

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>0062</sup> OF 2009

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

AND IN THE MATTER OF WEST BAY NORTH WEST, BLOCK 4D, PARCEL 414

BETWEEN:

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

PLAINTIFF

AND

ELIZABETH THORNTON

DEFENDANT



ORIGINATING SUMMONS

**TO:** Elizabeth Thornton of PO Box 501, Grand Cayman KY1-1302, Cayman Islands.

LET THE DEFENDANT, Elizabeth Thornton, within 14 days after service of this Summons on her, 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 January 2007 the Defendant, Elizabeth Thornton, a member of the Plaintiff Credit Union, applied to the Plaintiff for a loan in the sum of CI\$12,000.00 and part of this loan was to be secured by a Second Charge over the land registered in her name at the Lands and Survey Department as West Bay North West, Block 4D, Parcel 414 ("Parcel 414").
2. Parcel 414 was at all material times registered in the name of the Defendant and on 31<sup>st</sup> January 2007, the Plaintiff as Chargee and the Defendant as Chargor executed a Second Charge in respect of Parcel 414.
3. The Second Charge dated 31<sup>st</sup> January 2007 provided that:-

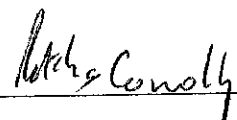
- 3.1 The Plaintiff would lend and the Defendant would borrow the principal sum of CI\$10,500.00 ("the Principal Sum").
- 3.2 Interest on the Principal Sum would accrue at the rate of 9.75% per annum on the reducing balance.
4. The Second Charge dated 31<sup>st</sup> January 2007 also provided that:
- "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 August 2007, the Defendant has failed to pay the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.
6. By letters dated 12<sup>th</sup> September 2008 and served on the Defendant on 23<sup>rd</sup> September 2008 Messrs. Ritch & Conolly, as Attorneys for the Plaintiff, served notices on the 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 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 Defendant has 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. The Plaintiff avers that the letters dated 12<sup>th</sup> September 2008 and served

on the Defendant on 23<sup>rd</sup> September 2008 constituted such a notice pursuant to Section 64(2) and that the total amount outstanding became due on or after 23<sup>rd</sup> December 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 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 23<sup>rd</sup> December 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 414 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 414.
12. The Plaintiff also seeks an order that if after any sale of the Parcel 414 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.

If the Defendant does not acknowledge service, such judgment may be given or order may against or in relation to him as the Court may think just and expedient.

Dated this 3<sup>rd</sup> day of February 2009

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

**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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**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

RHJ/ 11445/CICSA v Elizabeth  
Thornton

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

