

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC134 OF 2018

BETWEEN:

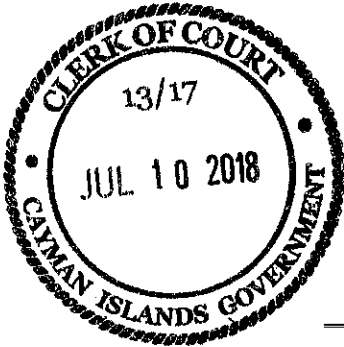
CARIBBEAN UTILITIES COMPANY LIMITED

Plaintiff

AND

(1) LITTLE DARLINGS LIMITED
(2) DONNA MARIE DAIJE

Defendants



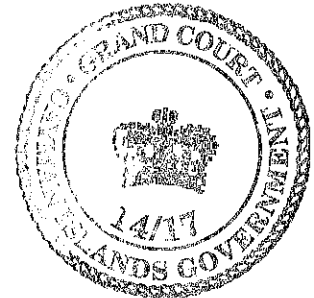
WRIT OF SUMMONS

TO:

Little Darlings Limited
P.O. Box 829
George Town
Grand Cayman
Cayman Islands

and

Donna Marie Daije
P.O. Box 2239
Grand Cayman KY1-1106
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 6 day of July 2018

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 First Defendant is a company incorporated in the Cayman Islands under Company No. 10903 with a registered office of P.O. Box 829, George Town, Grand Cayman, Cayman Islands.
2. The Second Defendant is an individual who resides in the Cayman Islands with a mailing address of P.O. Box 2239, Grand Cayman KY1-1106 Cayman Islands.
3. At all material times the Plaintiff has been a company engaged in the business of supplying electricity to residential and commercial properties.

Electrical Service Agreement

4. In or around 2001, the First Defendant entered into an agreement with the Plaintiff for the supply of service to the commercial property known as and situate at 13 Printer Way, Registration Section George Town East, Block 20B Parcel 389 ("the Premises") which was leased to them by Willowinds Holdings Ltd.
5. The Plaintiff contends that the First Defendant would have signed a Declaration and Agreement when applying for service, agreeing to the current Schedule of Rates, the Customer's Handbook – Terms of Service and other terms and conditions of supply being in force from time to time. Unfortunately, the Plaintiff cannot locate a copy of the signed agreement, but a copy of the 'Application for Electrical Service' form that the First Defendant would have signed is attached at Exhibit "**POC1**".
6. The Plaintiff opened account numbers 33557-319522, 33557-319524 and 33557-319156 in the First Defendant's name and duly supplied electricity to the Premises. The three accounts facilitated the units occupied by the First Defendant; representing the meters which registered the consumption used at the Premises.
7. The First Defendant defaulted upon the terms of payment for the supply of electricity to the Premises pursuant to the agreement with the Plaintiff and invoices rendered from time to time.
8. On or around 17 June 2015, the Second Defendant guaranteed the liabilities of the First Defendant to the Plaintiff ("Personal Guarantee").

9. The following were, *inter alia*, terms of the Personal Guarantee:

"2.1 The Guarantor unconditionally and irrevocably guarantees the due and prompt payment to CUC on demand of the Outstanding indebtedness."

2.2 Payment of monies owing by the Guarantor to CUC under this Guarantee shall be made without any deduction, set-off, withholding or counter-claim.

2.3 It is expressly agreed hereby that the obligations of the Guarantor to pay the sums aforesaid on demand are separate and independent of the obligations of the Customer to pay such sums under the Supply Agreement.

2.4 CUC is therefore entitled to demand payment of such sums hereunder whether an Event of Default has occurred under the Supply Agreement or not. Any payment by the Guarantor hereunder where no Event of Default has occurred may be treated as prepayment on behalf of the Customer under the Supply Agreement.

....

11.1 The Guarantor hereby indemnified CUC against any liabilities, claims, costs and expenses whatsoever which may be made against CUC or which may be incurred or become payable by CUC in respect of the business of the Guarantor or as a result of this Guarantee.

11.2 The Guarantor shall pay to CUC on demand the amount of all reasonable expenses incurred by CUC in connection with any step taken by CUC with a view to or in connection with its protection, exercise or enforcement of any right or interest created by this Guarantee or for any similar purpose as a result of a breach by the Guarantor of this Guarantee. There shall be recoverable under this clause the full amount of all legal expenses on a full indemnity basis both before and after any judgment, whether or not such would be allowed under rules of court or any taxation or other procedure carried out under such rules.

...

11.5 The Guarantor hereby agrees and undertakes to indemnify CUC against any loss or damage or expenses which result from the non-payment by the Customer or any other relevant parties of any amount due to CUC under the Supply Agreement or this Guarantee, and this indemnity shall continue in full force and effect notwithstanding any judgment in favour of CUC."

10. The First Defendant failed to pay its obligations to the Plaintiff pursuant to the agreement and/or invoices rendered and, on 18 April 2018, the Plaintiff formally demanded the sums due from both the First Defendant under the terms of the agreement and from the Second Defendant under the terms of the Personal Guarantee.
11. Ms. Karin Thompson Attorney-at-Law represented the Second Defendant in ongoing divorce proceedings. By letter dated 27 April 2016 Ms. Thompson provided an undertaking on the part of her firm to pay direct remittance "*such sums as may be owed as the date of any final or interim order allowing the disposition of [her] client's fifty (50%) legal and beneficial ownership of the funds being held on escrow*" being 50% of CI\$322,338.55 from the sale of the former matrimonial home. However, despite this undertaking, the debt remains due and owing.
12. As at 6 July 2018, the Plaintiff claims the principal of CI\$54,150.43 plus interest pursuant to s.34 Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 on all sums due at the rate of 2.38%.
13. The Plaintiff claims its costs of these proceedings.
14. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF CLAIMS:

- a) CI\$54,150.43 being the principal sum due as of 6 July 2018;
- b) Pre- and post-judgment interest pursuant to *s.34 Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012* on all sums due at the rate of 2.38% from 6 July 2018 and continuing at the rate of CI\$3.53 per diem;
- c) Costs; and
- d) Such further and other relief as this Honourable Court may deem just.

HSM Chambers

HSM Chambers
Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$54,150.43 as of 6 July 2018. The amount of the filing fees to commence the proceeding is CI\$200.00, plus ad valorem fees of CI\$441.50. 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 statutory term upon which interest is claimed is as set out in paragraph 12 above;
2. The prescribed rate of interest is 2.38% per annum;
3. The date from which interest is payable is 6 July 2018; and
4. The amount of interest accruing due each day is CI\$3.53.

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B E T W E E N:

CARIBBEAN UTILITIES COMPANY LIMITED

Plaintiff

AND

(1) LITTLE DARLINGS LIMITED
(2) DONNA MARIE DAIJE

Defendants

"POC1"

Service Requirements

Exact street address where service is required: Building/House No.:		Apartment No.:
Street Name:		District:
Telephone number at address requiring electricity service:		
Address where service is required [only if exact street address has not been issued by Government Planning Department]:		
Registration section:	Block:	Parcel:
Please indicate: <input type="checkbox"/> Permanent supply <input type="checkbox"/> Temporary supply		
Has electricity been provided previously at this address? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Number of bedrooms:		
Do you own the property where service is required? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If you are a tenant, state landlords name and telephone number:		
Please tick to indicate if you would like to receive information on any of the following: <input type="checkbox"/> Security lighting <input type="checkbox"/> Customer Share Purchase Plan		

Declaration & Agreement

The undersigned declares that the information provided on this application is true and accurate and understands that any false declarations may result in reassessment of deposit and/or disconnection of service. In case of a corporate application, the undersigned confirms that I am a duly authorised officer of the company and have the authority to apply for electricity service.

Having agreed to pay/transfer a deposit to Caribbean Utilities Company, Ltd. [CUC], the undersigned hereby applies for service in accordance with the current Schedule of Rates, the Customer's Handbook – Terms of Service and other terms and conditions of supply being from time to time in force regulating the use and supply of electricity which are on file with CUC, or any effective superseding schedule governing this class of service. The undersigned understands and agrees to the terms herein and acknowledges and agrees to the right of CUC to require security deposits or advance payments where these are deemed appropriate or necessary by CUC. In the case that CUC requests such a deposit, the undersigned agrees to pay the same to CUC forthwith upon demand.

It is further agreed that should CUC or the undersigned terminate this service, the undersigned will be liable for all unpaid amounts and authorise CUC to transfer any outstanding amounts to any of the undersigned's active CUC accounts.

Name: _____ Signature: _____
Position: _____ Date: _____

Acceptance by CUC

Name: _____ Signature: _____
Position: _____ Date: _____

Please Note: Tenants are required to notify CUC upon termination of tenancy.

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:

CARIBBEAN UTILITIES COMPANY LIMITED

Plaintiff

AND

(1) LITTLE DARLINGS LIMITED
(2) DONNA MARIE DAIJE

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
Attorneys-at-Law
68 Fort Street
George Town
PO Box 31726
George Town
Grand Cayman KY1-1207
CAYMAN ISLANDS

Ref: 417737.0298

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

