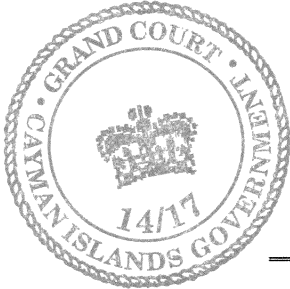


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC 173 OF 2017

BETWEEN:



BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

- (1) **FAME VARONA**
- (2) **CARLOS SANDOVAL**

Defendants

WRIT OF SUMMONS

TO:

Fame Varona and Carlos Sandoval
PO Box 2153
Grand Cayman KY1-1105
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 19 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.

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a Bank 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, 68 For Street, PO Box 31726, George Town, Grand Cayman, KY1-1207, Cayman Islands.
2. The Defendants are individuals who resides in the Cayman Islands with a mailing address of PO Box 2153, Grand Cayman KY1-1205, Cayman Islands.
3. Pursuant to a commitment letter dated 19 February 2009, HSBC Bank (Cayman) Limited agreed to loan the First and Second Defendants the sum of US\$511,740.00 together with interest thereon at a variable rate of interest based on the Bank's Prime Lending rate, plus 1%, the current total effective rate being 4.25% per annum to be repaid by way of monthly instalments of US\$2,724.75 over a 25 year term ("the Credit Facility Letter").
4. The Loan was secured by a Charge registered on or around 12 March 2009 as varied on 24 February 2011 ("the Legal Charge") against the property known as and situate at Registration Section Savannah, Block 27D, Parcel 99 ("the Property").
5. It was an express term of the Legal Charge that the Defendants agreed, inter alia, the following:

"...2(b) The Chargor further hereby covenants with the Chargee that the Chargor will on demand pay or discharge to the Chargee all monies and liabilities which shall for the time being (and whether on or at any time after such demand) be due, owing or incurred to the Chargee by the Chargor whether actually or contingently and whether solely or jointly with any other person and whether as principal or surety including interest, discount, commission or other lawful charges and expenses which the Chargee may in the court of its business charge in respect of matter aforesaid or for keeping the Chargor's account and so that interest shall be computed and compounded according to the usual mode of the Chargee as well after as before any demand made or judgment obtained hereunder and will on such demand also retire all bills or notes which may for the time be under discount with the Chargee and to which the Chargor is a party...

...

3(a) Pending such demand for repayment as aforesaid by the Chargee, the Chargor shall pay to the Chargee monthly repayments...or such other monthly or other sums as the Chargee shall

from time to time specify which sum shall be applied by the Chargee first in payment of interest from the date hereof at the rate or rates aforesaid and the balance shall be applied in reduction of the Principal Sum..."

6. The Defendants defaulted in payment and/or performance of terms of the Credit Facility Letter and the Legal Charge on 23 February 2013, HSBC Bank (CAYMAN) Limited filed an Originating Summons under cause number GC 324 of 2013 for an Order permitting the sale of the Property by private treaty.
7. The proceedings concluded with an Order of the Honourable Justice Hall dated 3 December 2013 granting, inter alia, permission to sell the Property by private treaty. Paragraph 3 of the said Order set a reserve price of CI\$470,000.
8. On or around 8 November 2014, HSBC Bank (CAYMAN) Limited assigned to the Plaintiff, a portfolio of mortgage accounts, of which the Defendants' was one.
9. The Plaintiff wrote to the Defendants on or around 4 June 2015 providing express notification of the assignment.
10. On or around 7 November 2014, HSBC Bank (CAYMAN) Limited transferred the Charge to the Plaintiff. As per the Official Cayman Islands Land Register, the Charge registered to the Plaintiff on or around 4 March 2015.
11. As the assigned and registered chargee, the Plaintiff applied to the court to be substituted as the Plaintiff in the proceedings in place of HSBC Bank (CAYMAN) Limited in order to rely on the order for sale.
12. On or around 11 August 2015, the Honourable Justice Williams ordered that Butterfield Bank (Cayman) Limited be substituted as the Plaintiff within the proceedings and further ordered that the reserve price be set aside allowing the sale of the property at a price it thinks fit having regard to its obligations under section 75 of the Registered Land Law.
13. On or around 12 April 2016, the Plaintiff instructed BCQS and Bould Consulting to conduct up to date valuations on the Property. The valuations were as follows:
 - a. Bould – Market Value CI\$320,000 (Special Assumption Value CI\$255,000).
 - b. BCQS – Market Value CI\$330,000 (Special Assumption Value CI\$265,000).

14. The Property was listed for sale on the CIREBA Multiple Listing System for CI\$408,000 since 11 August 2015. There was little interest in the Property at this price, and following a Market Interest Report prepared by the Plaintiff's instructed realtor, the Plaintiff reduced the listing price to CI\$330,000 on or around 9 May 2016. As per the aforementioned court order of Justice Williams, the Defendants were notified of the reduction in the listing price by way of letter dated 10 May 2016, which was emailed to their respective email addresses.
15. The listing price of the property was reduced to CI\$315,000 in October 2016, following receipt of a Market Interest Report compiled by the realtor indicating little interest in unfinished properties. On or around the 21 October 2016 the Defendants were notified of the reduction in the listing price by way of letter dated 21 October 2016, which was emailed to their respective email addresses.
16. The Plaintiff accepted an offer to purchase the Property for CI\$280,000/US\$333,333.33 which closed on or around 16 June 2017. As at the date of the closing, the outstanding balance of the Loan was US\$775,018.54 leaving a shortfall of US\$465,018.54 after the proceeds of sale were applied.
17. On or around 11 July 2017 and 21 August 2017 the Defendants were served demand letters by way of email, demanding payment in the sum of US\$465,018.54 ("the Principal Sum") within 7 days of service ("the Demands").
18. The Defendants failed to comply with the terms of the Demands and as of 17 June 2017 were indebted to the Plaintiff in the sum of US\$465,018.54 with interest thereon at the contractual rate of 4.25% which continues to accrue at the daily rate of US\$54.15.
19. The Plaintiff claims the Principal Sum together with interest thereon.
20. Alternatively, the Plaintiff claims statutory interest in accordance with the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules, 2012 at such rate as the Court deems fit.
21. The Plaintiff is entitled to, and claims, its contractual fees and all costs of, and incidental to, the enforcement of its rights under the Loan and Legal Charge, on an indemnity basis.
22. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceedings.

AND THE PLAINTIFF CLAIMS:

- a) US\$465,018.54 being the Principal Sum due;
- b) Pre- and post-judgment interest from 17 June 2017 to 19 October 2017 at the rate of 4.25% per annum in the sum of US\$6,768.25 and continuing at the rate of US\$54.15 per diem in accordance with the terms of the Loan and Legal Charge;
- c) Alternatively, pre- and post-judgment interest in accordance with the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules, 2012 at such rate as the Court deems fit.
- d) Costs on an indemnity basis in accordance with the terms of the Credit Agreement;
- e) Such further and other relief as this Court may deem just.

HSM Chambers
HSM Chambers
Attorneys-at-Law for the Plaintiff

Dated this 19 October 2017

INDORSEMENT

The principal amount claimed in respect of the debt is US\$465,018.54. The amount of the filing fees to commence the proceeding is C\$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 3 above;
2. The prescribed rate of interest is 4.25% per annum;
3. The date from which interest is payable is 17 June 2017; and
4. The amount of interest accruing due each day is US\$54.15.

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.

B E T W E E N:

BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

- (1) FAME VARONA
- (2) CARLOS SANDOVAL

Defendants

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*)
 - yes
 - no

 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

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 68 Fort Street PO Box 31726 George Town Grand Cayman KY1-1207 CAYMAN ISLANDS Ref: 300138.1299
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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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