

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO: ⁰⁰⁹⁷ OF 2014

BETWEEN:

1) HSBC BANK (CAYMAN) LIMITED

PETITIONER

AND:

1) ANNIE ROSE MOXAM
2) FRANK RENARD MOXAM

RESPONDENT



ORIGINATING SUMMONS



LET THE DEFENDANTS of c/o Brooks and Brooks, 2 Artillery Court, Shedden Road, George Town, Grand Cayman and c/o Steve McField & Associates, Cayman Business Park, Thomas Russell Avenue, George Town, Grand Cayman attend before the Judge in Chambers, at the Law Courts, George Town, Grand Cayman on the _____ day of _____ 2014, at _____ o' clock on the hearing of an application by the Plaintiff of HSBC House, 68 West Bay Road, George Town, Grand Cayman:

- 1) For a declaration that monies held by in account 100-0376760-510 are not subject to a freezing injunction granted by Williams J on 11 May 2012 in Cause D55 of 2006;
- 2) For an order that the Plaintiff be permitted to use the monies held in the said account to discharge the sums owed to it by the Second Defendant in respect of a loan facility dated 7 September 2011;
- 3) For an order the Plaintiff be further entitled to deduct its legal costs and expenses incurred in relation to the loan from the said account and that the residual balance be paid over to the First Defendant;
- 4) For such further and other relief as shall be just;
- 5) That the Defendants shall be ordered to pay the costs of this Application.

PARTICULARS

- 1) The Plaintiff is a Class A licensed Bank.
- 2) On 12 September 2013, in the context of divorce proceedings between the Defendants, a consent order was entered into stating that the Second Defendant was entitled to the payment of a significant sum of money from certain specified accounts held at the Bank. That consent order was entered into without the knowledge of or prior consultation with the Plaintiff as to the status of such accounts.
- 3) In September 2011 the Second Defendant pledged certain monies held by the Bank as security for a personal loan facility. As a result of this pre-existing security interest, the Bank held insufficient free funds to make the payments referenced in the Order of September 2013.
- 4) Having notified the parties of this position, the First Defendant has continued to demand that the Bank pay over the full sum referenced in the Order to her. The Second Defendant has consented to the use of the pledged monies to discharge the loan facility but has requested that the balance be returned to him.
- 5) The Bank has made demand on the loan facility provided to the Second Defendant and has informed the parties that it now proposes to discharge that facility from the sums held by it. The First Defendant has alleged that the monies in question are subject to a freezing injunction granted in the divorce proceedings on 11 May 2012 and that the Bank would be in breach of such order in the event that it proceeded in this manner.
- 6) In the absence of agreement between the Defendants as to the treatment of the said account, the Plaintiff now seeks the Court's determination as to its entitlement to discharge the sum owing from the monies held.

Dated the ^{24th} day of June 2014

Filed the ^{25th} day of June 2014

Wal

WALKERS
Attorney for the Plaintiff

NOTES:-

(1) This Summons 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 above date unless renewed by order of the Court.

(2) If a defendant does not attend personally or by his attorney at the time and place above-mentioned such order will be made as the Court may think just and expedient.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

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**ACKNOWLEDGMENT OF SERVICE OF
ORIGINATING 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 appropriate box)
 yes no

Service of the Summons is acknowledged accordingly

(Signed) _____

Attorney For

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 be Plaintiff if suing in person) of his name, address and reference, if any in the box below.

Walkers
190 Elgin Avenue
George Town, Grand Cayman

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 ORIGINATING 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 495GT, 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 of 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 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 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 set 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.