

IN THE GRAND COURT OF THE CAYMAN ISLANDS

99  
CAUSE NO. OF 2009

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

AND IN THE MATTER OF WEST BAY NORTH WEST, BLOCK 1D, PARCEL 58

BETWEEN:

NATIONAL BUILDING SOCIETY  
OF THE CAYMAN ISLANDS

PLAINTIFF

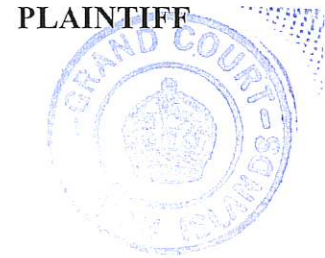
AND:



(1) EDGAR QUESADA

AND

(2) CAREY QUESADA



DEFENDANTS

ORIGINATING SUMMONS

**TO:** **Edgar Quesada**, of P.O. Box 30209, Newlands, Grand Cayman, KY1-1209 and  
**Carey Quesada**, of P.O. Box 30209, Newlands, Grand Cayman, KY1-1209

**LET THE DEFENDANTS**, Edgar Quesada and Carey Quesada, 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, National Building Society of Cayman, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (2004 Revision) as follows: -

1. In or about March 2007, the Defendants applied to the Plaintiff for a loan in the sum of CI\$380,000.00 to repay the Credit Union and to buy out the equity of Henry and Vivia Ebanks in their residence in West Bay being Registration Section West Bay North West, Block 1D, Parcel 58. This borrowing was to be repaid over 20 years by 240 monthly instalments of CI\$4,184.13 and was to be secured, inter alia, by a Legal Charge over the property registered at the Lands and Survey Department in the names of Edgar Quesada and Carey Quesada, that is, the above named Defendants, as West Bay North West, Block 1D, Parcel 58 ("the Property").

2. The Property was at all material times registered in the names of the Defendants and on 27 April 2007, the Plaintiff as Chargee and the Defendants as Chargors executed a Legal Charge ("the Legal Charge") in respect of the Property.

3. The Legal Charge dated 27 April 2007 provided that:-

3.1 The Plaintiff would lend the principal sum of CI\$380,000.00 ("the Principal Sum").

3.2 Interest on the Principal Sum would be variable being linked to the Chargee's base rate plus 3.75% that is 12% per annum at the date of the legal charge.

4. The Legal Charge dated 27 April 2007 also provided that :

*"Section 72 and Sub-section 6 of Section 73 of the above 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 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 money owing or to perform and 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 without further notice either*

(a) *appoint a receiver of the income of the property the subject of this security; or*

(b) *sell the property the subject of this security by 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 enter into possession of the charge property, exercise its power of sale or foreclosure or appointment of a receiver at any time thereafter without further notice; or*

(e) *so as to provide that wherever there is a reference to "five per cent" this shall be read as "ten per cent".*

5. On and since 2 September 2008, the Defendants have failed to make the monthly instalments due in respect of the Principal Sum loaned and in respect of interest.

6. In November 2007, the Defendants applied for an increase in the mortgage amount in the sum of CI\$10,000.00 (the "Additional Principal Sum"). By a letter dated 26 November 2007, the Plaintiff extended a loan to the Defendants of CI\$10,000.00 as a separate loan repayable over a term of 5 years with interest at 3.75% above US prime rate and

repayable at the rate of CI\$218.67 per month. The Defendants indicated acceptance of the terms by signing two copies of the offer letter.

7. On and since 2 October 2008, the Defendants have failed to make the monthly instalments due in respect of the Additional Principal Sum loaned and in respect of interest.
8. In or around March 2008, the Defendants applied to the Plaintiff for mortgage financing to assist with the purchase of a residence in Phelan Close, George Town, Grand Cayman. By way of collateral to this mortgage financing, the Plaintiff registered a second mortgage on the property. This second charge was registered as a "Third Charge" against the property in the sum of CI\$64,780.00.
9. The Third Legal Charge dated 28 March 2008 also provided that :

*"Section 72 and Sub-section 6 of Section 73 of the above 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 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 money owing or to perform and 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 without further notice either*

- (a) *appoint a receiver of the income of the property the subject of this security; or*
- (b) *sell the property the subject of this security by 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 enter into possession of the charge property, exercise its power of sale or foreclosure or appointment of a receiver at any time thereafter without further notice; or*
- (e) *so as to provide that wherever there is a reference to "five per cent" this shall be read as "ten per cent".*

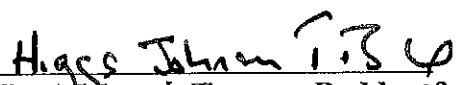
10. On and since 2 June 2008, the Defendants have failed to make the monthly instalments due in respect of the Principal Sum loaned under the Third Charge and in respect of interest.
11. By letters dated 4 November 2008 and served on the Defendants on 6 November 2008, Messrs Truman Bodden & Company [now known as Higgs Johnson Truman Bodden & Co.], as Attorneys for the Plaintiff, served notice 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 Legal Charge was repayable three months after the service of the notices.

12. Since service of the section 64(2) and section 72(1) notices neither of the Defendants have made any payments in respect of the Principal Sum and the Additional Principal Sum under the Third Charge outstanding and/or interest.
13. 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 (3) months after service of that Notice. The Plaintiff avers that the letters to the Defendants dated 4 November 2008 constitute such Notices pursuant to Section 64(2).
14. 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 (3) 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.
15. The Registered Land Law (2004 Revision) by virtue of Section 72(2) provides that if a Chargor has not complied, within three (3) months after the date of service of the Notice of Demand served on him under Section 72(1), the Chargee may sell the Charged Property. Therefore, on and since 6 February 2009, that is three (3) months after the service of the Notices on the Second Defendant, there has accrued a right to the Plaintiff to sell the Charged Property and the Plaintiff seeks an order that it may do so.
16. In the premises, the Plaintiff seeks an order pursuant to the provisions of the Registered Land Law (2004 Revision) that:-
  - 12.1 an order for possession be made;
  - 12.2 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 the Property.
17. The Plaintiff also seeks an order that if after any sale of the Property 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 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.

Dated this 2<sup>nd</sup> day of March 2009

  
Higgs Johnson Truman Bodden & Co.  
Attorneys-at-Law for the Plaintiff

**NOTE:** This Summons may not be served later than 4 calendar months beginning with the date unless renewed by Order of the Court.

**IMPORTANT**

Directions for acknowledgement of service are given with the accompanying forms.

**THIS ORIGINATING SUMMONS** has been issued by Higgs Johnson, Tuman, Boden & Co. whose address for service is 5<sup>th</sup> Floor Anderson Square Building, Shedden Road, George Town, P.O. Box 800, Grand Cayman, KY1-1103, CAYMAN ISLANDS.

**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 495G, George Town, Grand Cayman.

**Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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 acknowledgement 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 named stated on the Writ of 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.

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AND IN THE MATTER OF WEST BAY NORTH WEST, BLOCK 1D, PARCEL 58

BETWEEN:

NATIONAL BUILDING SOCIETY  
OF THE CAYMAN ISLANDS

PLAINTIFF

AND:

(1) EDGAR QUESADA

AND

(2) CAREY QUESADA

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.** Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ of Summons is being acknowledged.
2. State whether the Defendant intends to contest or otherwise participate in the proceedings (*tick appropriate box*)  
 Yes                       No
3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)  
 Yes                       No

Service of the Writ of 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 the 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.

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

Higgs Johnson Truman Bodden  
& Co  
PO Box 866  
Anderson Square Building  
George Town  
Grand Cayman KY1-1103  
Ref: PSB/501683-1

*Indorsement 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 indorsement]