

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. **6053** OF 2016

BETWEEN:

FIDELITY BANK (CAYMAN) LIMITED

Plaintiff

-AND-

MICHAEL F. WHITTAKER

Defendant

WRIT OF SUMMONS



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, P.O. 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 of Service within the time stated, or if you return the Acknowledgment of Service without stating therein your 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 19th day of August 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 Acknowledgment of Service are given with the accompanying form.

See overleaf for particulars of the Plaintiff's claim

STATEMENT OF CLAIM

1. The Plaintiff is a limited liability company registered in the Cayman Islands carrying on business as a financial institution.
2. The Defendant is a resident of the Cayman Islands.
3. On or about 30 March 2012 the Defendant made a promissory note in favour of the Plaintiff dated 30 March 2012 (the "Promissory Note").
4. The terms of the Promissory Note are that the principle amount of CI\$46,000 plus interest at the rate of 19% per annum are payable by the Defendant to the Plaintiff on demand.
5. On or about 5 February 2015 the Defendant owed the Plaintiff CI\$46,112.96 (the "Debt") under the Promissory Note. The Debt is comprised of principal of CI\$40,769.06 and interest of CI\$5,343.90.
6. The Plaintiff made demand for payment of the Debt by letter dated 5 February 2015 sent from the Plaintiff's attorneys to the Defendant.
7. The Defendant breached the Promissory Note by failing or refusing to pay the Debt.
8. In the circumstances the Plaintiff's claim is for principal of CI\$40,769.06; interest to date of demand of CI\$5,343.90; interest on principal at the rate of 19% per annum continuing from the date of demand until all sums outstanding under the Promissory Note are paid in full; and costs.

AND THE PLAINTIFF CLAIMS:

- A. The Debt of CI\$46,112.96;
- B. Pre-judgment interest at the contractual rate of 19% per annum from the 5 February 2015 until the date of Judgment;
- C. Post-judgment interest of the contractual rate of 19% per annum from the date of Judgment until payment is made in full;
- D. Costs.

E. Such other relief as this Honourable Court sees fit.

Dated this 19th day of August 2016

Broadhurst

Broadhurst LLC

Attorneys-at-Law for the Plaintiff

INDORSEMENTS

LIQUIDATED DEBT OR DEMAND

The amount claimed in respect of the liquidated debt or demand is CI\$46,112.96 and is made up as follows:

Principal:	CI\$40,769.06
Interest:	CI\$5,343.90 from 31 March 2012 to 5 February 2015;

If, within the time allowed to return the acknowledgement of service, the Defendant pays the Plaintiff or its attorneys-at-law CI\$46,112.96 plus fixed costs of \$500, the filing fee of \$200, *ad valorem* fee of CI\$307.69 and interest of CI\$20.10 per day from 5 February 2015 until the date of payment, further proceedings will be stayed.

INTEREST

Simple interest is claimed at the contractual rate of 19% per annum pursuant to the Promissory Note signed by the Defendant and dated 30 March 2012.

Interest began to accrue under the Promissory Note on 31 March 2012. As at the date of demand, being 5 February 2015, the total interest claimed is CI\$5,343.90. Interest is continuing to accrue at 19% per annum, being \$20.10 per day.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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 installments or otherwise.

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 fourteen (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, 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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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 G0153 OF 2016

BETWEEN:

FIDELITY BANK (CAYMAN) LIMITED

Plaintiff

-AND-

MICHAEL F. WHITTAKER

Defendant

ACKNOWLEDGEMENT 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 proceeding (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 proceeding, 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 the Defendant

Signed: _____
Defendant in person

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 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.

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

BROADHURST LLC.
ATTORNEYS-AT-LAW
40 LINWOOD STREET or
PO BOX 2503
GRAND CAYMAN KY1-1104

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