numbered 16/2005, 17/2005 and 18/2005 constituted a demand in writing pursuant to Section 64(2) and that the amount outstanding became due on 29<sup>th</sup> November 2005.

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 Defendant on or after 29<sup>th</sup> November 2005.

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 01/2006, 02/2006 and 03/2006 and a copy of that Notice was posted at Parcel 338H112 on 31<sup>st</sup> January 2006.

16. The Registered Land Law (1995 Revision) by virtue of Section 72(2) provides that:

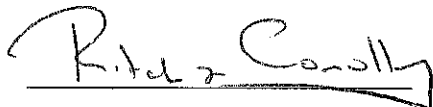
*“Section 72(2) If the chargor does not comply within three months of the date of service, with a notice served on him under sub-section (i) the chargee may*

...

*(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 338H112 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 03/2006, that is February 2006, 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 Parcel 338H112 either by private treaty or public auction in good faith and having regard to the interests of the Defendant.
  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 has 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 338H112 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 30<sup>th</sup> day of March 2006.



**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.

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AND IN THE MATTER OF SPOTTS, BLOCK 25B, PARCEL 338H112

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:

DWIGHT CARTER

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.**

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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:

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.

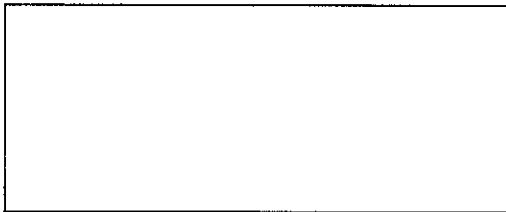
**Please complete overleaf**

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:AHP/CNB/9780\_Carter,Dwight

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



**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 495 GT, 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.