

IN THE GRAND COURT OF THE CAYMAN ISLANDS

487  
CAUSE NO. OF 2007

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

AND IN THE MATTER OF WEST BAY NORTH EAST, BLOCK 9A, PARCEL 518H4

BETWEEN:

FIRSTCARIBBEAN INTERNATIONAL BANK (CAYMAN) LTD

PLAINTIFF

AND:

KAREN RAMSAY  
EVELYN WALKER

FIRST DEFENDANT  
SECOND DEFENDANT

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ORIGINATING SUMMONS

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**TO:** Karen Ramsay whose address for service is PO Box 147, Grand Cayman KY1-1104.

**AND:** Evelyn Walker whose address for service is PO Box 147, Grand Cayman KY1-1104.

**LET THE DEFENDANTS, Karen Ramsay and Evelyn Walker,** 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, FirstCaribbean International Bank (Cayman) Ltd of PO Box 68, FirstCaribbean House, 25 Main Street, George Town, Grand Cayman KY1-1102, the Plaintiff claims against the Defendants relief pursuant to the Registered Land Law (2004 Revision) as follows: -

1. The Defendants applied to the Plaintiff for a loan in the sum of CI\$137,750.00 and this loan was to be secured by a First Legal Charge ("the Legal Charge") on the land registered at the Lands & Survey Department as West Bay North East, Block 9A, Parcel 518H4 ("Parcel 518H4").
2. Parcel 518H4 was at all material times registered in the name of the Defendants and on or about 18<sup>th</sup> June 2003 the Plaintiff as Chargee and the Defendants as Chargors executed a Legal Charge in respect of Parcel 518H4.

3. The Legal Charge provided that:

3.1 The Plaintiff would lend and the Defendants would borrow the principal sum of CI\$137,750.00.

3.2 Interest on that amount would accrue at the rate of 3% above the Cayman Islands Dollar Prime Lending 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 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.”*

5. Since about August 2005 the Defendants have failed to pay the monthly instalments due in respect of the sums 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 repayable three months after the service of a demand in writing by the chargee.”*

7. By letters dated 15th February 2007 the Plaintiff sent a notice to the Defendants 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.

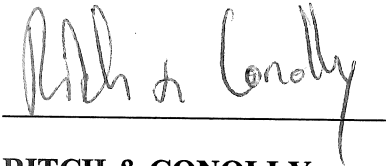
8. The Defendants did not make payment of the balance of the principal sum outstanding and/or accrued interest.
9. The Plaintiff avers that the letter dated 15th February 2007 and sent to the Defendants constituted a demand in writing pursuant to Section 64(2) of the Registered Land Law (2004 Revision) and that the amount outstanding became due on 15th June 2007.
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 sent to the Defendants on or after 15<sup>th</sup> June 2007.
12. 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.”*
13. 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 518H4 after one month of the date of the Section 72(1) Notice.
14. On 15th February 2007 the Plaintiff sent such a notice to the Defendants as described in paragraph 7 of the Legal Charge demanding payment of the full sums outstanding.
15. An agreement to repay the Plaintiff the sum of CI\$2000.00 per month was entered into by the First Defendant in February 2007 but was not honoured and therefore since one month after the date of the Notice, that is 15th July 2007, 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.
16. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:

- a) The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
  - b) The Plaintiff be entitled to sell Parcel 518H4 either by private treaty or public auction in good faith and having regard to the interests of the Defendants.
  - c) 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.
  - d) 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.
17. The Plaintiff also seeks an Order that if after any sale of Parcel 518H4 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 12<sup>th</sup> day of October 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.



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/FCIB/9812\_Ramsey & Walker

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.