

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**



CAUSE NO: GC 122 OF 2019

**BETWEEN:**

DEX LTD.

**AND:**

JOSHUA MCLEAN



**PLAINTIFF**

**DEFENDANT**



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**WRIT OF SUMMONS**

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To: The Defendant  
Joshua McLean  
P.O. Box 1470  
Grand Cayman  
KY1-1110

**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 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment 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 26 day of July, 2019

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 Acknowledgment of Service are given with the accompanying form.

## **STATEMENT OF CLAIM**

1. The Plaintiff is in the business of private lending, with their registered office being at One Capital Place, 3rd Floor, 130 Shedden Road, P.O. Box 799, Grand Cayman KY1-1103.
2. On or about 27<sup>th</sup> October 2017 the plaintiff agreed to lend to the defendant the sum of KY\$21,500.00 repayable on terms recorded in writing. The agreement is more particularly evidenced by a loan agreement between the plaintiff and the defendant dated 27<sup>th</sup> October 2017.
3. By the loan agreement, the plaintiff and the defendant agreed as follows:
  - 3.1 The plaintiff would lend the defendant the sum of KY\$21,500.00.
  - 3.2 The defendant would repay the loan by monthly instalments of KY\$689.00 over a period of 48 months commencing on 27 November 2017.
  - 3.3 Interest would be payable on the sum of KY\$21,500.00 at the rate of 23% per annum to be paid monthly with first payment due on 27 November 2017.
  - 3.4 Default interest is payable at the rate of 23% per annum accruing from the date of repayment compounded monthly on the last day of each month and calculated both before and after demand or judgment on a daily basis.
  - 3.5 The plaintiff is entitled to defer or waive any payment of interest.
  - 3.6 The defendant shall pay to the plaintiff all costs, fees and expenses incurred in connection with preserving and enforcing, or attempting to, any of the plaintiff's rights under the agreement.
4. Pursuant to clause 2.2 of the loan agreement, on or about the 27<sup>th</sup> October 2017 the plaintiff disbursed the sum of KY\$21,500.00 to the defendant.
5. In breach of the agreement the defendant failed to make the monthly repayments in accordance with the terms of the agreement. The last payment received from the defendant was the sum of KY\$500.00 on 16 May 2019.

6. By letter dated 10<sup>th</sup> July 2018 the plaintiff wrote to the defendant and pursuant to clause 9 of the agreement gave notice in writing of an event of default and declared the entire sum owing to be due and payable forthwith.
7. Despite demands made by the plaintiff, the defendant has failed to pay the amount due on the loan and as at 25 July 2019 the sum of KY\$28,140.50 is due and owing to the plaintiff arrived at as follows:

|                              |                    |
|------------------------------|--------------------|
| Total Principal Outstanding  | \$20,941.00        |
| Total Interest Outstanding   | \$ 6,921.70        |
| Legal Costs incurred to date | <u>\$ 1,200.00</u> |
| <b>Total Outstanding:</b>    | <b>\$29,062.70</b> |

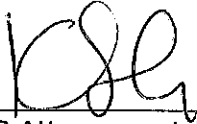
Interest continues to accrue on the principal sum at the rate of 23% per annum or KY\$13.20 per day.

#### **STATEMENT REGARDING INTEREST**

- a) The plaintiff waives its contractual right to compound interest and claims simple interest at the rate of 23% per annum.
- b) The Plaintiff seeks pre and post judgment interest at the contractual rate of 23% on the unpaid principal sum outstanding from the date of initial default until payment and in accordance with the provisions of the Judicature Law (2013 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
- c) The interest rate claimed is 23%.
- d) Interest is claimed on the principal sum from the date of default under the loan.
- e) The amount of interest owing at date of issue of this Writ is KY\$6,921.70
- f) The amount of interest accruing each day following the issue of this Writ is KY\$13.20.

**AND THE PLAINTIFF CLAIMS:**

- (i) The sum of KY\$29,062.70 as monies due and owing.
- (ii) Pre and post judgment Interest on the said sum in accordance with the terms of the agreement and the Judicature Law (2016 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time accruing at the rate of 23% per annum or KY\$13.20 per day.
- (iii) Costs as pleaded or to be assessed.



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KSG Attorneys-at-Law  
Attorneys for the Plaintiff

**Endorsement**

If within the time for returning Acknowledgement of Service the Defendants pay to the Plaintiff's Attorneys-at-Law the total amount claimed of KY\$29,062.70 and all filing fees, ad valorem fees, and all interest claimed all further proceedings will be stayed.

**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 the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, 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 installments 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 Acknowledgment 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.

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**JOSHUA McLEAN**

**DEFENDANT**

**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.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes

no

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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

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Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for the Plaintiff

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

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

KSG  
Attorneys at Law  
4<sup>th</sup> Floor Harbour Centre  
42 North Church Street  
PO Box 2255 KY1-1107  
George Town  
Grand Cayman

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

[Empty box for defendant's Attorney endorsement]