

IN THE GRAND COURT OF THE CAYMAN ISLANDS



166  
CAUSE NO. OF 2009

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

AND IN THE MATTER OF SOUTH SOUND, BLOCK 15B, PARCEL 55

BETWEEN:

CAYMAN ISLANDS DEVELOPMENT BANK



AND

OLNEY DEAN THOMPSON  
ARTHUR OLNEY THOMPSON  
SHELIA JOYCE THOMPSON

DEFENDANTS

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ORIGINATING SUMMONS

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**TO:** OLNEY DEAN THOMPSON, ARTHUR OLNEY THOMPSON and SHELIA JOYCE THOMPSON, whose address for service is PO Box 539, Grand Cayman KY1-1107.

LET THE DEFENDANTS, OLNEY DEAN THOMPSON, ARTHUR OLNEY THOMPSON and SHELIA JOYCE THOMPSON, 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, Cayman Islands Development Bank., PO Box 2576, 36B Dr. Roy's Drive, George Town, Grand Cayman KY1-1103, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Law (2004 Revision) as follows:-

1. On 8<sup>th</sup> October 2003 the Defendants as Chargors and the Plaintiff as the Chargee executed a First Charge ("the Charge") in respect of the property registered at the Lands and Survey Department as South Sound, Block 15B, Parcel 55 ("Parcel 55")

in consideration of a business loan granted to Island Styles Rentals (2004) Ltd trading as Island Styles Rentals.

2. The Charge provided, inter alia, that:
  - 2.1 The Chargee would lend and the Chargors would borrow the principal sum of Ninety Seven Thousand CI Dollars (CI\$97,000.00) which was to be secured as a Charge on Parcel 55.
  - 2.2 Interest on the principal sum would accrue at the rate of 9.50% per annum.
3. The Legal Charge dated 8<sup>th</sup> October 2003 also provided that:-

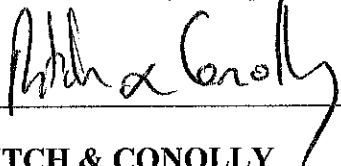
*“Section 72 of the above Law shall be varied in respect of this Charge and of any instrument or variation executed pursuant to this Charge so as to entitle the Chargee immediately upon default by the Chargors in payment of the principal sum or of any interest payable hereunder or in the performance or observance of any agreement expressed or implied herein to serve on the Borrower 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 Borrower 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 Charged property;*
  - (b) sell the Charged Property 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 Charged Property, exercise its powers of sale or foreclosure or appointment of a receiver at any time thereafter without further notice.*
4. Subsequently on 25<sup>th</sup> July 2005 the Chargors and the Chargee executed a Variation of First Charge which provided, inter alia, that the principal sum be decreased by CI\$21,000.00 to CI\$76,000.00 and increased by CI\$204,000.00 to CI\$280,000.00 with the interest rate being CI Prime plus 4.0% per annum.
5. Subsequently on 21<sup>st</sup> March 2006 the Chargors and the Chargee executed a further Variation of First Charge which provided, inter alia, that the principal sum of CI\$280,000.00 be increased by CI\$30,000.00 to total CI\$310,000.00 with the interest rate being CI Prime plus 4.0% per annum.

6. Finally on 2<sup>nd</sup> May 2006 the Chargors and the Chargee executed a further Variation of First Charge which provided, inter alia, that the principal sum of CI\$310,000.00 be increased by CI\$40,000.00 to total CI\$350,000.00 with the interest rate being CI Prime plus 4.0% per annum.
7. Since or from about January 2008 the Defendants have failed to pay the full amounts of the monthly instalments due in respect of the principal sum loaned and in respect of interest.
8. By letters dated 5<sup>th</sup> January 2009, and signed for as received by the First Defendant on 6<sup>th</sup> January 2009, letters dated 18<sup>th</sup> November 2008 and signed for as received by the Second Defendant on 2<sup>nd</sup> December 2008 and letters dated 18<sup>th</sup> November 2008 and signed for as received by the Third Defendant on 3<sup>rd</sup> December 2008, the Plaintiff duly served notices on the Defendants pursuant to Section 64(2) and Section 72(1) of the Registered Land Law (2004 Revision) indicating that the sum secured by the 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 Charge was repaid proceedings would be taken.
9. The notice demanded payment of the balance of the principal sum outstanding and accrued interest.
10. The Defendants have failed to make the required payments in respect of the principal sum outstanding and/or accrued interest as demanded.
11. 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 5<sup>th</sup> January 2009 and 18<sup>th</sup> November 2008 and served on the Defendants constituted such notices pursuant to Section 64(2) and that the total amount outstanding became due on 6<sup>th</sup> April 2009.
12. 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.
13. 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 6<sup>th</sup> April 2009 there has accrued a right to the Plaintiff to sell the Property and the Plaintiff seeks an order that it may do so.

14. In the premises, the Plaintiff seeks an Order pursuant to the provisions of the Registered Land Law (2004 Revision) that:
- 11.1 The variations in the Legal Charge referring to the provisions of Section 72 of the Registered Land Law (2004 Revision) be allowed.
  - 11.2 That an order for possession be made.
  - 11.3 The Plaintiff be entitled to sell the property either by private treaty or public auction in good faith and having regard to the interests of the Defendants.
  - 11.4 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 property.
15. The Plaintiff also seeks an Order that if after any sale of Parcel 55 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 7<sup>th</sup> day of April 2009

  
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**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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**AND IN THE MATTER OF SOUTH SOUND, BLOCK 15B, PARCEL 55**

**BETWEEN:**

**CAYMAN ISLANDS DEVELOPMENT BANK**

**PLAINTIFF**

**AND:**

**OLNEY DEAN THOMPSON  
ARTHUR OLNEY THOMPSON  
SHELIA JOYCE THOMPSON**

**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.**

- 
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:

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 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:  
MSB/CIDB/11522\_IslandStyles

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 endorsement]