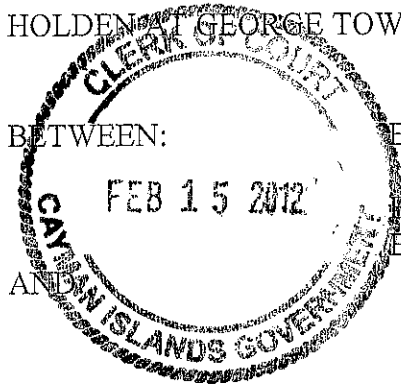


Writ of Summons (O.6, r.1)

IN THE GRAND COURT OF THE CAYMAN ISLAND
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO: 70 OF 2012



BETWEEN: EDNA BROWN SEYMOUR

PLAINTIFF

FIRSTCARIBBEAN INTERNATIONAL
BANK (CAYMAN) LIMITED

AND

ANDRE ALEXANDER

1st DEFENDANT

2nd DEFENDANT



SPECIALLY ENDORSED WRIT OF SUMMONS

TO: THE DEFENDANT: FIRSTCARIBBEAN INTERNATIONAL BANK (CAYMAN)
LIMITED

ANDRE ALEXANDER, Newlands, Grand Cayman, 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 15th day of February 2012

NOTE - This Writ may not be served later than 4 calendar 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 and was at all material times the owner of property Registration Section Savannah Block 27C Parcel 637 (the "Property").
2. The Defendant, First Caribbean International Bank (Cayman) Ltd. ("Bank"), is and at all material times was a bank carrying on business at First Caribbean House, 25 Main Street, P.O. Box 68 GT, George, Grand Cayman and the Plaintiff had an account at the Bank.
3. The 2nd Defendant was at all material times an employee, servant or agent of the 1st Defendant and at all times was authorised to represent the Bank.
4. At the material time the Plaintiff owned the land on which the Property is situated. Initially a single storey building was situated on it for a number of years and gradually using her own funds and later borrowing money from the Credit Union bank of CI\$56,000.00, principle and interest, the Plaintiff carried out work on the Property. Following Hurricane Ivan the Property was damaged and the Plaintiff required a loan from a bank to complete the repairs.
5. The Plaintiff was desirous of completing the work on the Property and in order to secure the funds and complete the work on the Property the Plaintiff provided the Bank with two estimates. One estimate was from a business called Neat & Fine Contractors dated October 2005 for CI\$138,861 and the other from A & C Construction dated 18 May 2005 for CI\$148,000.00.
6. The Plaintiff attended the Bank to meet with the 2nd Defendant and to discuss the Bank granting her a loan. The 2nd Defendant after reviewing the two estimates provided by the Plaintiff informed the Plaintiff that the Bank would lend her the funds.
7. The Plaintiff later learnt that the 2nd Defendant also operated a business or he would employ various individuals to work in the construction industry. The 1st and/or 2nd Defendant did not and thus failed to disclose to the Plaintiff the 2nd Defendant's interest in the construction industry.
8. On 16 November 2005 the 1st Defendant notified the Plaintiff by letter of the same date that "...it was pleased to establish a Credit Facility....." to her to cover the sum of CI\$169,080.00. The 2nd Defendant signed the documents as the Small Business Officer on behalf of the 1st Defendant. That offer was accepted by the Plaintiff and the offer letter signed by the Plaintiff on 28 November 2005.
9. However, the 2nd Defendant through his knowledge of Banking and his position at the Bank represented to the Plaintiff that in order to get the grant of the loan,

notwithstanding the offer, it would be conditional upon her using a person recommended by him.

10. The Person recommended by the 2nd Defendant was Mr. Owen Powiss. He was to complete the work through a company called Creative Builders & Trucking. The 2nd Defendant further represented and warranted to the Plaintiff that Mr. Powiss was the correct person for the job and that if she used the services of Mr. Powiss that he could complete the work as he had completed another property on Eastern Avenue, he was good at his job and thus someone who would get the job finished, that he could get the work completed for less than the estimates already provided for the work and material and would save her CI\$30,000.00.
11. In order to secure the loan the Plaintiff was not permitted to use her own contractor and thus was induced by the representations made by the 2nd Defendant to use the person that he had recommended. In reliance upon the said representations and/or warranties made by him and induced thereby the Plaintiff agreed to use the services of Mr. Owen Powiss.
12. Mr. Owen Powiss attended the Plaintiff's Property. He informed the Plaintiff that the 2nd Defendant contacted him and requested he prepare an estimate of the work necessary to complete the property together with cost.
13. On 16 December 2005 Mr. Powiss supplied an estimate to the 1st and 2nd Defendant although it is addressed to the Plaintiff. The total sum for the work to be carried out was CI\$106,475.00. The Plaintiff will rely on the contents of that document for its full terms and conditions. It is to be noted that that document states that "Each week the contractor shall prepare an itemized statement of the costs and expenses incurred to date." The Plaintiff has never been provided with such an itemised statement and is not aware if the Defendants were ever provided with such an itemised statement and/or receipts to support the payment of funds paid to Mr. Powiss or Clive Ellis.
14. The Bank lent the Plaintiff the sum of money as set out in the estimate of Mr. Powiss to takeover the loan at Credit Union Bank and to complete the work. The figure lent did not exceed the amount set out in the Credit Facility. As a customer of the Bank the Plaintiff expected the Bank to act with reasonable skill and care when advising her about financial matters. The Defendants failed to exercise reasonable skill and care and to provide the Plaintiff with any itemised accounts before it agreed to release any funds under the 1st Loan. They further failed to ensure that before any funds were released that an independent qualified surveyor's report had been obtained on the work carried out at that time to confirm that the work had actually been carried out before permitting a draw on the mortgage account.
15. The loan at Credit Union bank was taken over by the Bank in or about November 2005. According to the certified copy of the Title the transfer of the Charge to the

Bank was not registered until 6 February 2006. However, the 1st Defendant has never explained or failed to account to the Plaintiff as to why the loan of CI\$59,583.42 was only reduced to CI\$56,508.91.

16. The sum loaned to complete the work was CI\$112,571.00 (1st Loan). At no time were the funds given to the Plaintiff for her to dispose of as she felt fit and any and all sums under the 1st Loan were only ever paid out by the Defendants. The total sum on loan to the Plaintiff was CI\$169,080.00.
17. On 7 January 2006 Mr. Powiss contacted the Plaintiff and told her that she had to travel to Miami with him to purchase certain appliances and the materials for the Property. Due to the late notice the Plaintiff initially informed him that she could not travel with him. On 11 January 2006 the first draw was made on the mortgage facility and paid directly to Creative Builders and Trucking's account. On 12 January 2006 the Plaintiff travelled to Miami with Mr. Powiss to choose the items that she wanted Mr. Powiss to purchase for her Property and returned on 15 January 2006. However, many of those items chosen by the Plaintiff have never been received by the Plaintiff.
18. The Defendants have failed to act with reasonable skill and care, as it failed, amongst other things, to select someone who would provide an estimate that covered the actual materials and services to be performed, permitted the draw downs without first being provided with an itemised statement and knew or must have known based on the original two estimates that the work and material could not be completed for the sum estimated by Mr. Powiss.
19. A draw down was made by the Defendants to Clive Ellis on 11, 20 April and 5 May 2006 which individual was brought to the Property by the 2nd Defendant to do tile and exterior synthetic finishing work. The Plaintiff did not know Mr. Ellis or for whom he worked. The Plaintiff has since learnt that Mr. Ellis was employed by the 2nd Defendant. This work was either not finished or carried out properly.
20. All documents for the authorisation of the release of the funds were prepared by the 2nd Defendant. The Plaintiff was instructed by the 2nd Defendant to attend the Bank, request the document that had been left by him for her, sign it and leave it at the counter for the 2nd Defendant to collect. The Plaintiff could not read. The fact that the Plaintiff could not read was made known to the Defendants. Based on the representations of the 2nd Defendant the Plaintiff signed the various documents prepared by him. At no time did the 2nd Defendant inform the Plaintiff to obtain independent legal advice or to ensure that she understood the contents of the document. As can be seen from the Bank documents and letters written by the 2nd Defendant at no time was any of the money from the 1st Loan paid directly to the Plaintiff.

21. Based on the documents prepared by the 2nd Defendant and disclosed by the 1st Defendant the total sum paid out under the 1st Loan was CI\$155,277.83. Notwithstanding complaints made by the Plaintiff, the Defendants have not or refuse to account to the Plaintiff for this difference or provide any itemised breakdown showing the cost of work actually carried out or items purchased for and installed in the Property which formed the basis for the payments out under the 1st Loan.
22. The Plaintiff has since learnt that the 2nd Defendant employed some of his workmen including Cuban workers to perform some of the construction work on the Plaintiff's Property for which services they received payment. The Plaintiff never authorised the 2nd Defendant to employ any of his employees on her Property.
23. The Plaintiff became concerned at the fact that the work was not being completed on time and properly. She complained to the 2nd Defendant but became further concerned when it appeared to her that he did not take any action. The Plaintiff on separate occasions complained to the 1st and 2nd Defendant about this failure to complete the work either properly or timeously. The Plaintiff became increasingly concerned that the work was not being completed properly or at all and that materials allegedly purchased was never received on site or at all. The Plaintiff complained to a Philip Swenenton an employee at the Bank about the 2nd Defendant and Mr. Powiss. The Plaintiff instructed the 2nd Defendant not to pay out any more money. However, it was too late as she was informed by the Bank's staff that all funds had been used at that stage. Mr. Powiss failed to complete the work for the sum loaned under the 1st Loan and has since left the jurisdiction.
24. The Plaintiff made a report to the Police expressing her concern about the conduct of Mr. Powiss.
25. The 2nd Defendant never informed the Plaintiff that he or his employees were involved in the construction of the Property. The funds lent to the Plaintiff under the 1st loan were exhausted but the work was either not carried out or was not completed.
26. On or about 26 June 2006 and without any explanation to the Plaintiff another report was commissioned and completed by DDL which sets out the work that was still outstanding and thus to be completed and the estimate of cost of the work still to be carried out. At that time DDL estimated that a further CI\$88,735.00 was required to complete the Property. That figure did not include the extra sum of CI\$17,500.00 for material stored on and off the site some of which still had not been received by the Plaintiff.
27. As a result of the complaints made by the Plaintiff to the 1st and 2nd Defendant about the failure of Mr. Powiss to complete and/or to work properly or on time as represented by 2nd Defendant the 2nd Defendant at the request of the Plaintiff

visited the Property. The 2nd Defendant by letter dated 21 September 2006 wrote to the Plaintiff admitting to her, inter alia, that there were “.....inconsistencies on the amount drawn on the loan which was used by the contractor and the value of work done to date...”. Notwithstanding the poor workmanship, material allegedly purchased by him never arrived.

28. In fact, the said representations of the 2nd Defendant were false, fraudulently or negligently made and in breach of its fiduciary duty and/or reasonable skill and care.

Particulars

- a. The services of Mr. Powiss and his servants and agents were inadequate.
- b. Mr. Powiss did not provide the material and services for the sum of money which he represented he could and thus did not or could not complete the work.
- c. Mr. Powiss did not save the Plaintiff CI\$30,000.00 as represented by the 2nd Defendant by himself and/or on behalf of the 1st Defendant or Mr. Powiss.
- d. Mr. Powiss did not complete the work with reasonable skill and care or at all.
- e. Mr. Powiss has not provided any itemised accounts for items purchased or installed on the property to the Plaintiff or at all.
- f. Mr. Powiss was given money to purchase and provide materials and services but he has failed to provide all the materials or the services for which the money was advanced to the Plaintiff.
- g. Mr. Powiss has left the Cayman Islands without accounting for any and all of the money paid to him by the 2nd Defendant.
- h. The 1st and 2nd Defendant either together or separately have failed to account to the Plaintiff for how the 1st Loan was spent and/or together or separately omitted to properly account for the funds and how the funds were to be used or permitted funds to be removed from the loan account and used for a purpose other than the purpose for which it was lent to the Plaintiff.
- i. Contrary to the representations of 2nd Defendant, the Plaintiff still required and had to be advanced funds to purchase materials and complete the work on the Property.

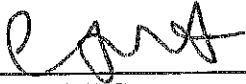
- j. In the premises Mr. Powiss did not provide adequate work or services in accordance with his estimate or at all.
 - k. The representations made by the 2nd Defendant were made knowing that they were false or at least made in the absence of any genuine belief that they were true.
 - l. The representations were made with the intention that they would be acted upon by the Plaintiff in a manner which resulted in damage to her.
29. In the letter referred to at paragraph 27, Mr. Alexander stated that the contractor was “..working on your house when you approached us for a loan.” The Plaintiff denies that statement and avers that she never knew or met Mr. Powiss or knew of Creative Builder & Truckers before he was recommended to her by the 2nd Defendant and that Mr. Powiss was introduced to her by the 2nd Defendant.
30. The Plaintiff would never have used the services of Mr. Powiss but for the representations of the 2nd Defendant which induced her to use his services.
31. By a letter dated 6 June 2006 Genesis Construction Co. Ltd provided the Plaintiff with a report titled Quantification Summary of Work Done on Dwelling House at the above Premises. The report states, inter alia, that the work carried out on the Property by Mr. Powiss was incomplete and the report will be relied on as evidence of the exact amount of work completed.
32. As a result, on 14 August 2006 the 1st Defendant prepared an additional Credit Facility of CI\$107,105.18. for the Plaintiff.
33. As a result of the Property not being completed in accordance with the estimate of Mr. Powiss and work having to be redone and/or the repurchase of material and items for the Property, on or about 28 September 2006 the 1st and 2nd Defendant without conducting an assessment of the means of the Plaintiff authorised a second loan of CI\$107,218.00 (2nd Loan) to complete the work on the Property. On 12 January 2007 Neat & Fine Construction provided an estimate of CI\$95,518.00 to complete the work. The Plaintiff will rely on this document for its terms and conditions.
34. The 1st Defendant permitted the 2nd Defendant to give advice which advice was relied on by the Plaintiff and which advice proved to be incorrect. The 1st Defendant’s servant and/or agent made representations on which the Plaintiff was induced to rely and which proved to be incorrect. The Plaintiff made complaints in similar terms as above to other officers of the Bank but they failed to assist the Plaintiff to remedy the above breaches.

35. Notwithstanding the negligence and/or fraudulent conduct of the Defendants or their respective servant or agents the 1st Defendant now seeks repayment of the entire loan facility from the Plaintiff.
36. The Plaintiff is now unable to pay back the loan that now forms part of her mortgage and the 1st Defendant has brought an action to foreclose on the mortgage and to sell the Plaintiff's Property which order was granted to the Defendants. The 1st Defendant has wrongfully and in breach of its mandate to the Plaintiff as a customer of the Bank released funds for a purpose other than the purpose for which it was authorised to release those funds and further has failed to account to the Plaintiff in the manner requested by the Plaintiff or at all so that funds were used by other individuals for a purpose other than the repair of her Property. The Plaintiff requires the Defendants to make a full account of all of the money allegedly owed by her to the Bank and to confirm the exact amount of the funds spent on the Property.
37. The attorneys for the Defendants appeared before the court on 9 October 2009 and 5 February 2010 on an application for foreclosure. The Defendants provided the court with an affidavit but did not make full disclosure in accordance with Ord 41 in that it failed to notify the court of the factual background. For instance, it did not inform the court of the letter referred to at paragraph 20 and the various complaints made by the Plaintiff that she has not received all of the funds purportedly loaned to her as it must be important for the Bank to ascertain the exact sum loaned by it to the Plaintiff before such an Order can be made. Further the Defendants have not provided any itemised accounts as stipulated in the agreement prepared by Mr. Powiss and or set out why such estimates have not been provided or any indication of the basis upon which each payment was made by the Bank supported by such itemised accounts and or the basis on which payments were made to Mr. Clive Ellis who is not a contracting party to an agreement or any agreement with the Plaintiff.
38. The 1st Defendant did not exercise reasonable skill and care in the management of the Plaintiff's account for the reasons as set out above and below. The representations made by the 2nd Defendant were incorrect; no itemised accounts were ever provided to the Bank and the Bank did not seek to obtain such accounts; the Bank failed to assess the exact sum under the 1st Loan that was actually used for the benefit of the Plaintiff thus necessitating the need for a 2nd Loan to be granted without first assessing the Plaintiff's ability to repay it and the Bank failed to ensure that its staff did not whilst handling the affairs of the Plaintiff have a conflict of interest.
39. As a result of the failure of the 1st Defendant to properly manage the loans the Plaintiff was unable to complete the repair and thus rent her Property in a timely manner so that she could service the loan and will seek damages from the Plaintiff for such consequential loss.

40. As a result of the failure to provide reasonable skill and care, the removal of funds without the knowledge and/or approval of the Plaintiff and the misrepresentations of the Defendants and/or their respective servants or agents the Plaintiff has suffered damages which damages will be further particularised on full disclosure of all bank records and itemised statements by the Defendants pursuant to the accounting as requested.

AND the Plaintiff claims:

- (i) An account of all sums paid out by the Defendants in respect of the construction of the Property and to whom.
- (ii) A copy of all receipts provided to the Defendants under the 1st loan to confirm that all sums paid out on behalf of the Plaintiff have in fact been used for the purpose of services and materials on her property.
- (iii) An order for payment of all sums by the Defendants on behalf of the Plaintiff that were not in fact made on behalf of the Plaintiff to be paid by the Defendants to the Plaintiff if shown to be due under the account at (i) above and/or deducted from her mortgage
- (iv) Damages
- (v) Injunctive Relief to stop the sale of the Plaintiff's property.
- (vi) Further, pursuant to The Judicature Law (1995 Revision), the Defendant is entitled to and claims interest on such sums as are found to be due at such rate and for such period as the Court shall think fit.
- (vii) Costs



CHAMBERS

Clyde Allen

THIS WRIT was issued by Clyde Allen of CHAMBERS on behalf of the Plaintiff whose address for service is P.O. Box 31076 SMB, 2nd Floor, Suite 10, Jack & Jill Building, 19 Fort Street, KYI-1205, George Town, Grand Cayman, Cayman Islands.

Writ of Summons (O.6, r.1)
IN THE GRAND COURT OF THE CAYMAN ISLAND
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO: 70 OF 2012

BETWEEN: EDNA BROWN SEYMOUR
FIRST CARIBBEAN INTERNATIONAL
BANK (CAYMAN) LIMITED
AND: ANDRE ALEXANDER

PLAINTIFF
1st DEFENDANT
2nd 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 a 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

Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for

Address for service: (please see overleaf)

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

Clyde Allen
CHAMBERS
Attorney-At-Law
PO Box 31076SMB
Jack & Jill Bldg, KY1-1205
Grand Cayman
Cayman Islands

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

[Empty box for defendant's attorney indorsement]