

IN THE GRAND COURT OF THE CAYMAN ISLANDS

GD335

CAUSE NO. OF 2012

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:

KIRK HENDRIKS

DEFENDANT



WRIT OF SUMMONS



TO: Kirk Hendriks of PO Box 30268, Grand Cayman KY1-1202

**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 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, George Town, Grand Cayman KY1-1106, 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 judgement may be entered against you forthwith without further notice.

ISSUED this 20<sup>th</sup> day of July 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 Acknowledgement of Service are given with the accompanying form.

## STATEMENT OF CLAIM

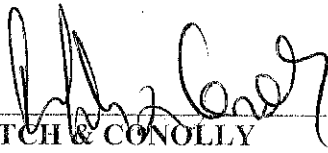
1. The Plaintiff is a Bank carrying on business at 200 Elgin Avenue, PO Box 1097, Grand Cayman KY1-1102 and the Defendant has, and at all material times has been, a customer of the Plaintiff. Furthermore the Defendant has, and at all material times has been a guarantor, principal obligor and surety to the Plaintiff under the terms of a Deed of Guarantee.
2. On or about 13<sup>th</sup> December 2007 the Defendant entered into, and signed, a Deed of Guarantee whereby in consideration of the Plaintiff agreeing to give credit and/or banking facilities and accommodation to Kirk Sea Tours Ltd (hereinafter referred to as "the company") the Defendant, guaranteed unconditionally and irrevocably to the Plaintiff as principal obligor, and not merely as surety, the due and punctual payment of all debts and liabilities, present and future, direct or indirect and of each and every liability of the company.
3. The liability of the Defendant was expressly agreed to be unlimited.
4. Furthermore the Defendant undertook to keep the Plaintiff fully and effectually indemnified against all losses, damages, costs, claims and expenses arising out of or in connection with any failure on the part of the company to pay any of the sums aforesaid as and when the same should the same should fall to be paid. The Guarantee given by the Defendant was a continuing guarantee and covered all debts and liabilities owed to the Plaintiff by the company and it would be applied to, and secure, any ultimate balance due or remaining unpaid to the Plaintiff.
5. The liability of the Defendant to make payment under the said Deed of Guarantee arose upon the Plaintiff giving notice in writing demanding payment.
6. The Deed of Guarantee provided that if there was default in the payment of any debt or liability owing to the Plaintiff by the company at any time the Plaintiff may treat the whole of the indebtedness secured as due and payable and may forthwith collect from the Defendant the total amount guaranteed.
7. In or about September 2011 there was default in payment to the Plaintiff and since that date no deposits to the account have been made.
8. Despite written demands made to the Defendant on the 17<sup>th</sup> May 2012 demanding payment the sum outstanding has not been repaid.
9. The Defendant is indebted to the Plaintiff in respect of the terms of the said Deed of Guarantee in the total sum of US\$176,904.13, made up of US\$175,205.17 by way of principal and US\$1,698.96 by way of interest.
10. Interest on the above sum continues at the rate of 5.75% per annum, a daily sum of US\$27.72 until payment.

**AND THE PLAINTIFF CLAIMS:-**

1. Payment of the principal sum of US\$175,205.17;
2. Interest on this sum as set out above in the sum of US\$1,698.96 and continuing from the date hereof at the rate of 5.75% per annum, a daily sum of US\$27.72 until payment;
3. Fixed costs of CI\$500.00 together with the prescribed court fees of CI\$1,118.34, alternatively costs to be assessed;
4. Further or other relief.

If, within the time limited for acknowledging service of these proceedings, the Defendant pays to the Plaintiff's attorneys the total amount claimed (including interest and costs) further proceedings will be stayed.

Dated the 20<sup>th</sup> day of July 2012

  
RITCH & CONOLLY  
Attorneys at Law for the Plaintiff

**TO:** The Clerk of the Court

**AND TO:** The Defendant of PO Box 30268, Grand Cayman KY1-1202

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CAUSE NO. OF 2012

BETWEEN:

CAYMAN NATIONAL BANK LTD

PLAINTIFF

AND:

KIRK HENDRIKS

DEFENDANT

ACKNOWLEDGEMENT 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 Judgement 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 judgement entered by the Plaintiff (tick box)

Yes

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 communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

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

Ritch & Conolly  
Queensgate House  
113 South Church Street  
PO Box 1994  
Grand Cayman KY1-1104  
  
Ref: CNB/#12876

*Endorsement 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 endorsement]

**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 the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, Grand Cayman KY1-1106.

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 endorsed 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 Acknowledgment 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.