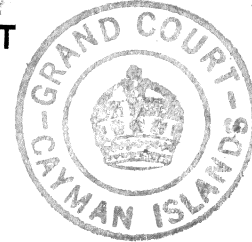


THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No. 179 Of 2012

BETWEEN:

THE CAYMAN ISLANDS DEVELOPMENT  
BANK



PLAINTIFF

AND:



(1) STEPHEN COTTERELL,  
(2) HUGH P. COTTERELL  
(3) PATSY CARLETTE COTTERELL

DEFENDANT'S

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WRIT OF SUMMONS

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**TO: Stephen Cotterell, Hugh P. Cotterell & Patsy Carletta Cotterell**  
**P.O. Box 290, c/o 94 Bougainvillea Drive, Savannah Acres**  
**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 Courts Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgement of Service 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 4<sup>th</sup> day of April 2012

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.

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## STATEMENT OF CLAIM

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1. The Plaintiff is a body corporate having perpetual succession established under the Cayman Islands Banking laws and expressly empowered by the said laws to grant loans in accordance with the said laws including retail lending.
2. The Defendants at all material times are all residents of the Cayman Islands, the First Defendant being a customer of the Plaintiff who obtained financing from the Plaintiff for the purposes of a student loan, and the Second and Third Defendants who guaranteed to indemnify the Plaintiff in the event of default by the First Defendant.

### **The Agreement**

3. By a memorandum of loan agreement made 24 September 2007, the ("**Agreement**"), the Plaintiff agreed to advance to the First Defendant the sum of CI\$30,000 for the purposes approved in the Agreement, namely eligible expenses including tuition fees to undertake an approved course of study in the United States.
4. The loan amount to the First Defendant described above was increased in 2009 to CI\$45,704 (the "**Loan**") in order to restructure the First Defendant's account with the Plaintiff, which included tuition arrears, outstanding interest and to capitalise future interest for a period of six months.
5. Of this additional loan, CI\$12,967.7 was advanced on 7 May 2009 and a further CI\$2,756.30 advanced on the same date to cover accumulated interest charges.
6. The Second and Third Defendants (the "**Sureties**") agreed to act as sureties for the loan to the First Defendant as indicated in the Agreement up to the original loan amount of CI\$30,000. Paperwork regarding additional surety for the additional loans to the First Defendant are presently being recovered by the Plaintiff.

### **Guarantee**

7. In addition to signing the said Agreement and agreeing jointly and severally to indemnify the Plaintiff in the event of the First Defendants default of the Agreement, the Sureties signed a letter personally guaranteeing to indemnify the Plaintiff, (the "**Guarantee**"), stating that they would make good any default by the First Defendant including any and all loss, damage or expense the Plaintiff should suffer as a result of the First Defendant entering the Agreement with the Plaintiff. The said Guarantee was dated 9 October 2007 and was good for CI\$30,000.

### **Terms of the Agreement**

8. The terms of the Agreement as set out in the Agreement *inter alia* was that the First Defendant repay the CI\$30,000 loan by monthly instalments of CI\$482.00 (Four Hundred & Eighty Two Cayman Islands Dollars) over a period of 84 months commencing on 27<sup>th</sup> February 2009, (there was an interest only grace period of seventeen months dating from the signing of the Agreement in September 2007 to the commencement of the monthly payments in 2009). Interest was to be 2.5% per annum above base rate effectively commencing at a rate of 8.95% per annum, later increased to 9.5% per annum.
9. The funds allocated for interest capitalisation described in paragraph 4 above were not applied to the loan resulting in the loan being 10 months delinquent as of March 16 2010, with an indication that \$8,000 in tuition fees appeared to have been subsequently unaccounted for and possibly misappropriated.
10. In any event, the First Defendant is in default of the Agreement and subsequent increase in the Loan, and the Second and Third Defendants are also in default of the Agreement and under the terms of the Guarantee provided by the Second and Third Defendants dated 9 October 2007.

### **Demand Letter**

11. By a letter dated 30 January 2012, the Plaintiff through its attorneys made a formal demand to the First Defendant (and by way of the guarantee indemnity, the Third and Second Defendants), asking the First Defendant to satisfy the First Defendants indebtedness to the Plaintiff within 7 days of the date of service of the demand letter or a reasonable offer to settle the outstanding indebtedness to the Plaintiff.
12. The said demand letter was served on the First Defendant on 13 February 2012.
13. A further demand letter was served on the Second & Third Defendants on 3 April 2012.
14. Neither the First Defendant, Second Defendant nor the Third Defendant have substantively replied to the said Demand Letters and to date have not honoured their obligations to the Plaintiff under the Agreement and or the Guarantee.

### **PARTICULARS**

15. The First Defendant has failed to pay the monthly installments due under the Agreement and subsequent re-financing of the Agreement. The current state of the account between the Plaintiff and the First Defendant as of **17 January 2012**, the date of last assessment by the Plaintiff, is as follows;


(a) The total amount of principle & interest outstanding is CI\$53,741.89.

- (b) The current arrears of monthly payments agreed on is CI\$18,965.54.
  - (c) The amount of interest accruing on a daily basis is CI\$11.21.
  - (d) The current period in default of payment is 21 months.
  - (e) The current rate of interest is 9.95%
16. The First Defendant therefore is in breach of the Agreement with the Plaintiff.
  17. The Second and Third Defendants are in breach of the Agreement with the Plaintiff by way of being sureties to the Agreement and in breach of the Guarantee with the Plaintiff.
  18. The Plaintiff claims pre-judgment interest in accordance with the terms of the Agreement as described in paragraphs 15 (c) and (e) above and the Judicature Law (2007 Revision);

#### **AND THE PLAINTIFF CLAIMS**

- (1) Immediate payment of all monies due to the Plaintiff by the First Second & Third Defendants under the Agreement and subsequent Loan restructuring, the amount of which as of 17 January 2012, was CI\$53,741.89 principle & interest, and accruing on a daily basis;
- (2) In the alternative, the Second & Third Defendants under the guarantee, to immediately pay the sum of CI\$30,000 against the principle & Interest sum of CI\$53,741.89 described above in paragraph (4) in accordance with the Agreement and Guarantee leaving a balance of CI\$23,741.89 to be paid by the First Defendant, and or the Second and Third Defendants together with all accrued interest, costs and legal fees to date, on terms agreeable to the Plaintiff;
- (3) Pre-judgment interest in accordance with the terms of the Agreement and Guarantee between the parties as described above in paragraph 18, and post judgment interest in accordance with the Judgment Debts Rate of Interest Rules (2010);
- (4) Court fees including *ad valorem* fees;
- (5) Legal costs to conclusion of these proceedings;
- (6) Further or other relief as this Honourable Court deems fit.

Note: Further proceedings will be stayed if within the time limit for acknowledging service of this writ, the First Defendant and or Second and Third Defendants pays the amount of principle & interest claimed by the Plaintiff including all accrued interest, costs and legal fees to date, payment to be made to the Plaintiff or his attorney.



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**Irvin Banks**  
**Attorneys-at-Law**

4 April 2012

**DIRECTIONS FOR ACKNOWLEDGEMENT 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, PO Box 495, 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 installments or otherwise.

***See over for Notes of Guidance***

### 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/her.
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 authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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.

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(3) PATSY CARLETTE COTTERELL

DEFENDANT'S

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ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

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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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes     No

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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 of Summons is acknowledged accordingly

(Signed) \_\_\_\_\_  
Attorney for

## NOTE 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/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her 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/her name, address and reference, if any, in the box below.

Irvin Banks  
Attorney-at -Law  
14 Rosemont Close  
George Town Box 1643  
Grand Cayman KY1-1109  
Cayman Islands  
Cell Phone 325 6395  
Fax 945 9169  
[irvin.banks@candw.ky](mailto:irvin.banks@candw.ky)

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.