

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 301 OF 2010

B E T W E E N:

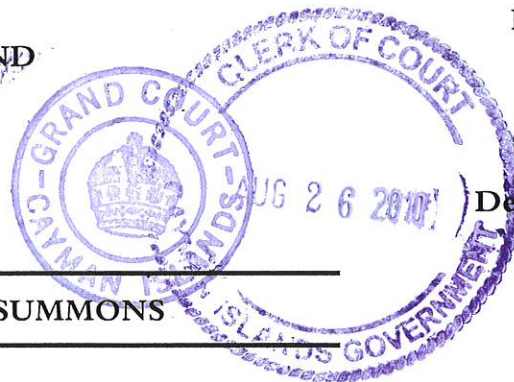
CHRISTINE DESANZO (as Personal Representative of the
Estate of Mr. Dirk Desanzo, Deceased)

Plaintiff

AND

GODFREY DAWKINS

Defendant



WRIT OF SUMMONS

TO: **Godfrey Dawkins**
PO Box 31384
Grand Cayman KY1-1206
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, Grand Cayman, KY1-1106, Cayman Islands, 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 Acknowledgement within the time stated, or if you return the Acknowledgement 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 26 August 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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is the Personal Representative of the Estate of Dirk Desanzo, Deceased, with a mailing address of PO Box 30222, Grand Cayman, KY1-1201, Cayman Islands. Dirk Desanzo passed away on 25 April 2006. The Plaintiff was granted Letters of Administration on 15 June 2006, which were re-sealed in Grand Cayman on 31 October 2006.
2. The Defendant is an individual residing in the Cayman Islands with a mailing address of PO Box 31384, Grand Cayman, KY1-1206, Cayman Islands.
3. On or about 6 April 2005, the Defendant entered into an agreement with Dirk Desanzo, Deceased, whereby Dirk Desanzo would loan the Defendant certain sums on terms as pleaded (the "**Loan Agreement**"). The terms of the Loan Agreement were, *inter alia*, as follows:
 - a. Dirk Desanzo, deceased, would advance as a loan to the Defendant the sum of US\$200,000 to the Defendant;
 - b. That the Defendant would make monthly payments of US\$1,333.33 to the Dirk Desanzo, deceased, on the first of each month for the one year term of the Loan Agreement;
 - c. That the repayment of the principal would be due and payable in full on or before 6 April 2006.
4. Dirk Desanzo, deceased, advanced funds to the Defendant in accordance with the terms of the Loan Agreement.
5. The Defendant defaulted on the terms of repayment of the Loan Agreement.
6. On or about 9 March 2007, after the death of Dirk Desanzo, the Defendant acknowledged the debt and agreed to pay to the Plaintiff, as administrator, in accordance with a Promissory Note which the Defendant executed on 9 March 2007. The terms of the Promissory Note were, *inter alia*, as follows:
 - a. The principal sum owed by the Defendant to Dirk Desanzo, deceased was US\$200,000 as of the date of the Promissory Note.

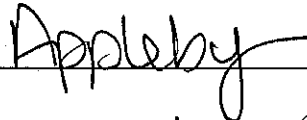
- b. The Defendant would make monthly payments of US\$4,977.01 on the first of each month for a period of 48 months;
 - c. Interest would be payable at the rate of 9% per annum;
 - d. That failure by the Defendant to make payments within 7 days of the first of each month would result in all unpaid amounts due under the Promissory Note becoming immediately due and payable without demand or notice;
 - e. That in the event of default, all costs and expenses of collection or attempts at collection, including legal fees on a full indemnity basis, would be payable by the Defendant regardless of any scale court costs that any Court may seek to impose;
 - f. That the Defendant agreed to the registration of a second charge over properties located at Block 13D, Parcel 37 and Block 13B, Parcel 111 to secure the Promissory Note;
 - g. That the Defendant agreed to waive the right to interpose any defence, setoff or counterclaim in any litigation arising out of the Promissory Note.
7. The Defendant defaulted on the terms of payment by failing to make the following payments:
- 1 February 2008
 - 1 March 2010
 - 1 April 2010
 - 1 May 2010
 - 1 June 2010
 - 1 July 2010
 - 1 August 2010
8. As a result of the default in payments, the entire sum set out in the Promissory Note have become due and owing.
9. As of the date of the commencement of this proceeding the Defendant, pursuant to the terms of the Promissory Note, owed to the Plaintiff, as administrator of the estate of Dirk Desanzo, deceased, the sum of US\$79,823.85 calculated as follows:

Principal	US\$74,776.13
Interest on Missed payment February 2008 ¹ :	US\$1,120.44
Interest on Principal	<u>US\$3,927.28²</u>
	US\$79,823.85

10. Interest continues to accrue from 1 August 2010 at the rate of 18.43 per day being the daily interest on the missed payment of 1 February 2008 and interest on the unpaid principal of US\$74,776.13.
11. Notwithstanding the demand for payment pursuant to the terms of the Loan Agreement and the Promissory Note, the Defendant has either failed or neglected to make payment the Plaintiff.
12. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) US\$74,776.13 being the principal sum due;
- b) US\$5,047.72 pre-judgment interest calculated from 1 February 2009 to 1 August 2010 at the rate of 9% per annum in accordance with the terms of the Promissory Note;
- c) Pre and post judgment interest calculated from 2 August 2010 at the rate of 9% per annum in accordance with the terms of the Promissory Note;
- d) Alternatively, pre and post judgment interest calculated pursuant to the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
- e) Costs on a contractual basis, in accordance with paragraph 6(d) above, and following the issuance of the Writ of Summons to be taxed if not agreed;
- f) Alternatively, costs on an indemnity basis or standard basis in accordance with the Court Costs Rules 2001; and
- g) Such further and other relief as this Court may deem just.



APPLEBY
 Attorneys for the Plaintiff

¹ US\$4,977 at 9% (per diem of 1.23) for 913 days from 1 February 2008 to 1 August 2010

² US\$74,776.13 principal at 9% (per diem of \$18.43) for 213 days from 1 January 2010 to 1 August 2010

INDORSEMENT

The principal amount claimed in respect of the debt is US\$74,776.13 plus interest of US\$5,047.72 as of the date of filing. The amount of the filing fees to commence the proceeding is US\$243.90 (CI\$200.00) plus ad valorem fees of US\$603.59 (CI\$494.94). If, within the time for returning the acknowledgement of service, the defendant pays 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 6(c) above;
2. The prescribed rate of interest is 9% per annum;
3. The date from which interest is payable is 1 February 2008;
4. The total interest claimed as of 26 August 2010 is US\$5,047.72; and
5. The amount of interest accruing due each day is US\$18.43.

This WRIT OF SUMMONS was filed by Appleby, Attorneys for the Plaintiff whose address for service is Clifton House, 75 Fort Street, PO Box 190, Grand Cayman, KY1-1104, Cayman Islands (ref: NSP/312081.0001)

Acknowledgment of service of writ of summons (O.12, r.3)

**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 each Defendant or by each Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495 GT, 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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2010

B E T W E E N:

CHRISTINE DESANZO (as Personal Representative of the Estate of Mr, Dirk Desanzo, Deceased)

Plaintiff

AND

GODFREY DAWKINS

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.

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 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 communication 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.

<p>APPLEBY Attorneys-at-Law 75 Fort Street PO Box 190 Grand Cayman KY1-1104 CAYMAN ISLANDS</p> <p>Ref: NSP/12081.001</p>

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

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