

THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No. 182 Of 2012

BETWEEN:

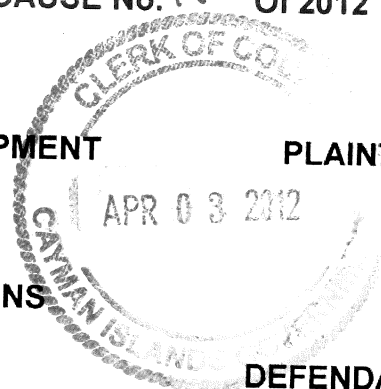
THE CAYMAN ISLANDS DEVELOPMENT
BANK

PLAINTIFF

AND:

(1) COLIN PHILMORE COWENS
(2) SUSAN H. COWENS

DEFENDANT



WRIT OF SUMMONS

TO: Colin Philmore Cowens, and Susan H. Cowens, of P.O. Box 197,
28 Doubletree Lane
Spotts, Newlands, Grand Cayman KY1-1104
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 3 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.

STATEMENT OF CLAIM

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 were 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 business Loan ("**Loan 1**"), and his wife the Second Defendant, who along with the First Defendant secured a loan from the Plaintiff for the purposes of debt consolidation (**Loan #2**).

The Agreements

Loan #1

3. By a loan agreement made 15 March 2005, the ("**First Agreement**"), the Plaintiff agreed to advance to the First Defendant the sum of CI\$36,500 for the purposes approved in the Agreement, namely to assist in financing a dump truck and another motor vehicle.

Loan #2

4. By an Offer Letter accepted on 9 February 2009 the ("**Second Agreement**"), the Plaintiff agreed to advance the First and Second Defendants the sum of CI\$31,898.00 for the purposes of debt consolidation.

Terms of the Agreements

5. The terms of the Agreement as set out in the First Agreement *inter alia* was that the First Defendant repay the Loan of CI\$36,500 by monthly instalments of CI\$921.36 (Nine Hundred & twenty one dollars thirty six cents), over a period of 48 months commencing 30 May 2005.
6. The terms of the Agreement as set out in the Second Agreement *inter alia* was that the First Defendant and Second Defendants repay the Loan of CI\$31,898 by monthly instalments of CI\$735.00 (seven hundred and thirty five dollars), over a period of 48 months commencing on 30 September 2009.

7. Both the First Defendant and the Second Defendant are in default of the above described loans as detailed in the particulars of default set out below in paragraphs 12, 13 and 14.

Demand Letter

8. By a letter dated 30 January 2012 to the First Defendant and the Second Defendant, the attorneys for the Plaintiff made a formal demand to the First Defendant and Second Defendant on behalf of the Plaintiff asking the First Defendant and the Second Defendant to satisfy their 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.
9. The said demand letter was served on the First Defendant on 24 February 2012.
10. Neither the First Defendant nor the Second Defendant have substantively replied to the said Demand Letter and to date have not honoured their obligations to the Plaintiff under the loan Agreements.
11. The Second Agreement was also secured by the Promissory Notes of the First Defendant and the Second Defendant.

PARTICULARS

12. The First Defendant has failed to pay the monthly installments due under the First 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\$19,828.88.
 - (b) The current arrears of monthly payments agreed on is CI\$14,456.80
 - (c) The amount of interest accruing on a daily basis is CI\$4.68.
 - (d) The current period in default of payment is 1,264 days.
 - (e) The current rate of interest is 9.95%

The First Defendant therefore is in breach of the First Agreement with the Plaintiff.

13. The First and Second Defendants have failed to pay the monthly installments due under the Second Agreement. The current state of the account between the Plaintiff and the First and Second Defendants under the Second Agreement 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\$37,306.82.


- (b) The current arrears of monthly payments agreed on is CI\$20,580.00.
- (c) The amount of interest accruing on a daily basis is CI\$4.58.
- (d) The current period in default of payment is 838 days.
- (e) The current rate of interest is 5.00%.

The First and Second Defendants therefore are in breach of the Second Agreement with the Plaintiff.

- 14. The Plaintiff claims pre-judgment interest in accordance with the terms of the First Agreement as described in paragraphs 12 (c)(e) above and the Second Agreement described in 13 (c)(e) above and in accordance with the Judicature Law (2007 Revision), and post judgment interest in accordance with the Judgment Debts Rate of Interest Rules (2010);

AND THE PLAINTIFF CLAIMS

- (1) Immediate payment of all monies due to the Plaintiff by the First and Second Defendants under the Agreements, the amount of which as of 17 January 2012, was CI\$19,828 88 principle & interest under the First Agreement, and CI\$37,306.82, principle & interest under the Second Agreement, and accruing on a daily basis;
- (2) Pre-judgment interest in accordance with the terms of the Agreement and Guarantee between the parties as described above in paragraph 16, and post judgment interest in accordance with the Judgment Debts Rate of Interest Rules (2010);
- (3) Court fees including *ad valorem* fees;
- (4) Legal costs to conclusion of these proceedings;
- (5) Further or other relief as this Honourable Court deems fit.



Irvin Banks
Attorneys-at-Law

3 April 2012

Note: Further proceedings will be stayed if within the time limit for acknowledging service of this writ, the Defendants pay 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.

This Writ was filed by Irvin Banks attorney-at-Law for the Petitioner, of 14 Rosemont Close, P.O. Box 1643 George Town, Grand Cayman KY1-1109, Cayman Islands, Tel 345 325 6395 Fax 345 945 9169, irvin.banks@candw.ky

**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.

BETWEEN:

THE CAYMAN ISLANDS DEVELOPMENT
BANK

PLAINTIFF

AND:

(1) COLIN PHILMORE COWENS
(2) SUSAN H. COWENS

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 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

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.