

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁶⁰⁰⁶⁰ OF 2009

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

AND IN THE MATTER OF BREAKERS, BLOCK 55A, PARCEL 167

BETWEEN:



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



PLAINTIFF

AND

KAYNELL CHOLLETTE

FIRST DEFENDANT

AND

CHARLES CHOLLETTE

SECOND DEFENDANT

ORIGINATING SUMMONS

TO: Kaynell Chollette and Charles Chollette of PO Box 381, Grand Cayman KY1-1109

LET THE DEFENDANTS, Kaynell Chollette and Charles Chollette, 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 July 2005 the First Defendant, Kaynell Chollette, a member of the Plaintiff Credit Union, applied to the Plaintiff for a loan in the sum of CI\$6,000.00 which, together with the balance of previous loans made to her gave a balance due of CI\$39,500.00. This borrowing was to be repaid by monthly instalments of CI\$604.00 and was to be secured by a Variation of Charge over the property

registered in the name of the First Defendant and the Second Defendant at the Lands and Survey Department as Breakers, Block 55A, Parcel 167 ("Parcel 167").

2. Parcel 167 was at all material times registered in the names of the First Defendant and the Second Defendant and on 20th April 2006 the Plaintiff as Chargee and the First Defendant and the Second Defendant as Chargors executed a Variation of Charge in respect of Parcel 167.

3. The Variation of Charge dated 20th April 2006 provided that:-

3.1 The Principal Sum loaned to the Defendants would be increased to CI\$69,000.00 ("the Principal Sum").

3.2 Interest on the Principal Sum would accrue at the rate of 0.81% per month on the reducing balance.

4. The Variation of Charge dated 20th April 2006 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."

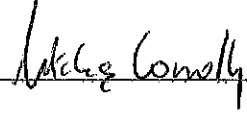
5. On or since August 2006 the First Defendant and the Second Defendant have failed to make the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.

6. By letters dated 26th September 2008 and served on the First Defendant on 1st October 2008 and on the Second Defendant on 22nd October 2008, Messrs. Ritch & Conolly, as Attorneys for the Plaintiff, served notice on the First Defendant and on the Second Defendant 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 Variation of Charge was repayable three months after the service of the notices and indicating that unless the balance of the sum

secured by the Variation of 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 issued.

7. Since service of the section 64(2) and section 72(1) notices were made the Defendants have not made any payments in respect of the Principal Sum outstanding and/or interest.
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. Therefore, the Plaintiff avers that the letters dated 26th September 2008 and served on the First Defendant on 1st October 2008 and on the Second Defendant on 22nd October 2008 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on 22nd January 2009.
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 Legal 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 and since 22nd January 2009, there has accrued a right to the Plaintiff to sell the 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 167 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. 167.
12. The Plaintiff also seeks an order that if after any sale of the Parcel 167 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 3rd day of February 2009



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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FIRST DEFENDANT

AND

CHARLES CHOLLETTE

SECOND 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.

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:

Please complete overleaf

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.

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: RJH/10686/CICSA/Chollette,
Kaynell and Charles

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]