

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO: SC 148 OF 2017

BETWEEN:



FIDELITY BANK (CAYMAN) LIMITED

AND

JOAN ELAINE EBANKS



Plaintiff

Defendant

PLAINT

TO:

Joan Elaine Ebanks
P.O. Box 111
Grand Cayman KY1-1102
Cayman Islands



THIS PLAINT 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 service of this Plaint on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out full particulars of your defence in the space provided in the Acknowledgment of Service form.

If you fail to satisfy the claim or to return the Acknowledgment of Service form containing full particulars of your defence, the Plaintiff may apply for a default judgment without any further notice to you.

Issued this 26th day of July 2017

See overleaf for particulars of the Plaintiff's claim

PARTICULARS OF CLAIM

1. The Plaintiff is and was at all material times a company organised and carrying on business as a Bank pursuant to the laws of the Cayman Islands. The Plaintiff's address for service is care of its attorneys, HSM Chambers, 68 Fort Street, George Town, 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 P.O. Box 111, Grand Cayman KY1-1102, Cayman Islands.
3. On or about 22 April 2008, the Defendant entered into a Credit Agreement with the Plaintiff (the "**Credit Agreement**").
4. The Plaintiff advanced credit to the Defendant from time to time in accordance with the terms of the Credit Agreement. The terms of the Credit Agreement were, *inter alia*, as follows:
 - a. *"FINANCE CHARGES ON PURCHASES AND CASH ADVANCES: We assess Finance Charges upon your statement closing date, based on your average daily balances of Purchases and/or Cash Advances. No finance Charges will be assessed on any new Purchases if they are paid for in full by the payment due date shown on your statement and if your previous balance was paid in full by the statement closing date. Otherwise, Finance Charges will be assessed on any new Purchase from the payment due date following the date the new payment was posted to the Card Account.*
 - ...
 - b. *"COLLECTION COSTS: If you are in default of any of these terms and conditions you shall be responsible for payment of all FBCs collection and court costs including reasonable attorney's fees.*
 - c. *REASONS FOR REQUIRING IMMEDIATE PAYMENT: You shall be in default under this Agreement and we may require immediate payment of all amounts owed by you if:*
 - *You fail to make any required payment by the due date;*
 - *The outstanding balance on the Card Account at any time exceeds your credit limit;*

- *You fail to abide by any other terms of this agreement;*
- *You make any false or misleading statements on your application for the Card and the Card Account;*
- *You default in the payment of any other of your obligations owed to FBC;*
- *You die, become insolvent or become the subject of bankruptcy proceedings; or*
- *Your property is seized by garnishment, attachment or any other process by any creditor*

....

- d. *TERMS AND CONDITIONS OF AGREEMENT: The Card is issued by Fidelity Bank (Cayman) Limited (FBC) and as such is subject to the following conditions:*
- e. *The person named on the Card (Cardholder) shall sign the Card and any replacement issued following loss thereof immediately upon receipt. That the Plaintiff would advance credit to the Defendant.*
- f. *Use of the Card in connection with the purchase of goods and/or services represents an extension of credit by the supplier. The Card may only be used within the authorized credit limit as given to the Cardholder by FBC. The Cardholder must sign a sales voucher every time the Card is used, however, failure to sign does not relieve the Cardholder from responsibility for payment.*
- g. *FBC will forward a statement to Cardholder once a month showing the account charges and credits since the last statement, the account balance, the minimum payment due in accordance with the Terms of Repayment and the next payment due date. The Terms of Repayment are defined below.*
- h. *The Card is valid provided the Cardholder pays an Annual Fee to FBC the amount of which will be fixed by FBC each year and which is available upon request. A Late Fee is applicable when minimum payment is not received before or on the due date.*
- i. *If a supplier issues a credit voucher in respect of goods returned, FBC will upon receipt of the credit voucher from the supplier, credit the amount of the voucher to the appropriate account. Unless a credit voucher is issued and sent to FBC, the account is payable in full and no claim by the Cardholder against the supplier may be the subject of set-off or counterclaim against FBC.*

- j. The outstanding balance Cardholder's account shall become due and payable to FBC on the Cardholder's bankruptcy or death or (at the discretion of FBC) if the Cardholder is in breach of any Conditions of Use.*
- k. Overdue accounts are subject to collection and all collection costs including, but not limited to, legal expenses incurred shall be charged to the Cardholder, and shall be payable him/her on demand.*

TERMS OF REPAYMENT

- l. The Cardholder may pay amounts due on or before the date for payment contained in the statement. "Payment" means either cash or cheque (with is subsequently duly honoured) in the hands of FBC by the close of business on or before the due date.*
 - m. The Cardholder may extend payment (including a service fee and interest) providing that a monthly repayment of \$50.00 or 5% of the outstanding balance (whichever is greater) is made.*
 - n. OTHER FEES AND CHARGES: When you receive the Card, you will also receive a notice detailing current prevailing interest rates, service charges, penalty fees and the annual fees. The annual fee will appear on your first monthly statement and is not refundable. In the subsequent years, annual fees are charged on the anniversary statement each year. You will pay all applicable fees and charges communicated to you. You understand that these fees and charges are not refundable in the event of termination of the Credit Card account."*
5. The Defendant was notified of the interest rate of 18% per annum by way of a Fees Guide provided to her at the time of signing the Credit Agreement.
 6. The Defendant defaulted on the terms of payment and a Demand Letter dated 26 July 2016 was served on the Defendant on 26 July 2016 requesting payment of all outstanding sums on the account.
 7. The Defendant acknowledged the debt by executing a Promissory Note for payments to be made in the sum of US\$150 per month towards the outstanding debt. The first payment was due on 26 August 2016, and subsequent payments to be made on or before 29th day of each subsequent month.

8. Payments have not been made in accordance with the Promissory Note. The Defendant has only made four payments totalling US\$606.10 towards the outstanding debt since the Promissory Note was executed.
9. The Defendant has either failed or neglected to make full payment to the Plaintiff notwithstanding a Demand for the monies.
10. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) US\$6,505.23 being the principal sum due as at 13 July 2017;
- b) Pre and post-judgment interest at the rate of 18% per annum in accordance with the Credit Agreement, from 14 July 2017 accruing at \$3.21 per diem as at the date hereof.
- c) Alternatively, interest on all sums due in accordance with Section 34 of the Judicature Law (2017 Revision) at such rate as the Court thinks fit.
- d) Costs on an indemnity basis in accordance with the terms of the Credit Agreement.
- e) Such further and other relief as the Court may deem just.



HSM Chambers
Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is US\$6,505.23 and interest at the rate of 18% per annum, accruing at the rate of US\$3.21 as of the date of filing. The amount of the filing fees to commence the proceeding is CI\$25.00 (US\$30.49). 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 and the costs of issuing the Plaintiff, 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 4 and 5 above;
2. The prescribed rate of interest is 18% per annum; and
3. The date from which interest is payable is 14 July 2017.

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO: SC 148 OF 2017

B E T W E E N:

FIDELITY BANK (CAYMAN) LIMITED

Plaintiff

AND

JOAN ELAINE EBANKS

Defendant

ACKNOWLEDGMENT OF SERVICE

1. State Defendant's name and address:-

[Empty rectangular box for Defendant's name and address]

2. State whether the Defendant intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Plaint is acknowledged accordingly.

Dated this day of 2017

Defendant's Signature

See overleaf

PARTICULARS OF DEFENCE

1. *[Here set out in numbered paragraphs the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him]*

Defendant's Signature

REMINDER - This form must be taken or sent to the Court Office, PO Box 495, Grand Cayman KY1-1106 within 14 days of receipt otherwise a default judgment may be entered against you.