

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>168</sup> OF 2020

BETWEEN:

CAYMAN NATIONAL BANK LIMITED

PLAINTIFF

AND:

DARIO ROBERTO MAYORQUIN CASTILLO

DEFENDANT



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WRIT OF SUMMONS

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**TO:** Dario Roberto Mayorquin Castillo of PO Box 655, Grand Cayman KY1-1107, 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 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, George Town, Grand Cayman, 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 <sup>4<sup>th</sup></sup> day of November 2020

**NOTE** – This Writ may not be served later than 4 calendar 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 a Bank carrying on business at its branch at Elgin Avenue, PO Box 1097, George Town, Grand Cayman KY1-1102 and elsewhere.
2. The Defendant is an individual who was at all material times the guarantor ("Guarantor") of a commercial loan ("the Commercial Loan") extend to King Imports Ltd ("the Company") by the Plaintiff.
3. As collateral for the Commercial Loan facility, the Defendant executed a Deed of Guarantee dated 7 August 2012 in respect of all debts and liabilities of the Company, without limitation ("the Guarantee"). The Commercial Loan was also secured by a First Legal Charge over property registered as George Town East, Block 19E, Parcel 1238, a second Collateral Charge over property registered as Savannah, Block 28B, Parcel 286, and a (Third Party) Charge over the same property (together "the Charges" and "the Charged Properties" respectively).
4. On 6 August 2015, the principal sum loaned by the Bank to the Company was increased to a total of CI\$664,000.00.
5. The Commercial Loan was not maintained by the Company according to its terms to the satisfaction of the Plaintiff and the Company fell into default in respect of the Commercial Loan payments due to the Bank.
6. The Plaintiff served Statutory Notices pursuant to Section 64 and 72 of the Registered Land Law (2018 Revision) the Charged Properties were subsequently sold by the Bank pursuant to its power under the Charges.
7. After the application of sale proceeds from the sale of the Charged Properties to the Commercial Loan, there remained a total balance outstanding to the Bank of CI\$357,398.05 as of 27 May 2019.
8. The Guarantee provided by the Guarantor was unlimited and unconditional and it irrevocably guaranteed to the Bank all debts and liabilities present and future, direct or indirect, absolute or contingent, mature or not and each and every liability of the Company of nature.
9. The Bank has previously demanded payment of the outstanding sum due to it from the Company. The Company failed to meet the demands for payment and on or around 31 October 2019 the Company was struck off the Register of Companies.
10. On 23 October 2019 he Bank served demand for payment of all sums due under the Guarantee upon the Guarantor by way of a letter from the Bank's attorneys dated 22 October 2019. The Plaintiff received no response to that demand for payment from the Guarantor and no payment has since been made by the Guarantor.

11. As at 22 October 2019 the total amount due to the Bank from the Guarantor was CI\$392,011.41 consisting of interest of CI\$122,237.93, late fees of CI\$2,800 and principal of CI\$266,973.48.

**INTEREST**

12. The Plaintiff is entitled to, and hereby claims, interest pursuant to its terms and conditions at a rate of 5.25% per annum (being a per diem rate of CI\$56.59), or, alternatively, interest pursuant to section 34 of the Judicature law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012, on such sums due to it and for such period as the Court deems fit.

**AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT:**

1. Payment of the said sum of CI\$392,011.41 pursuant to the terms of the Guarantee;
2. Fixed costs of CI\$150.00 together with the issue fee for these proceedings of CI\$200.00 and Process Server's costs of CI\$60.00.
3. Costs.

Dated the 4<sup>th</sup> November 2020

  
**RITCH & CONOLLY**

Attorneys at Law for the Plaintiff

If, within the time limited for returning the Acknowledgement of Service the Defendant pays the amount claimed to the Plaintiff or its attorney's further proceedings will be stayed.

**TO:** The Clerk of the Court

**AND TO:** The Defendant of PO Box 655, Grand Cayman. KY1-1107, Cayman Islands

**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 495, George Town, Grand Cayman KY1-1106.

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. 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 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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**DEFENDANT**

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**ACKNOWLEDGMENT OF SERVICE**

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1. State Defendant's 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 intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

**Service of the Writ of Summons is acknowledged accordingly.**

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Defendant's Signature

