

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *G0583* OF 2012

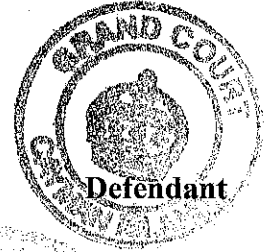
B E T W E E N:

MONTPELIER PROPERTIES (CAYMAN) LIMITED

Plaintiff

AND

**DONNA MYRIE-STEPHENS TRADING AS LE CLASSIQUE
(SHOE & LEATHER EMPORIUM)**



WRIT OF SUMMONS

TO: Donna Myrie-Stephens
Trading as Le Classique (Shoe & Leather Emporium)
PO Box 2805 GT
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, PO Box 495, Grand Cayman, KY1-1106, Cayman Islands, 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 judgment may be entered against you forthwith without further notice.

Issued this 18 December 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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a resident company organized and carrying on business pursuant to the laws of the Cayman Islands. The Plaintiff's registered office is located at Elizabethan Square, Shedden Road, PO Box 2136, Grand Cayman. The Plaintiff address for service is in care of its Attorney, Nathania Pearson, Attorney-at-Law, 24 Huldah Avenue, George Town, PO Box 5, Grand Cayman KY1-1801, Cayman Islands.
2. The Defendant is and was at all material times a resident of the Cayman Islands trading as Le Classique (Shoe & Leather Emporium), whose address is PO Box 2805, Grand Cayman KY1-1112, Cayman Islands. The Defendant's address for the service is in care of her attorneys, Samson & McGrath, 5th Floor Genesis Building, Dr. Roy's Drive, George Town, Grand Cayman.
3. That on or about 1 January 2006, the Plaintiff entered into an lease agreement with the Defendant for the lease of retail space of 2,040 square feet located at Block D Building, ground floor and second floor Elizabethan Square on Shedden Road, George Town (the "Lease Agreement"). The terms of the Lease Agreement were *inter alia*:
 - a. The option to renew shall be one x one year option to renew. The rate will be reviewed at the end of each lease period and negotiated annually prior to renewal of the lease agreement.
 - b. The rent for one year will be at the rate of CI\$26.00 per square foot equivalent to CI\$4,420.00 per month or CI\$53,040.00 per annum.
 - c. The terms of the lease would be for the period of one year from 1 January 2006 to 31 December 2006.
 - d. The rent deposit would be applied first to fix any repairs to the premises which the tenant should have done. Secondly to pay any rent that the tenant owes. Thirdly to satisfy any other outgoing which is under the lease agreement the tenant is liable to bear or pay; and Fourthly, to refund the balance, if any, to the tenant without interest when the lease ends.
 - e. The tenant must pay the landlord interest on any unpaid amount which he owes the landlord at the rate of 12% per annum, calculated from the due date to the date of actual payment, and compounded at the end of each calendar month.
 - f. To indemnify the Landlord against every loss and for all damage whatsoever which the Landlord incurs or sustains as a consequence of every breach by the Tenant of its obligations in the Lease Agreement and against all actions, claims, liability, costs and expenses so arising.
4. That the Defendant breached the terms of the Lease Agreement by failing to pay the rent in accordance with the terms of the Lease Agreement.

5. That the Defendant failed to pay rent for:

Date	Invoice No.	CI\$
1 July 2008	5469	28.80
1 December 2008	5705	4,930.00
1 January 2009	5764	4,930.00
2 February 2009	5809	4,930.00
1 March 2009	5850	4,930.00
Rent owed		19,748.80
2 June 2009	Deposit applied to 5469 and 5707	-4,777.00
Total sum owed		14,972.80

6. That on or about 2 June 2009, the Plaintiff applied CI\$4,776.60, being the Defendant's deposit to the outstanding balance. The deposit was applied to invoice no. 5469 and to part of invoice no. 5705, reducing the total sum owed from the Defendant to the Plaintiff to CI\$14,972.80.
7. That the Defendant ceased paying rent in December 2008, despite being in occupation of the premises until March 2009.
8. Approximately one year after the Defendant moved out of the premises, on or about 30 March 2010, after a receipt of a demand letter from the Plaintiff's previous attorneys, the Defendant acknowledged the debt and suggested that the Plaintiff should write-off the total sum of the debt owed.
9. On or about 24 June 2010, the Plaintiff wrote to the Defendant outlining that they were willing to accept a payment plan of CI\$250 to CI\$500.00 per month.
10. Subsequently, on or about 22 September 2010, the Plaintiff accepted the Defendant's offer to pay of CI\$ 250.00 per month until the debt had been paid in full. The terms of the payment agreement were that the Defendant would make a "good faith" payment of CI\$500.00 by 1

October 2010 and thereafter, by way of standing order, monthly payments of CI\$250.00 per month. The Defendant failed to make payment in accordance with the 22 September 2010 agreement.

11. On or about 6 March 2012, the Defendant was served with a "Letter before Action" which demanded the Defendant pay the debt in full within 14 days receipt of said letter. On or about 5 April 2012, the Defendant by way of her attorneys, Samson & McGrath Attorneys-at-Law offered to pay CI\$250.00 per month until the debt was satisfied in full. The Defendant further stated she would make the first payment at the end of April 2012.
12. On 26 April 2012, the Plaintiff wrote to the Defendant stating that given the age of the debt and the Defendant's previous dishonored promises to pay, that it would accept a payment plan on the following terms: a lump sum payment of CI\$2,500.00 on 31 May 2012 and thereafter monthly payments of CI\$518.90 payable on the 27th day of every month over a 24 month period.
13. On 29 June 2012, the Defendant, through her attorneys advised that she was unable to pay a lump sum payment and confirmed that she would be able to pay a monthly sum of CI\$518.90 per month commencing on 27 July 2012. The Plaintiff accepted the Defendant's counteroffer of CI\$518.90 per month. As of the date of the commencement of these proceedings the Defendant has not made any payment towards the debt.
14. That the Defendant defaulted on the terms of the Lease Agreement and as of the date of the commencement of this proceedings, the Defendant owed the Plaintiff the total sum of CI\$21,923.46 being principal of CI\$14,972.80 plus interest of CI\$6,950.66.
15. Notwithstanding the demand for payment pursuant to the terms of the Lease Agreement, the Defendant has either failed or neglected to make payment the Plaintiff.
16. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) CI\$14,972.80 being the principal sum due;
- b) CI\$6,950.66 pre-judgment interest calculated from 7 February 2009 to 18 December 2012 at the rate of 12% per annum in accordance with the terms of the Lease Agreement;
- c) Pre and post judgment interest calculated from 19 December 2012 at the rate of 12% per annum in accordance with the terms of the Lease Agreement;
- d) Alternatively, pre and post judgment interest calculated pursuant to the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time;

- e) Costs on a contractual basis, in accordance with paragraph 3(f) above, and following the issuance of the Writ of Summons to be taxed if not agreed;
- f) Alternatively, costs on an indemnity basis or standard basis in accordance with the Court Costs Rules 2001; and
- g) Such further and other relief as this Court may deem just.


NATHANIA PEARSON
Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is C\$14,972.80 plus interest of C\$6,950.66 as of the date of filing. The amount of the filing fees to commence the proceeding is C\$200.00 plus ad valorem fees of C\$49.73. If, within the time for returning the acknowledgement of service, the defendant pays the plaintiff or its attorneys-at-law the total amount claimed in principal, interest and the costs of issuing the Writ of Summons, further proceedings will be stayed. The money must be paid to the plaintiff or to its attorneys-at-law.

INDORSEMENT REGARDING INTEREST

1. The contractual term upon which interest is claimed is as set out in paragraph 3(e) above;
2. The prescribed rate of interest is 12% per annum;
3. The date from which interest is payable is 7 February 2009;
4. The total interest claimed as of 18 December 2012 is C\$6,950.66; and
5. The amount of interest accruing due each day is C\$4.92.

This WRIT OF SUMMONS was filed by Nathania Pearson , Attorney-at-Law for the Plaintiff whose address for service Barnett Music Centre, 24 Huldah Avenue, George Town, PO Box 5, Grand Cayman KY1-1801, Cayman Islands.

Acknowledgment of service of writ of summons (O.12, r.3)

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

After completion it must be delivered or sent by post to the Law Courts, PO Box 495 GT, 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 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 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.
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.

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CAUSE NO: OF 2012

B E T W E E N:

MONTPELIER PROPERTIES (CAYMAN) LIMITED

Plaintiff

AND

DONNA MYRIE-STEPHENS TRADING AS LE CLASSIQUE
(SHOE & LEATHER EMPORIUM)

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 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 communication 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.

NATHANIA PEARSON
Attorney-at-Law
24 Huldah Avenue, George Town
PO Box 5
Grand Cayman KY1-1801
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.

