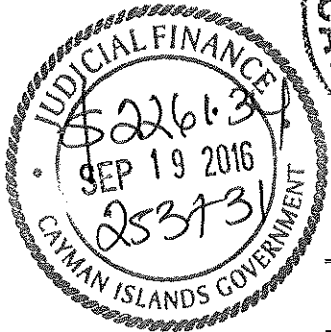


IN THE GRAND COURT OF THE CAYMAN ISLANDS


CAUSE NO: GC ⁰¹⁷⁴ OF 2016

BETWEEN:

IN CAYMAN
AND
HANDEL BOWEN



Plaintiff



Defendant

WRIT OF SUMMONS

TO:

HANDEL BOWEN
17 Tangerine Place,
Kingston 10,
Jamaica

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 28 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 day of September 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 a company organised and carrying on business pursuant to the laws of the Cayman Islands. The Plaintiff changed its name from National Building Society of Cayman to JN Cayman on or around 11 August 2015. 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 Defendant is an individual whose last known mailing address in the Cayman Islands was P.O. Box 31534, Grand Cayman, Cayman Islands, KY1-1207. The Defendant currently resides at 17 Tangerine Place, Kingston10, Jamaica.
3. The Plaintiff loaned monies to the Defendant, secured by charges registered against six parcels of land as follows below.

George Town South Block 14E Parcel 588H1-H5

4. The property known as and situate at Registration Section George Town South, Block 14E, Parcel 588 comprises 5 separate dwellings within the same complex. These individual dwellings are registered as Block 14E, Parcels 588H1-H5 inclusive (hereafter referred to as "588H1", "588H2" etc.). At all material times, the Defendant was the registered proprietor of all five of the dwellings.
5. The Plaintiff loaned monies to the Defendant, secured by charges over four of the above-named dwellings, namely, 588H1, 588H2, 588H3, 588H5 as follows:
 - a. The Defendant registered his title as proprietor in respect of both 588H1 and 588H2 on 27 June 1994. These Parcels had registered against both titles on the 11 January 1996 a collateral spread charge to secure the sum of US\$336,000.00. This charge was transferred to the Plaintiff, registered against both Parcels on 23 November 2006, and subsequently varied to Cayman Islands Dollars, and following payment and further advance, secured the sum of CI\$205,000.00. The variation was registered on 23 November 2006. The terms of the Charge required repayment of principal and contractual interest on demand, and further required payment of principal and interest terms in monthly instalments of CI\$2,605.00 pending such demand.
 - b. The Defendant registered his title as proprietor of 588H3 on 21 June 2006. On the same date a charge was registered in favour of the Plaintiff securing the sum of CI\$125,000.00. The terms of the Charge required repayment of principal and contractual interest on

- demand and further required payment of principal and interest terms in monthly instalments of CI\$1,600.00 per month pending such demand.
- c. The Defendant registered his title as proprietor of 588H5 on 4 April 2006. On the same date a charge was registered in favour of the Plaintiff securing the sum of CI\$84,000.00. The terms of the Charge required repayment of principal and contractual interest on demand, and further required payment of principal and interest terms in monthly instalments of CI\$1,100.00 per month pending such demand.
 - d. 588H4 was also owned by the Defendant at all material times, but the charge registered against the Defendant's beneficial interest was not in favour of a third party.

George Town South Block 24E Parcel 396H2, H4 and H5

6. The Defendant is the registered owner of three dwellings known as and situate at George Town South, Block 24E, Parcels 396H2, 396H4 and 396H5 (hereinafter abbreviated in the same manner as 588H1 above). The Plaintiff is a registered charge holder in respect of two of these.
 - a. On 18 October 1995 the Defendant registered his interest as the proprietor of 396H4 and 396H5. A charge was registered over each in favour of the Plaintiff on 17 April to secure a principal sum of CI\$190,000.00 (total CI\$380,000.00). Sums secured by both charges were repayable upon demand, with monthly instalments of CI\$2,515.13 due on each pending such demand.
 - b. 396H2 was also registered in the Defendant's name on 18 October 1995. This property is free and clear.
7. The schedule to the charge documents, containing the Plaintiff's standard terms and conditions, provides *inter alia*, as follows:

"2(a) The Chargor shall repay the Chargee on demand the Principal Sum or such portion thereof as shall have been advanced to the Chargor and remains due and owing together with interest.

...

3(a) Pending such demand for repayment as aforesaid by the Chargee the Chargor shall pay to the Chargee principal and interest in monthly instalments...

...

12. The right contained in Section 81(1) of the above Law to make further advances and to give credit to the Chargor on a current or continuing account and the right contained in Section 82 of the above Law to consolidate charges are expressly reserved to the Chargee.

...

15. The Chargor shall pay the Chargee's inspection fees and all other fees and expenses of and in connection with the inspection and valuation of the property hereby charged the examination of

the title thereto and preparation of this Charge together with the Stamp Duty and registration fees now or hereafter payable on this charge or any instrument of variation or discharge or partial discharge or power of attorney executed pursuant to this charge and such monies as aforesaid shall be recoverable from the chargor as a debt, shall bear interest a rate hereinbefore mentioned and shall be charged upon the property hereby charged. In addition the Chargor shall pay on demand all fees and expenses that may be hereafter incurred by the Chargee of and incidental to the protection and enforcement from time to time of the Chargee's rights."

8. On or around 16 July 2010 the sums loaned to the Defendant were, by way of a letter addressed to the Defendant dated 16 July 2010, signed as agreed by the Defendant, consolidated into a single account, number: MLL400000838 ("the Consolidated Account"). The balance was CI\$558,294.33, the interest rate was US Prime rate plus 3%, at the time of the consolidation being 6.25%, and being 6.50% per annum at the date of this pleading. The interim contractual monthly instalment was CI\$4,189.34. All other terms and conditions of the previous loans were expressly preserved.
9. The Defendant failed to maintain the terms of repayment as detailed above. As at 3 August 2015 there was an outstanding balance on the loan of CI\$651,811.45 including arrears of CI\$136,931.71.
10. At this time the Defendant was no longer living in the Cayman Islands, so statutory notices pursuant to Sections 64(2) and 72(1) of the Registered Land Law (2004 Revision) ("RLL") were served upon the Defendant by affixing to the front door of the Properties and publishing in three consecutive issues of the Cayman Islands Gazette, namely the 17 August 2015, 31 August 2015 and 14 September 2015, in accordance with Section 153(d) RLL.
11. No payments were received to pay the sums in the notices, or at all. The Plaintiff's right of sale relating to all above-named properties arose on 18 December 2015.
12. The Plaintiff obtained independent valuations and listed the security properties for sale on the CIREBA Multiple Listing System.
13. 588H1-H5 were sold together for CI\$325,000.00. The purchase price was split pro-rata between each of the individual lots. The properties with charges registered in the Plaintiff's name (588H1-3 and H5) therefore realised CI\$260,000.00 of the total purchase price. The sale completed on 2 June 2016. After realtor's fees and other fees and expenses for which the Plaintiff was liable upon closing were paid, the Plaintiff received CI\$218,829.00, which was credited to the outstanding principal Defendant's consolidated account.

14. The balance of the Consolidated Account, which at 14 September 2016 is CI\$513,320.06, including an outstanding balance of principal of CI\$332,267.20, accrued interest of CI\$105,978.50, and other late fees and loan fees payable under the terms of the charges.
15. The remaining two properties over which the Plaintiff has registered security for the debt have an estimated combined value of CI\$105,000 to CI\$110,000. A significant shortfall will remain upon their sale.
16. The plaintiff claims the sums due pursuant to the Consolidated Account The Plaintiff claims interest at the contractual rate of US Prime plus 3%, presently 6.50%, or such other rate as may be applicable under the terms of the charge documentation, and which continues to accrue at the daily rate of CI\$56.74. Alternatively the Plaintiff claims statutory interest in accordance with the *Judicature Law (2013 Revision)* and the *Judgment Debts (Rates of Interest) Rules, 2010* at such rate as the court deems fit.
17. The Plaintiff is entitled to, and claims, its contractual fees and all costs of, and incidental to, the enforcement of its rights under the charge, on an indemnity basis.
18. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF CLAIMS:

- a) CI\$332,267.20 being the principal sum due to 14 September 2016;
- b) Pre- and post-judgment interest from 16 July 2010 to 14 September 2016 at the rate of US Prime Rate + 3%, at the date hereof being 6.50%, in the sum of CI\$105,978.50, and continuing from 15 September 2016 at the rate of CI\$56.74 per diem;
- c) Alternatively, pre and post judgment interest in accordance with the *Judicature Law (2013 Revision)* and the *Judgment Debts (Rates of Interest) Rules, 2010*;
- d) Costs on an indemnity basis;
- 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\$332,267.20** as of the date of filing. 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 paragraph 8 above;
2. The prescribed rate of interest is at the rate of US Prime rate plus 3%, presently 6.50%;
3. The date from which interest is payable is 16 July 2010;
4. The amount of interest accruing due each day is CI\$56.74.

**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 **28** 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 **28** 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.

B E T W E E N:

JN CAYMAN

Plaintiff

AND

HANDEL BOWEN

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.

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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.

 2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

<input type="checkbox"/> yes	<input type="checkbox"/> 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*).

<input type="checkbox"/> yes	<input type="checkbox"/> 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 PO Box 31726 George Town Grand Cayman KY1-1207 CAYMAN ISLANDS Ref: 417718.0101

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

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