

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 88 OF 2011

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND



(1) MYRON GUSHLAK
(2) DEBBIE GUSHLAK



DEFENDANTS

WRIT OF SUMMONS

TO: Myron Gulak
AND TO: Debbie Gushlak

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 18 day of March 2011.

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

THE PARTIES

1. The Plaintiff is a category "A" bank in the Cayman Islands.
2. The First Defendant was a resident of the Cayman Islands who is currently incarcerated in prison in the United States of America. The Plaintiff understands that the First Defendant owns 100% of the shares in Prodigious (Grand Cayman) Ltd. ("Prodigious"), a non resident company incorporated in the Cayman Islands and that at some stage and in particular in February 2007 the Defendants were directors of Prodigious.
3. The Second Defendant is the wife of the First Defendant who is ordinarily resident in the Cayman Islands.
4. The Defendants as of the date hereof are involved in divorce proceedings in the Cayman Islands.
5. Within the divorce proceedings an Injunction was made against all the assets of the First Defendant worldwide.

BACKGROUND

4. The Plaintiff loaned US\$2,400,000.00 to Prodigious in or about February/March 2007 and took certain security for the loan including a Guarantee and Postponement of Claim ("Guarantee") and Charge over property known as Registration Section Prospect, Block 23C, Parcel 198 ("the Property") owned by Prodigious. The Plaintiff understands the Property is a marital asset of the Defendants.

5. On 26 February 2007 a Guarantee was executed by the Defendants in favour of the Plaintiff which is governed by and construed in accordance with the laws of the Cayman Islands.
6. In particular, some of the provisions of the Guarantee state as follows:

"For VALUABLE CONSIDERATION, receipt whereof is hereby acknowledged, the undersigned and each of them (if more than one) hereby jointly and severally guarantees payment on demand to Royal Bank of Canada (hereinafter called the "Bank") of all debts and liabilities present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by

*Prodigious (Grand Cayman) Ltd....("Prodigious") (hereinafter called the "customer") to the Bank or remaining unpaid by the customer to the Bank heretofore or hereafter incurred or arising and whether incurred by or arising from agreement or dealing between the Bank and the customer or by or from any agreement or dealings with any third party by which the Bank may be or become in any manner whatsoever a creditor of the customer or however otherwise incurred or arising anywhere within or outside the country where this guarantee is executed and whether the customer be bound alone or with another or others and whether as principal or surety (such debts and liabilities hereinafter called the "liabilities"); the liability of the undersigned hereunder being established for the sum of **Two Million, Four Hundred Thousand United States Dollars (US\$2,400,000)** together with interest thereon from the date of demand for payment at a rate equal to the Bank's Prime Interest Rate in effect from time to time plus two percent (2%) per annum as well after as before default and judgment.*

AND THE UNDERSIGNED AND EACH OF THEM (IF MORE THAN ONE) HEREBY JOINTLY AND SEVERALLY AGREE WITH THE BANK AS FOLLOWS:

...

2) *This guarantee shall be continuing guarantee and shall cover all the liabilities, and it shall apply to and secure any ultimate balance due or remaining unpaid to the Bank.*

3) *The Bank shall not be bound to exhaust its recourse against the customer or others or any securities it may at any time hold before being entitled to payment from the undersigned of the liabilities. The undersigned renounce to all benefits of discussion and division.*

...

8) *All moneys, advances renewals and credits in fact borrowed or obtained from the Bank shall be deemed to form part of the liabilities, notwithstanding any lack or limitation of status or of power, incapacity or disability of the customer or of the directors, partners or agents thereof, or that the customer may not be a legal or suable entity, or any irregularity, defect or informality in the borrowing or obtaining of such moneys, advances, renewals or credits, the whole whether known to the Bank or not; and any sum which may not be recoverable from the undersigned on the footing of a guarantee shall be recoverable from the undersigned and each of the as sole or principal debtor in respect thereof and shall be paid to the Bank on demand with interest and accessories.*

...

9) *The undersigned and each of them shall be bound by any account settled between the Bank and the customer, and if no such account has been so settled immediately before demand for payment under this guarantee any account stated by the Bank shall be accepted by the undersigned and each of them as conclusive*

evidence of the amount which at the date of the account so stated is due by the customer to the Bank or remains unpaid by the customer to the Bank.

....

12) No suit based on this guarantee shall be instituted until demand for payment has been made, and demand for payment shall be deemed to have been effectually made upon any guarantor if and when an envelope containing such demand, addressed to such guarantor at the address of such guarantor last known to the Bank, is posted, postage prepaid, in the post office, and in the event of the death of the any guarantor demand for payment addressed to any of such guarantor's heirs, executors, administrators or legal representatives at the address of the addressee last known to the Bank and posted as aforesaid shall be deemed to have been effectually made upon all of them. Moreover, when demand for payment has been made, the undersigned shall also be liable to the Bank for all legal costs (on a solicitor and customer basis) incurred by or on behalf of the Bank resulting from any action instituted on the basis of this guarantee. All payments hereunder shall be made to the Bank at the branch or agency of the Bank.

...

15) Prime Interest Rate is the annual rate of interest announced from time to time by the Royal Bank of Canada as a reference rate then in effect for determining interest rates on Cayman Island dollar commercial loans in the Cayman Islands.

...

17) This Guarantee and Postponement of Claim shall be governed by and construed in accordance with the laws of the Cayman Islands ("Jurisdiction").

The undersigned irrevocably submits to the courts of the Jurisdiction in any action or proceeding arising out of or relating to this Guarantee and Postponement of Claim, and irrevocably agrees that all such actions and proceedings may be heard and determined in such courts, and irrevocably waives, to the fullest extent possible, the defense of an inconvenient forum. The undersigned agrees that a judgment or order in any such action or proceedings may be enforced in other jurisdiction in any manner provided by law. Provided, however, that the Bank may serve legal process in any manner permitted by law or may bring an action or proceedings against the undersigned or the property or assets of the undersigned in the courts of any other jurisdiction.”

7. The Plaintiff will refer to the Guarantee as may be necessary for its full terms and legal effect.
8. On 1 March 2007 a Variation of Charge over the Property was made in favour of the Plaintiff in the Principal sum of US\$2,400,000.00. Notice of Demand pursuant to section 64(2) of the Registered Land Law was served on Prodigious on 3 February 2011 for repayment of the principal and interest secured by the Charge over the Property.

PLAINTIFF'S CLAIM

9. Notwithstanding service of the Notice of Demand referred to paragraph 8 herein, under the Guarantee, a Demand Notice was duly served on
 - (1) the Second Defendant on 2 February 2011 by email and service in this manner was accepted and acknowledged on behalf of the Second Defendant by her Attorneys-at-Law, Stuarts Walker Hersant, on the same day, namely, on 2 February 2011, thereby waiving the requirements of service set out in clause 13 of the Guarantee referred to at paragraph 6 herein.

- (2) the First Defendant on 2 February 2011 by email on his Attorneys-at-Law, Samson McGrath, who were authorised to accept service on behalf of the First Defendant in this manner, thereby waiving the requirements of service set out in clause 13 of the Guarantee referred to at paragraph 6 herein.

10. In particular the Demand Notice states as follows:

Pursuant to the above guarantee, we hereby demand payment from you of all money owing to us by Prodigious (Grand Cayman) Ltd. within 15 days from the date hereof. The amount due as of today is US\$1,630,662.38 together with interest accruing at the rate of US\$360.80 per day.

If we do not receive payment from you in full within 15 days, we will institute proceedings against you to recover the amount due together with legal costs.

Dated this 31 day of January 2011”

11. The Defendants failed to pay the sum of US\$1,630,662.38 or any part of it inclusive of interest pursuant to the Demand Notice.
12. There is now due and owing from the Defendants the principal sum and interest in the sum of US\$1,647,159.18 as of the date hereof.

AND THE PLAINTIFF CLAIMS:

- (1) The sum of US\$1,647,159.18
- (2) Interest in the sum of US\$360.80 per day from the date hereof until the date of payment.
- (3) Further or other relief as this Honourable Court may deem just.
- (4) Costs on an indemnity basis.

Dated this 19 day of March 2011

Conyers Dill & Pearman
Conyers Dill & Pearman
Attorneys at Law for the Plaintiff

This Writ of Summons and Statement of Claim were filed by Messrs Conyers Dill & Pearman, Attorneys-at-Law for and on behalf of the Plaintiff, whose address for service is Boundary Hall., Cricket Square, P.O. Box 2681, Grand Cayman KY1-1111, Cayman Islands.

Acknowledgement of service of writ of summons (0.12, 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 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.

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.

Conyers Dill & Pearman
Boundary Hall, Cricket Square
PO Box 2681
Grand Cayman KY1-1111
Ref: LDD/705144

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