

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 234 OF 2010

BETWEEN:

DELROY JOSEPHS

PLAINTIFF

AND:

HARRIET LOTT

DEFENDANT



AMENDED STATEMENT OF CLAIM

1. The Plaintiff, Delroy W. Josephs, is a businessman who is ordinarily resident in the Cayman Islands.
2. The Defendant is Harriet Lott a Cayman national, ordinarily resident in the Cayman Islands and insofar as is known to the Plaintiff, the director of companies duly incorporated in the Cayman Islands know as Hurlstone Holdings Limited and Tropical L'Attitude Ltd.
3. ~~On or about 30<sup>th</sup> November 2009~~ On or around 18<sup>th</sup> September 2009 at the request of the Defendant, the Plaintiff entered into a loan agreement of the same date with the Defendant ("the Loan Agreement"). The material terms of the Loan Agreement were as follows:
  - (i) The Plaintiff would advance to the Defendant the sum of US\$ 200,000.00 to be repaid by the Defendant on or before the 30<sup>th</sup> day of November 2011;
  - (ii) The Defendant would commence repayment of the sum advanced on 1<sup>st</sup> January 2010 by installment of US\$5,000.00, and thereafter monthly payments in installments of US\$ 5,000.00 would be due on the first day of each month towards the balance;
  - (iii) The loan was to be interest free but in the event that any monthly installment was not made on the first day of each and every month, interest would be due and payable at a rate of 5% per annum on the total remaining balance of the loan until the repayment of all monies due and owing.
4. The Plaintiff duly advanced to the Defendant an amount equivalent to the sum of US\$200,000.00 by way of two cheques pursuant to the Loan Agreement on or around 18<sup>th</sup> September 2009 ~~30<sup>th</sup> November 2009.~~

5. On or about 3<sup>rd</sup> December 2009 the express terms of the Loan Agreement were evidenced in writing in the form of a document headed Promissory Note signed by the Defendant.
6. Despite repeated requests by the Plaintiff, including written demand made by letter dated 29 March 2010 and promises of payment by the Defendant, the Defendant has failed to pay any of the monthly payments owing and due under the Loan Agreement at any time or at all.
7. The total sum of the monthly repayments of ~~US\$ 30,000.00~~ US\$ 45,000.00 remains due and owing to the Plaintiff as does the entirety of the full sum advanced under the Loan Agreement, the Defendant having failed and neglected to make any repayments under the Loan Agreement.
8. The Plaintiff pleads that the Defendant is in breach of the terms of the Loan Agreement and seeks judgment in the sum of the debt of ~~US\$30,000.00~~ US\$ 45,000.00 owing by the Defendant under the Loan Agreement.
9. Further, pursuant to the terms and conditions of the Loan Agreement, the Plaintiff claims interest on the total remaining balance of the loan being US\$ 200,000.00 at the contractual rate of 5% per annum from 1 January 2010 to the date of trial.
10. In the alternative, the Plaintiff relies on s.34 of the Judicature Law (2007 Revision) and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules 1995 as varied by the Judgment Debts (Rates of Interest) Rules 2006 and 2008, promulgated by the Rules Committee pursuant to the s.34 of the said Law, and claims interest on the debt owing and costs as follows:
  - (i) Pre-judgment (simple) interest on the debt from 1 January 2010 (the date the Plaintiff's cause of action arose) to the date of trial at the prescribed rate of 5% per annum (US\$ 27.39 per diem, being 170 days i.e. US\$ 4,657.53 as of 19 June 2010, the date of issue of the Writ of Summons herein);
  - (ii) Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the prescribed rate of 5% per annum or such other rate then prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules; and
  - (iii) Interest on all fixed or assessed costs and orders running from the date of service of the judgment, order or certificate of taxation respectively and at the prescribed rate of 5% per annum or such other rate prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules 1995;

Subject always to the discretion of this Honourable Court.

**AND THE PLAINTIFF THEREFORE CLAIMS FROM THE DEFENDANT**

- (a) Judgment in the sum of ~~US\$30,000.00~~ US\$ 45,000.00 or such sums as may be due at date of trial;
- (b) Interest at the contractual rate of 5% per annum on the total sum advanced of US\$200,000.00 from 1 January 2010 to date of trial (US\$ 27.39 per diem);

- (c) Further or alternatively, prejudgment interest at the rate of 5% per annum (US\$ 27.39 per diem) from 1 January 2010 being 170 days i.e. US\$ 4,657.53 as of 19 June 2010 together with Post-judgment interest at the rate of 5% per annum as more specifically pleaded above;
- (d) Costs;
- (e) Such further and other relief as to this Honourable may seem just.

**DATED** at Grand Cayman this 21<sup>st</sup> day of June 2010

**AMENDED at Grand Cayman this 6<sup>th</sup> day of September 2010**

*Nelson & Co.*

Nelson & Co.

Attorneys for the Plaintiff

**THIS AMENDED STATEMENT OF CLAIM** is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

**TO:** The Clerk of the Grand Court

**AND TO:** Harriet Lott  
C/o Bodden Corporate Services Ltd  
802 Grand Pavilion Commercial Centre  
West Bay Road  
P.O Box 10335 APO  
Grand Cayman  
Cayman Islands

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**CAUSE NO: 2010**

**BETWEEN:**

**DELROY JOSEPHS**

**PLAINTIFF**

**AND:**

**HARRIET LOTT**

**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.

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2. State whether the Defendant intend to contest the proceedings (tick appropriate box)

Yes  No

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3. If the claim against the Defendants 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 Plaintiffs (tick box)

Yes  No

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Service of the Writ is acknowledged accordingly

Signed .....

Attorney for

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

Nelson & Company  
Attorneys at Law  
PO Box 2075  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1105  
CAYMAN ISLANDS  
Attn: Steven Barrie

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 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 495, 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 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 Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service (or 28 days in the case of a writ served outside the jurisdiction pursuant to an order of the Court), 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.