

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

CAUSE NO. *0179* OF 2008

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

**AND IN THE MATTER OF LOWER VALLEY, BLOCK 32C, PARCEL 160**

**BETWEEN:**

**THE CAYMAN ISLANDS CIVIL SERVICE ASSOCIATION  
CO-OPERATIVE CREDIT UNION LIMITED**

**PLAINTIFF**

**AND**

**ANDREA ALESEA MARTINEZ-CALDERON**

**FIRST DEFENDANT**

**AND**

**RAUL ESTEVAN MARTINEZ SNR**

**SECOND DEFENDANT**



**ORIGINATING SUMMONS**



**TO: Andrea Alesea Martinez-Calderon of PO Box 161, Grand Cayman KY1-1501  
and Raul Estevan Martinez Snr of PO Box 1804, Grand Cayman KY1-1109.**

**LET THE DEFENDANTS, Andrea Alesea Martinez-Calderon and Raul Estevan Martinez Snr, 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, PO Box 495, George Town, Grand Cayman KY1-1106.**

**BY THIS SUMMONS** which is issued on the application of the Plaintiff, The Cayman Islands Civil Service Association Co-Operative Credit Union Limited, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (2004 Revision) as follows:-

1. In or about November 2005 the First Defendant, Andrea Alesea Martinez-Calderon, a member of the Plaintiff Credit Union, applied to the Plaintiff for a loan in the sum of CI\$39,695.91 which, together with the balance of previous loans made to her, gave a total amount of borrowing of CI\$92,795.77. This borrowing was to be repaid by 120 monthly instalments of CI\$1,214.00 and a portion of it was to be secured by a Second Charge over the land registered in the

names of the First Defendant and the Second Defendant at the Lands and Survey Department at Lower Valley, Block 32C, Parcel 160 ("Parcel 160").

2. The Property was at all material times registered in the name of the First Defendant and the Second Defendant and on 10<sup>th</sup> November 2005 the Plaintiff as Chargee and the First Defendant and the Second Defendant as Chargors executed a Second Charge in respect of Parcel 160.

3. The Second Charge dated 10<sup>th</sup> November 2005 provided that:-

3.1 The Plaintiff would lend and the First Defendant and the Second Defendant would borrow the principal sum of C1\$39,645.91 ("the Principal Sum").

3.2 Interest on the Principal Sum would accrue at the rate of 9.75% per annum on the reducing balance.

4. The Legal Charge dated 10<sup>th</sup> November 2005 also provided that:

"Section 72 of the Registered Land Law (1995 Revision) shall be varied in respect of this Charge and of any instrument or 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 any interest payable hereunder (as defined by Section 64(2) of the Registered Land Law (1995 Revision) or in the performance or observance of any agreement, expressed or implied herein to

- a. appoint a receiver of the income of the Charged Property; or
- b. sell the Charged Property to private treaty as well as by public auction; or
- c. foreclose or enter into possession of the Charged Property; or
- d. in the event that the Chargee does appoint a receiver or enters into possession of the Charged Property, exercise its powers of sale or foreclosure or appointment of a receiver at any time thereafter without further notice."

5. On and since July 2007 the First Defendant and/or the Second Defendant have failed to pay the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.

6. By letters dated 15<sup>th</sup> October 2007 and served on the First Defendant on 22<sup>nd</sup> October 2007 and served on the Second Defendant on 16<sup>th</sup> November 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 Second Charge was repayable three months after the service of the Section 64(2) notice and indicating that unless the balance of the sum secured by the Second Charge was repaid, or the loan repayments were brought up to date and thereafter the monthly sums due under the Loan Agreement were maintained, proceedings would be taken.

7. The Defendants have not made any payment in respect of the Principal Sum outstanding and/or interest, or any payment.

8. 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. The Plaintiff avers that the letter dated 15<sup>th</sup> October 2007 and served on the First Defendant on 22<sup>nd</sup> October 2007 and served on the Second Defendant on 16<sup>th</sup> November 2007 constitutes such a notice pursuant to Section 64(2) and that the total amount outstanding became due on or after 16<sup>th</sup> February 2008.

9. The Registered Land Law (2004 Revision) by virtue of Section 72(1) provides that once there is a default in the payment of 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 Second Charge, as the case may be.

10. 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 16<sup>th</sup> February 2008 there has accrued a right to the Plaintiff to sell the Charged Property and the Plaintiff seeks an order that it may do so.

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

11.1 an order for possession be made in terms that the Plaintiff be at liberty to sell Parcel 160 either by public auction or private treaty;

11.2 the Plaintiff have leave pursuant to Grand Court Rules Order 45 Rule 3(1) and (2) to issue a Writ of Possession in respect of Parcel 160.

12. The Plaintiff also seeks an order that if after any sale of Parcel 160 there should be any shortfall in the amount due and owing to the Plaintiff, the Plaintiff be at liberty to enter Judgment for the said shortfall, together with interest and costs.

Dated this 10<sup>th</sup> day of April 2008

  
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**RITCH & CONOLLY**  
**Attorneys for the Plaintiff**

If the Defendants do not acknowledge service, judgment 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:

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ANDREA ALESEA MARTINEZ-CALDERON

FIRST DEFENDANT

AND

RAUL ESTEVAN MARTINEZ SNR

SECOND DEFENDANT

ACKNOWLEDGEMENT 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.

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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)

Yes

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 Defendants are 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 or principal office.

*Endorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below*

Ritch & Conolly  
Attorneys-at-Law  
Queensgate House  
PO Box 1994  
113 South Church Street  
George Town  
Grand Cayman KY1-1104  
Cayman Islands

RHM/ 11010/CICSA v Andrea Alesea  
Martinez-Calderon and Raul Estevan  
Martinez Smr

*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, George Town, 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.