

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 31 OF 2013

BETWEEN:

JOHNSON FAMILY PROPERTIES CAYMAN INC.

PLAINTIFF

AND:

CHESTERS' ENTERPRISES LTD.

DEFENDANT

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WRIT OF SUMMONS

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TO: CHESTERS' ENTERPRISES LTD

**THIS WRIT OF SUMMONS** has been issued against you by the above named Plaintiffs, of PO Box 2075, George Town, Grand Cayman, KY1-1105 in respect of the claims 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 Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

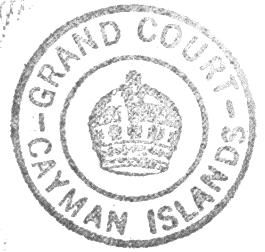
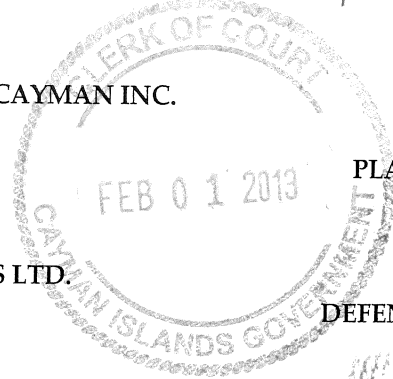
If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 30<sup>th</sup> day of January 2013.

**NOTE** this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

**IMPORTANT**

Directions for the Acknowledgement of service are given with the accompanying form.



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2013

BETWEEN:

JOHNSON FAMILY PROPERTIES CAYMAN INC.

PLAINTIFF

AND:

CHESTERS' ENTERPRISES LTD.

DEFENDANT

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STATEMENT OF CLAIM

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**The Parties**

1. The Plaintiff, Johnson Family Properties Cayman Inc is a duly incorporated Cayman company the registered office of which is Maricorp Services Ltd, 31 The Strand, PO Box 2075, George Town, Grand Cayman, KY1-1105.
2. The Defendant, Chester' Enterprises Ltd. is a duly incorporated Cayman company the registered office of which is situate at Pease Bay, Grand Cayman, Block 43D, Parcel 14, PO Box 238, Grand Cayman, KY1-1601.

**The First Loan**

3. During the period 30 November 2011, to in or around March 2012, the Plaintiff advanced the sum of US\$ 800,000.00 to the Defendant pursuant to an agreement in writing, dated 10<sup>th</sup> April 2012 ("the First Loan Agreement").
4. The money was lent by the Plaintiff to the Defendant for the purpose of purchasing certain plant and equipment for the operation of the business.
5. The following were express and material terms of the First Loan Agreement:
  - 5.1 by clause 2.1, the Defendant agreed to pay interest on the outstanding loan balance at the rate of 5% per annum;
  - 5.2 by clause 2.2, the Defendant agreed to pay the interest on the loan within 7 days of the end of each calendar month;
  - 5.3 by clause 3.1, the Defendant agreed to provide security for the loan by way of a Promissory Note made by the Defendant in favour of the Plaintiff; and

- 5.4 by clause 4.1, it was agreed that the Plaintiff may demand immediate repayment of the loan together with interest if the defendant defaulted on any payment of interest or principal for a period in excess of fourteen (14) days.
6. Pursuant to clause 3.1 of the First Loan Agreement, the Defendant forthwith made a Promissory Note for US\$ 800,000.00 together with interest at the fixed rate of 5% per annum, dated 10<sup>th</sup> April 2012 ("the First Promissory Note").
7. The Promissory Note was payable to the Plaintiff immediately, without presentment or demand or any notice to the Defendant, upon the occurrence of any of the following events:
- 7.1 upon default in the payment or performance of any liability or obligation of the Defendant to the Plaintiff, including any default in the payment of any installment, when due; or
- 7.2 when the Plaintiff in good faith believed that the prospect of payment of the note was impaired.
8. The Defendant failed to pay interest payments due pursuant to the First Loan Agreement..

#### **The Second Loan**

9. During the period March 2012, to in or around October 2012, the Plaintiff advanced the further sum of US\$ 1,700,000.00 to the Defendant pursuant to an agreement in writing, dated 8<sup>th</sup> September 2012 ("the Second Loan Agreement").
10. The money was lent by the Plaintiff to the Defendant for the purpose of purchasing certain plant and equipment for the operation of the business.
11. The following were express and material terms of the Second Loan Agreement:
- 11.1by clause 2.1, the Defendant agreed to pay interest on the outstanding loan balance at the rate of 5% per annum;
- 11.2by clause 2.2, the Defendant agreed to pay the interest on the loan within 7 days of the end of each calendar month;
- 11.3by clause 3.1, the Defendant agreed to provide security for the loan by way of a Promissory Note made by the Defendant in favour of the Plaintiff;
- 11.4by clause 3.2, the Defendant agreed to provide additional security for the loan by way a Bill of Sale in favour of the Plaintiff over the plant and equipment purchased by the Defendant with the Loan;

- 11.5 by clause 4.1, it was agreed that the Plaintiff may demand immediate repayment of the loan together with interest if the defendant defaulted on any payment of interest or principal for a period in excess of fourteen (14) days.
12. Pursuant to clause 3.1 of the Second Loan Agreement, the Defendant forthwith made a second Promissory Note for US\$ 1,700,000.00 together with interest at the fixed rate of 5% per annum, dated 2<sup>nd</sup> September 2012 ("the Second Promissory Note").
13. The Promissory Note was payable to the Plaintiff immediately, without presentment or demand or any notice to the Defendant, upon the occurrence of any of the following events:
- 13.1 upon default in the payment or performance of any liability or obligation of the Defendant to the Plaintiff, including any default in the payment of any installment, when due; or
- 13.2 when the Plaintiff in good faith believed that the prospect of payment of the note was impaired.
14. Pursuant to clause 3.2 of the Second Loan Agreement, the Defendant, as grantor, by deed dated 18<sup>th</sup> September 2012 assigned to the Plaintiff the several chattels and things specifically described in the schedule annexed to the deed ("the Chattels") upon the terms and conditions contained in the deed for the purpose of securing to the Plaintiff the sum of US\$1,700,000.00 then lent to him.
15. The value of the chattels at the time of the execution of the deed was US\$1,051,915.00
16. The Defendant failed to pay interest payments due pursuant to the Second Loan Agreement..
17. By way of letter dated 28<sup>th</sup> December 2012, the Plaintiff demanded from the Defendant payment of all outstanding interest payments in the total sum of US\$80,139.50 , due under the First and Second Loan Agreements ("the Loan Agreements").
18. Despite this written demand the Defendant failed to pay this sum to the Plaintiff.
19. By way of letter dated 14<sup>th</sup> January 2013, the Plaintiff demanded immediate repayment of the principal due under the loans together with interest, in the total sum of US\$2,115,570.79. The Plaintiff's demand was ignored and the sums due and owing under the Loan Agreements remain unpaid by the Defendant.
20. The Plaintiff further demanded immediate payment of the sum of US\$2,115,570.79 due under the Promissory Notes. The Plaintiff's demand was ignored and the Promissory Notes dishonoured.
21. The Plaintiff further proposed to call at the Defendant's business premises on 18<sup>th</sup> January 2013 in order to take possession of the Chattels. The Plaintiff's proposal was ignored, the Defendant has failed and refused to deliver up the said Chattels in breach of the terms of the deed and the Plaintiff has been unable to seize and take possession of the Chattels by way of execution.

22. The Plaintiff therefore claims the sum of US\$2,035,431.29 as money lent to the Defendant and repayable on 14<sup>th</sup> January 2013, together with interest due thereon at the rate of 5% per annum in the sum of US\$ 80,139.50 continuing at a daily rate of US\$ 278.82 which sums the Defendant has failed to repay in whole or in part from 28 December 2012.
23. In the alternative, the Plaintiff claims against the Defendant the sum of US\$2,035,431.29 together with interest thereon at 5% per annum in the sum of US\$ 80,139.50 continuing at a daily rate of US\$ 278.82 and now due and owing under the said terms of the Promissory Notes.
24. Further, in the alternative, the Plaintiff claims against the Defendant the sum of US\$ US\$2,035,431.29 together with interest as special damages pursuant to Section 57 (1) of the Bills of Exchange Law (1997 Revision) at the rate of 5% per annum on from 10 April 2012 to date of trial.
25. Yet further or in the alternative, the Plaintiff claims to be entitled to possession of the Chattels by virtue of the Bill of Sale or alternatively to payment of US\$1,051,915.00 the value of the said chattels.

**THE PLAINTIFF THEREFORE CLAIMS AGAINST THE DEFENDANT:**

- (a) Judgment in the sum of US\$2,035,431.29 as money due under the Loan Agreements or under the Promissory Notes;
- (b) Contractual interest on the loans at the rate of 5% per annum and in the sum of US\$ 80,139.50 continuing at a daily rate of US\$ 278.82 from 28<sup>th</sup> December 2012 to date of trial pursuant to clause 2.1 of the Loan Agreements or the Promissory Notes, or in the alternative, interest as special damage under Section 57(1) of the Bills of Exchange Law (1997 Revision);
- (c) Further or alternatively, Declarations or Orders :
  - (i) for delivery of the Chattels; and
  - (ii) that this Honourable Court do sanction and permit the Plaintiff be at liberty to sell the Chattels by private treaty; or
  - (iii) for payment of US\$1,051,915.00 the value of the said Chattels; and
  - (iv) pre and post-judgment interest thereon calculated pursuant to the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules, as amended from time to time.
- (d) Costs; and
- (e) Such further and other relief as to this Honourable may seem just.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of US\$2,115,570.79 , plus interest and costs further proceedings will be stayed. The money must be paid to the Plaintiff or their Attorney.

DATED at Grand Cayman this 30th day of January 2013

Nelson & Co

Nelson & Co.

Attorneys for the Plaintiffs

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

TO: The Clerk of the Grand Court

AND TO: Chester's Enterprises Ltd

BETWEEN:

JOHNSON FAMILY PROPERTIES CAYMAN INC.

PLAINTIFF

AND:

CHESTERS' ENTERPRISES LTD.

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 intend 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 the Defendant

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.

Indorsement by Plaintiffs' Attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Nelson & Company  
Attorneys at Law  
PO Box 2075  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1105  
Attn: S Barrie/C Flanagan

Indorsement 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 indorsement]

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, 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 instalments or otherwise.

See over for notes for guidance

## 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.