

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC 137 OF 2016

BETWEEN:

C N EWERS & CO. LTD. T/A UNCLE CLEM'S MEAT & GROCERY

Plaintiff

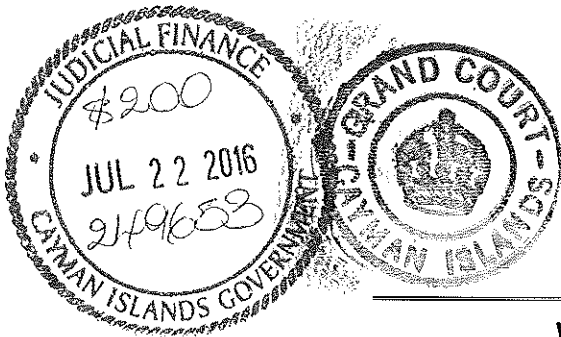
AND

CREOLE FOODS LTD.

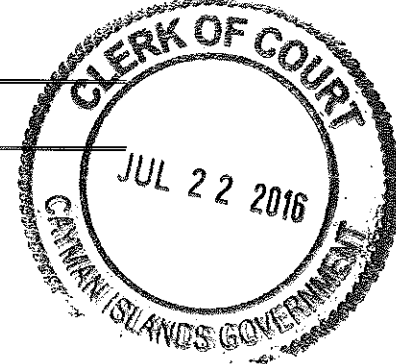
First Defendant

ANDRE ALEXANDER

Second Defendant



WRIT OF SUMMONS



TO:

**Creole Foods Ltd**  
PO Box 1811,  
Grand Cayman, KY1-1109  
Cayman Islands

**Andre Alexander**  
PO Box 1811,  
Grand Cayman, KY1-1109  
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 21 day of July 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.

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## STATEMENT OF CLAIM

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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, 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 address for service is PO Box 1811, Grand Cayman, KY1-1109.
3. The Second Defendant is an individual whose mailing address in the Cayman Islands is PO Box 1811, Grand Cayman, KY1-1109. The Second Defendant is the sole director/shareholder of the First Defendant's Company.
4. The Defendants failed to repay invoices issued to them by the Plaintiff, for goods that were supplied between December 2012 and March 2015. The value of the debt was agreed between the Plaintiff and Defendants and a Promissory Note and Deed of Guarantee and Indemnity were executed detailing, *inter alia*, a payment schedule.
5. On or around 11 December 2015 the Second Defendant signed a Promissory Note for the principal sum together with all interest and charges with interest, from the 31 January 2016 at the rate of 24% per annum until fully paid. The terms and conditions of the Promissory Note were, *inter alia* and as follows:

*"(1) The total sum of CI\$101,187.92 shall be payable by the Maker to the Payee initially by way of monthly instalments of CI\$500.00 per month for three consecutive months with the first instalment due on or before 4:00pm on 31 January 2016. The second instalment shall be due on or before 4:00pm on 29 February 2016 and the third monthly instalment shall be due on or before 4:00pm on 31 March 2016.*

*(2) Once the instalment due on 31st March 2016 is paid the matter is to be reviewed on 1 April 2016 before which time the Maker shall produce to the Payee's attorneys, HSM Chambers, updated financial statements, with a view to increasing monthly payments according with the Maker's means. In the event that the Maker and the*

*Payee cannot agree in writing by 4:00pm on 8th April 2016 a suitable increased monthly instalment, the debt shall become payable in full on demand.*

*(3) Interest hereon shall be calculated on the basis of a 365-day year applied to the actual number of days elapsed. All payments of principal and interest hereon shall be payable at par in lawful currency of the Cayman Islands.*

*(4) Interest shall be payable on the same dates as principal is repaid in arrears at the rate of 24% per annum. There shall be no penalty for early repayment in full of the principal and interest due at the time of such repayment of the balance due...*

...

*(6) In the event that any payment of principal and interest, whether by agreed payment instalment or otherwise is not paid within seven (7) days of its due date hereunder or in the event of commencement by or in respect of the Maker of bankruptcy proceedings (whether voluntary or compulsory), all unpaid amounts evidenced by this Promissory Note, at the option of the Payee, shall immediately become due and payable, without demand or notice. Failure to exercise this option shall not constitute a waiver of the rights to exercise the same in the event of ongoing or subsequent default.*

*(7) All costs and expenses of collection (including all legal fees) will be recoverable on a full indemnity basis from the Maker. Any amounts due hereunder shall continue to bear interest at the rate of interest equal to 24% per annum. All accrued legal fees and interest will be due and payable upon making of the last monthly payment."*

6. On or about 21 December 2015, the Second Defendant entered into a Deed of Guarantee and Indemnity with the Plaintiff (the "**Deed**") providing a full guarantee to the Plaintiff relating to sums owed by the First Defendant. The terms of the Agreement were, *inter alia*, as follows:

*"(1.1) The Guarantor hereby guarantees on demand to pay to the Creditor all monies and discharge all obligations and liabilities whether actual or contingent now or at any time hereafter due owing or incurred to the Creditor by Creole Foods Ltd. ("the Company") in whatever currency denominated in any manner whatsoever (whether alone or jointly and in whatever style name or form and whether as principal or surety) (when the same are due) together with interest (as well after as before any demand or judgment) to date of payment at such rates and upon such terms may*

*from time to time be payable by the Company (or which would have been so payable but for the liquidation administration or other incapacity of the Company) and all commissions fee and other charges and all legal and other costs and expenses incurred by the Creditor in relation to the Company or this Guarantee or any other guarantee indemnity or security for any monies obligations or liabilities hereby guaranteed on a full indemnity basis.*

*(1.2) The total amount recoverable under this Guarantee shall be limited to the principal amount of CI\$79,230.55 plus interest of CI\$21,957.37 with interest continuing to accrue on the unpaid principal balance in the amount of 24% per annum payable in accordance with clause 1.3 hereof.*

*(1.3) The Guarantor hereby agrees to pay interest (to the extent that such interest is not paid by the Company) from the date of demand until payment on all monies obligations and liabilities hereby guaranteed (as well after as before any demand or judgment or the liquidation administration or other incapacity of the Company) at such rate as may from time to time be payable by the Company or would have been payable but for the liquidation administration or other incapacity of the Company or any arrangement or composition with the creditors of the Company upon such days and upon such terms as the Creditor may from time to time determine and such interest shall be compounded in the event of it not being punctually paid in accordance with the usual practice of the Creditor but without prejudice to the right of the Creditor to require payment of such interest when due."*

7. The rate of contractual interest applied to this outstanding amount is specified in the Promissory Note (Clause 4) and the Deed (Clause 1.2) as 24% per annum.
8. The Defendants defaulted on the terms of payment. As of the date of the commencement of this proceeding the Defendants, pursuant to the terms of the Promissory Note and the Deed, owe to the Plaintiff, the principal sum including interest of CI\$115,738.72. Interest on that sum continues to accrue at the rate of CI\$65.88 per day.
9. Since the Promissory Note and the Deed were signed two payments were made by the Defendants totalling CI\$1,000.00: CI\$500.00 paid on 8 March 2016 and \$500.00 paid on the 11 March 2016.
10. Notwithstanding a demand for payment made on the Defendants, prior to the commencement of these proceedings, by formal demand letter dated 5 July 2016 and served

on 6 July 2016, the Defendants have either failed or neglected to make 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\$115,738.72 being the principal sum due as of 21 July 2016;
- b) Pre and post judgment interest from 22 July 2016 at the rate of 24% per annum in accordance with the terms of the Promissory Note and the Deed being CI\$65.88 per day;
- c) Alternatively, pre and post judgment interest in accordance with Section 34 of the *Judicature Law (2013 Revision)* and the *Judgment Debts (Rates of Interest) Rules 2012*;
- d) Costs on an indemnity basis in accordance with the terms of the Promissory Note and the Deed;
- 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\$115,738.72 as of 21 July 2016. The amount of the filing fees to commence the proceeding is CI\$200.00. 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 paragraphs 5 and 8 above;
2. The prescribed rate of interest is 24% per annum;
3. The date from which interest is payable is 22 July 2016 and
4. The amount of interest accruing due each day is CI\$65.88.

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

No.8  
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: GC OF 2016

B E T W E E N:

C N EWERS & CO. LTD. T/A UNCLE CLEM'S MEAT & GROCERY

Plaintiff

AND

CREOLE FOODS LTD.

First Defendant

ANDRE ALEXANDER

Second Defendant

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**ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS**

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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 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

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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  
Buckingham Square  
720 West Bay Road  
PO Box 31726  
George Town  
Grand Cayman KY1-1207  
CAYMAN ISLANDS  
  
Ref: 418860.0002

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

