



IN THE GRAND COURT OF THE CAYMAN ISLANDS

492  
CAUSE NO. OF 2008

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

AND IN THE MATTER OF GEORGE TOWN EAST, BLOCK 19E, PARCEL 104  
AND GEORGE TOWN CENTRAL, BLOCK 14CJ, PARCEL 159

BETWEEN:

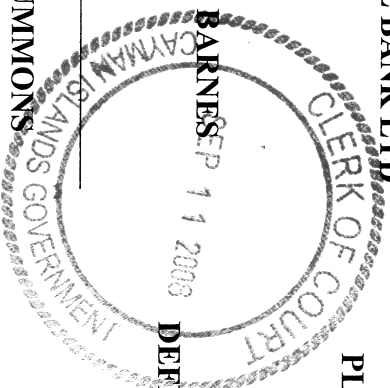
CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND

CHARLES EDWIN BARNES

DEFENDANT



ORIGINATING SUMMONS

TO: CHARLES EDWIN BARNES whose address for service is PO Box  
1721, Grand Cayman KY1-1109.

LET THE DEFENDANT, Charles Edwin Barnes, within 14 days after service of this  
Summons on him, 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 8<sup>th</sup> August 2005 the Defendant as Chargor 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 East, Block 19E, Parcel 104  
("Parcel 104") and a Collateral Charge ("the Collateral Charge") in respect of the  
property registered at the Lands and Survey Department as George Town Central,  
Block 14CJ, Parcel 159 ("Parcel 159").

2. The Charge and the Collateral Charge provided, inter alia, that:

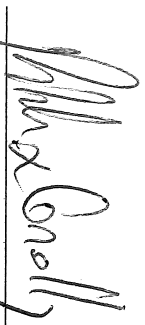
- 2.1 The Chargee would lend and the Chargor would borrow the principal sum of:
  - 2.1.a Nine Hundred Thousand CI Dollars (CI\$900,000.00) which was to be secured as a Charge on Parcel 104 and a Collateral Charge on Parcel 159.
    - 2.1b Interest on the principal sum would accrue at the rate of 2.00% per annum above the Chargee's Prime Lending Rate for Cayman Islands Dollars during construction, and after construction at the rate of 2.25% per annum, and subject to variation by the Chargee.
3. In or about June 2006 the Defendant applied for, and was granted a further loan, in the sum of CI\$300,000.00 which increased the previous loan made to the Defendant, giving a total amount of borrowing of CI\$1,200,000.00. This borrowing was to be secured by a Variation of First Legal Charge registered against Parcel 104 and as a Variation of Collateral First Legal Charge against Parcel 159.
4. On 24<sup>th</sup> October 2007 the Plaintiff as Chargee and the Defendant as Chargor executed a further Variation of First Legal Charge in respect of Parcel 104, and a Variation of Collateral First Legal Charge registered against Parcel 159 which provided that:
  - 4.1 The principal sum would be increased by CI\$345,000.00 to total CI\$1,545,000.00.
  - 4.2 Interest on that sum would accrue at the rate of 2.50% above the Cayman Islands Dollar Prime Rate and subject to variation.
5. The Legal Charge dated 8<sup>th</sup> August 2005 also provided that:-

*“Sections 72 and 75 of the above Law (Registered Land Law) shall be varied in their application to 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 serve on the Chargor notice in writing to pay the moneys owing or due or to perform or observe the agreement as the case may be and further so as to provide that if the Chargor does not comply within one month of the date of service of such notice the Chargee may thereupon appoint a receiver of the income of the Charged Property or sell the Charged Property by private treaty as well as by public auction or by tender or to foreclose on the Charged Property.*”

6. Since from or about April 2008 the Defendant has failed to pay the monthly instalments due in respect of the principal sum loaned and in respect of interest in full.
7. By letters dated 9<sup>th</sup> April 2008, and signed for as received by the Defendant on 10<sup>th</sup> April 2008, the Plaintiff duly served notice on the Defendant pursuant to Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sum secured by the Charge and the Collateral Charge 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 and Collateral Charge was repaid proceedings would be taken.
8. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
9. The Defendant has failed to make the required payments in respect 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 letters dated 9<sup>th</sup> April 2008 and served on the Defendants on 10<sup>th</sup> April 2008 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 10<sup>th</sup> July 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 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.
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 10<sup>th</sup> July 2008 there has accrued a right to the Plaintiff to sell the 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:
  - a. The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.

- b. That an order for possession be made.
  - c. The Plaintiff be entitled to sell the properties either by private treaty or public auction in good faith and having regard to the interests of the Defendant.
  - d. The Plaintiff do 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 104 and 159 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<sup>th</sup> day of September 2008.

  
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**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.

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CAUSE NO. OF 2008

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

AND IN THE MATTER OF GEORGE TOWN EAST, BLOCK 19E, PARCEL 104  
AND GEORGE TOWN CENTRAL, BLOCK 14C1, PARCEL 159

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:

CHARLES EDWIN BARNES

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.

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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 plaintiffs Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Messrs. Ritch & Conolly  
Queensgate House  
113 South Church Street  
PO Box 1994  
Grand Cayman KY1-1104  
  
Ref: MSB/CNB/11426\_Barnes

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.