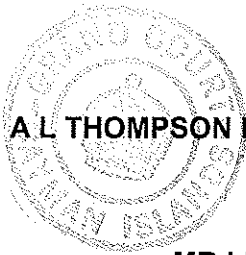


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 006 OF 2016

BETWEEN:



A L THOMPSON BUILDING SUPPLIES LIMITED

Plaintiff

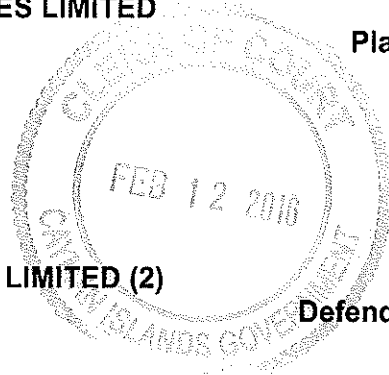
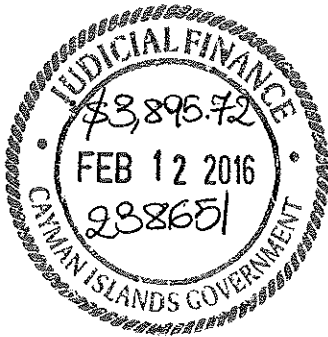
-v-

MR LEWIS EBANKS (1)

AND

EMPIRE DEVELOPMENT COMPANY LIMITED (2)

Defendants



WRIT OF SUMMONS

TO:

Mr Lewis Ebanks
P.O. Box 10009
Grand Cayman KY1-100
CAYMAN ISLANDS

AND

Empire Development Company Ltd
C/o Mr Lewis Ebanks
P.O. Box 10009
Grand Cayman KY1-100
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 12 day of Feb 2016

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 incorporated in, 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 resident and citizen of the Cayman Islands, and the Owner and Director of the Second Defendant Company. Prior to the incorporation of the Second Defendant, the First Defendant carried on business trading as Empire Development pursuant to a Trade and Business licence granted on or before 1st April 2003.
3. The Second Defendant is a company incorporated in, organised and carrying on business pursuant to the laws of, the Cayman Islands. The Second Defendant was incorporated on or around 9th February 2004. The Second Defendant's registered office is PO Box 10009, Grand Cayman KY1-100, Cayman Islands.
4. On or about 2nd October 2003, and by way of an Individual Credit Application dated 2nd October 2003, the First Defendant (trading as Empire Development) entered into a credit agreement with the Plaintiff (the "**First Agreement**") under the terms of which the Plaintiff would provide building supplies on credit to the First Defendant. The terms of the Agreement were, *inter alia*, as follows:

"1. A.L. Thompson Building Supplies Ltd. will assign you a maximum credit line and has the right to reduce or withdraw your credit privileges under this CREDIT AGREEMENT at any time without prior notice...

2. A.L. Thompson Building Supplies Ltd may permit you to purchase goods and/or services from an A.L. Thompson Building Supplies Ltd outlet on credit up to your credit line. You agree that said purchase will be governed by the terms of this CREDIT AGREEMENT.

3. Invoices will be issued by A.L. Thompson Building Supplies Ltd for purchases under this CREDIT AGREEMENT. Payment of the purchase price shall be pursuant to the terms set forth on each invoice. A.L. Thompson Building Supplies Ltd require you to sign the invoice at the time of ordering a credit purchase or at the time of the delivery of the goods or services ordered. You will be liable to A.L. Thompson Building Supplies Ltd for payment in accordance with the terms of the invoice whether or not you in fact sign the invoice. The date of shipment shall be deemed to be the date of invoice for purposes of payment and assessment of LATE PAYMENT CHARGES.

4. If you fail to pay A.L. Thompson Building Supplies Ltd in accordance with this CREDIT AGREEMENT, A.L. Thompson Building Supplies Ltd has the right, subject to any rights you may have by law, to collect your default, to declare the entire balance of your account immediately due and payable. If any unpaid balance is referred to an attorney for collection, you will pay to the extent permitted by law reasonable attorney's fees if the attorney is not our salaried employee, all costs and accrued LATE PAYMENT CHARGES on said unpaid balance in accordance with the LATE PAYMENT CHARGE RATE SCHEDULE.

5. A LATE PAYMENT CHARGE will be computed on statement date on any invoice which falls in a past due position on the monthly closing date. The LATE PAYMENT CHARGE begins to accrue the day after the due date of the invoice. The LATE PAYMENT CHARGE is computed monthly on the outstanding balance past due after all payments and credits received by the closing date of the statement have been deducted. The LATE PAYMENT CHARGE will be computed basis [sic] the following rates, which are subject to change without notice to you.

My signature on the CREDIT AGREEMENT and my/our use of the account constitutes my/our consent to the terms and conditions of the account and the CREDIT AGREEMENT..."

5. The "Late Payment Charge Rate Schedule" applied a monthly periodic rate of 1.5% interest, Annual Rate of 18% to the entire balance. The First Agreement was signed by Mr Lewis Ebanks, and stated "Empire Development" as the business name.
6. The Plaintiff provided building materials to the First Defendant from time to time in accordance with the terms of the Agreement. The Plaintiff monitored and recorded all transactions between the parties pursuant to the First Agreement in an account (the Account). It was agreed between the parties that goods and services provided to the Second Defendant (after incorporation) on credit would be added to the Account, and subject to the same terms.
7. The First Defendant defaulted on the terms of payment. By June 2012 the unpaid account balance, including contractual interest charges was CI\$531,181.53. Due to the high balance and large number of unpaid invoices, the Plaintiff refused to provide further credit to the First and/or Second Defendant.
8. On or around 1st June 2012 the First Defendant signed a Promissory Note (the Note) in his personal capacity to write-down CI\$450,000 from the balance on the account. The terms of the Note included *inter alia*:

*"FOR VALUE RECEIVED the undersigned Lewis Ebanks ("the **Maker**"), as owner of Empire Development Company Limited... promises to pay to A.L. Thompson Building Supplies Ltd ("the **Payee**")... the principal sum of CI\$450,000, together with interest thereon at the rate of 0.75% per month on the following terms:*

1. *The total principal sum of CI\$450,000 shall be payable by the Makers to the Payee by way of an initial payment of \$100,000 on or before July 31 2012, a further payment of \$150,000 on or before August 31, 2012 and monthly instalments of no less than CI\$20,000 per month with the first instalment due in the month of September 2012.*

2. *Interest hereon shall be calculated in the basis of a twelve-month year applied to the actual number of months elapsed. All payments of principal and interest hereon shall be payable at par in lawful currency of the Cayman Islands.*
3. *Interest shall be payable monthly at the rate of 0.75% per month (9.0% nominal annual rate) on the outstanding balance past due after all payments and credits received by the due date of the statement have been deducted...*
4. *The principal amount of this note represents an aggregate of amounts of existing indebtedness that the Maker freely admits is due and owing to the Payee and excludes any amounts classified as Accounts receivable by the Payee.*
5. *All amounts received for payment of this Note shall first be applied to any expenses due to the Payee under this note, then to accrued interest, and finally to the reduction of the principal...*
6. *In the event that any payment of principal and interest is not paid within thirty (30) days of its due date hereunder or in the event of any commencement by the Maker of bankruptcy proceedings (whether voluntary or compulsory), all unpaid amounts evidenced by this Promissory Note ... shall immediately become due and payable, without demand or notice...*
7. *In the event of default hereunder, all costs and expenses of collection (including all legal fees on an full indemnity basis regardless of any scale court costs which may otherwise apply) may be recovered by the Payee from the Maker, whether this Promissory Note is collected by suit otherwise [sic]. While this promissory note is in default, any amounts due hereunder shall continue to bear interest equal to 0.75% per month..."*
9. The First Defendant signed a Personal Guarantee dated 6th July 2012 ("the Guarantee") to guarantee all present and future indebtedness owing to the Plaintiff by Empire Development Company Ltd. The Guarantee accompanied a new credit agreement ("the Second Agreement") made between the Plaintiff and the Second Defendant. The

Second Agreement contained identical terms to the First Agreement, including those following Paragraph 4 above.

10. The First Defendant failed to make any payments pursuant to the Note. The Second Defendant failed to make payments for goods and services in accordance with the First and Second Agreements.
11. The Plaintiff wrote Formal Demand letters to the First and Second Defendant claiming outstanding sums due under the First and Second Agreements and the Note. No payment was received from the First and/or Second Defendant.
12. As of the date of the commencement of this proceeding the First Defendant, pursuant to the terms of the Note owed to the Plaintiff the principal sum of CI\$450,000.00. Further, pursuant to Clause 3 of the Note, the Plaintiff claims from the First Defendant contractual interest at 9% from 31st July 2012 to 9th February 2016 in the sum of CI\$142,915.07, and continuing in the sum of CI\$110.96 per diem.
13. At the date of the commencement of this proceeding Pursuant to the First and Second Agreements the Second Defendant owed to the Plaintiff the sum of CI\$209,144.44. Further, pursuant to Clause 5 and the Late Payment Charge Rate Schedule of the Second Agreement, the Plaintiff is entitled to, and claims contractual interest at the rate of 6% per annum from 10th July 2013 to 9th February 2016 in the sum of CI\$182,151.14, and continuing at the rate of CI\$34.38 per diem.
14. The First Defendant personally guaranteed payment in full of the sums in paragraph 13 by signing the Guarantee. The Plaintiff further to paragraph 12 and in the alternative claims the sums in Paragraph 13 from the First Defendant.
15. In the alternative to the contractual interest claimed in Paragraphs 12 and 13, the Plaintiff claims interest on all principal sums due pursuant to section 34 Judicature Law (2013 revision) in such sums and at such rate as the court deems fit.
16. The Plaintiff is entitled to, and seeks its costs of the proceeding on an indemnity basis, according with the terms of the Promissory Note and Agreements as set out above.

17. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF CLAIMS:

- a) CI\$659,144.44 being the principal sum due as of 9th February 2016;
- b) Pre and post judgment interest at the rate of 9% per annum in accordance with the terms of the Promissory Note on sums due thereunder, and at the rate of 6% in accordance with the terms of the First and Second Agreement on sums due thereunder to 9th February 2016 in the total sum of CI\$325,066.21, continuing at the rate of CI\$145.34 per day from 10th February 2016;
- c) Alternatively, pre and post judgment interest in accordance with Section 34 Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules, as amended from time to time;
- d) Costs on an indemnity basis in accordance with the terms of the First and Second Agreement and the Promissory Note;
- 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\$659,144.44** as of the date of filing. The amount of the filing fees to commence the proceeding is **CI\$200.00**, plus ad valorem fees of **CI\$3,695.72**. 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 terms upon which interest is claimed are set out in paragraphs 4 and 8 above;
2. The prescribed rate of interest is 6% per annum for the First and Second Agreement and 9% per annum for the Promissory Note;
3. The date from which interest is claimed under the terms of the Promissory Note is 31st July 2012 and under the terms of the First and Second agreements is 10th July 2013.
4. The amount of interest accruing due each day is CI\$145.34.

This WRIT OF SUMMONS was filed by HSM Chambers, Attorneys-at-Law for the Plaintiff whose address for service is Buckingham Square, 720 West Bay Road, PO Box 31726, Grand Cayman, KY1-1207, Cayman Islands (ref: AD/309773-0010)

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.

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 Buckingham Square 720 West Bay Road PO Box 31726 George Town Grand Cayman KY1-1207 CAYMAN ISLANDS Ref: []/[] |
|--|

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

| |
|--|
| |
|--|