

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 290 OF 2007

IN THE MATTER OF THE REGISTERED LAND LAW (2004 REVISION)

AND IN THE MATTER OF LOWER VALLEY, BLOCK 38E, PARCEL 89

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:

TYVONNE SOLOMON

DEFENDANT



ORIGINATING SUMMONS



TO: Tyvonne Solomon whose address for service is PO Box 278, Grand Cayman KY1-1602.

LET THE DEFENDANT, Tyvonne Solomon, 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, 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 (2004 Revision) as follows: -

1. The Defendant applied to the Plaintiff for a loan which together with the balance of previous loans made to the Defendant, gave a total amount of borrowing in the sum of CI\$204,000.00 and this loan was to be secured by a Variation of First Legal (Third Party) Charge ("the Legal Charge") on the land registered at the Lands & Survey Department as Lower Valley, Block 38E, Parcel 89 ("Parcel 89").
2. Parcel 89 was at all material times registered in the name of the Defendant and on or about 23rd February 2004 the Plaintiff as Chargee and the Defendant as Chargor executed a Legal Charge in respect of Parcel 89.
3. The Legal Charge provided that:

- 3.1 The Plaintiff would lend and the Defendant would borrow the principal sum of CI\$204,000.00.
 - 3.2 Interest on that amount would accrue at the rate of 3% above the Cayman Island Dollar Prime Rate per annum.
4. In or about August 2004 the Defendant applied for, and was granted a further loan, in the sum of CI\$8,500.00 which increased the previous loan made to the Defendant, giving a total amount of borrowing of CI\$212,500.00. This borrowing was to be secured by a further variation of the Legal Charge registered against Parcel 89 and dated 23rd February 2004.
5. On 20th August 2004 the Plaintiff as Chargee and the Defendant as Chargor executed a further Variation of the Legal Charge in respect of Parcel 89 which provided that:
 - 5.1 The principal sum would be increased from CI\$204,000.00 by CI\$8,500.00 to CI\$212,500.00.
 - 5.2 Interest on that amount would accrue at the rate of 3% above the Cayman Island Dollar Prime Rate per annum.
6. In or about July 2005 the Defendant applied to the Plaintiff for a loan in the sum of CI\$50,791.00 which, together with the balance of previous loans made to the Defendant, gave a total amount of borrowing of CI\$263,291.00. This borrowing was to be secured by a further variation of the Legal Charge registered against Parcel 89 and dated 23rd February 2004.
7. On or about 15th July 2005 the Plaintiff as Chargee and the Defendant as Chargor executed a further Variation of Charge in respect of Parcel 89 and the Variation provided that:
 - 7.1 The principal sum would be increased from CI\$212,500.00 by CI\$50,791.00 to CI\$263,291.00.
 - 7.2 Interest on that amount would accrue at the rate of 3% above the Cayman Island Dollar Prime Rate per annum.
8. 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 provided that the Chargee has given written notice to the Chargor of the default and the action to be taken to cure the same and the same has not been cured within a period of 30 days from receipt of the notice-to-cure then in any such event the whole of the Indebtedness including all Interest and Costs 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 Law, which the Chargor hereby acknowledges to understand, shall apply subject to the modifications hereinafter 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."*

9. Since 30th January 2006 the Defendant has failed to pay the monthly instalments due in respect of the sums loaned and in respect of interest.

10. The Registered Land Law (2004 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."

11. By a letter dated 11th July 2006, and received by the Defendant on 23rd July 2006, the Plaintiff served a notice on the Defendant pursuant to the provisions of Section 64(2) of the Registered Land Law (2004 Revision) demanding payment of the balance of the principal sum outstanding and accrued interest.

12. The Defendant did not make payment of the balance of the principal sum outstanding and/or accrued interest.

13. The Plaintiff avers that the letter dated 11th July 2006 and served on, and received by, the Defendant constituted a demand in writing pursuant to Section 64(2) of the Registered Land Law (2004 Revision) and that the amount outstanding became due on 11th November 2006.

14. The Registered Land Law (2004 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.”

15. The Plaintiff avers that a Notice in writing to pay the money owing pursuant to Section 72(1) of the Registered Land Law (2004 Revision) could be served on the Defendants on or after 11th November 2006.

16. The Registered Land Law (2004 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 (2004 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 89 after one month of the date of service of the Section 72(1) Notice.

18. Therefore, on 23rd November 2006 the Plaintiff served such a notice on the Defendant, and it was received by the Defendant on 23rd November 2006, as described in paragraph 7 of the Legal Charge demanding payment of the full sums outstanding.

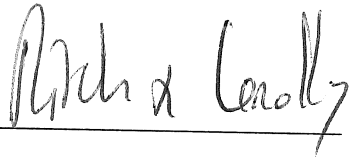
19. No response was received and since one month after the date of the Notice, that is 23rd December 2006, there has accrued a right in favour of the Plaintiff to sell the charged property and the Plaintiff seeks an Order that it may do so.

a. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:

1. The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
2. The Plaintiff be entitled to sell Parcel 89 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 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 89 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 10th day of July 2007.



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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BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:

TYVONNE SOLOMON

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
Grand Cayman KY1-1104

Ref:MB/CNB/10883_Tyvonne

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 495, Grand Cayman KY1-1106.

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.