

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 441 OF 2010

BETWEEN: FIDELITY BANK (CAYMAN) LIMITED PLAINTIFF

AND: A&C CONSTRUCTION LTD FIRST DEFENDANT

AND: CLIVE SMITH SECOND DEFENDANT

WRIT OF SUMMONS

TO: A&C Construction Ltd
PO Box 2549
#46 Belford Estate
Bodden Town
Grand Cayman KY1-1104
Cayman Islands

AND TO: Clive Smith
PO Box 2549
Grand Cayman KY1-1104
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, P.O. Box 495G, George Town, Grand Cayman, 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 25th day of November 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 the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is a Cayman Island Class "A" Licensed bank ("the Bank"), duly authorized under the laws of the Cayman Islands to, *inter alia*, offer retail banking facilities to its customers.
2. The First Defendant is an ordinary company registered under the laws of Cayman Islands. The Second Defendant is an individual who at all material times was a resident in the Cayman Islands.
3. At the request of the First Defendant the Bank advanced money to it under a line of credit under account number 10001234 ("the Line of Credit") with the Bank.
4. The Second Defendant signed a Guarantee and Postponement of Claim Form, guaranteeing payment to the Bank of all the First Defendant's debts and liabilities ("the Guarantee").
5. Payment under the terms of the Line of Credit fell into arrears and on 15 February 2010, the Bank, through its attorneys, made formal demand for the immediate payment of the total amount outstanding, together with accrued interest to the date of payment.
6. No payments have been received from the Defendants.
7. As at 25 November 2010, the amount due under the Line of Credit and the Guarantee totalled CI\$288,098.27, with interest of CI\$3,157.24.
8. Interest is also accruing on the Line of Credit at a rate of 16% per annum. The Bank is therefore entitled to and claims interest on the Line of Credit.

STATEMENT REGARDING INTEREST

8.1. Interest calculations on the Line of Credit:

8.1.1. As at 25 November 2010, total interest accrued amounts to CI\$3,157.24.

8.1.2. Interest continues from 25 November 2010 to accrue at the daily rate of CI\$126.29 until payment.

AND THE PLAINTIFF claims:

1. The sum of CI\$288,098.27;
2. Interest to 25 November 2010 on the Line of Credit totalling CI\$3,157.24, accruing thereafter at the daily rate of CI\$126.27 until payment;
3. Costs; and
4. Such further and/or other relief as this Honourable Court deems appropriate.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of \$288,098.27 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.]

Campbells

[Signature of Plaintiff or his Attorney]

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.

**Campbells
4th Floor Scotia Centre
PO Box 884
George Town
Grand Cayman KY1-1103
(Ref: JRM/12857-16991)**

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 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 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, 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.