

THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No. 347 Of 2012

BETWEEN:

THE CAYMAN ISLANDS DEVELOPMENT BANK

PLAINTIFF

AND:

(1) STEPHEN MCDERMOTT
(2) Anglen & Elaine McDermott

DEFENDANTS

WRIT OF SUMMONS



TO: Stephen McDermott, 27 Trinity Way, North Sound Estates, Newlands
P.O. Box 383, Grand Cayman KY1-1502, 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 6 day of August 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 Defendant at all material times was a resident of the Cayman Islands, the Defendant being a customer of the Plaintiff who obtained financing from the Plaintiff for the purposes of financing a dump truck for his business.

The Agreement

3. By a loan agreement dated 3 February 2011, ("**Agreement**"), the Plaintiff agreed to advance to the 1st Defendant the sum of CI\$329,025.00 for the purposes approved in the Agreement, i.e. to refinance an existing financial stimulus loan with the Plaintiff and to discharge loans with Royal Bank of Canada.

Terms of the Agreement

4. The terms of the Agreement as set out in the Agreement *inter alia* was that the 1st Defendant repay the loan of CI\$329,025.00 by monthly instalments of CI\$3,145.00 (Three thousand one hundred and forty five dollars), over a period of 180 months commencing 30 April 2011.

By paragraph 6 of the loan agreement between the parties the 1st Defendant agreed to pay the entire Plaintiff's administrative expenses and legal fees in the event of enforcement of the loan.

The 2nd Defendants by way of surety for the 1st Defendants loan, on 19 April 2011, charged property to the value of CI\$192,500 in order to secure part of the loan to the 1st Defendant by the Plaintiff. In the event of default by the 1st Defendant, the 2nd Defendants agreed for the Plaintiffs to proceed to recover the amount charged (if necessary) in accordance with the Registered Land Law (1995 Revision).

5. The 1st Defendant is in default of the above described loan as detailed in the particulars of default set out below in paragraph 10.

Demand Letters

6. A letter from the Plaintiff's attorneys to the Defendant dated 14 May 2012 which was served on the Defendant on 16 May 2012 advised the Defendant to make

arrangements with the Plaintiff to bring the arrears of CI\$20,045.00 up to date within 14 days of receipt of the letter or legal proceedings would commence against the Defendant.

7. There was no reply to the Plaintiffs letter of 14 May 2012
8. A formal Demand letter from the Plaintiffs attorneys dated 13 June 2012 was served on the 1st Defendant on 24 June 2012, and the 2nd Defendants on 23 June 2012, requesting payment of the outstanding loan and interest due to the Plaintiff within 7 days of the date of service of the demand letter or to make reasonable arrangements with the Plaintiff to satisfy the indebtedness, or face legal consequences.
9. The terms of the schedule to the 2nd Defendants Charge was that the sum of CI\$192,500 was due and payable on demand by the Plaintiff of the 1st Defendants (principle debtors loan). The 2nd Defendants are therefore in default of the charge agreement with the Plaintiff to the value of CI\$192,500.

Neither the 1st Defendant or the 2nd Defendant have replied to the said Demand Letter of 13 June 2012 and to date the 1st Defendant has not honoured his obligations to the Plaintiff under the Agreement.

PARTICULARS

10. The 1st Defendant has failed to pay the monthly installments due under the Agreement. The current state of the account between the Plaintiff and the Defendant as of **7 May 2012**, the date of last assessment by the Plaintiff, is as follows;

- (a) The total amount of principle outstanding is CI\$327,328.62
- (b) The total amount of interest outstanding is CI\$10,050.72.
- (c) The current arrears of monthly payments agreed on is CI\$20,045.00
- (d) The amount of interest accruing on a daily basis is CI\$71.74
- (e) The current period in default of payment is 190 days.
- (f) The current rate of interest under the agreement is 8 %

The 1st Defendant therefore is in breach of the Agreement with the Plaintiff, and the 2nd Defendants are in breach of the Charge agreement with the Plaintiff.

11. The Plaintiff claims pre-judgment interest in accordance with the terms of the Agreement as described in paragraphs 10 (b) (d) and (f), and post judgment interest in accordance with the Judicature Law (2007 Revision), and 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 1st Defendant under the Agreement the amount of which as of 7 May 2012, was CI\$337,379.34 principle & interest, and accruing on a daily basis;
- (2) An Order that the 2nd Defendants are in breach of the charge agreement with the Plaintiff for the sum of CI\$192,500 of the loan provided to the 1st Defendant, payable on demand
- (3) Pre-judgment interest in accordance with the terms of the Agreement between the parties as described above in paragraph 11 and post judgment interest in accordance with the Judicature Law (2007 Revision), and Judgment Debts Rate of Interest Rules (2010);
- (4) Fixed court costs including *ad valorem* fees;
- (5) Legal fees 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 Defendant 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.



Irvin Banks
Attorney-at-Law

6 August 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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AND:

**(1) STEPHEN MCDERMOTT
(2) Anglen & Elaine McDermott**

DEFENDANTS

**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.