

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

2011/141

**CAUSE NO. OF 2008**

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

**AND IN THE MATTER OF GEORGE TOWN SOUTH, BLOCK 14E, PARCELS 314H1, 314H2, 314H3, 314H4 AND 314H5**

**BETWEEN:**

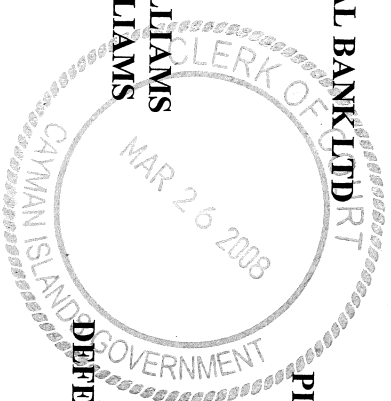
**CAYMAN NATIONAL BANK LTD**

**PLAINTIFF**

**AND**

**ORVILLE WILLIAMS  
LEONIE WILLIAMS**

**DEFENDANTS**



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**ORIGINATING SUMMONS**

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**TO: Orville Williams and Leonie Williams whose address for service is P.O. Box 30961, Grand Cayman KY1-1204**

**LET THE DEFENDANTS, Orville Williams and Leonie Williams, 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. Further to a Legal Charge executed on 30<sup>th</sup> August 2000 on 13<sup>th</sup> May 2004 the Defendants as Chargers and the Plaintiff as the Chargee executed Transfer of Charges ("the Charges") in respect of the properties registered at the Lands and Survey Department as George Town South, Block 14E, Parcels 314H1, 314H2, 314H3, 314H4 and 314H5 ("Parcels 314H1 to 314H5").
2. The Charges provided, inter alia, that:

- 2.1 The Chargee would lend and the Chargors would borrow the principal sums of:
  - (a) Four Hundred and Eight Thousand, Five Hundred CI Dollars (CI\$408,500.00) which was to be secured as a Charge on Parcels 314H1 to 314H5.
3. Subsequently on 2<sup>nd</sup> June 2004 the Defendants as Chargors and the Plaintiff as Chargee executed Variations of the First Legal (Third Party) Charges (“the Variations”) in respect of Parcels 314H1 to 314H5 in consideration of the Chargee granting Summertime Ltd (“the Company”) facilities for loans and/or overdrafts.
4. The Variations provided, inter alia, that:
  - 4.1 The principal sum of Four Hundred and Eight Thousand, Five Hundred CI Dollars (CI\$408,500.00) would be increased to total Seven Hundred and Twenty Five Thousand CI Dollars (CI\$725,000.00), the new principal sum.
  - 4.2 Interest on the new principal sum would accrue at the rate of 2.50% per annum above the Chargee’s Prime Rate for Cayman Islands Dollars and subject to variation by the Chargee.
  - 4.3 The Chargors and/or the Company shall repay the new principal sum on demand together with any interest then due.
  - 4.4 Pending such demand for repayment the Chargors and/or the Company would pay to the Chargee such monthly or other sums as the Chargee shall from time to time specify, which said sums shall be applied by the Chargee first in payment of interest from the date hereof at the rate or rates aforesaid and the balance shall be applied in reduction of the new principal sum.
5. It was specified by the Variations that all other covenants and provisions contained in or subsisting in the relation to the principal deed (“the Charges”) shall be applicable for securing the payment of the new principal sum and any further advances and the interest thereon and for enforcing and defining the rights of the parties and as if the terms herein contained had been comprised in the principal deed.
6. Since or before October 2006 the Defendants have failed to pay the monthly instalments due in respect of the new principal sum loaned and in respect of interest.
7. The Legal Charge provided that :

*“Section 72 of the 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 Chargors 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 Charged Premises; or*

*(b) Sell the Charged Premises by private treaty as well as by public auction; or*

*(c) Foreclose or enter into possession of the Charged Premises; or*

*(d) In the event that the Chargee does appoint a receiver or enters into possession of the Charged Premises, exercise its powers of sale or foreclosure or appointment of a receiver at any time thereafter without further notice”.*

8. By letters dated 12<sup>th</sup> July 2007 and served by personal service on the First Defendant on 21<sup>st</sup> September 2007, and served by personal service on the Second Defendant on 21<sup>st</sup> December 2007, Messrs. Ritch & Conolly, as Attorneys for the Plaintiff, served notices on the Defendants pursuant to the provisions of Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sum secured by the 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 Charges was repaid proceedings would be taken.

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

10. 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 letter dated 12<sup>th</sup> July 2007 and served on the First Defendant on 21<sup>st</sup> September 2007, and served on the Second Defendant on 21<sup>st</sup> December 2007, constitutes such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 21<sup>st</sup> March 2008.

11. 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 Chargors notice in writing to pay the money owing, or to perform and observe the terms of the Charge, as the case may be.

12. 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 21<sup>st</sup> March 2008 there has accrued a right to the Plaintiff to sell the Charged Properties and the Plaintiff seeks an order that it may do so.

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

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

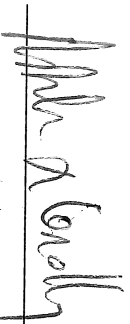
13.2 An Order for possession be made.

13.3 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 Defendant.

13.4 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.

14. The Plaintiff also seeks an Order that if after any sale of Parcels 314H1 to 314H5 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 26<sup>th</sup> day of March 2008.

  
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**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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BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:

ORVILLE WILLIAMS  
LEONIE WILLIAMS

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.

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  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/10552\_Williams

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.