

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 376 OF 2011

BETWEEN:

COX LUMBER LTD



Plaintiff

AND
NEIL ARMSTRONG

Defendant

WRIT OF SUMMONS



TO:

Neil Armstrong
37 Jackie Street
P.O. Box 360
Grand Cayman KY1-1501
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 22nd day of September 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 is and was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands. The Plaintiff was formerly known as Cox Lumber Co. The Plaintiff's address for service is care of its attorneys, Appleby (Cayman) Ltd., PO Box 190, Grand Cayman, KY1-1104, Cayman Islands.
2. The Defendant is an individual who resides in the Cayman Islands with a mailing address of PO Box 360, Grand Cayman, KY1-1501, Cayman Islands.
3. On or about 22 December 2009, the Defendant signed a Promissory Note with the Plaintiff for monies owed (the "**Promissory Note**"). The terms of the Promissory Note were, *inter alia*, as follows:
 - a. That the Plaintiff would pay the Principal amount of CI\$96,920.38 to the Defendant by way of monthly instalments of CI\$4,550.00 per month;
 - b. That the monthly instalments shall be payable on or before the 1st day of each month until paid in full with the first instalment due on 1 January 2010;
 - c. That interest shall be payable on the same dates as principal is repaid in arrears at the rate of 12% per annum;
 - d. In the event that any payment of principal and/or interest is not received on or prior to the due date, interest equal to 18% per annum shall be charged on the delinquent amounts ("**Delinquent Amounts**") until paid;
 - e. In the event that any payment of principal and interest is not paid when due, all unpaid amounts due under the Promissory Note, at the option of the Plaintiff shall immediately become due and payable without demand or notice; and

- f. That all expenses including but not limited to court costs and attorney's fees incurred in relation to collection will be reimbursed in full by the Defendant if referred to an attorney for collection.
4. The Defendant defaulted on the terms of payment and as of the date of the commencement of this proceeding the Defendant, pursuant to the terms of the Promissory Note, owed to the Plaintiff the principal sum of CI\$52,820.38 plus interest of CI\$15,225.47 on the principal balance and interest of CI\$7,646.58 on the Delinquent Amounts, exclusive of costs for a total of CI\$75,692.43. Interest on that principal sum continues to accrue at the rate of CI\$17.61 per day and interest of 18% per annum continues to accrue on all Delinquent Amounts.
5. The following payments were received from the Defendant totalling CI\$44,100.00 from 1 January 2010 to 27 July 2011.

DATE OF PAYMENT	PAYMENT AMOUNT
1 January 2010	CI\$4,550.00
1 February 2010	CI\$4,550.00
1 May 2011	CI\$15,000.00
1 June 2011	CI\$10,000.00
27 July 2011	CI\$10,000.00

6. Notwithstanding the above, the Defendant has either failed or neglected to make full payment to the Plaintiff in accordance with the terms or the Promissory Note as set out in paragraph 3(e).
7. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) CI\$52,820.38 being the principal sum due to 21 September 2011;

- b) CI\$7,646.58 being interest on the Delinquent Amounts of CI\$50,600.00 from 1 February 2010 to 21 September 2011 at the rate of 18% per annum in accordance with the terms of the Promissory Note;
- c) Pre and post judgment interest on the Delinquent Amounts from 22 September 2011 to date of payment at the rate of 18% per annum in accordance with the terms of the Promissory Note;
- d) CI\$15,225.47 being interest on the principal sum from 1 January 2010 to 21 September 2011 at the rate of 12% per annum in accordance with the terms of the Promissory Note;
- e) Pre and post judgment interest on the principal sum from 22 September 2011 at the rate of 12% per annum in accordance with the terms of the Promissory Note;
- f) Alternatively, pre and post judgment interest in accordance with the *Judicature Law (2007 Revision)* and the Judgment Debt (Rates of Interest) Rules, as amended from time to time;
- g) Costs on an indemnity basis in accordance with the terms of the Promissory Note;
- h) Alternatively, costs on an indemnity basis or standard basis in accordance with the Court Costs Rules 2001; and
- i) Such further and other relief as this Court may deem just.

Appleby (Cayman) Ltd.

Appleby (Cayman) Ltd.
Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$52,820.38 plus CI\$15,225.47 for interest on that principal sum and CI\$7,646.58 for interest on the Delinquent Amounts as of 21 September 2011. The amount of the filing fees to commence the proceeding is CI\$200.00, plus ad valorem fees of CI\$428.20. If, within the time for returning the acknowledgement of service, the defendants pay 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 3(c) and 3(d) above;
2. The prescribed rate of interest on the principal sum is 12% per annum;
3. The prescribed rate of interest on the Delinquent Amounts is 18% per annum;
4. The date from which interest is payable is 1 January 2010;
5. The total interest claimed on the principal sum as at 21 September 2011 is CI\$15,225.47;
6. The total interest claimed on the Delinquent Amounts as at 21 September 2011 is CI\$7,646.58;
7. The amount of interest accruing each day on the principal sum is CI\$17.61; and
8. Interest at the rate of 18% continues to accrue on the Delinquent Amounts until paid.

This WRIT OF SUMMONS was filed by Appleby (Cayman) Ltd., Attorneys-at-Law for the Plaintiff whose address for service is Clifton House, 75 Fort Street, PO Box 190, Grand Cayman, KY1-1104, Cayman Islands (ref: HS/309642.0091)

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.

BETWEEN:

COX LUMBER LTD.

Plaintiff

AND

NEIL ARMSTRONG

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.

Appleby (Cayman) Ltd.
Attorneys-at-Law
75 Fort Street
PO Box 190
George Town
Grand Cayman KY1-1104
CAYMAN ISLANDS

Ref: HS/309642.00921

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