

IN THE SUMMARY COURT OF THE CAYMAN ISLANDS

CAUSE NO: SC OF 2021

B E T W E E N:

A.L. THOMPSON BUILDING SUPPLIES LIMITED

Plaintiff

AND

(1) WENDEL CONSTRUCTION LIMITED

(2) WENDEL WENDEL

Defendants



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PLAINT

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TO:

(1) **Wendel Construction Limited**  
P.O. Box 11175 Airport  
#2 Caterpillar Lane  
Grand Cayman KY1-1008  
Cayman Islands

(2) **Wendel Wendel**  
P.O. Box 11175  
Grand Cayman KY1-1008  
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 26 day of March 2021

**See overleaf for particulars of the Plaintiff's claim**

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**PARTICULARS OF CLAIM**

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1. The Plaintiff is and was at all material times a Bank 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, P.O. Box 31726, George Town, 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 #2 Caterpillar Lane, P.O. Box 11175 Airport, Grand Cayman KY1-1008, 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 P.O. Box 11175, Grand Cayman KY1-1008, Cayman Islands. The Second Defendant was and is the owner and Director of the First Defendant.
4. Pursuant to a commercial credit account agreement dated 5 June 2014, 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 based on 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 Wendel Wendel on behalf of the First Defendant.
7. Pursuant to a Personal Guarantee dated 5 June 2014, 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\$10,680.34.
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\$5.27 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 CLAIMS:**

- a) The sum of CI\$10,680.34;
- b) Pre- and post-judgment interest from 1 November 2020 at the contractual rate of 18% per annum in accordance with the terms of the credit agreement, accruing at CI\$5.27 per diem until discharged in full;
- c) Alternatively, pre- and post-judgment interest in accordance with s.34 of the *Judicature Act (2021 Revision)* and the *Judgment Debts (Rates of Interest) Rules, 2021* at the rate of 2.375% for such period as the Court deems fit;
- d) CI\$175.00 fixed costs pursuant to Section 11 of the Summary Court Rules 2004 and such further and other costs as the Court may deem just; and
- e) Such further and other relief as this Court may deem just.

*Hsm chambers*

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**HSM Chambers  
Attorneys-at-Law for the Plaintiff**

## **INDORSEMENT**

The principal amount claimed in respect of the debt is a) CI\$10,680.34 as of the date of filing. The amount of the filing fees to commence the proceeding is CI\$25.00. The fixed fee to commence the proceeding is CI\$150.00. If, within the time for returning the acknowledgement of service, the Defendant pays the Plaintiff or its attorneys-at-law the total amount claimed in principal and the costs of issuing the Plaintiff, 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 6 & 11 above;
2. The prescribed contractual rate of interest is 18% per annum;
3. The date from which interest is payable is 1 November 2020;
4. The amount of interest accruing due each day is CI\$5.27;
5. The alternative rate of interest is 2.375% per annum (court rate).

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(2) WENDEL WENDEL

Defendants

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

Service of the Plaint is acknowledged accordingly.

\_\_\_\_\_  
Defendants' Signature

Dated this      day of      2021.

See overleaf

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**PARTICULARS OF DEFENCE**

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1. *[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]*

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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.