

IN THE SUMMARY COURT OF THE CAYMAN ISLANDS

CAUSE NO: SC 83 OF 2018

BETWEEN:

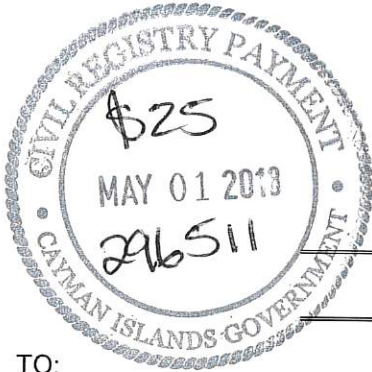
BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

(1) RUDOLPH DAVIS
(2) NADDINE DAVIS

Defendants

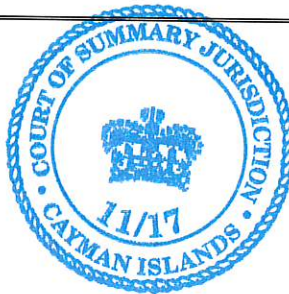


PLAINT



TO:

Rudolph and Naddine Davis
P.O. Box 344
Grand Cayman, KY1-1106
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 Complaint on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. 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 30th day of April 2018

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, P.O. Box 31726, George Town, Grand Cayman, KY1-1207, Cayman Islands.
2. The Defendants are individuals who reside in the Cayman Islands whose mailing address is P.O. Box 344, Grand Cayman KY1-1106, Cayman Islands.
3. Pursuant to a Promissory Note with HSBC (Cayman) dated 28 October 2013, and a Credit Facility Agreement which were assigned to the Plaintiff, the Defendants were advanced the sum of US\$29,414.19 on or around 28 October 2013 for the purpose of consolidation of a debt ("the Credit Facility Agreement").
4. It was a term of the Credit Facility Agreement, *inter alia*, the following:

"...Variable rate of interest based on the HSBC Bank (Cayman) Limited's Base Lending Rate, PLUS 4.25% subject to a minimum rate of 7.50% per annum..."

...this Facility is to be repaid by way of variable monthly repayments, currently in the amount of USD \$589.40 per month, representing a blended payment of principal and interest...The first payment is due on the 23rd of November [2013] and thereafter on the same day of each calendar month (or other day as agreed by the bank).

...in the event of default on monthly payments in excess of 30 days, the Bank's prevailing commercial interest rates will automatically apply.

...Notwithstanding the above, the loan remains payable on demand at the Bank's discretion."

Exhibited as "POC1" is a copy of the Credit Facility Agreement.

5. The Defendants defaulted upon their repayment obligations under the Credit Facility Agreement and on or around 28 November 2017, the Defendants were e-mailed a letter demanding repayment of the total sum of CI\$1,934.05, inclusive of past due principal, past due interest and late fees, within 7 days of service ("the Demand").

6. The Plaintiff made several efforts to work with the Defendants in order to bring the Credit Facility Agreement up to date. On for around 6 December 2017 the Plaintiff's Attorneys, HSM Chambers, notified the Defendants that it was willing to review the Loan for a possible restructure and requested that the Defendants provide a completed personal loan application and employment letters. This request was not satisfied. Additionally, on or around 15 December 2017 the Defendants provided a proposal for a payment plan which was considered, however, deemed by the Plaintiff to be infeasible. Notwithstanding this the Plaintiff made a counter-offer that it was willing to accept monthly payments of US\$1000.00 towards the arrears in addition to the regular monthly payments of US\$589.40. Unfortunately, the Defendants did not make the payments as requested and the credit facility fell into further arrears.
7. The Defendants failed to comply with the terms of the Credit Facility Agreement and the Demand and as at 17 April 2018, the Defendants were indebted to the Plaintiff in the sum of US\$5,155.73 being the principal sum, late fees, together with interest thereon at the contractual rate of 9.75% per annum in the sum of US\$893.17 which continues to accrue at the daily rate of US\$1.53.
8. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF CLAIMS:

- a) US\$5,155.73 being the principal sum due.
- b) Pre- and post-judgment interest from 18 April 2018 at rate of 9.75% per annum in accordance with the terms of the Credit Facility Agreement at the rate of US\$1.53 per diem.
- c) CI\$175.00 fixed costs pursuant to Section 11 of the Summary Court Rules 2004 and such further and other costs as the Court may deem just; and
- d) Such further and other relief as this Court may deem just.

HSM Chambers

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

INDORSEMENT

The principal amount claimed in respect of the debt is US\$5,155.73. The amount of the filing fees to commence the proceeding is CI\$25.00 (US\$30.49). The fixed fee to commence the proceeding is CI\$175.00. 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 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 paragraph 7 above;
2. The proscribed rate of interest is 9.75% per annum in accordance with the terms of the Credit Facility Agreement at the rate of CI\$1.53 per diem; and
3. The date from which interest is payable is 18 April 2018.

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B E T W E E N:

BUTTERFIELD BANK (CAYMAN) LIMITED

AND

Plaintiff

(1) RUDOLPH DAVIS
(2) NADDINE DAVIS

Defendants

EXHIBIT "POC1"

STRICTLY PRIVATE & CONFIDENTIAL

Rudolph and Naddine Davis
P.O. Box 344
Grand Cayman KY1-1106
CAYMAN ISLANDS

October 23, 2013

Dear Mr. and Mrs. Davis,

HSBC Bank (Cayman) Limited (the Bank) is pleased to offer the following credit facility (the "Facility") for you, our customer.

Unsecured Personal Loan (New):

Borrower Name: Rudolph and Naddine Davis

Amount: USD \$29,414.19

Purpose: Consolidation of debt

Interest: Variable rate of interest based on the HSBC Bank (Cayman) Limited's Base Lending Rate, PLUS 4.25% subject to a minimum rate of 7.50% per annum. Current total effective rate being 7.50% per annum.

Repayment: This Facility is to be repaid by way of variable monthly repayments, currently in the amount of USD \$589.40, Five Hundred and Eighty Nine United States Dollars & Forty Cents] per month, representing a blended payment of principal and interest amortised over 60 month term. The first payment is due on the 23th of November and thereafter on the same day of each calendar month (or other day as agreed by the Bank). In the event that date falls on a day that is not a business day, payment will become due on the following business day. Notwithstanding the above, the loan remains payable on demand at the Bank's discretion.

Fees/Penalty: There is no arrangement fee to set up the Facility. The loan can be repaid at any time without penalty.

Security: Signed Promissory Note in the amount of USD \$29414.19.



Covenants:

By signing and returning the duplicate of this letter the Borrower(s) covenant with us:

1. At our request, an updated Personal Financial Statement is to be provided by the Borrower on an annual basis.
2. If for any reason Rudolph Davis decides to leave the employment of HSBC Bank (Cayman) Limited, the Borrower has the option to repay the loan in full. Should the loan not be repaid in full, the balance outstanding on the loan will attract a variable interest rate of HSBC Bank (Cayman) Limited's Base Lending Rate PLUS 5% for the remaining duration.
3. In the event of default on monthly payments in excess of 30 days, the Bank's prevailing commercial interest rates will automatically apply.
4. The Borrower will update the Bank before acquiring additional debt or if the Borrower's financial situation changes significantly.

The Bank reserves the right to:-

1. Withdraw the offer of the Facility if any time before the Facility is drawn down any of the information submitted in connection with the loan application is found in the Bank's opinion to be incorrect or misleading or if any change in the Borrower's circumstances takes place, which the Bank in its sole discretion determines to be unacceptable.
2. Withhold funds or demand repayment of disbursed funds if subsequent to the disbursement of funds information submitted in connection with the loan application is found in the Bank's opinion to be incorrect or misleading or if any change in the Borrower's circumstances takes place, which the Bank in its sole discretion determines to be unacceptable.
3. Amend the terms and conditions of the staff unsecured personal loan policy from time to time and apply such revised terms to this facility.

Other Provisions

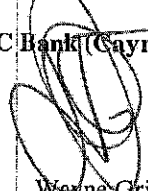
Currency Conversion: If under the terms of this letter, the Facility is stated to be in US Dollars, the Facility may be advanced in either US Dollars or the local currency equivalent at the Bank's option.

Current Interest Rate: Variable rate of interest based on the HSBC Bank (Cayman) Limited's Base Lending Rate, PLUS 4.25% subject to a minimum rate of 7.50% per annum. Current total effective rate being 7.50% per cent per annum.

We trust you will find the credit facility outlined above meets your needs. Please indicate your acceptance of these terms by returning a signed copy of this Agreement. If we do not receive a signed copy by October 31, 2013, then this offer will expire.

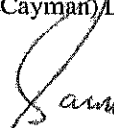
Yours sincerely

HSBC Bank (Cayman) Limited

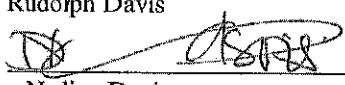

By: Wayne Griffith
Title: Head of Retail Banking & Wealth Management
Phone no: (345) 914 - 7516

Acknowledgement:

The undersigned agrees to the foregoing terms and conditions and certifies that all information provided to HSBC Bank (Cayman) Limited is true, and acknowledges receipt of a copy of this Agreement.

Signed 

Rudolph Davis

Signed 

Nadine Davis

Accepted this day 28th of Oct 2013

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BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

(1) RUDOLPH DAVIS
(2) NADDINE DAVIS

Defendants

ACKNOWLEDGMENT OF SERVICE

1. State 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.

5. Service of the Plaint is acknowledged accordingly.

Dated this day of 2018.

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, P.O. Box 495, Grand Cayman KY1-1106 within 14 days of receipt otherwise a default judgment may be entered against you.