

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 90 OF 2008

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

**AND IN THE MATTER OF GEORGE TOWN SOUTH, BLOCK 14D, PARCEL 332
AND GEORGE TOWN SOUTH, BLOCK 14E, PARCEL 721**

BETWEEN:

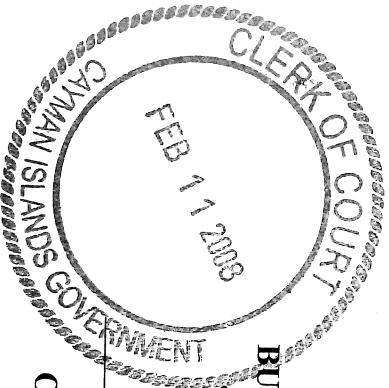
CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND

**BURNELL VANCE HURLSTON
JOYCE AMY HURLSTON**

DEFENDANTS



ORIGINATING SUMMONS



**TO: BURNELL VANCE HURLSTON whose address for service is PO Box
1428, Grand Cayman KY1-1110.**

**AND TO: JOYCE AMY HURLSTON whose address for service is PO Box 1428,
Grand Cayman KY1-1110.**

**LET THE DEFENDANTS, Burnell Vance Hurlston and Joyce Amy Hurlston, 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 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 20th June 1996 the Defendants as Chargors and the Plaintiff as the Chargee
executed a Legal Charge ("the Charge") in respect of the property registered at the
Lands and Survey Department as George Town South, Block 14D, Parcel 332
("Parcel 332") and a Second Charge ("the Second Charge") in respect of the
property registered at the Lands and Survey Department as George Town South,
Block 14E, Parcel 489 (which was combined into number Block 14E, Parcel 706

2. and changed to Block 14E, Parcel 721 in or about December 2001 (“Parcel 721”) together with Variations of Collateral First Legal Charge (“the Collateral Charges”) in respect of the property registered at the Lands and Survey Department as George Town South, Block 14E, Parcel 721 (“Parcel 721”).
2. On 20th June 1996 the Defendants as Chargors and British American Bank Ltd (“British American”) transferred the Charge in respect of the property registered at the Lands and Survey Department as George Town South, Block 14E, Parcel 508 (which was combined into number Block 14E, Parcel 706 and changed to Block 14E, Parcel 721 in or about December 2001 (“Parcel 721”) to Cayman National Bank Ltd (“the Plaintiff”).
3. The Charges and the Collateral Charges provided, inter alia, that:
 - 2.1 The Chargee would lend and the Chargors would borrow the principal sums of:
 - 2.1.a Four Hundred and Eight Thousand CI Dollars (CI\$408,000.00) which was to be secured as a Charge on Parcel 332 and a Collateral Charge on Parcel 721.
 - 2.1.b Seventy Five Thousand CI Dollars (CI\$75,000.00) which was to be secured as a Third Legal Charge on Parcel 721.
 - 2.2 Interest on the principal sums would accrue at the rate of 2.00% per annum above the Chargee’s Prime Lending Rate for Cayman Islands Dollars and subject to variation by the Chargee.
4. In or about March 1999 the Defendants applied for, and were granted a further loan, in the sum of CI\$51,000.00 which increased the previous loan made to the Defendants, giving a total amount of borrowing of CI\$459,000.00. This borrowing was to be secured by a Variation of Charge registered against Parcel 332 and dated 19th March 1999 and as a Collateral Charge to Parcel 721.
5. On 18th April 2005 the Plaintiff as Chargee and the Defendants as Chargors executed a further Variation of the Legal Charge in respect of Parcel 332, and as a Variation of the Collateral First Legal Charge registered against Parcel 721 which provided that:
 - 5.1 The principal sum would be increased from CI\$372,564.00 by CI\$133,000.00 to CI\$505,564.00.
 - 5.2 Interest on that sum would accrue at the rate of 2.25% above the Cayman Islands Dollar Prime Rate.

6. In or about August 2005 the Defendants applied to the Plaintiff for a loan in the sum of CI\$20,000.00 which, together with the balance of previous loans made to the Defendants, gave a total amount of borrowing of CI\$509,306.00. This borrowing was to be secured by a further Variation of the Legal Charge registered against Parcel 332, and as a Variation of the Collateral First Legal Charge registered against Parcel 721.
7. On or about 18th August 2005 the Plaintiff as Chargee and the Defendants as Chargors executed a further Variation of Charge in respect of Parcel 332, and as a Variation of Collateral First Legal Charge registered against Parcel 721 which provided that:
 - 7.1 The principal sum of CI\$505,564.00 would be decreased by CI\$16,258.00 and increased by CI\$20,000.00 to total CI\$509,306.00.
 - 7.2 Interest on that amount would accrue at the rate of 2.25% above the Cayman Islands Dollar Prime Rate.
8. The Legal Charge dated 20th June 1996 also provided that:-

“Section 72 of the above Law (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

 - a) *appoint a receiver of the income of the property; or*
 - b) *sell the property the subject of this security by private treaty as well as by public auction*
9. Since or about September 2007 the Defendants have failed to pay the monthly instalments due in respect of the principal sum loaned and in respect of interest.
10. By letters dated 6th September 2007 and sent by registered post to the Defendants, and signed for as received by the Defendants on 14th September 2007, the Plaintiff duly served notice on the Defendants pursuant to Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sum secured by the Legal Charge, Variation of Charges and Collateral Charges was repayable three months after the service of the Section 64(2) notice and indicating that pursuant to Section 72(1) unless the balance of the sum secured by the Legal Charge, Variation of Charges and Collateral Charges was repaid proceedings would be taken.
11. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.

12. The Defendants have failed to make the required payments in respect of the principal sum outstanding and/or accrued interest as demanded.

13. The Registered Land Law (2004 Revision) provides that once a notice of demand has been served pursuant to Section 64 (2) the total amount of outstanding principal and interest becomes due and payable three months after service of that notice. Therefore the Plaintiff avers that the letters dated 6th September 2007 and served on the Defendants on 14th September 2007 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 14th December 2007.

14. The Registered Land Law (2004 Revision) by virtue of Section 72(1) provides that once there is a default in the payment of the principal, or any other periodical payments and if such default continues for three months, the Chargee may serve on the Chargor notice in writing to pay the money owing, or to perform and observe the terms of the Legal Charge as the case may be.

15. The Registered Land Law (2004 Revision) by virtue of Section 72(2) provides that if a Chargor has not complied, within three months after the date of service of the notice served on him under Section 72(1), the Chargee may sell the Charged Property. Therefore, on or since 14th December 2007 there has accrued a right to the Plaintiff to sell the Properties 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:

16.1 The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.

16.2 That an order for possession be made.

16.3 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 Defendants.

16.4 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 properties.

17. The Plaintiff also seeks an Order that if after any sale of Parcels 332 and 721 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 11 day of February 2008.

Robb x Conolly

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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AND GEORGE TOWN SOUTH, BLOCK 14E, PARCEL 721

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:

BURNELL VANCE HURLSTON
JOYCE AMY HURLSTON

DEFENDANTS

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)

<input type="checkbox"/>	yes	<input type="checkbox"/>	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
Grand Cayman KY1-1104
Ref: MSB/CNB/11169_Hurlston

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 acknowledgement 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.