

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC 180 OF 2017

B E T W E E N:

**BUTTERFIELD BANK (CAYMAN) LIMITED**

Plaintiff

AND

- (1) ALTON DAVIS
- (2) FERONA DAVIS

Defendants



WRIT OF SUMMONS



TO:

Alton and Ferona Davis  
PO Box 11442  
Grand Cayman KY1-1108  
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 23 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 Defendant is an individual who resides in the Cayman Islands with a mailing address of PO Box 31187, Grand Cayman KY1-1205, Cayman Islands.
3. Pursuant to a commitment letter dated 1 April 2011, HSBC Bank (Cayman) Limited agreed to loan to the Defendants the sum of USD\$385,000 plus interest thereon at a variable rate of interest based on the Bank's Prime Lending rate, plus 1.25%, the current total effective rate being 4.5% per annum to be repaid by way of monthly instalments of US\$2,095.57 over a 26 year term ("the Loan").
4. The Loan was secured by a Charge registered on or around 6 October 2005 ("the Legal Charge") against the property known as and situate at 227 Marina Drive, Spotts, Block 24E, Parcel 130 ("the Property").
5. As per the Official Cayman Islands Land Register, the Charge was transferred/assigned to the Plaintiff on or around 16 February 2015.
6. It was an express term of the Legal Charge that the Defendant agreed, *inter alia*, the following:

*"(2)(a) The term, repayment dated, monthly payments and other terms of this Charge are set out in the commitment letter between the Chargor and the Chargee dated 27 November 2008 (the "Commitment") as amended from time to time. In the event of any conflict between the terms of this Charge and the Commitment, the terms of this Commitment shall prevail.*

...

*3(b) Pending such demand for payment as aforesaid by the Chargee the Chargor shall pay to the Chargee such monthly sums as the Chargee shall from time to time specify which said sums shall be applied by the Chargee first in payment of interest from the date*

*hereof and at the rates aforesaid and the balance shall be applied in reduction of the Principal Sum.*

...

*15. The Chargor shall pay all costs charges and expenses incurred hereunder by the Chargee and all other moneys paid by the Chargee ...and all costs on a full indemnity basis to the Chargee or the Receiver of all proceedings for enforcement of the security hereby constituted or for obtaining payment of the moneys hereby secured or any part therefore or arising out of or in connection with the acts authorised by clause 13 hereof (whether or not such charges costs expenses and moneys or part thereof would be allowable upon a taxation by the Court) shall be recoverable from the Chargor as a debt..."*

7. The Defendants failed to maintain the terms of repayment as set out in Loan agreement and Legal Charge. As at 5 March 2014, the Defendants were indebted to the Plaintiff in the sum of CI\$103,727.67 including arrears of CI\$28,760.57.
8. On or around 13 March 2015, the Second Defendant was personally served with notices pursuant to Section 64(2) and 72 of the Registered Land Law (2004 Revision), dated 11 March 2015, demanding payment of US\$386,204.84 plus further interest from 5 March accruing at the rate of US\$45.35 per day ("the Statutory Notices").
9. On or around 16 March 2015, the First Defendant was served with the Statutory Notices.
10. No payments were received to pay the sums in the Statutory Notices as demanded, or at all. The Plaintiff's right of sale arose and crystallised on or around 23 July 2014.
11. On or around 17 August 2016, the Plaintiff's attorneys requested two independent valuations of the Property from BCQS Property Management Ltd. and Bould Consulting Limited in accordance with the Grand Court Practice Directions No. 5 of 2012 and No. 4 of 2014
12. On or around 19 August 2016, BCQS Property Management Ltd. carried out a valuation of the Property and opined that the Market Value of the Property was CI\$270,000 with a Special Assumption Value of CI\$230,000 subject to the Special Assumption of a marketing period of 180 days.

13. On or around 19 August 2016 Bould Consulting Limited carried out a valuation of the Property and opined that the Market Value of the Property was CI\$280,000 with a Special Assumption Value of CI\$230,000 subject to the Special Assumption of a marketing period of 180 days.
14. On or around 29 September 2014, the Plaintiff listed the Property with Property Pals Ltd. for Sale for CI\$290,000.00 on the CIREBA Multiple Listing System.
15. The Plaintiff accepted an offer to purchase the Property for CI\$250,000/ US\$297,619.05 which closed on or around 30 June 2017.
16. As at the date of the closing, the outstanding balance of the Loan was US\$441,723.27 leaving a shortfall of US\$164,937.56 after the proceeds of sale were applied.
17. On or around 28 August 2017 the Defendants were served by way of email with a letter dated 28 August 2017 demanding payment in the sum of US\$164,937.56 ("the Principal Sum") within 7 days of service ("the Demand").
18. The Defendants failed to comply with the terms of the Demand and the Plaintiff claims the Principal Sum together with interest thereon at the contractual rate of 1% above the Bank's Prime Lending rate for Cayman Island Dollars, presently 3.25%, which continues to accrue at the daily rate of CI\$19.21.
19. 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.
20. 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.
21. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceedings.

**AND THE PLAINTIFF CLAIMS:**

- a) CI\$164,937.56 being the Principal Sum due;
- b) Pre- and post-judgment interest from 30 June 2017 to 23 October 2017 at the rate of 4.25% per annum in the sum of CI\$2,227.79 and continuing at the rate of CI\$19.21 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 23 day of October 2017

**INDORSEMENT**

The principal amount claimed in respect of the debt is a) CI\$164,937.56. 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 3 above;
2. The proscribed rate of interest is 4.25% per annum;
3. The date from which interest is payable is 30 June 2017; and
4. The amount of interest accruing due each day is CI\$19.21.

**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.

BETWEEN:

BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

(1) ALTON DAVIS  
(2) FERONA DAVIS

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.

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: 300138.1293
--

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

--