

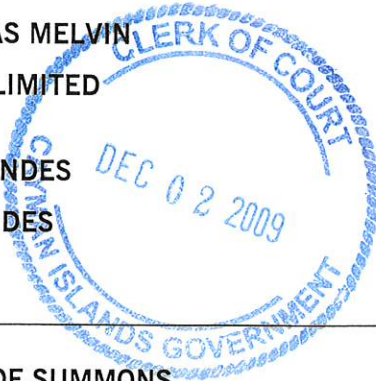
IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO CIV 90609 OF 2009



BETWEEN: (1) DAVID DOUGLAS MELVIN
(2) JUPITERSTAR LIMITED PLAINTIFFS

AND: (1) FERNANDO MENDES
(2) MARGRET MENDES DEFENDANTS



WRIT OF SUMMONS

TO: Mr Fernando Mendes
PO Box 1775
Grand Cayman KY1-1109
Cayman Islands

AND TO: Mrs Margaret Mendes
PO Box 1775
Grand Cayman KY1-1109
Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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 Courts Office, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgment 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 7th day of December 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 the order of the Court.

IMPORTANT

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

Charles Adams Ritchie & Duckworth

**Charles Adams Ritchie & Duckworth
Attorneys-at-Law for the Plaintiffs**

THIS WRIT was issued by Charles Adams Ritchie & Duckworth, Attorneys-at-Law, for and on behalf of the Plaintiffs herein, whose address for service is that of their said Attorneys-at-Law, 2nd Floor Zephyr House, 122 Mary Street, George Town, Grand Cayman, KY1-1107, Cayman Islands

IN THE GRAND COURT OF THE CAYMAN ISLANDS
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BETWEEN: (1) **DAVID DOUGLAS MELVIN**
(2) **JUPITERSTAR LIMITED** **PLAINTIFFS**

AND: (1) **FERNANDO MENDES**
(2) **MARGARET MENDES** **DEFENDANTS**

STATEMENT OF CLAIM

The Parties

1. The 1st Plaintiff is an individual with permanent residency status in the Cayman Islands and who holds a British Overseas Territories Citizenship. The 1st Plaintiff is also a former client of the 1st Defendant.
2. The 2nd Plaintiff is a company registered in the Cayman Islands which is controlled by the 1st Plaintiff.
3. The 1st Defendant is an individual who is ordinarily resident in the Cayman Islands. The 1st Defendant is also the Managing Director of FINAB International Corporate Management Services Ltd, a Company registered in the Cayman Islands ("FINAB") and part of the international 'Banif' Banking Group. FINAB and the 1st Defendant provided corporate management services to the 2nd Plaintiff.
4. The 2nd Defendant is the 1st Defendant's wife who is also ordinarily resident in the Cayman Islands.
5. In or around June 2006 the 1st Defendant contacted the 1st Plaintiff to request that 1st Plaintiff assist him in providing short term financing for the purchase of a home for himself and his wife, the 2nd Defendant. Particularly, the 1st Defendant requested that the 1st Plaintiff provide short

term financing in respect of the Defendants' intended purchase of the property known as Block 15 E, Parcel 245 H7, South Sound, Grand Cayman, Cayman Islands also known as "The Plantation, No. 19" ("the Property"). The 1st Plaintiff proposed that a short term lending be made available to him in order to allow him time to secure financing from a bank in the Cayman Islands. In this regard, the 1st Defendant specifically stated in an email to the 1st Plaintiff of 14 June 2006 that "*All I ask is a financing for 6 months. Please*".

The Agreement

6. By an agreement made on or about June 2006 (hereinafter referred to as "the Agreement") between the Plaintiffs and the Defendants, the Plaintiff agreed to lend to the Defendants the sum of CI\$387,500 ("the Loan").
7. The following were and are terms and conditions of the Agreement:-
 - (i) The Defendants would provide security, by way of registered charge, over the property in respect of the sum advanced by the Loan upon their completing the purchase of the Property;
 - (ii) The Loan would be 'short term' and be repayable in full upon the Defendants securing alternative bank financing within 6 months or otherwise on demand;
 - (iii) The Loan would attract interest at 7.5% per annum.
8. In or around June 2006 the Defendants' attorney, Shiona Creary of Creary & Associates drew up contractual documents which were intended to reflect the Agreement. These contractual documents consisted of, inter alia, the following:-
 - (i) A draft Charge and Schedule thereto to be registered with the Cayman Islands Land Registry ("the Charge");
 - (ii) A personal guarantee to be given by the Defendants ("the Guarantee");

- (iii) A company resolution to be passed by the 2nd Plaintiff to advance the Loan funds.

9. The Charge was drafted to provide for, inter alia, the following:-

- (i) security for the sum of CI\$387,500 (ie the Loan) with interest at a rate of 7.5% fixed for one year, thereafter interest of 1.5% per annum over the prime rate for lending in the Cayman Islands;
- (ii) The "Principal Sum" (ie the Loan) to be repaid *"in monthly instalments of interest on demand over a Five (5) year term and subject to review from time to time as the Chargee's discretion and in accordance with the Schedule annexed hereto together with any interest then due"*;
- (iii) *"The Chargor shall not without the consent of the Chargee sell, lease, charge, let or part with possession of the Charged Property"*.

10. The Guarantee was drafted to provide for, inter alia, the following:

- (i) Promises from Defendants to pay to the 2nd Plaintiff the sum of CI\$387,500 with interest at a rate of 7.5% for one year and 1.5% above the prime rate for lending in the Cayman Islands over a five year period;
- (ii) Immediate repayment of the sums outstanding under the Loan in the event of default in the payment or performance of any liability or obligation of the Defendants, including any default in the payment of any instalment when due or when the 2nd Plaintiff *"in good faith believes that the prospect of payment of this note is impaired"*;
- (iii) An agreement by the Defendants to pay 10% *"of the full amount of the principal at the time this note is placed in the hands of an attorney, in addition to all other amounts owing hereunder"* in the event of the Loan being collected by *"suit"* or *"if*

the principal due under this note has not been paid by the due date, however such maturity be brought about".

11. Pursuant to the Agreement in or around June 2006, the 1st Plaintiff duly advanced the Loan to the Defendants.
12. In breach of the Agreement, the Charge and the Guarantee as hereinbefore set out the Defendants have:-
 - (i) neglected and failed to provide proper security in respect of the Loan by failing to register the Charge with the Cayman Islands Land Registry;
 - (ii) neglected and failed to repay the Loan;
 - (iii) defaulted in monthly payments due under the Charge and Guarantee on numerous occasions;
 - (iv) failed to provide alternate financing in respect of the Property in order to repay the Plaintiffs;
 - (v) subsequently charged and/or let and/or parted with possession of the property;
13. On 31 August 2009 the Defendants acknowledged their liability to the Plaintiffs in the sum of CI\$384,128.00 by executing a charge document (in favour of the 2nd Plaintiff) securing the sum of CI\$384,128.00 against the Property. However, due the fact that the Defendants had by August 2009 given prior security to Fidelity Bank (Cayman) Limited ("Fidelity") in respect of borrowing in the sum of CI\$100,000 plus interest, it will not be possible to register this further charge document (executed in favour of the 2nd Plaintiff) without Fidelity's consent which has not been forthcoming.
14. By reason of the aforesaid facts and matters the Plaintiffs claim repayment of the sum of CI\$384,128 plus interest thereon now due and owing under the Agreement and the Loan.

AND THE PLAINTIFFS CLAIM:-

1. The sum of CI\$384,128;
2. Interest on the sum of CI\$384,128 from 31 August 2009 at a rate of 7.5% per annum pursuant to the Agreement as described in paragraph 7 (iii) herein, continuing at a daily rate of CI\$78.31 or at such other rate as this Honourable Court directs;
3. Further or other relief;
4. Costs.

Charles Adams Ritchie & Duckworth

**CHARLES ADAMS RITCHIE & DUCKWORTH
ATTORNEYS-AT-LAW FOR THE PLAINTIFFS**

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(2) JUPITERSTAR LIMITED **PLAINTIFFS**

AND: (1) FERNANDO MENDES
(2) MARGRET MENDES **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.

[Empty box for Defendant name]

2. State whether the Defendant intends to contest 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 or principal office.

Indorsement by Plaintiff's attorney (or by Plaintiff is suing in person) of his name, address and reference, if any, in the box below.

Charles Adams Ritchie & Duckworth
2nd Floor Zephyr House
122 Mary Street
PO Box 709
George Town
Grand Cayman KY1-1107
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
FOR 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, George Town, PO Box 495, Grand Cayman, KY1-1106, Cayman Islands.

1. Each Defendant (if there is 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.