

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 327 OF 2007

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

**AND IN THE MATTER OF GEORGE TOWN CENTRAL, BLOCK 14C,
PARCELS 296H17 AND 296H18**

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND

SUMMER DREAM LTD

DEFENDANT

ORIGINATING SUMMONS



**TO: Summer Dream Ltd whose address for service is PO Box 10340,
Grand Cayman KY1-1003.**

LET THE DEFENDANT, Summer Dream Ltd within 14 days after service of this Summons on it, 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 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 (2004 Revision) as follows:-

1. On 30th June 2004 the Defendant as Chargor and Aall Trust & Banking Corporation Limited ("Aall Trust") as the Chargee executed a Legal Charge and a Second Charge ("the Charges") in respect of the property registered at the Lands and Survey Department as George Town Central, Block 14C, Parcel 296H17 ("Parcel 296H17") together with a Collateral Charge and a Collateral Second Charge ("the Collateral Charges") in respect of the property registered at the Lands and Survey Department as George Town Central, Block 14C, Parcel 296H18 ("Parcel 296H18").
2. The Charges and the Collateral Charges provided, inter alia, that:

- 2.1 The Chargee would lend and the Chargor would borrow the principal sums of:
 - 2.1.a Three Hundred and Five Thousand US Dollars (US\$305,000.00) which was to be secured as a Charge on Parcel 296H17 and a Collateral Charge on Parcel 296H18.
 - 2.1.b One Hundred Thousand US Dollars (US100,000.00) which was to be secured as a Second Legal Charge on Parcel 296H17 and a Collateral Second Charge on Parcel 296H18.
- 2.2 Interest on the principal sum would accrue at the rate of 1.50% per annum above the Chargee's Prime Lending Rate for United States Dollars and subject to variation by the Chargee.
- 2.3 The Chargor shall pay interest to the date of payment (as well before any demand or judgment or the death, insanity, bankruptcy or other incapacity of the Chargor) at the rates and upon the terms from time to time agreed with the Chargee.
- 2.4 The Chargor would pay or discharge to the Chargee on demand all monies and liabilities which shall for the time being (and whether on or at any time after such demand) be due owing or incurred to the Chargee by the Chargor. Pending such demand, the Defendant would repay to the Plaintiff such monthly or other sums as the Plaintiff shall from time to time specify.
3. It was specified by Aall Trust in the Charges and the Collateral Charges, that the Defendant would repay the principal sum, and accrued interest, by monthly instalments.
4. In April 2005 Aall Trust transferred the Charges and Collateral Charges to Cayman National Bank Ltd ("the Plaintiff").
5. Since in or about August 2006 the Defendant has failed to pay the monthly instalments due in respect of the principal sum loaned and in respect of interest.
6. 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 re-payable three months after the service of a demand in writing by the chargee"

By a letter dated 20th September 2006 sent by registered post to the Defendant, and received by the Defendant on 22nd September 2006, the Plaintiff duly served Notices on the Defendant pursuant to Section 64 of the Registered Land Law (2004 Revision) demanding payment of the balance of the principal sum and accrued interest which, as at that date, amounted to US\$398,032.68 in respect of principal and US\$2,137.93 in respect of interest and other charges.

7. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
8. The Defendant did not make payment of the balance of the principal sum outstanding and/or accrued interest as demanded.
9. The Plaintiff avers that the notice posted to the Defendant on 20th September 2006 constituted a demand in writing pursuant to Section 64(2) and that the amount outstanding became due on 20th January 2006.
10. 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.”

11. 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 Defendant on or after 20th January 2007.
12. A notice pursuant to the provisions of Section 72(1) of the Registered Land Law (1995 Revision) was sent by registered post to the Defendant on 14th March 2007 and received by the Defendant on 15th March 2007.
13. 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 subsection (1) the Chargee may*

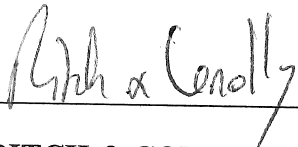
... (b) sell the Charged Property.”

15. However, the Charge provides that:

“The provisions of Section 72 of the Law shall apply to this Charge subject to such modifications as may be herein contained... at any time after the Chargee shall have demanded payment of the Principal Sum or any part thereof... the Chargee shall, whether or not a receiver has been appointed, have the right to foreclose or enter into possession of the Charged Property or both in the same circumstances as would allow the Chargee to exercise its power of sale or appoint a receiver...upon the exercise of its power of sale the Chargee shall have the right to sell the Charged Property by private treaty as well as by public auction.”

16. Therefore, on and since 15th April 2007 there has accrued a right in favour of the Plaintiff to sell the Charged properties and the Plaintiff seeks an Order that it may do so.
17. In the premise, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:
 - 17.1 The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
 - 17.2 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 Defendant.
 - 17.3 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.
 - 17.4 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.
18. The Plaintiff also seeks an Order that if after any sale of Parcels 296H17 and 296H18 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 1 day of ~~July~~^{August} 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 him, 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

327

CAUSE NO. 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:

SUMMER DREAM LTD

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/10553_Summer Dream
Ltd

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, 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.