

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0113 OF 2010

BETWEEN: (1) ERIC GRACE  
(2) BEVERLEY GRACE

Plaintiffs

AND: FIRSTCARIBBEAN INTERNATIONAL BANK (CAYMAN) LIMITED

Defendant



WRIT OF SUMMONS



TO: FirstCaribbean International Bank (Cayman) Limited  
Main Street Branch  
FirstCaribbean House  
25 Main Street  
George Town

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiffs of 11 Allen Grove, Bedfordview, Johannesburg, South Africa, in respect of the claim set out on the next page.

Within fourteen (14) days after the service on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495, Grand Cayman, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this <sup>4<sup>th</sup></sup> of March 2010

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 Acknowledgment of Service are given with accompanying form.

## STATEMENT OF CLAIM

### Summary of Plaintiffs' Claim

1. The Defendant and the Plaintiffs are and were at all material times in a relationship of banker and customers respectively. The Plaintiffs maintained with the Defendant two deposit accounts with total balances amounting as at the beginning of 2008 of approximately US\$352,000.00 on an express mandate that no payment out of the accounts should be made save on the written instruction signed by either the first Plaintiff or the Second Plaintiff.
2. Between June and July 2008, in breach of the Plaintiffs' mandate, and without the knowledge and authority of the Plaintiffs, or of either of them, the Defendant, acting negligently, wrongfully debited the Plaintiffs' accounts transferring all the funds in the accounts to an account at Bank of China in South Shenzhen, China ("the Bank of China account"). Neither of the Plaintiffs is beneficially entitled to the Bank of China account and neither of the Plaintiffs received any benefit from any of the transfers made by the Defendant from their accounts.
3. As a result of the Defendant's breach of mandate and negligence the Plaintiffs have suffered loss to the extent that they have been deprived of the entire balance standing to the credit of their accounts and all interest which would have accrued to those accounts had the wrongful debits not been made. Despite demand the Defendant has failed or refused to credit the Plaintiffs' accounts with the amounts wrongfully debited and with the interest of which the Plaintiffs have been deprived.

### The Parties

4. The Plaintiffs are husband and wife and reside together at 11 Allen Grove, Bedfordview, Johannesburg, South Africa.
5. The Defendant is registered with the Cayman Islands Monetary Authority as a Class A bank and carries on the business of banking in the Cayman Islands. The Defendant was incorporated following a merger of the businesses and operations

within the Caribbean of Barclays Bank PLC ("Barclays") and Canadian Imperial Bank of Commerce ("CIBC") on 14 October 2002. With that merger all the banking operations of Barclays and CIBC in the Cayman Islands were transferred to the Defendant.

#### The Creation of the Accounts and the Mandate

6. On 4 January 1994 the Plaintiffs opened a deposit account in their joint names at the Barclays branch at 25 Main Street, George Town, Grand Cayman. At that time the First Plaintiff and the Second Plaintiff were not yet married and the account was opened in the names of Eric Robert Grace and Beverley Ann Savadier, the Second Plaintiff's maiden name.
  
7. At the opening of the account the Plaintiffs executed a mandate in a standard form provided to them by Barclays with the Plaintiffs required to insert particulars relevant to them and to strike out such words or terms which were inapplicable, such that the mandate set out the following terms:

"Dear Sir,

We, the undersigned, request and authorise you to open bank account(s) in the names of Eric Robert Grace & Beverley Ann Savadier and to honour withdrawals of any and all funds, and accept instructions in [sic] relation to the account(s), providing such withdrawal or instruction is signed by either of us

This authority is to remain in force until either of us shall have expressly revoked it by a notice in writing. It shall not be revoked by the death of any of us, whereafter the signature of the survivor or survivors may be accepted as a sufficient discharge for any balance on this account or any part of such balance.

In consideration of your opening such account(s) in currencies other than Cayman Islands Dollars, as we may from time to time request, we agree that all sums placed to the credit of any such account shall be payable only at your branch and in the currency of the relevant account by banker's draft or telegraphic transfer, and provided that any such payment is, at the time when it falls to be made, freely permissible under all laws and usages affecting your branch and affecting payment in such currency.

We agree that you have the right at your discretion to postpone payment against deposits, the amounts of which have been credited to the account, until you have received advice that the amount of such deposits have become available to you in the currency of the account.

We request you to:

forward all mail to us at the address at the head of this letter.

We authorise you to accept all instructions given by us by letter, facsimile, telex, cable or other means regarding our account(s). All such instructions shall be deemed to have been issued only upon their receipt by you. With regard to instructions issued by electronic and/or electronic process (e.g. facsimile or telex), we accept the risk of equipment malfunction, including paper shortage, transmission errors, omissions and distortions. It is agreed the risk of misunderstanding and errors, and the risk of instructions being given by unauthorised parties are ours and you shall not be held responsible for any loss, liability or exposure that may result from such misunderstandings, errors and unauthorized instructions. We hereby undertake to indemnify you from and against all actions, proceedings, damages, costs, claims, demands, expenses and losses, which you may suffer, incur or sustain by reason of your following such instructions.

We agree that we will examine all statements supplied by you setting out transactions on any of our accounts and agree that, unless we object in writing to any of the matters contained in such statement within fourteen days of the date of such statement, we shall be deemed conclusively to have accepted all matters contained in such statement as true and accurate in all respects.

We agree that nothing in the arrangements between you and us should be treated as constituting an implied agreement restricting or negating any lien, charge, pledge, right of set-off or other right you may have existing or implied by law.

We agree that we shall be jointly and severally liable for any overdraft, loan or other credit facilities or accommodation which shall be granted on any account in our joint names, together with all interest commission and other banking charges and expenses.

Our existing bankers from whom we authorise you to request a banker's reference are:

...

The following signatures operate as our specimen signatures.

Yours faithfully,

[Specimen signatures of both Plaintiffs affixed]"

8. The Plaintiffs deposited funds into the account from time to time and on 2 May 2001 the account had a balance of US\$346,161.91. The funds in the account were then transferred to an index linked deposit account for the period 4 May 2001 to 2 May

2002. In May 2002, on the instructions of the Plaintiffs, Barclays transferred the balance in the index linked time deposit into 2 deposit accounts as follows:

8.1 a fixed deposit account numbered 8090385; and

8.2 a savings account numbered 3482730.

9. In or about August 2002 the Plaintiffs received notification from Barclays of the transfer of the banking operations of Barclays and of the benefits and obligations of the Plaintiffs' accounts to the Defendant. Barclays also sent to the Plaintiff a document titled "Supplemental Terms and Conditions" dated 29 July 2002 which contained the supplemental terms and conditions which would become effective upon the transfer of the Plaintiffs' accounts to the Defendant. The Plaintiffs will rely on the Supplemental Terms and Conditions for its full terms and effect.

10. Under the terms of the Supplemental Terms and Conditions, the transfer of the Plaintiffs' accounts from Barclays to the Defendant became effective on 14 October 2002. The Defendant assigned the following numbers to the Plaintiffs' accounts:

10.1 the fixed deposit account - number 090385530448

10.2 the savings account - number 00010082684.

#### The Operation of the Accounts

11. The Plaintiffs married in 1995 and the Second Plaintiff supplied Barclays with her new specimen signature as a result of her change of name by marriage.

12. By fax transmission dated 9 September 2004 the Second Plaintiff wrote to the Defendant advising that the Plaintiffs' address had changed and provided the Defendant with the new addresses being their residential address 11 Allen Grove, Bedfordview, Johannesburg, South Africa and their postal address P.O. Box 2315 Southdale, South Africa. The fax transmission stated the Plaintiffs' telephone number as 02711-680-5722 and fax number as 027-11-4334791. The Plaintiffs requested the Defendant to change its records accordingly. The instructions were signed by the Second Plaintiff in her married name.

13. By e-mail dated May 20, 2005 the Plaintiffs wrote to the Defendant's International Relationship Manager Frank Ebanks from their e-mail address

boardmas@mweb.co.za requesting information as to how to make a wire transfer of just over US\$50,000 from their accounts to Standard Bank in South Africa to meet a liability for a penalty which had been imposed on them by the South African tax authorities. Mr Ebanks responded by e-mail the same day advising the Plaintiffs that in order to effect the wire transfer the Plaintiffs should send signed faxed instructions requesting the Defendant to debit the Plaintiffs' accounts and instructing the Defendant to execute a wire transfer to Standard Bank in South Africa. Mr Ebanks further advised that the details required to effect the wire transfer were:

- 13.1 the full name, address, SWIFT CODE and branch number of the receiving bank;
  - 13.2 the full name and account number of the beneficiary account;
  - 13.3 the full name, address, SWIFT CODE and branch number if any intermediary bank was being used.
14. By fax transmission dated 23 May 2005 the Plaintiffs wrote to the Defendant providing the details required for effecting the wire transfer requested. The fax transmission stated the Plaintiffs' home and postal addresses as stated at paragraph 12 and also the Plaintiffs' telephone number and fax number as previously provided to the Defendant. The fax transmission also stated the Plaintiffs' home telephone number as 27(11)455-2207, and provided the name and details of the physical address of Standard Bank, being Rutlandgate, Cnr William Nicol Drive, Jan Smuts Avenue & Hyde Parke Lane, Hyde Parke Ext 21, Sandton 2196, South Africa. The instructions were signed by both Plaintiffs.
15. The last statements received by the Plaintiffs in respect of the accounts showed the balance on each account as follows:
- 15.1 Account No. 090385530448 - Statement dated 21 January 2008 - Balance - US\$229,336.61;
  - 15.2 Account No. 000010082684 - Statement dated 18 February 2008 - Balance - US\$123,073.81.

#### **The Wrongful Debits**

16. By e-mail dated 2 September 2008 the Second Plaintiff requested the Defendant to confirm that their accounts were in order and to state when the accounts would

mature. To the Plaintiffs' complete horror and surprise the Defendant's Wealth Manager Frank Ebanks responded by e-mail the same day advising the Plaintiffs that both the Plaintiffs' accounts were closed on 15 July 2008 "as per letter of instructions duly signed by you and Eric Grace".

17. Neither of the Plaintiffs had signed any letter of instructions to the Defendant requiring that their accounts be closed. The last instructions made by the Plaintiffs for any payment out of either of their accounts were the instructions provided on 23 May 2005 requesting the wire transfer to Standard Bank in Sandton, South Africa.
18. The Defendant subsequently advised the Plaintiffs that the Defendant had received four fax transmissions ("the forged instructions"), purportedly signed by both Plaintiffs, instructing the Defendant as follows:

- 18.1 Fax transmission dated 3<sup>rd</sup> June 2008 ("the first forged instructions") purportedly sent from Eric Grace from fax number 0027866588798 on Jun 04 2008 at 05:51 PM and which states as follows:

"Firstcaribbean (Cayman) Limited [sic]  
P.O. Box 68 George Town  
Grand Cayman, KY1-1102  
Cayman Islands,

Reff [sic]: Certificate No. 090385530448

Attention: Frank  
Phone: 345-815-2260

INSTRUCTION FOR A PATIAL [sic] WITHDRAWAL

Due to family Financial/Medical emergancy [sic], We (sic) do here by [sic] request/instruct the bank to make a patial [sic] withdrawal in the amount of (One hundred and eighty thousand USD) \$180,000 from our account No. 09038530448, and wire transfer the funds to our account as stated below:

Bank Name: Bank of China (Lou hu sub branch)  
1<sup>st</sup> floor bao li bid No. 2048 bao an rd  
South Shenzen, China

Acct. No: 477273301881014816

Swift Code: BKCHCNBJ45A

Beneficiary: Eric Grace

All bank charges/penalty applicable to this transaction should be debited from our ballance [sic]. Please endeavoure [sic] to send us a

copy of the transfer confirmation slip via fax No. +2786 658 8798/  
+2786 658 8799 or e-mail ([erickbeverleyg@yahoo.com](mailto:erickbeverleyg@yahoo.com)).

Thank you for your co-operation.

Faithfully,

[Purportedly signed by Eric Grace and Beverley Grace]"

18.2 Fax transmission dated 13/06/08 ("the second forged instructions")  
purportedly sent from Eric Grace from fax number 0027866378438 on Jun 13  
2008 at 07:09 PM and which states as follows:

"Firstcaribbean (Cayman) Limited (*sic*)  
P.O. Box 68 George Town  
Grand Cayman KY1-1102  
Cayman Islands

Reff (*sic*): Certificate No. 000010082684

Attn: Frank Ebanks

Sir,

INSTRUCTION FOR A PATIAL (*sic*) WITHDRAWAL

We will (*sic*) like to make patial (*sic*) withdrawal in the amount of USD.  
100,000 (One hundred thousand USD.) from our other account  
#000010082684 and the funds transferred to our account as stated bellow (*sic*):

Bank Name: Bank of China (lou hu sub-branch)  
1<sup>st</sup> floor bao lib Id no. 2048 bao an rd  
South Shenzhen, China

Acct No. 477273301881014616

Swift: BKCHCNBJ45A

Beneficiary: Eric Grace

Please endeavour to send us the confirmation slip via our e-mail  
([erickbeverleyg@yahoo.com](mailto:erickbeverleyg@yahoo.com))

Thank you very much for your excellent [*sic*] customer service.

Faithfully,

[Purportedly signed by Eric Grace and Beverley Grace]"

18.3 Fax transmission dated 27<sup>th</sup> June 2008 ("the third forged instructions") purportedly sent from Eric Grace from fax number 0027866588799 on Jun. 27 2008 05:19 PM and which states as follows:

"FirstCaribbean International Bank  
P.O. Box 695 Grand Cayman  
Cayman Island [sic]

Reff [sic]: Acct No. 103226264

Attn: Frank  
Ext. 815 2260

Sir,

INSTRUCTION FOR ACCOUNT CLOSURE

We do here by [sic] instruct the Bank to close our time deposit account reff. [sic] No. 10326264. All bank charges / penalties should be deducted from the principal and the balance transferred to our account as stated bellow [sic]

Bank Name: Bank of China (luo hu sub-branch)  
1<sup>st</sup> floor ban li bid no 2048 bao an rd

Acct No. 477273301881014616

Swit [sic] code.BKCHCNBJ45A

Acct Name. Eric Grace

Once again thank you very much for your excellent [sic] customer service.

Faithfully,

[Purportedly signed by Eric Grace and Beverley Grace.]"

None of the Plaintiffs' accounts with the Defendant had a reference number 10326264.

18.4 Fax transmission dated 15<sup>th</sup> july [sic] 2008 ("the fourth forged instructions") which states as follows:

"FirstCaribbean International Bank  
P.O. Box 695 Grand Cayman  
Cayman Island (sic)

Attn: Candace Myles

Madam.

INSTRUCTION FOR ACCOUNT CLOSURE

We do here by [sic] instruct the Bank to close all our time deposit accounts, all bank charges / penalties should be deducted from the principal and the ballance [sic] transferred to our account stated bellow [sic]

Bank Name: Bank of China (lua hu sub-branch)  
1<sup>st</sup> floor bao li bld no 2048 bao an rd

Acct No. 477273301881014616

Swit [sic] Code. BKCHCNBJ45A

Acct Name. Eric Grace

Once again thank you very much for your excellent [sic] customer service.

Faithfully,

[Purportedly signed by Eric Grace and Beverley Grace.]”

19. None of the four fax transmitted instructions was sent or signed by the Plaintiffs or either of them. All four fax transmitted instructions were forgeries.
  
20. The Defendant has stated that, acting on the basis of the forged instructions, it debited the Plaintiffs’ accounts and transferred all the funds standing to their credit to the Bank of China account. The Plaintiffs have advised the Defendant that neither of the Plaintiffs had signed the forged instructions and that neither of them has in any way authorised the transfer of the funds in their accounts to the Bank of China account. Despite demand by the Plaintiffs and by the Plaintiffs’ lawyers in South Africa and in the Cayman Islands the Defendant has failed to credit the Plaintiffs’ accounts with the amounts wrongfully debited.

#### **The Defendant’s Duties to the Plaintiffs**

21. The mandate constituted a relationship of banker and customers between the Defendant and the Plaintiffs respectively. It is an implied term of the contract between Defendant as banker and Plaintiffs as customers, as constituted by the mandate, that the Defendant would exercise the reasonable skill and care expected of an ordinary prudent banker in and about the Plaintiffs’ business. In particular the Defendant owes a duty of care to the Plaintiffs which required the Defendant not to debit or make withdrawals or transfers from the Plaintiffs’ accounts without due inquiry where the facts would have led the ordinary prudent banker to consider that

there was a serious or real possibility that the Plaintiffs were being defrauded by the forged instructions.

22. By making the transfers to the Bank of China account the Defendant acted negligently and in breach of its implied duty of care as a banker to the Plaintiffs, its customers.

#### PARTICULARS

22.1 As the Plaintiffs' banker, the Defendant is deemed to know the Plaintiffs' signatures or had a duty to ensure that before making it debited the Plaintiffs' accounts it compared the signatures appearing on any instructions received with the specimen signatures provided to the Defendant by the Plaintiffs. The signatures appearing on the forged instructions were obvious and patent forgeries which, on the most cursory comparison with the Plaintiffs' specimen signatures would have been discerned to be forgeries by any reasonable honest banker. The Defendant's employees failed to compare the signatures appearing on the forged instructions with the Plaintiffs' specimen signatures, or effected the transfers without observing the clear and patent differences between the signatures appearing on the forged instructions and the Plaintiffs' specimen signatures.

22.2 The Defendant debited the Plaintiffs' accounts or one of them on the third forged instructions which instructed the Defendant to "close our time deposit account ref. [sic] No. 10326264" even though the Plaintiffs maintained no account with such a reference number.

22.3 As the Plaintiffs' bankers the Defendant is deemed to "know its customer" and ought to have observed very glaring features of the forged instructions which were inconsistent with the nature and pattern of the Plaintiffs' pattern of conduct of their accounts. In particular:

22.3.1 The Plaintiffs in September 2004 provided the Defendant with their new residential and mailing addresses, their telephone and fax numbers and expressly requested that these be placed on the Defendant's records. The first three forged instructions, which each stated the fax number from which the fax was being sent, each show a

different fax number none of which was the fax number which the Plaintiffs had provided the Defendant.

22.3.2 The Plaintiffs had previously communicated with the Defendant by e-mail which all showed that the Plaintiffs' the e-mail address to be boardmas@mweb.co.za. The first two of the forged instructions both requested that confirmation of the wire transfers should be sent to be erickbeverleyg@yahoo.com which very curiously had the First Plaintiff's name spelt as "erick".

22.3.3 All the information provided by the Plaintiffs to the Defendant showed that the Plaintiffs were resident in and conducted business in South Africa. It would have appeared quite extraordinary to any ordinary prudent banker, and entirely out of character with the Plaintiffs' profile as known to the Defendant, that the forged instructions were each requesting that the money in the Plaintiffs' accounts be transferred to an account at Bank of China in South Shenzhen, China. It would have appeared even more extraordinary to the ordinary prudent banker that the first two forged instructions required the transfer to China "due to family Financial/Medical emergency" when the Plaintiffs at all times resided in South Africa.

22.3.4 The only bank which the Plaintiff had previously advised the Defendant that they had a relationship with was Standard Bank of South Africa. The forged instructions requested that the transfers be made to the Bank of China in Shenzhen, China.

22.3.5 Over the previous 14 years of the operation of the accounts the Plaintiffs had made only one transfer out of the accounts in May 2005. The ordinary prudent banker would have observed against that history that four sudden requests for wire transfers of extremely large sums (when compared to the single previous transfer) over a period of 6 weeks was entirely inconsistent with the mode in which accounts had previously been operated.

22.3.6 The forged instructions were each replete with obvious spelling errors inconsistent with the Plaintiffs' previous communication with the Defendant such as: the name of the Defendant being misstated; the word "partial" being spelt as "patial" in four instances; the word "excellent" being spelt as "exellent" in three separate instances.

23. The standard expected of a reasonable honest and prudent banker requires that the Defendant complies with the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorism Financing in the Cayman Islands ("the Guidance Notes"). The Defendant's failures particularised at paragraph 22.3 above were in breach of the Guidance Notes, and in particular the following paragraphs:

"4.1 Once the identification procedures have been completed and the client relationship is established, the *Financial Services Provider* is required to monitor the conduct of the relationship/account to ensure that it is consistent with the nature of the business stated when the relationship/account was opened."

"4.4 *Financial Services Providers*, either directly or in accordance with paragraph 3.43, are expected to have systems and controls in place to monitor on an ongoing basis relevant activities in the course of the business relationship. The nature of this monitoring will depend on the nature of the business. The purpose of the monitoring is for *Financial Services Providers* to be vigilant for any significant or inconsistencies in the pattern of transactions. Inconsistency is measured against the stated original purpose of the accounts. Possible areas to monitor could be:-

- (a) transaction type
- (b) frequency
- (c) amount
- (d) geographical destination/destination
- (e) account signatories."

"Appendix K -- Examples of Suspicious Activities  
Wire Transfers

...  
(4) Foreign exchange transactions that are performed on behalf of a customer by a third party followed by wire transfer of funds to locations having no apparent business connection with the customer or to countries of specific concern.

Characteristics of the customer or his/her business activity

...  
(6) Unexplained inconsistencies arising from the process of identifying or verifying the customer (for example, regarding previous or current country of residence, country of issue of the passport, countries visited according to the passport, and documents furnished to confirm name, address and date of birth."

### The Defendant's Liability

24. By debiting the Plaintiffs' accounts and making the transfers to the Bank of China account upon the forged instructions the Defendant acted wrongfully and in breach of mandate and is liable to credit the Plaintiffs' accounts with all amounts transferred to the Bank of China account together with all interest which would have accrued to each the accounts in accordance with the terms of the agreement between the Plaintiffs and the Defendants from the date of each transfer to the date the defendant credits each account.
25. Despite demand the Defendant has failed or refused to credit the Plaintiffs' accounts with the amounts wrongly transferred out together with interest as a consequence of which the Plaintiffs have suffered loss and damage.
26. The Plaintiffs are entitled to have their accounts credited with the amounts wrongfully debited from their accounts together with the interest as stated at paragraph 24 above. Alternatively, the Plaintiffs are entitled to damages in the amounts wrongfully debited with interest at the rates to which the Plaintiffs are entitled under their contract with the Defendant or at such other appropriate commercial rates as, in accordance with section 34 of the Judicature Law this honourable Court deems just.

### WHEREFORE THE PLAINTIFFS CLAIM:-

- (1) An order directing the Defendant to account to the Plaintiffs for all the interest which would have accrued to the Plaintiffs' accounts had the Defendant not made the debits of the Plaintiffs' account in June and July 2008.
- (2) An order directing the Defendant to credit the Plaintiffs' accounts with an amount equal to the amount debited from each of the accounts in June and July 2008 together the interest which would have accrued to each account in accordance with the account provided under paragraph (1) above.
- (3) Alternatively, damages in the amounts debited from each account together with interest at the rates to which the Plaintiffs are entitled under their contract with the Defendant or at such other appropriate rates as, in accordance with section 34 of the Judicature Law this honourable Court deems just.
- (4) Costs.

(5) Such further or other relief as to this honourable Court seems just.

Dated this 4<sup>th</sup> day of March 2010

*Mourant du Feu & Jeune*

**MOURANT DU FEU & JEUNE**  
Attorneys-at-Law for the Plaintiffs

THIS WRIT OF SUMMONS was filed by Mourant du Feu & Jeune, Attorneys-at-Law for the Plaintiffs whose address is 11 Allen Grove, Bedfordview, Johannesburg, South Africa, and whose address for service is Second Floor, Harbour Centre, 42 North Church Street, George Town, P.O. Box 1348, Grand Cayman KY1-1108, Cayman Islands Ref: 2046180/ARCHD/MdFJ/2442530/1

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE

OF WRIT OF SUMMONS

1. 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

2. A Defendant who states in his Acknowledgment 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 "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 Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, 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 installments or otherwise.

*See over for notes for guidance*

## 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. 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 his 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.

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.

- 
1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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  2. State whether the Defendant intends to contest the proceedings (tick appropriate box)  
 yes  no

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  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 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.*

Mourant du Feu & Jeune  
Attorneys-at-Law  
Second Floor, Harbour Centre  
P.O. Box 1348  
George Town  
GRAND CAYMAN, KY1-1108 (ref: HGR/4180-0000)

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