

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0314 OF 2011

B E T W E E N:

FALMOUTH INVESTMENTS LTD

AND

- 1. DMNY CAYMAN LTD**
- 2. DILIP MEWANI**



Plaintiff

Defendants



WRIT OF SUMMONS

TO:

DMNY Cayman Ltd.
c/o Bodden Corporate Services Ltd.
Grand Pavilion Centre
802 West Bay Road
Grand Cayman KY1-1003

Dilip Mewani
PO Box 32318
Grand Cayman KY1-1209
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 31st day of August 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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands. The Plaintiff's address for service is care of its attorneys, Pearson & Associates, PO Box 5 Grand Cayman KY1-1801, Cayman Islands.
2. The First Defendant is and was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands. The First Defendant's registered office is PO Box 10335, Grand Cayman KY1-1003, Cayman Islands.
3. The Second Defendant is an individual who resides in the Cayman Islands with a mailing address in care of PO Box 32318, Grand Cayman KY1-1209.
4. On or about 1 February 2008, the Defendant entered into an lease agreement with the Plaintiff whereby the Plaintiff would lease 1,414.33 square feet of his premises known as Registration Section George Town Commercial, Block OPY Parcel 110/18 also known as Royal Plaza Unit C (the "**Demised Premises**") to the Defendant (the "**Lease Agreement**"). The terms of the Lease Agreement were, *inter alia*, as follows:
 - a. That although the Registered Land law form indicates that the Lease Agreement was for a term of 3 years. The Defendants entered into the Lease Agreement for a period of 5 years commencing on 1 February 2008 in accordance with the terms of the Lease Agreement;
 - b. That the First Defendant's rent for the first year of the term commencing on and including the 1st day of February 2008 to the 31 day of January 2009 would be US\$162,648.00 per annum to be paid monthly on the first day of every month in the amount of US\$13,554.00 per month;
 - c. That for the remainder of the term of the Lease Agreement the rent shall increase each year either by the CPI rate or 5% whichever is greater;
 - d. That interest shall accrue on rent or any other unpaid sums due within 14 days of the due date at the rate of 3% above the U.S. Dollar Prime Rate prescribed by the Judgment Debts (Rates of Interest) Rules 2003, calculated on a daily basis.

- e. That maintenance fees are the First Defendant's proportion of annual expenses incurred by the Plaintiff shall be equal to US\$7.00 per square foot for the first year and will be recalculated for the remainder term of the Lease Agreement according to the Plaintiff's projected maintenance costs but such maintenance fees shall not exceed US\$10.00 per square foot;
 - f. That the First Defendant shall pay the Plaintiff's legal fees and disbursements reasonably and properly incurred on an indemnity basis for the purposes of serving any notice and conducting any legal proceedings against the tenant which result in a finding that the tenant is or was in breach of any covenant or condition of the Lease Agreement; and
 - g. That the Second Defendant would pay on an indemnity basis the rent or maintenance fees or in observing any of the covenants, conditions or other terms of the Lease Agreement of which the First Defendant shall be in default.
5. The Plaintiff leased the Demised Premises to the First Defendant in accordance with the Lease Agreement.
 6. The First Defendant defaulted on the terms of Lease Agreement as of the date of the commencement of this proceeding the First Defendant, pursuant to the terms of the Lease Agreement, owed the Plaintiff the sum of US\$179,775.67 calculated as follows:

Principal	US\$174,356.84
Interest on missed payment	
February 2008 ¹ :	US\$ 3,546.29
Interest on Principal	<u>US\$ 1,872.54²</u>
	<u>US\$179,775.67</u>
 7. The Second Defendant personally guaranteed payment of the rent and maintenance fees incurred by the First Defendant pursuant to the Lease Agreement by signing the Lease Agreement as personal guarantor. A term of the Lease Agreement was, *inter alia*, the Second Defendant shall be liable to the Plaintiff for all rent and maintenance fees due to the Plaintiff by the First Defendant.
 8. That First Defendant failed to pay the monthly maintenance fees of US\$589.30 for the period 14 February 2008 to 14 July 2011 in accordance with the Lease Agreement.

¹ US\$14,143.30 at 8% (per diem of 3.09) for 1144 days from 14 February 2008 to 31 August 2011

² US\$174,356.84 at 8% (per diem of 38.21) for 49 days from 14 July 2011 to 31 August 2011

9. That the First Defendant failed to pay rent and maintenance fees for July 2008 in the amount of US\$14,143.30.
10. Interest continues to accrue from 26 August 2011 at the rate of US\$38.21 per day being the daily interest on the missed payment of 14 July 2008 and interest on the unpaid principal of US\$174,356.84.
11. That the First Defendant ceased paying rent in October 2010, despite being in occupation of the Demised Premises until July 2011.
12. The First Defendant continued occupation of the Demised Premises until July 2011 when they vacated the premises.
13. Notwithstanding a demand for payment made on the First Defendant and a demand being made on the Second Defendant as guarantor, the Defendants have either failed or neglected to make payment to the Plaintiff
14. That although the Lease Agreement states that interest on amounts owing shall be calculated at the rate of 3% above the U.S. Dollar Prime Rate prescribed by the Judgment Debts (Rates of Interest) Rules 2003, calculated on a daily basis, the Plaintiff is of the view that interest calculated in accordance with the Lease Agreement would be usurious given the fluctuation in interest rates over the period 2008 to 2011. The Plaintiff has applied the interest rate of 5% plus 3 which was in effect at the time the Lease Agreement was entered into.
15. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) US\$174,356.84 being the principal sum due;
- b) US\$5,418.83 pre-judgment interest calculated from 14 February 2008 to 31 August 2011 at the rate of 8% per annum in accordance with the terms of the Lease Agreement;
- c) Pre and post judgment interest calculated from 31 August 2011 at the rate of 8% per annum in accordance with the terms of the Lease Agreement;
- 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 4(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.

Pearson & Associates

PEARSON & ASSOCIATES

Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is US\$174,356.84 plus interest of US\$5,418.83 as of the date of filing. The amount of the filing fees to commence the proceeding is US\$243.90 (CIS\$200.00) plus ad valorem fees of US\$1,471.78 (CIS\$1,206.86).
259.58 114.86

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 4(d) above;
2. The prescribed rate of interest is 8% per annum;
3. The date from which interest is payable is 14 February 2008;
4. The total interest claimed as of 31 August 2011 is US\$5,680.34; and
5. The amount of interest accruing due each day is US\$38.21.

This WRIT OF SUMMONS was filed by Pearson & Associates, Attorneys for the Plaintiff whose address for service is 2nd Fl Barnett Music Centre, 24 Huldah Ave, PO Box 5, Grand Cayman, KY1-1801, Cayman Islands

Notes on address for service

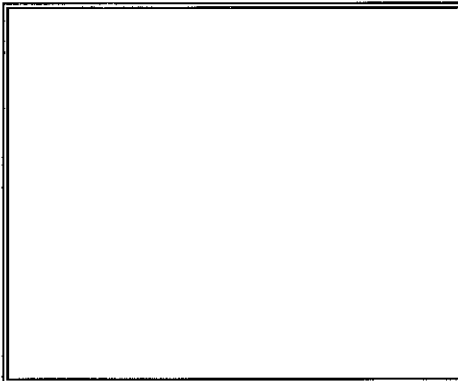
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

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.

PEARSON & ASSOCIATES
Attorney-at-Law
24 Huldah Ave
PO Box 5
Grand Cayman KY1-1801
CAYMAN ISLANDS
Phone:345 9467043
Fax:345 946 7044
Email: npearson@candw.ky

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



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 installments 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. 90344 OF 2010

B E T W E E N:

FALMOUTH INVESTMENTS LTD

Plaintiff

AND

- 1. DMNY CAYMAN LTD
- 2. DIILIP MEWANI

Defendants

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