

IN THE SUMMARY COURT OF THE CAYMAN ISLANDS

CAUSE NO. SC 164 OF 2019

BETWEEN:

STEVEN J BARRIE



PLAINTIFF

AND:



DEREK PEDRO

FIRST DEFENDANT

CITIBANK N.A.

SECOND DEFENDANT



PLAINT

TO THE DEFENDANTS

- (1) DEREK PEDRO of 1501 W Wellington Ave, Chicago, Illinois 60657, USA
- (2) CITIBANK N.A. of 2001 N Halstead, Chicago, Illinois 60614, USA

THIS PLAINT has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within fourteen (14) days after the service of this **Plaint** 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 this action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the Acknowledgement of Service form.

If you fail to satisfy the claim or to return the Acknowledgement of Service form containing full particulars of your defence, the Plaintiff may apply for a **default judgment** without further notice to you.

Issued this 1st day of August, 2019.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

Particulars of Claim

1. The Plaintiff is Caymanian and an attorney at law.
2. The First Defendant is unknown to the Plaintiff but is an individual and believed to be resident in Chicago, Illinois, United States of America. The Second Defendant is a US corporation engaged in the business of banking with its registered office at 701 East 60th Street North, Sioux Falls, South Dakota, USA and a place of business at 2001 N Halstead, Chicago, Illinois, United States of America.
3. On or about 6 November 2017 the Plaintiff entered into a lease agreement with the legal owner (the "**Landlord**") of a property known as 206 Britannia Drive, Phase 1, Block 12D Parcel 25H, Grand Cayman, Cayman Islands (the "**Property**"). The lease agreement was for a period of 12 months and 16 days, commencing on 15 November 2017
4. On or about 4 February 2018 the Second Defendant, or a person unknown to the Plaintiff, represented by way of email from pizzadiva@live.com that he was the Plaintiff's Landlord (the "**Fraudster**"). He requested a short-term loan from the Plaintiff of US\$20,000 to be repaid within 14 days. The Plaintiff was at the time negotiating for the purchase of the Property from his Landlord through a real estate company in the Cayman Islands acting on behalf of the Landlord (the "**Agent**"). The Plaintiff had no reason to doubt the probity of the Fraudster as he was familiar with, and had precise details of, the terms of the Plaintiff's offer to purchase the Property which had been communicated only to the Agent.
5. The Plaintiff agreed to lend the money to the person he believed to be the Landlord as part of his offer to purchase. On or about 4 February 2018 the Plaintiff was instructed, again by way of email, to send the loan proceeds to the First Defendant's bank account, held at the Second Defendant's branch at 2001 N Halstead, Chicago, Illinois. The Plaintiff was provided with the following details for the account:

Bank name: CITI BANK

Account Receivable or Beneficiary Name: DEREK PEDRO

Account number: 139765161

Routing number: 271070801

Swift code: CITIUS33

Bank Address: 2001 N HALSTED CHICAGO ILLINOIS 60614

Beneficiary Address: 1501 W wellington Ave, Chicago. ILLINOIS 60657

6. The Plaintiff sent the money to the First Defendant's bank account on 5 February 2018 by wire transfer from his account at Scotiabank, Grand Cayman. On 6 February 2018 the

Plaintiff was made aware that the Landlord's email account had been hacked and the person with whom he had been corresponding was not the Landlord and that the representations made to the Plaintiff by the Fraudster were false.

7. The First Defendant by orchestrating or participating in the false representations made to the Plaintiff, or by allowing his bank account to be used to receive the funds which were the proceeds of fraud is liable in damages to the Plaintiff by being the principle or an accessory to the fraud.
8. Alternatively, the First Defendant is liable to the Plaintiff by receiving the Plaintiff's funds by way of which he was unjustly enriched. Alternatively, upon receipt of the Plaintiff's funds by the First Defendant the First Defendant was placed in the position of constructive trustee of the funds on behalf of the Plaintiff and owed the Plaintiff a duty not to disperse the funds.
9. The Second Defendant, whether with or without knowledge, facilitated the fraud by allowing the funds to be deposited in the First Defendant's account with them on or about 6 February 2018. The Second Defendant should have been put on alert when it received a payment from an unusual source to the First Defendant's bank account. The Plaintiff advised the Second Defendant on or about 7 February that the funds received by it were the proceeds of a fraud.
10. At the point that the Second Defendant was informed by the Plaintiff that the payment was fraudulent, the Second Defendant owed a duty to the Plaintiff to use reasonable care and skill to ensure that the Plaintiff's money was not fraudulently paid or diverted to the First Defendant's account. The Second Defendant breached that duty by:
 - i. failing to take the appropriate steps to freeze the funds in the First Defendant's account;
 - ii. failing to freeze the funds before they were paid to the First Defendant's account;
 - iii. failing to take steps to trace or reverse the payment.
11. The Second Defendant is liable to the Plaintiff as an accessory to the fraud by allowing the First Defendant to withdraw funds from his account when they should have been aware that the payment was abnormal and taken the appropriate steps to freeze the account.
12. Alternatively, the Second Defendant is liable to the Plaintiff by receiving the Plaintiff's funds by way of which it was unjustly enriched. Alternatively, upon receipt of the Plaintiff's funds by the Second Defendant the Second Defendant was placed in the position

of constructive trustee of the funds on behalf of the Plaintiff and owed the Plaintiff a duty not to disperse the funds.

13. The Plaintiff's loss as a result of the fraud is US\$20,000.00 plus interest. The Defendants are jointly and severally liable in damages in the sum of US\$20,000.00 plus interest.
14. The Plaintiff accordingly seeks judgment jointly and severally against the Defendants in the sum of US\$20,000.00 with pre and post-judgment calculated pursuant to the Judicature Law (2017 Revision) and the Judgment Debt (Rates of Intent) Rules as amended from time to time.

AND THE PLAINTIFF CLAIMS:

- (1) Judgment in the sum of US\$20,000.00;
- (2) Interest in accordance with Section 34 of the Judicature Law (2017 Revision), as pleaded in Paragraph 10 above;
- (3) Costs to be assessed or alternatively fixed costs; and
- (4) Such further and applicable other relief as this Honourable Court deems necessary.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of **US\$ 20,000.00** together with costs and interest, further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.



Nelson & Company
Attorneys for the Plaintiff

Plaintiff's address for service:

31 The Strand
46 Canal Point Drive
PO Box 2075
Grand Cayman
KY1-1105
Cayman Islands.

This Plaintiff was filed by Nelson & Company whose address for service is 31 The Strand, 46 Canal Point Drive, P.O. Box 2075, Grand Cayman, Cayman Islands.

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ACKNOWLEDGEMENT OF SERVICE

1. State Defendant's name and Address:

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

YES

NO

3. If you do not intend to contest the action, do you want time in which to pay the claim?
(tick box)

YES

NO

4. If you intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Plaintiff is acknowledged accordingly

Defendant's Signature

Dated this day of , 2019

PARTICULARS OF DEFENCE

Here set out in numbered paragraphs the grounds upon which the Defendant says that he is not liable to the Plaintiff or is not liable for the full amount claimed.

Defendant's Signature

REMINDER – This form must be delivered or sent to the Courts Office, P.O. Box 495, George Town, Grand Cayman, within fourteen (14) days of receipt, otherwise a default judgment may be entered against you.