



THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2023

IN THE MATTER OF THE REGISTERED LAND ACT (REVISED)

BETWEEN:

WOODWARD LEEMON TERRY

Plaintiff

AND:

SCHOLARS RETREAT LTD.

Defendant

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**ORIGINATING SUMMONS**

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TO: Scholars Retreat Ltd., PO Box 2222, Grand Cayman KY1-1105, Cayman Islands

LET THE DEFENDANT, Scholars Retreat Ltd., 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, Woodward Leemon Terry, the Plaintiff seeks relief pursuant to the provisions of the Registered Land Act (Revised) as follows:

1. On or before 10 May 2021, the Defendant borrowed US\$400,000.00 from the Plaintiff, at a rate of 5% per annum (the "Principal Sum").
2. The Principal Sum was to be repaid on or before 1 July 2021 from the proceeds derived from the sale of 2 properties owned by the Defendant, namely Registration Section: West Bay North West, Block 4D, Parcel 384H19 ("Parcel 19"), and Registration Section: West Bay North West, Block 4D, Parcel 384H20 ("Parcel 20").
3. To secure the loan of the Principal Sum, a First Legal Demand Charge was registered over Parcel 19 (the "Charge") in favour of the Plaintiff as Chargee, with

a spread charge over Parcel 20 (the "Spread Charge") (the Charge and Spread Charge together, the "Charges").

4. The Charges, inter alia, provide that:
  - a. The Plaintiff would lend, and the Defendant would borrow, the Principal Sum of US\$400,000.00.
  - b. Interest on the Principal Sum would accrue at the rate of 5% per annum from the date of the Charges until repaid.
  
5. The Schedules to the Charges provide, inter alia, that:
  - a. The Principal Sum shall be paid first out of the proceeds arising from the sale of Parcel 19 and Parcel 20.
  - b. The Charges constitute and will be a continuing security to the Plaintiff and will avail the Plaintiff in respect of all the Defendant's present and future indebtedness on any accounts whatever. It is in addition to any security which would be implied or arise in the ordinary course from the business relations between the Defendant and the Plaintiff and will be deemed to continue despite any payments which the Defendant makes or any settlement of account or any other thing whatever.
  - c. Where the Defendant does not discharge all money and liabilities in full in accordance with the Charges, or is in breach of any of its covenants or obligations in the Charges whether express or implied, the whole of the Principal Sum and all interest on it and any other sums owing or payable under the Charges will become immediately due and payable.

- d. The Charges provide that Sections 72 to 75 of the Registered Land Act (Revised) (the “Act”) will apply subject to the following modifications:
- i all remedies available to the Plaintiff including the power of sale and appointing a receiver will immediately arise without further notice;
  - ii in addition to the remedies that Section 72 of the Act provides, the Plaintiff may foreclose or enter into possession of the charged premises or both in the same circumstances as would allow the Plaintiff to exercise its power of sale or appoint a receiver;
  - iii if the Plaintiff appoints a receiver of the charged premises, the Plaintiff may exercise its power of sale or foreclosure or entry into possession at any time afterwards without further notice, and if the Plaintiff enters into possession of the charged premises without first appointing a receiver the Plaintiff may exercise its power of sale or foreclosure or appointing a receiver at any time afterwards without further notice;
  - iv when the power of sale arises, the Plaintiff may sell the charged premises by private contract as well as by public auction;
  - v in addition to those set out in the Act or any other act relating to receivers, a receiver that the Plaintiff appoints will have such powers as the Plaintiff specifies (including the right to sell the charged premises and carry on the Defendant’s business) for properly enforcing and protecting the Plaintiff’s rights under the Charges;
  - vi the receiver's remuneration may be in such amount or on such basis, whether commission hourly rate or otherwise, as the Plaintiff agrees with the receiver.

6. On 31 May 2021, the Defendant entered a Promissory Note with the Plaintiff (the “Promissory Note”).
7. The Promissory Note increased the amount borrowed by the Defendant by US\$14,450.00, bringing the totalled amount owed, as at 31 May 2021, to US\$414,450.00.
8. The Promissory Note provided, inter alia, that:
  - a. The Defendant promise to pay the Plaintiff his personal representatives, nominees and/or assigns the sum of US\$414,450.00 (the “The New Principal Sum”) with interest thereon at the rate of 5% per annum (the “Interest”) from June 1, 2021, until repaid.
  - b. The New Principal Sum and Interest shall be repaid in full by the Defendant on, or before July 1, 2021, failing which, such New Principal Sum and Interest shall be paid to the Plaintiff from the first disbursements arising out of the sale of Parcel 19 and Parcel 20.
  - c. A First Legal Demand Charge has been registered over Parcel 19, spread over Parcel 20 in favour of the Plaintiff as Chargee, to secure the repayment of the New Principal Sum.
  - d. The Promissory Note shall become immediately due and payable upon:
    - i. the Defendant’s failure to pay when due any payment of the New Principal Sum, Interest or expenses due hereunder;
    - ii. failure in the performance or observance of any of the terms or conditions of the Charges, or any mortgage, deed of trust, guaranty, indemnity, security agreement, or other agreement or other

agreement securing, guaranteeing, or otherwise pertaining to the Promissory Note, after giving effect to any applicable curative period which may be contained therein;

- iii. default in the payment, or performance of any other liability or obligation of the Defendant to the Plaintiff, or any other holder of this Promissory Note, whether now existing, or hereafter arising, after giving effect to any applicable curative period.
  - e. If this Promissory Note or any instalment of principal or interest is not paid when due, whether at maturity or by acceleration, the Defendant promises to pay all costs of collection, including without limitation, actual attorneys' fees, and all expenses in connection with the protection or realization of the collateral securing the Promissory Note or the enforcement of any guaranty hereof incurred by the Plaintiff on account of such collection, whether or not suit is filed hereon or thereon; such costs and expenses shall include, without limitation, all costs, expenses and attorneys' fees actually incurred by the Plaintiff hereof in connection with any insolvency, bankruptcy, arrangement or other similar proceedings involving the Defendant, or involving any chargor, endorser or guarantor hereof, which in any way affects the exercise of the Plaintiff's rights and remedies under the Promissory Note, or under the Charge, or the Spread Charge, or under any mortgage, deed of trust, security agreement, guaranty or other agreement securing or pertaining to the Promissory Note.
9. The Defendant failed to pay the Principal Sum pursuant to the Charges.
  10. The Defendant failed to pay the New Principal Sum on or before 1 July 2021 pursuant to the Promissory Note.

11. The Defendant has not made any payment toward the debt owed to the Plaintiff.
12. Notices were served on the Defendant pursuant to the provisions of Section 64(2) and Section 72 of the Act (the "Notices") indicating that the sum secured by the Charges were repayable 3 months after the service of the Section 64(2) notice, and indicating that pursuant to Section 72, unless the balance of the sum secured by the Charges were repaid, proceedings would commence.
13. Section 153 (c) of the Act provides that a notice shall be deemed to have been served if sent by registered post to the last known postal address in the Islands or elsewhere and a receipt purporting to have been signed by him has been received in return.
14. The Notices were sent to the Defendant by registered mail on 1 March 2023, but a receipt signed by the Defendant was not returned.
15. Section 153 (d) of the Registered Land Act (Revised) provides that a notice shall be deemed to have been served by displaying the notice in a prominent place on the land affected and by publishing the Notices in 3 consecutive issues of the Cayman Islands Gazette.
16. The Notices were posted on a prominent place of Parcel 19 and Parcel 20, and published in issues 10/2023, 11/2023, and 12/2023 of the Cayman Islands Gazette.
17. The Defendant failed to make the required payment in respect of the principal sum outstanding and/or interest after service of the Notices.
18. The Act 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 1 month, the Chargee may serve on the Chargor notice in writing to pay the

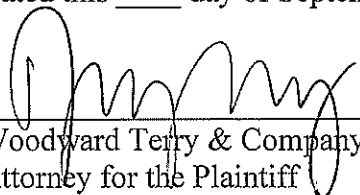
money owing, or to perform and observe the terms of the Legal Charge, as the case may be.

19. The Act by virtue of Section 72(2) provides that if a Chargor has not complied within 3 months after the date of service, the Chargee may sell the Charged Property.
20. As requisite time has passed pursuant to Sections 72(1) and (2) the Plaintiff, in his capacity as Chargee, accrued the right to sell Parcel 19 and Parcel 20.
21. Vacant possession of Parcel 19 and Parcel 20 is now sought in order that the properties may be sold either by public auction or by private treaty.
22. As at 14 September 2023, the Defendant owed the Plaintiff US\$461,969.87 in principal and interest.
23. The Land Registers for Parcel 19 and Parcel 20 both have the following restrictions and cautions affecting the Land Registers:
  - a. A restriction that no dispositions occur until a certificate of occupancy is received from Planning, and
  - b. A Caution in favour of Joseph Bonsu-Akoto, 37 Aurora Drive, West Bay, PO Box 1333, Grand Cayman KY1-1108.
24. Section 134 (2) of the Act provides that upon the application of a proprietor affected by a restriction, and upon notice thereof to the Registrar, the court may order a restriction be removed or varied, or make such other order as it thinks fit, and may make an order as to costs.

25. The Plaintiff does not know whether Certificates of Occupancy from the Planning Department have been issued for Parcel 19 and Parcel 20.
26. If Certificates of Occupancy have not been obtained, the restrictions should be removed from the Land Registers of Parcel 19 and Parcel 20 so that the properties may be sold.
27. In relation to the Caution, Section 129 (3) of the Act provides that on registration of a transfer by a chargee in exercise of his powers of sale, the Registrar of Lands shall remove any caution which purports to prohibit any dealing by the chargor and which was registered after the charge by virtue of which the transfer has been effected.
28. Pursuant to Section 129 (3) of the Act, the Cautions affecting Parcel 19 and Parcel 20 should be removed by the Registrar of Lands upon registration of the Plaintiff's transfer to purchasers.

29. The Plaintiff now seeks:
- a. an Order for Possession of Parcel 19 and Parcel 20,
  - b. leave pursuant to Grand Court Rules O.45, r.3(1) and (2) to issue Writs of Possession,
  - c. removal of any Caution, Restriction or Incumbrance from the Land Registers of Parcel 19 and Parcel 20 that would prevent the transfer of the properties to purchasers, and
  - d. sale of Parcel 19 and Parcel 20.

Dated this 18 day of September, 2023

  
Woodward Terry & Company  
Attorney 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.

This Originating Summons was filed by Woodward Terry & Company, Attorneys-at-Law, for and on behalf of the plaintiff whose address for service is PO Box 822, Suite # 10, 2<sup>nd</sup> Floor, Jack & Jill Building, 19 Fort Street, George Town, Grand Cayman, Cayman Islands, British West Indies.

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IN THE MATTER OF THE REGISTERED LAND ACT (REVISED)

BETWEEN:

WOODWARD LEEMON TERRY

Plaintiff

AND:

SCHOLARS RETREAT LTD.

Defendant

**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.

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 the proceedings 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 or 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.

Woodward Terry & Company  
Attorneys-at-Law  
PO Box 822, Suite # 10, 2<sup>nd</sup> Floor  
Jack & Jill Building, 19 Fort Street  
George Town, Grand Cayman  
Cayman Islands

Indorsement 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, George Town, 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.