

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC 9 OF 2014

B E T W E E N:

A.L. THOMPSON BUILDING SUPPLIES LTD.



AND

1. SHOREWAY BUILDERS LTD.
2. GILLARD MCLAUGHLIN



Plaintiff

Defendants

AMENDED WRIT OF SUMMONS

TO:

Shoreway Builders Ltd.
c/o Bodden Corporate Services Ltd.
802 Grand Pavilion Commercial Centre
P.O. Box 10335
Grand Cayman KY1-1003
CAYMAN ISLANDS

Gillard McLaughlin
P.O. Box 127
Grand Cayman KY1-1301
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 6th day of January 2014

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 company organised and carrying on business pursuant to the laws of the Cayman Islands. The Plaintiff's address for service is care of its attorneys, HSM Chambers, Suite 3 Buckingham Square, 720 West Bay Road, PO Box 31726, Grand Cayman, KY1-1207, Cayman Islands.
2. The First Defendant is and was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands. The First Defendant's registered office is Bodden Corporate Services Ltd, PO Box 10335, Grand Cayman, KY1-1003, Cayman Islands.
3. The Second Defendant is an individual who resides in the Cayman Islands with a mailing address of PO Box 127, Grand Cayman, KY1-1301, Cayman Islands.
4. On or about 26 February 2010, the First Defendant entered into a credit agreement with the Plaintiff (the "**Credit Agreement**"). The terms of the Credit Agreement were, *inter alia*, as follows:
 - a. That the Plaintiff would advance credit to the First Defendant;
 - b. The date of shipment shall be deemed to be the date of invoice for purposes of payment and assessment of interest at the rate of 18% per annum as indicated in the terms of the Credit Agreement; and,
 - c. That all costs and expenses of collection, including but not limited to court costs, attorney's fees and any other expenses which may be suffered by the Plaintiff, will be reimbursed by the First Defendant if referred to an attorney for collection.
5. The Second Defendant personally guaranteed payment in full of the charges incurred by the First Defendant pursuant to the Credit Agreements by signing a Personal Guarantee. A term of the Personal Guarantee was, *inter alia*, that the Second Defendant shall be jointly and severally liable to the Plaintiff and its subsidiary companies for all monies due to the Plaintiff by the First Defendant.

6. Furthermore, on or about 26 July 2013, the Second Defendant, as guarantor for the First Defendant acknowledged the debt by signing a Promissory Note with the Plaintiff for the repayment of monies owed (the "**Promissory Note**"). The terms of the Promissory Note were, *inter alia*, as follows:
 - a. That the Principal and interest amount of CI\$75,361.27 shall be payable by the Second Defendant by way of monthly instalments of CI\$2,000.00 per month;
 - b. That the monthly instalments shall be payable on or before the last day of each month with the first instalment due on 31 July 2013;
 - c. In the event that the Second Defendant fails to make any payment when due under the Promissory Note, the Plaintiff may declare immediately due and payable the outstanding principal and interest plus additional interest as prescribed by the Credit Agreement (at its option and without notice to the Second Defendant); and
 - d. The Second Defendant shall pay all expenses incurred in relation to collection (including but not limited to attorney's fees and court costs) paid or incurred by the Plaintiff in enforcing the Promissory Note upon default by the Second Defendant.
7. The Plaintiff advanced credit to the First Defendant from time to time in accordance with the terms of the Credit Agreement.
8. The First Defendant defaulted on the terms of payment and as of 6 January 2014 the First Defendant, pursuant to the terms of the Credit Agreement, owed to the Plaintiff the principal sum of CI\$78,780.06 plus interest of CI\$3,768.49, exclusive of costs for a total of CI\$82,584.55. Interest on that sum continues to accrue at the rate of ~~CI\$77.70~~ CI\$38.85 per day.
9. Notwithstanding a demand for payment made on the First Defendant and the demand made of the Second Defendant as guarantor, the Defendants have either failed or neglected to make payment to the Plaintiff.
10. Notwithstanding a demand for payment made prior to the commencement of these proceedings, the Defendant has either failed or neglected to make full payment to the Plaintiff.
11. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) CI\$78,780.06 being the principal sum due as of 6 January 2014;
- b) CI\$3,768.49 interest from 30 September 2013 to 6 January 2014 at the rate of 18% per annum in accordance with the Credit Agreement and as set out in paragraph 4 above;
- c) Pre and post judgment interest from 7 January 2014 at the rate of 18% per annum in accordance with the terms of the Credit Agreement being ~~CI\$77.70~~ CI\$38.85 per day;
- d) Costs on an indemnity basis in accordance with the terms of the Credit Agreement;
- e) Such further and other relief as this Court may deem just.

HSM Chambers

HSM Chambers
Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$78,780.06 plus interest of CI\$3,768.49 as of 6 January 2014. The amount of the filing fees to commence the proceeding is CI\$200.00, plus ad valorem fees of CI\$678.80. If, within the time for returning the acknowledgement of service, the defendants pay 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 4 above;
2. The prescribed rate of interest is 18% per annum;
3. The date from which interest is payable is 30 September 2013;
4. The total interest claimed as at 6 January 2014 is CI\$3,768.49; and
5. The amount of interest accruing due each day is ~~CI\$77.70~~ CI\$38.85.

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.

B E T W E E N:

A.L. THOMPSON BUILDING SUPPLIES LTD.

Plaintiff

AND

- 1. SHOREWAY BUILDERS LTD.
- 2. GILLARD MCLAUGHLIN

Defendants

ACKNOWLEDGMENT OF SERVICE OF AMENDED 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.

HSM Chambers Attorneys-at-Law Suite 3 Buckingham Square 720 West Bay Road PO Box 31726 George Town Grand Cayman KY1-1207 CAYMAN ISLANDS Ref: LV/309773.0011

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

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