

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 98 OF 2007

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

AND IN THE MATTER OF WEST BAY BEACH NORTH, BLOCK 17A, PARCEL 10/1/8

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

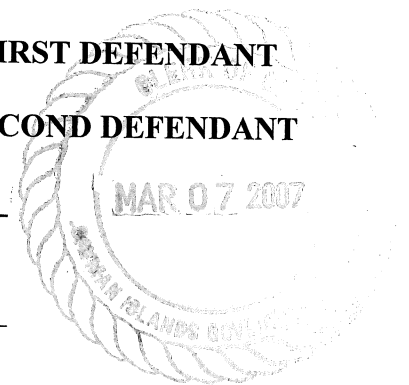
AND:

HERBERT HUDDLESTON

FIRST DEFENDANT

CAROL HUDDLESTON

SECOND DEFENDANT



ORIGINATING SUMMONS

TO: HERBERT HUDDLESTON and CAROL HUDDLESTON whose address for service is PO Box 482, Grand Cayman KY1-1106.

LET THE DEFENDANTS, Herbert Huddleston and Carol Huddleston, 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, George Town, Grand Cayman KY1-1106.

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 Defendants applied to the Plaintiff for a loan in the sum of US\$130,000.00 and this loan was to be secured by a Charge on the land registered at the Lands & Survey Department as West Bay Beach North, Block 17A, Parcel 10/1/8 ("Parcel 10/1/8").
2. Parcel 10/1/8 was at all material times registered in the name of the Defendants and on or about 22nd August 2001 the Plaintiff as Chargee and the Defendants as Chargors executed a Legal Charge in respect of Parcel 10/1/8.

3. The Legal Charge provided that:

3.1 The Plaintiff would lend and the Defendants would borrow the principal sum of US\$130,000.00.

3.2 Interest on that amount would accrue at the rate of 3% above the United States Dollar Prime Rate per annum.

4. The Legal Charge also provided that:

“In the event that the Chargor shall fail to discharge all monies and liabilities in full in accordance with the terms hereof or in the event that the Chargor shall be in breach of any of the Chargor’s covenants or obligations herein contained whether express or implied or in the event that the Chargor commits any act of bankruptcy or makes any assignment or composition for the benefit of the Chargor’s creditors or, being a company, goes into liquidation (other than a voluntary liquidation for the purposes of a reconstruction only the terms of which have been previously approved in writing by the Chargee) or suffers the appointment of a receiver over any part of the Chargor’s assets then in any such event the whole of the Principal Sum and all interest thereon and any other sums owing hereunder to the Chargee shall become immediately due and payable and the provisions of Sections 72 to 75 of the said Law shall apply subject to the modifications set forth:-

(1) the power of sale and of appointing a receiver and any other remedies available to the Chargee shall become immediately exercisable without further notice;

(2) in the event that the Chargee does appoint a receiver the Chargee shall be entitled to exercise its power of sale at any time thereafter without further notice;

(3) upon the exercise of the Chargee’s power of sale the Chargee shall have the right and power to sell the charged property by private treaty or by public auction or part in one way and part the other .”

5. Since on or about April 2006 the Defendants have failed to pay the monthly instalments due in respect of the sums loaned and in respect of interest and 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. By a letter dated 3rd May 2006 and received by the First Defendant on 8th May 2006 and the Second Defendant on the 5th May 2006, the Plaintiff served a notice

on the Defendants pursuant to the provisions of Section 64(2) of the Registered Land Law (1995 Revision) demanding payment of the balance of the principal sum outstanding and accrued interest.

8. The Defendants did not make any payment of the balance of the principal sum outstanding and/or accrued interest.
9. The Plaintiff avers that the letter dated 3rd May 2006 and served on the Defendants on 8th May 2006 and 5th May 2006 respectively constituted a demand in writing pursuant to Section 64(2) of the Registered Land Law (1995 Revision) and that the amount outstanding became due on 3rd September 2006.
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 Defendants on or after 3rd September 2006.
12. 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

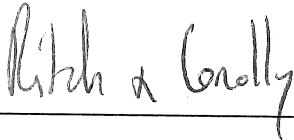
...

(b) sell the charged property.”

13. 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 10/1/8 after one month of the date of service of the Section 72(1) Notice.
14. Therefore, on 23rd November 2006 the Plaintiff served such a notice on the Defendants as described in paragraph 7 of the Legal Charge demanding payment of the full sums outstanding.
15. No response was received and since one month after the date of the Notice, that is 24th December 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.
 - a. 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 10/1/8 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 do 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 10/1/8 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 7th day of March 2007.



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.

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FIRST DEFENDANT

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CAROL HUDDLESTON

SECOND 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
Queensgate House
113 South Church Street
PO Box 1994
Grand Cayman KY1-1104

Ref:MB/CNB/10688_Huddleston,H&C

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]