

IN THE GRAND COURT OF THE CAYMAN ISLANDS

G 0163

CAUSE NO: OF 2014

B E T W E E N:

BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

LEONARD YATES, trading as Lenny's Backhoe Service

Defendant



WRIT OF SUMMONS

TO:

Leonard Yates, trading as Lenny's Backhoe Service
P.O. Box 226
Grand Cayman KY1-1501
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 25th day of July 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 Defendant is an individual who resides in the Cayman Islands with a mailing address of PO Box 226, Grand Cayman, KY1-1501, Cayman Islands.
3. On or about 25 August 2011, the Plaintiff provided the Defendant with a Credit Facility (the "**Credit Facility**"). The terms and conditions of the Credit Facility were, *inter alia*, as follows:
 - a. That the Plaintiff would lend the Defendant CI\$144,000 to assist in the purchase of a 2001 CAT 322 CL Excavator ("**Excavator**");
 - b. Interest would be charged at a rate of 3% per annum above the Bank's Prime rate for C.I. Dollar lending, variable from time to time as published by the Bank based on the daily outstanding balance. Prime Rate at all material times has been 3.25%;
 - c. Monthly payments of CI\$2,800 were to commence within 30 days of drawdown by way of combined capital and interest payments, amortised over a 5 year term;
 - d. The Plaintiff would hold a Bill of Sale on the Excavator and also hold a Bill of Sale on the 2002 CAT 325CL Excavator as collateral.
4. The Defendant defaulted on the terms of the payment. The Plaintiff put the Defendant on notice for payment.
5. The Plaintiff seized the Excavator on 30 November 2013.
6. The Plaintiff sold the Excavator on 4 December 2013 and applied the proceeds of sale to the Credit Facility.
7. There was a shortfall of CI\$70,416.46 including interest and fees of CI\$15,725.27.

8. The Plaintiff defaulted yet again on the terms of payment in regards to the shortfall and as a result the Plaintiff was served with a demand for payment on 3 March 2014.
9. As of the date of the commencement of this proceeding the Defendant, owed to the Plaintiff the principal sum of CI\$73,201.77. Interest on that sum continues to accrue at the rate of CI\$12.06 per day.
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\$73,201.77 being the principal sum due as of 25 July 2014;
- b) Pre and post judgment interest from 26 July 2014 at the rate of 6.25% per annum in accordance with the terms of the Credit Facility being CI\$12.06 per day;
- c) Costs on an indemnity basis in accordance with the terms of the Credit Facility; and
- d) Such further and other relief as this Court may deem just.


HSM Chambers
Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$73,201.77 as of 25 July 2014. The amount of the filing fees to commence the proceeding is CI\$200.00, plus ad valorem fees of CI\$632.02. 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 3B above;
2. The prescribed rate of interest is 6.25% per annum;
3. The date from which interest is payable is 26 July 2014;
4. The amount of interest accruing due each day is CI\$12.06.

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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2014

BETWEEN:

BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

LEONARD YATES, trading as Lenny's Backhoe Service

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.

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/300138.1214

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