

**Writ of Summons (O.6, r.1)**

IN THE GRAND COURT OF THE CAYMAN ISLAND  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Cause no: <sup>G0043</sup> of 2014

1. PAMELA J. HUE
2. DAHLIA NICOLA JONES

BUTTERFIELD BANK (CAYMAN) LIMITED

PLAINTIFFS

DEFENDANT

SPECIALLY ENDORSED WRIT OF SUMMONS

TO: DEFENDANT: BUTTERFIELD BANK (CAYMAN) LIMITED c/o HSM  
Chambers Attorney-At-Law, 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, P.O. Box 495G, George Town,  
Grand Cayman, the accompanying Acknowledgment of Service stating therein whether  
you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or  
if you return the Acknowledgment without stating therein an 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 <sup>24</sup> day of March 2014

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 Acknowledgment of Service are given with the accompanying form.

## STATEMENT OF CLAIM

- (1) The Plaintiffs are owners of property at 43 Walkers Road property Registration Section George Town South Block 14E Parcel 303/304 ("commercial property"). The commercial property was purchased on 9 June 2009 for CI\$395,000.00 and the Plaintiffs paid a deposit of CI\$88,000.00.
- (2) The Defendant is a class A Bank registered and carrying on business in the Cayman Islands. It provides its customers with financial assistance by way of, *inter alia*, loans and retail mortgages secured by charges registered over their assets.
- (3) A loan amount was approved by the Defendant of \$326,250.00 to the Plaintiff to secure the purchase of the commercial property. By agreement of the parties, a charge was placed on the commercial property as well as a collateral charge was also placed on residential property known as 75 Moxam Road, Registration Section South Sound Block 15B Parcel 199 which was also owned by the Plaintiffs in order to secure loan amount.
- (4) When the commercial property was purchased various upgrades to the exterior and interior of the building were carried out. The Plaintiffs secured two tenants to rent the commercial property. The monthly mortgage payment for the commercial property was made during the first and second year using rental income received from two tenants. Due to a number of factors including a down turn in the economy, one of the rental tenants of the commercial property vacated the premises in August 2011. The rental income from the remaining business tenant was insufficient to service the mortgage. The monthly mortgage payment was or about \$2,710.00. The Plaintiffs made monthly payments to the Defendant in the amount of CI\$1,150.00. The mortgage thus fell into arrears.
- (5) During that time and at all times, the Plaintiffs continued to update the Defendant about their financial circumstances and ongoing Probate Action Cause no: G364 of 2010 in which they were named Defendants. As a result of various inhibitions placed on properties in the Estate of Lloyd Hue by the Plaintiff, John Hue, in October 2010 by his attorney, some of which properties were to be transferred to the 1<sup>st</sup> Plaintiff, the Plaintiffs have not been able to realise various assets so that they could pay off any and all debts owing and due including paying off or reducing the mortgage.
- (6) Windsor Villas was owned by Lloyd Hue and Pamela Hue jointly and was acquired by them on 27 October 2004. When Lloyd Hue passed away, that property was transferred into the 1<sup>st</sup> Plaintiff's name by right of survivorship. In February 2011 the 1<sup>st</sup> Plaintiff decided to sell a unit in Windsor Villas to Wayde Bardswell for \$130,000.00. This sale proceeds were to be used to pay off or substantially reduce the mortgage amount that was outstanding to the bank. Mr. Bardswell was approved for the loan with the Bank of Butterfield. The Plaintiffs

had sold an apartment to him previously at the same property. However, due to the Probate Action, John Hue instructed his attorney to place an inhibition on it by way of an Order of Henderson J in the Probate action, in which he was disputing the validity of a second Will, and thus the property could not be sold and the funds realised used to pay off the mortgage to the Defendant.

- (7) Such a sale would have assisted in paying down the mortgage to the Defendant and/or certainly make it current with the payments if not ahead of the payments due and owing at that time.
- (8) In or about June 2012 the Defendant retained the services of Appleby who served a section 64 Registered Land Law demand notice establishing the sum of money to repay to the chargee. However, contrary to the Registered Land Law, they served at the same time a section 72 notice power of sale notice on the Plaintiffs without waiting the statutory 4 months.
- (9) In 2013 the Plaintiffs were able to secure tenants to rent space in the commercial property. At that time, the rent for Mrs. Glenda Dilbert was \$1,200.00 and Miss Georgia Scott was \$950.00. The total rent collected was therefore \$2,150.00. The mortgage payment due each month was CI\$2,710.00 leaving a shortfall of \$500.00. Mrs. Georgia Scott informed the Plaintiffs that she was interested in renting an additional vacant space within the building which would have made up the rent collected to \$2,710.00.
- (10) The Defendant and/or its agents informed the Plaintiffs that there was a contract to sell the property for CI\$225,000.00 by the Bank to a third party. That would leave a substantial amount of negative equity and trigger the potential sale under the collateral charge secured on 75 Moxam Road.
- (11) Mr. Huw Moses of HSM Attorney At Law by email informed the Plaintiffs that the sale was to take place on 31 July 2013. On 16 July 2013 the Plaintiffs were further informed by Mr. Moses at 3.34 pm that the sale was to take place on 17 July 2013 at 3.00 p.m. Notwithstanding an inhibition registered against this property, the mortgagee proceeded to sell the commercial property by way of private treaty and not by public auction as provided for by section 75 Registered Land Law (R). Further, the sale of that commercial property by private treaty was made without leave of court pursuant to section 77 of the Registered Land Law (R) given the variation of the charge to sell by private treaty thus avoiding the supervisory role of the Grand Court. Further, the sale of the commercial property was at an under-value and in breach of the duty of the mortgagee to take reasonable care to obtain the best price possible in the circumstances which was the current market value. The Plaintiffs accept that they have to repay a sum of money to the chargee but contest the amount that is being pursued by the Defendant which amount has arisen as a result of the Defendant's breach of its duty of care to the mortgagors to obtain the best market value.

- (12) The Defendant now seeks to sell 75 Moxam Road without (i) proper particularisation and accounting for the sale of the commercial property and (ii) leave of the court to sell 75 Moxam Road by way of private treaty. The Plaintiffs thus request a stay of any such proceedings now before the Honourable Court to sell that property until the outcome of this action to determine the market value of the commercial property and the true market value of all properties so charged.
- (13) Further, the Defendant has a purported purchaser for 75 Moxam Road but that sale price has been obtained in breach of the Defendant's duty of care to the Plaintiffs as it is by the Defendant's own admission below the market value of that property.
- (14) The Defendant has failed to comply with its common law duties of care and the statutory provisions pursuant to the Registered Land Law (R).

#### **Particulars of Negligence at Common Law**

- a) The Defendant sold the commercial property at an under-value.
- b) The Defendant failed to take such care in realizing the true market value on the sale of the commercial property as a reasonable man would in his own private affairs.
- c) The Defendant failed to secure current valuation report(s) for the sale of the commercial property.
- d) The chargee in breach of its duty of care to the Plaintiffs as to the manner of sale without notice to the Plaintiffs permitted the purchaser to enter the commercial property before its sale and notify the tenants not to make payment of rental income to the Plaintiffs.
- e) The Defendant failed to market the property correctly or at all.
- f) That any reasonable lender would and should have secured at least a current valuation report taking into account the rental income at that time and properly market the property for a reasonable period of time in order to secure the true market value.

#### **Particulars of breach of Statutory duty of care**

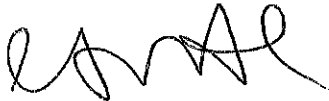
- g) The Defendant failed to comply with the provisions of the Registered Land Law (R), sections 64 and 72.
- h) The Defendant did not sell the property in compliance with section 75 of the Registered Land Law (R).
- i) The Defendant failed to seek leave of the Grand Court to obtain an order to sell the commercial property in breach of section 77 of the Registered Land Law (R).
- j) The Defendant failed to appear before the Grand Court and to secure a sale price together with a reserve sale price for the commercial property by way of private treaty.

k) The Defendant sought the removal of inhibitions without the approval of the court.

(13) As a result of the sale of the commercial property at an under-value as a result of the negligence of the Defendant, the Plaintiffs have suffered loss and damage which loss will be assessed by the Court based on the valuation reports put before it. The Plaintiffs will seek to set off the market price of the property against the sale price achieved by the Defendants of the commercial property.

AND the Plaintiff claims

- (i) Damages
- (ii) A stay of the sale of 75 Moxam Road until the determination of these proceedings.
- (iii) An accounting by the Defendant to the Plaintiffs.
- (iv) Set off of the market price against the sale price of the commercial property.
- (v) Further, pursuant to The Judicature Law (1995 Revision), the Plaintiffs are entitled to and claim interest on such sums as are found to be due at such rate and for such period as the Court shall think fit.
- (vi) Costs



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**CHAMBERS**

THIS WRIT was issued by Clyde H. Allen of **CHAMBERS** on behalf of the Plaintiff whose address for service is P.O. Box 31076 SMB, 2nd Floor, Suite 10, Jack & Jill Building, 19 Fort Street, KYI-1205, George Town, Grand Cayman, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLAND  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Cause no: of 2014

1. PAMELA J. HUE
2. DAHLIA NICOLA JONES

PLAINTIFFS

BUTTERFIELD BANK (CAYMAN) LIMITED

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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

yes       no

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3. If the claim against the Defendant is for a debt or a 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

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Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for

Address for service: (please see overleaf)

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

Clyde Allen  
**CHAMBERS**  
Attorneys-At-Law  
PO Box 31076SMB  
Jack & Jill Bldg, KY1-1205  
Grand Cayman  
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.*

[Empty box for defendant's attorney indorsement]