

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC OF 2020

B E T W E E N:

A.L. THOMPSON BUILDING SUPPLIES LIMITED

Plaintiff

AND

(1) ISLAND BUILDERS COMPANY LTD.

(2) DEAN SCOTT

Defendants



WRIT OF SUMMONS

TO:

(1) Island Builders Company Ltd.
Caribbean Autos Commodities
North Church Street
PO Box 31328 SMB, George Town
Grand Cayman
Cayman Islands

(2) Mr. Dean Scott
PO Box 559,
Grand Cayman KY1-1502
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 8th day of October 2020

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 Plaintiff is and was at all material times a company incorporated in 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, George Town, PO Box 31726, Grand Cayman KY1-1207, Cayman Islands.
2. The First Defendant is a company incorporated in and carrying on business pursuant to the laws of the Cayman Islands. The First Defendant's registered office address is Caribbean Autos Commodities, North Church Street, PO Box 31328 SMB, George Town, Grand Cayman, Cayman Islands.
3. The Second Defendant is and was at all material times an individual who resides in the Cayman Islands with a mailing address of PO Box 559, Grand Cayman KY1-1502, Cayman Islands. The Second Defendant is the owner and Director of the First Defendant.
4. Pursuant to a commercial credit account agreement dated 12 December 2002, it was agreed that the Plaintiff would extend credit to the First Defendant in respect of goods supplied to be repaid by the First Defendant in accordance with invoices rendered by the Plaintiff from time to time (the "**Credit Agreement**").
5. The Credit Agreement contained, *inter alia*, the following express terms:

"1. A.L. Thompson Building Supplies Ltd. will assign you a maximum credit line and has the right to reduce or withdraw your credit privileges under this CREDIT AGREEMENT at any time without prior notice..."

2. A.L. Thompson Building Supplies Ltd may permit you to purchase goods and/or services from an A.L. Thompson Building Supplies Ltd outlet on credit up to your credit line. You agree that said purchase will be governed by the terms of this CREDIT AGREEMENT.

3. Invoices will be issued by A.L. Thompson Building Supplies Ltd for purchases under this CREDIT AGREEMENT. Payment of the purchase price shall be pursuant to the terms set forth on each invoice. A.L. Thompson Building Supplies Ltd require you to sign the invoice at the time of ordering a credit purchase or at the time of the delivery of the goods or services ordered. You will be liable to A.L. Thompson Building Supplies Ltd for payment in accordance with the terms of the invoice whether or not you in fact sign the invoice. The date of shipment

shall be deemed to be the date of invoice for purposes of payment and assessment of LATE PAYMENT CHARGES.

4. If you fail to pay A.L. Thompson Building Supplies Ltd in accordance with this CREDIT AGREEMENT, A.L. Thompson Building Supplies Ltd has the right, subject to any rights you may have by law, to collect your default, to declare the entire balance of your account immediately due and payable. If any unpaid balance is referred to an attorney for collection, you will pay to the extent permitted by law reasonable attorney's fees if the attorney is not our salaried employee, all costs and accrued LATE PAYMENT CHARGES on said unpaid balance in accordance with the LATE PAYMENT CHARGE RATE SCHEDULE.

5. A LATE PAYMENT CHARGE will be computed on statement date on any invoice which falls in a past due position on the monthly closing date. The LATE PAYMENT CHARGE begins to accrue the day after the due date of the invoice. The LATE PAYMENT CHARGE is computed monthly on the outstanding balance past due after all payments and credits received by the closing date of the statement have been deducted. The LATE PAYMENT CHARGE will be computed basis [sic] the following rates, which are subject to change without notice to you.

My signature on the CREDIT AGREEMENT and my/our use of the account constitutes my/our consent to the terms and conditions of the account and the CREDIT AGREEMENT..."

6. The "Late Payment Charge Rate Schedule" applied an annual interest rate of 18% to the entire balance. The Credit Agreement was signed by Mr Dean Scott on behalf of the First Defendant.
7. Pursuant to a Personal Guarantee dated 12 December 2002, the Second Defendant guaranteed payment in full of all indebtedness incurred. A term of the Personal Guarantee was, inter alia, that the Second Defendant shall be liable to the Plaintiff for all monies due to the Plaintiff by the First Defendant under Credit Agreement (the "**Guarantee**").
8. The Plaintiff provided materials to the First Defendant from time to time in accordance with the terms of the Credit Agreement.
9. In breach of the Credit Agreement, the First Defendant failed to repay the invoices as and when due and the Plaintiff has suffered loss and damage as a result.

10. At the commencement of this proceeding the Defendants, pursuant to the terms of the Credit Agreement and Personal Guarantee, owe to the Plaintiff the sum of CI\$98,699.84.
11. The Plaintiff also claims pre- and post-judgment interest at the contractual rate of 18% per annum and continuing at the rate of CI\$48.67 per diem until the debt is paid in full.
12. Alternatively, the Plaintiff claims pre- and post-judgment interest in accordance with s.34 of the *Judicature Law (2017 Revision)* and the *Judgment Debts (Rates of Interest) Rules, 2012* at the rate of 2.375% for such period as the Court deems fit.
13. As a result of the above, the Plaintiff is entitled to the relief claimed in these proceedings.

AND THE PLAINTIFF CLAIM:

- a) CI\$98,699.84 being the balance due as at 5 October 2020;
- b) CI\$11,925.10 pre- and post-judgment interest from 6 February 2020 at the contractual rate of 18% per annum and continuing at the rate of CI\$48.67 per diem in accordance with the terms of the agreement;
- c) Alternatively, pre- and post-judgment interest from 6 February 2020 in accordance with the *Judicature Law (2017 Revision)* and the *Judgment Debts (Rates of Interest) Rules, 2012* at a rate of 2.375% and continuing to accrue at CI\$6.42 per diem;
- d) Costs to be taxed if not agreed; 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\$98,699.84. The amount of the filing fees to commence the proceeding is CI\$200.00, plus ad valorem fees of CI\$887.00. 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, 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 contractual term upon which interest is claimed is as set out in paragraph 11 above;
2. The prescribed rate of interest is 18% per annum;
3. The date from which interest is payable is 6 February 2020;
4. The amount of interest accruing due each day is CI\$48.67; and
5. Alternatively, pre- and post-judgment interest from 6 February 2020 in accordance with the *Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules, 2012* at a rate of 2.375% and continuing to accrue at CI\$6.42 per diem.

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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC OF 2020

B E T W E E N:

A.L. THOMPSON BUILDING SUPPLIES LIMITED

Plaintiff

AND

(1) ISLAND BUILDERS COMPANY LTD.

(2) DEAN SCOTT

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 68 Fort Street PO Box 31726 George Town Grand Cayman KY1-1207 CAYMAN ISLANDS Ref: 309773-0077
--

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

--