

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO: SC ³⁰ OF 2020

BETWEEN:

COX LUMBER LTD

Plaintiff

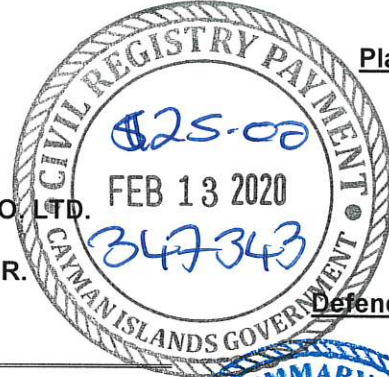
AND



(1) GENESIS CONSTRUCTION CO. LTD.

(2) TOUSSAINT BURKE, SNR.

Defendants



PLAINT



TO:

Genesis Construction Co. Ltd.
P.O. Box 2192
Grand Cayman, KY1-1105
Cayman Islands

Toussaint Burke, Snr.
P.O. Box 2192
Grand Cayman, KY1-1105
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 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 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 11 day of February 2020

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 pursuant to the laws of the Cayman Islands. The Plaintiff's address for service is care of its attorneys, HSM Chambers, 68 Fort Street, PO Box 31726, George Town, Grand Cayman, KY1-1207, Cayman Islands.
2. The First Defendant is a Cayman Islands incorporated company with a registered office address of Genesis Construction Co. Ltd., 39 Hickory Lane, Prospect, P.O. Box 2192, Grand Cayman, KY1-1105, Cayman Islands.
3. The Second Defendant is an individual who resides in the Cayman Islands with a mailing address P.O. Box 2192, Grand Cayman, KY1-1105, Cayman Islands. The Second Defendant is a shareholder/director of the First Defendant.

First Defendant

4. Pursuant to a promissory note dated 19 November 2018, the First Defendant agreed to pay to the Plaintiff, the principal sum of CI\$12,749.47 together with interest thereon and legal fees in respect of goods supplied between 13 December 2017 and 18 January 2018 in the sum of CI\$10,499.47 and a dishonoured cheque dated 21 March 2018 in the sum of CI\$2,290.00, inclusive of a bank fee to be paid by instalments of CI\$500 per month commencing on 28 November 2018 until discharged in full (the "Promissory Note").
5. It was an express term of the Promissory Note that the First Defendant agreed, *inter alia*, to the following:

"3. ...In the event that any instalment of principal, interest, or costs is not paid within seven (7) days of its due date hereunder, further interest charges shall apply to outstanding sums at the rate and in the manner described in clauses 4 and 5 herein.

...

5. *The principal amount of this Note represents an aggregate of amounts of existing indebtedness that the Maker freely admits are due and owing to Payee and/or its affiliates and related entities as of the date hereof. In the event that any payment of the principal*

and/or interest is not actually received by Payee on or prior to the respective due date, Maker agrees to pay the Payee a late charge equal to 18% per annum on such delinquent amount until paid or such lesser amount as shall be permitted by law.

...

8. *All costs and expenses of collection (including all legal fees up to and including the date of this Promissory Note) will be recoverable on a full indemnity basis from the Maker. Any amounts due hereunder shall continue to bear interest at the rate of interest equal to 18% per annum. All accrued legal fees and interest will be due and payable upon making of the last monthly payment for the debt."*

6. In breach of the Promissory Note, the First Defendant failed to pay the instalments as and when due. As at 10 February 2020, the First Defendant is indebted to the Plaintiff in the sum of C1\$12,249.47 ("Principal Sum").

Second Defendant - Deed of Guarantee and Indemnity

7. Pursuant to a deed of guarantee and indemnity dated 29 March 2019, the Second Defendant guaranteed the First Defendant's liability under the Promissory Note ("Deed of Guarantee and Idemnity").

8. It was an express term of the Deed of Guarantee and Indemnity that the Second Defendant agreed, *inter alia*, to the following:

"1.1 *The Guarantor hereby guarantees on demand to pay to the Creditor all monies and discharge all obligations and liabilities whether actual or contingent now or at any time hereafter due owing or incurred to the Creditor by Genesis Construction Co. Ltd. ("the Company") in whatever currency denominated in any manner whatsoever (whether alone or jointly and in whatever style name or form and whether as principal or surety) (when the same are due) together with interest (as well after as before any demand or judgment) to date of payment at such rates and upon such terms may from time to time be payable by the Company (or which would have been so payable but for the liquidation administration or other incapacity of the Company) and all commissions fee and other charges and all legal and other costs and expenses incurred by the Creditor in relation to the Company or this Guarantee or any other guarantee indemnity or security for any monies obligations or liabilities hereby guaranteed on a full indemnity basis.*

- 1.2 *The total amount recoverable under this Guarantee shall be limited to the principal amount of CI\$12,749.47 plus interest of CI\$126.80 and legal fees (currently in the sum of CI\$798.00. Interest shall be frozen in that sum unless a payment of principal, interest or associated legal fees shall remain unpaid for seven (7) days after its due date. In this event, interest shall continue to accrue on the unpaid principal balance in the amount of 18% per annum, in accordance with clause 1.3 hereof, and any accrued legal costs payable in accordance with clause 1.1 hereof.*
- 1.3 *The Guarantor, in the case of default as described in clause 1.2 above, hereby agrees to pay interest (to the extent that such interest is not paid by the Company) from the date of demand until payment on all monies obligations and liabilities hereby guaranteed (as well after as before any demand or judgment or the liquidation administration or other incapacity of the Company) at such rate as may from time to time be payable by the Company or would have been payable but for the liquidation administration or other incapacity of the Company or any arrangement or composition with the creditors of the Company upon such days and upon such terms as the Creditor may from time to time determine and such interest shall be compounded in the event of it not being punctually paid in accordance with the usual practice of the Creditor but without prejudice to the right of the Creditor to require payment of such interest when due.”*
9. On or around 29 March 2019, the Second Defendant presented the Plaintiff with a payment in the sum of CI\$500.00 to be paid towards the Principal Sum.
10. Neither the First Defendant nor the Second Defendant have made any payments since 29 March 2019, despite a formal demand being personally served upon the Second Defendant on or around 15 August 2019 calling upon the Deed of Guarantee.
11. The Plaintiff claims from the First and Second Defendant, the Principal Sum together with interest thereon at the rate of 18% per annum from 21 March 2018 to 10 February 2020. Alternatively, the Plaintiff claims statutory interest in accordance with the *Judicature Law (2017 Revision)* and the *Judgment Debts (Rates of Interest) Rules, 2010* at the rate of 2.375% for such a period as the Court deems fit.
12. The Plaintiff is entitled to, and claims, its contractual fees and all costs of, and incidental to, the enforcement of its rights under the Promissory Note and Deed of Guarantee and Indemnity.
13. As a result of the above, the Plaintiff is entitled to the relief claimed in these proceedings.

AND THE PLAINTIFF CLAIMS:

- a) CI\$12,249.47 being the Principal Sum due as at 10 February 2020;
- b) Pre- and post-judgment interest from 21 March 2018 to 10 February 2020 at the rate of 18% per annum in the sum of CI\$4,247.57 and continuing at the rate of CI\$6.04 per diem in accordance with the terms of the Credit Agreement.
- c) In the alternative, pre- and post-judgment interest pursuant to Section 34 of the *Judicature Law (2017 Revision)* and the *Judgment Debts (Rates of Interest) Rules, 2012* at the rate of 2.375% for such a period as the Court deems fit.
- d) Costs; and
- e) Such further and other relief as this Court may deem just.

HSM Chambers

HSM Chambers
Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$12,249.47 as of the date of filing. The amount of the filing fees to commence the proceeding is CI\$25.00. 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 Plaint, 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 5 and 8 above.
2. The prescribed rate of interest is 18% per annum.
3. The date from which interest is payable is from 21 March 2018.
4. The amount of interest accruing due each day is CI\$6.04.

This Plaint was filed by HSM Chambers, Attorneys-at-Law for the Plaintiff whose address for service is 68 Fort Street, George Town, PO Box 31726, Grand Cayman, KY1-1207, Cayman Islands (ref: SJA/309642.0141)

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Plaintiff

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(1) GENESIS CONSTRUCTION CO. LTD.

(2) TOUSSAINT BURKE, SNR.

Defendants

ACKNOWLEDGMENT OF SERVICE

1. State Defendant 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.

Service of the Plaintiff is acknowledged accordingly.

Dated this day of 2020

Defendant's Signature

See overleaf

PARTICULARS OF DEFENCE

[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]

1.

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.