

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ⁵⁰⁵ OF 2009

BETWEEN:

BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

JOHN ALLIGER

Defendant

WRIT OF SUMMONS

TO: John Alliger
P.O. Box 822
Grand Cayman KY1-1103
Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court office, PO Box 495, George Town, Grand Cayman KY1-1106, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the

proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 13th day of October 2009

NOTE - This Writ may not be served later than 4 calendar months (*or, if leave is required to effect service out of the jurisdiction, 6 months*) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands. The Plaintiff (also described herein as the "Bank") was formerly known as Bank of Butterfield International (Cayman) Ltd. The Plaintiff's address for service is care of its attorneys, Appleby, PO Box 190, Grand Cayman, KY1-1104, Cayman Islands.
2. The Defendant is an individual resident in the Cayman Islands with a mailing address of P.O. Box 822, Grand Cayman, KY1-1103, Cayman Islands.
3. On or about 4 July 2002, the Defendant signed a Guarantee in favour of the Plaintiff (the "**Guarantee**") in relation to a credit facility advanced to Sand and Sea Development Ltd. (the "**Debtor**"). The terms of the Guarantee were, *inter alia*, as follows:
 - a. The Guarantor unconditionally guarantees on demand to pay to the Bank all monies advanced to or paid on account of the Debtor provided that the total amount recoverable does not exceed US\$1,000,000 with interest and commission thereon, and all costs, charges and expenses and in addition thereto, interest and charges thereon from the date of demand by the Plaintiff;
 - b. This Guarantee shall be additional to any other guarantee or security now or hereafter held from the Guarantor in respect of the obligations and liabilities hereby secured, and the Bank shall not be required to exhaust its recourse against the Debtor or any security it may hold before being entitled to payment hereunder.

- c. This Guarantee shall be a continuing security until determined by three calendar months' notice in writing from the Guarantor or the Personal Representatives of the Guarantor;
 - d. The Bank shall be entitled to have a lien on all securities or other property of the Guarantor held by the Bank whether for safe custody or otherwise. The Bank shall further be entitled (as well before as after demand) to set off against any credit balance in any account of the Guarantor with the Bank (whether current or otherwise or subject to notice or not) the liability of the Guarantor to the Bank;
 - e. The Guarantee shall apply to the ultimate balance owing by the Debtor to the Bank and until such balance has been paid in full the Guarantor shall not be entitled to share in any security held or money received by the Bank on account of that balance or to stand in the place of the Bank in respect of any security or money nor until such balance has been paid in full shall the Guarantor take any step to enforce any right or claim against the Debtor in respect of any monies paid by the Guarantor to the Bank hereunder or have or exercise any rights as surety in competition with the Bank;
 - f. Any demand under the Guarantee shall be made in writing signed by an officer of the Bank and if such demand is sent by post it may be addressed to the Guarantor by name at the address or place of business last known to the Bank and shall be considered as having been duly made;
 - g. That interest and commission would accrue on unpaid balances thereon from the date of demand by the Bank on the Guarantor at the rate payable by the Debtor, namely 3% per annum above the US Dollar Libor rate; and,
 - h. That all costs, charges and expenses including court costs and attorney's fees will be reimbursed by the Defendant if referred to an attorney for collection.
4. The Debtor also granted charges to the Plaintiff securing the sums advanced pursuant to the credit facility which charges (the "Charges") secured the properties described as

Registration Section High Rock, Block 64A, Parcels 27H1, 27H2, 27H3, 27H4, 27H5, 27H6, 27H7, 27H12, 27H13, 27H14, 27H15, 27H16, 27H17.

5. The Plaintiff did advance sums to the Debtor of US\$3,000,000.
6. The Plaintiff made demand on the Defendant, as guarantor, by letter dated 13 July 2009 for payment under the guarantee which demand was delivered to the Defendant in accordance with the terms of the guarantee. The sum demanded was US\$2,749,471.57 (US\$2,403,800.64 principal and US\$345,670.93 interest).
7. In addition to this proceeding, the Plaintiff is enforcing its remedies against the Debtor pursuant to the Charges referred to above and the Registered Land Law in a separate action, namely Cause No. 300 of 2008. As of the date of the commencement of this proceeding, the Plaintiff has obtained an order to sell the charged properties but has not sold properties subject to the order.
8. Notwithstanding a demand for payment made on the Defendant pursuant to guarantee, the Defendant has either failed or neglected to make payment to the Plaintiff of any or all of the demanded sum pursuant to the terms of the Guarantee.
9. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) US\$1,000,000.00 being the principal amount recoverable under the Guarantee;
- b) Pre and post judgment interest from 13 July 2009 at the rate of 3% per annum above the US Dollar LIBOR rate, as amended from time to time, rate in accordance with the terms of the Guarantee;
- c) Alternatively, pre and post judgment interest in accordance with the *Judicature Law (2007 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
- d) Costs on an indemnity basis in accordance with the terms of the Guarantee;

- e) Alternatively, costs on an indemnity basis or standard basis in accordance with the Court Costs Rules 2001; and
- f) Such further and other relief as this Court may deem just.

A handwritten signature in black ink, appearing to read 'Appleby', is written over a horizontal line.

Appleby
Attorneys for the Plaintiff

THIS WRIT was issued by Appleby of Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. WS/00138/717), Attorneys-at Law for the Plaintiff.

INDORSEMENT

The principal amount claimed in respect of the debt is US\$1,000,000.00 plus interest of US\$8,484.65 as of the date of filing. The amount of the filing fees to commence the proceeding is CI\$200.00, plus ad valorem fees of CI\$4,500.00. If, within the time for returning the acknowledgement of service, the defendants pay the plaintiff or its attorneys-at-law the total amount claimed in principal, interest and the costs of issuing the Writ of Summons, further proceedings will be stayed. The money must be paid to the plaintiff or to its attorneys-at-law.

INDORSEMENT REGARDING INTEREST

1. The contractual term upon which interest is claimed is as set out in paragraph 3 (g) above;
2. 3% per annum above the US Dollar LIBOR rate, as amended from time to time;
3. The date from which interest is payable is 13 July 2009;
4. The total interest claimed as at 13 October 2009 is US\$8,484.65; and
5. The amount of interest accruing due each day is US\$91.23.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgement 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, PO BOX 495, GRAND CAYMAN KY1-1106.

2. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words of "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his Defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, but he must, within that time, issue a Summons for a Stay of Execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

Please complete overleaf

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. 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.
3. 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 Writ of Summons*)".
4. 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.
5. 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.
6. 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.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

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CAUSE NO: OF 2009

B E T W E E N:

BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

and

JOHN ALLIGER

Defendant

ACKNOWLEDGMENT OF SERVICE
OF WRIT OF 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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged:
-
2. State whether the Defendant intends to contest 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
-

Service of the Writ is acknowledged accordingly

Date: 2009

Attorneys for Defendant
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 KY1-1104 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.

Appleby
Attorneys-at-Law
Clifton House
75 Fort Street
PO Box 190
George Town
Grand Cayman KY1-1104
Ref: WAS/00138/717

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]