

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 166 OF 2017

BETWEEN: SCOTIABANK & TRUST (CAYMAN) LTD.

PLAINTIFF

AND: PAUL RAMOON
DELVA RAMOON

DEFENDANTS



WRIT OF SUMMONS

TO: Paul Ramoon
P.O. Box 648
Grand Cayman KY1-1107

AND TO: Delva Ramoon
P.O. Box 648
Grand Cayman KY1-1107



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, 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 judgement may be entered against you forthwith without further notice.

Issued this 11th day of October 2017.

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.

THIS WRIT OF SUMMONS was issued by the Plaintiff's Attorney, Collas Crill, whose address for service is Floor 2, Willow House, Cricket Square, P.O. Box 709, Grand Cayman KY1-1107, Cayman Islands.

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STATEMENT OF CLAIM

1. The Plaintiff at all material times carried on the regulated business of banking and trust management in the Cayman Islands.
2. At all material times the Defendants of P.O. Box 648, Grand Cayman KY1-1107 were residents of the Cayman Islands.

Commitment Letter Dated 5 July 2012

3. On 5 July 2012 the Plaintiff extended credit facilities to the Defendants with a maximum aggregate credit of CI\$725,000.00 ("Commitment Letter").
4. Pursuant to the terms of the Commitment Letter, the purpose of the credit facilities depended upon whether the credit was extended by way of operating credit ("Operating Credit") or non-revolving credit (Non-Revolving Credit).
5. In relation to the Operating Credit, the purpose of the credit was to:
 "...assist with funding working capital requirements."
6. In relation to the Non-Revolving Credit, the purpose of the credit was to
 "...amalgamate existing loan facilities and re-amortize over 12 years."
7. In relation to repayment of the Operating Credit, the Commitment Letter provided:
 "Advances made under this credit facility are **repayable upon demand** [*emphasis added*] and are expected to fluctuate widely within the limit established. In the event satisfactory fluctuations are not evident, the Bank reserves the right to convert the outstanding advances to a term promissory note. Upon such conversion regular principal payment arrangements will be established."

 "Pursuant to Schedule A, interest is calculated daily and payable monthly in arrears based on the actual number of days lapsed and divided by 365 day calendar year."

8. In relation to repayment of the Non-Revolver Credit, the Commitment Letter provides:

"The credit facility is **repayable upon demand**. [*emphasis added*] So long as the Bank has not demanded repayment in full, effective July 31st, 2012 the credit facility shall be repayable via 59 equal monthly installments of CI\$4,514 plus interest with a final payment of the amount then outstanding due on the 60th month unless the Bank, acting in its sole discretion, agrees to renew the facility for a further term. Facility is based on a 5-year term 12 year amortization. For greater certainty this credit facility will be repayable in full upon the Maturity Date, (the Maturity Date being defined as June 30th, 2017)."

"Amounts repaid cannot be re-drawn."

9. The Commitment letter provides that:

(a) in relation to the Operating Credit,

"Interest is payable at the Bank's Prime Lending Rate in effect from time to time. (Currently 3.25%)."

"The Bank's Prime Lending Rate is defined as a variable per annum rate of interest in effect and announced by the Bank from time to time, for loans made by the Bank in Cayman Islands Dollars. The Bank's Prime Lending Rate is, at the sole discretion of the Bank, subject to change from time to time."

(b) in relation to the Non-Revolver Credit,

"Interest is payable at the Bank's Prime Lending Rate (currently 3.25%) in effect from time to time plus 3.5% per annum."

"The Bank's Prime Lending Rate is defined as a variable per annum rate of interest in effect and announced by the Bank from time to time, for loans made by the Bank in Cayman Islands Dollars. The Bank's Prime Lending Rate is, at the sole discretion of the Bank, subject to change from time to time."

"Interest will be calculated daily on the outstanding facility balance and payable monthly in arrears based on the actual number of days lapsed in the interest period and divided by 365 days."

The current interest rate applicable to the amount owed by the Defendants to the Plaintiff is 9.75%.

10. In consideration for the credit facilities, the Defendants granted security in the following terms:

a. Authority to Hold Funds on Deposit to the extent of CI\$75,000.00 over term deposit

in the names of Paul Ramoon and Delva Ramoon;

- b. First Demand Legal Charge stamped in the amount of CI\$644,760 and since reduced by repayment to CI\$593,300 and a Second Demand Legal Charge for CI\$65,000 over 4 unit apartment complex and a commercial building with a single attached apartment located at George Town East, Block 19E, Parcel 161;
- c. First Demand Legal Collateral Charge stamped in the amount of CI\$644,760 and reduced by repayment to CI\$593,300 and Second Demand Legal Collateral Charge stamped nominally and collaterally to the Second Demand Legal Charge in 9(b) in the amount of CI\$65,000 over residential duplex located at George Town East, Block 20D, Parcel 252;
- d. Assignments of Payments Under Contract covering rental income from George Town East, Block 19E, Parcel 161;
- e. Assignment of All Risk Property Insurance to the Bank over the property at George Town East, Block 19E, Parcel 161;
- f. Assignment of Trade and Business License of Paul's Barber Shop and Retail, in favour of the Plaintiff;
- g. Assignment of All Risk Property Insurance to the Bank over the property at George Town East, Block 20D, Parcel 252; and
- h. Assignment of Payments Under Contract covering rental income from George Town East, Block 20D, Parcel 252.

Demand Dated 6 February 2013

11. As a result of the Defendants' default in their payment obligations, the Plaintiff's attorneys served a demand dated 6 February 2013 on the Defendants on 7 February 2013. The demand provided notice that unless the Defendants paid the then principal, interest and other advances owed by the Defendants, the Plaintiff would exercise its powers conferred on it by the land charges granted by the Defendants to the Plaintiff described herein in paragraph 9(b) and 9(c) and by virtue of the applicable sections of the Registered Land Law (RLL) to sell the secured properties.
12. As at the date of the 6 February 2013 demand, the total owing by the Defendants to the Plaintiff was CI\$649,625.53.

Demand Dated 30 May 2013

13. As a result of the Defendants' failure to comply with the 6 February 2013 demand, the Plaintiff's attorneys served a further demand dated 30 May 2013 on the defendants on 31 May 2013. The 30 May 2013 demand again provided notice that unless the Defendants paid the then principal, interest and other advances owed by the Defendants, the Plaintiff would exercise its powers conferred on it by the land charges granted by the Defendants and by virtue of the applicable sections of the RLL to sell the secured properties.

14. At the date of 26 May 2013 as indicated in the 30 May 2013 demand, the total owing by the Defendants to the Plaintiff was CI\$648,939.86.

Sale of Charged Properties

15. On or about the 29th day of July 2016 the Plaintiff sold the Defendants' property George Town East Block 19E Parcel 161 as chargee in exercise of power of sale under the RLL. The net proceeds received by the Plaintiff from that sale in the amount of US\$328,658.54 (CI\$269,500.00 equivalent) were applied to reduce the Defendants' debt to the Plaintiff.
16. On or about the 16th day of February 2017 the Plaintiff sold the Defendants' property, George Town East, Block 20D Parcel 252 as chargee in exercise of power of sale under the RLL. The net proceeds received by the Plaintiff from that sale in the amount of CI\$266,850.00 were applied to reduce the Defendants' debt to the Plaintiff.
17. The Plaintiff has received no payments from the Defendants since 5 September 2016.
18. Paragraph 13 of Schedule A to the Commitment Letter provides that,

"The Borrower shall pay on demand all reasonable costs and out-of-pocket expenses of the Bank (including) without limitation legal expenses) in respect of:

(a) the preparation and registration (if applicable) of this Commitment Letter and the Security Documents;

(b) all enforcement actions under or in connection with this Commitment Letter or the Security Documents;

(c) obtaining advice as to the enforceability of, or its rights and responsibilities in connection with, this Commitment Letter or the Security Documents; and

(d) appraisals, reports, or opinions obtained by the Bank from time to time in connection with this Commitment Letter.

All statements, reports certificates, opinions, appraisals and other documents or information required to be furnished to the Bank by the Borrower under this Commitment Letter shall be supplied without cost to the Bank"
19. Paragraph 20 of Schedule A to the Commitment Letter provides that the Plaintiff may charge certain additional fees to the Defendants in the event of default under the Commitment Letter.
20. As of 28 September 2017 the balance owed by the Defendants to the Plaintiff in respect of principal, interest and costs in relation to the Non-Revolving Credit was CI\$390,453.46.
21. As mentioned in paragraph 9 hereof, interest on the balance owed by the Defendants to the Plaintiff accrues at the rate 9.75% per annum or CI\$25.02 per diem.

AND THE PLAINTIFF claims:

- 1) The amount of CI\$390,453.46;
- 2) Interest at the rate of 9.75% per annum or CI\$25.02 per diem.
- 3) Fixed costs in accordance with the Grand Court Rules, Order 62, Rule 7 in the amount of CI\$500.00 plus CI\$200.00 to issue this Writ for a total of CI\$700.00; and
- 4) Further and applicable other relief as the Honourable Court deems necessary.

If, within the time for returning the Acknowledgement of Service, the Defendants pay the total amount claimed of CI\$391,153.46 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or its Attorneys.



[Signature of Plaintiff or its Attorney]

DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS

The accompanying form of Acknowledgement of Service should be completed by an Attorney acting on behalf of the Defendants or by the Defendants if acting in person. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, Grand Cayman KY1-1106, George Town, Grand Cayman.

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. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgement of service.
3. 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.
4. 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 Originating Summons)".
5. 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.
6. 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.
7. 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.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.

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**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

If you 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.**

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ of Summons is being acknowledged.

2. State whether the Defendant intends to contest or otherwise participate in the proceedings (tick appropriate box)

Yes

No

Service of the Writ of Summons is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

Address for service:

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 communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.

Please complete overleaf

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

Collas Crill
Floor 2, Willow House
Cricket Square
George Town
P.O. Box 709
Grand Cayman KY1-1107
Attn: Darlene McKiel
Tel: 949 4544

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

