

B E T W E E N:

BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

(1) OLIVAIRE WATLER

(2) SANDRA EDUN-WATLER

Defendants



WRIT OF SUMMONS

TO:

Olivaire Watler and Sandra Edun-Watler
PO Box 11540 APO
Grand Cayman KY1-1009
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 15 day of July 2021

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 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 For Street, PO Box 31726, George Town, Grand Cayman, KY1-1207, Cayman Islands.
2. The Defendants are both individuals who reside in the Cayman Islands with a mailing address of PO Box 11540 APO, Grand Cayman KY1-1009, Cayman Islands.
3. Pursuant to a commitment letter, dated 20 December 2000, Butterfield Bank (Cayman) Limited (formerly known as Bank of Butterfield International (Cayman Ltd.) agreed to loan to the Defendants, to construct a personal residence, the sum of CI\$800,000.00 plus interest thereon at a variable rate of interest based on the Bank's Prime Lending rate for Cayman Islands dollars, plus 0.5%, to be repaid by way of monthly instalments of CI\$7,720.00 over a 20 year term ("the Loan").
4. Pursuant to a second commitment letter, dated 15 May 2001, Butterfield Bank (Cayman) Limited agreed to loan to the Defendants the further sum of CI\$200,000.00, increasing the total loan to CI\$1,000,000.00, plus interest thereon at a variable rate of interest based on the Bank's Prime Lending rate for Cayman Islands dollars, plus 0.5%, to be repaid by way of monthly instalments of CI\$8,365.00 over a 20 year term ("the First Loan Increase").
5. Pursuant to a third commitment letter, dated 1 November 2001, Butterfield Bank (Cayman) Limited agreed to loan to the Defendants the further sum of CI\$365,000.00, increasing the total loan to CI\$1,365,000.00, plus interest thereon at a variable rate of interest based on the Bank's Prime Lending rate for Cayman Islands dollars, plus 0.5%, to be repaid by way of monthly instalments of CI\$10,580.00 over a 20 year term ("the Second Loan Increase").
6. The Loan was secured by a Charge registered on or around 16 January 2001 ("the Legal Charge") against the property known as and situate at Lower Valley, Block 32B, Parcel 228 ("the Property") and a Collateral Charge registered on or around 16 January 2001 against the property known as and situate at Lower Valley, Block 32B, Parcel 94 ("the Raw Land").

7. The First Loan Increase was secured by a Variation of the Legal Charge over the Property together with a Variation of the Collateral Charge over the Raw Land in the sum of CI\$1,000,000.00. The Second Loan Increase was secured by a variation of the Legal Charge over the Property together with a Variation of the Collateral Charge over the Raw Land in the sum of CI\$1,365,000.00, and in addition by a Collateral Charge against the property known as and situate at Prospect, Block 22E, Parcel 246H12 ("the Townhouse"). The Townhouse was sold in July 2004 and is no longer collateral in relation to this matter.
8. It was an express term of the Legal Charge that the Defendants agreed, *inter alia*, the following:

"1. The Chargors acknowledge that they owe to the Chargee the principal sum.

2. (a)...the Chargors shall pay interest on the principal sum (as well after as before any judgment) at the rate of one half per cent (0.50%) above the Chargee's Prime Rate for Cayman Islands dollars per annum on the principal sum.

(c) The Chargors shall upon demand repay to the Chargee the outstanding balance of the principal sum together with all interest which shall have accrued and all other monies owing under the Statutory Charge or this deed or any variation thereof and meanwhile until such demand be served the Chargors shall repay to the Chargee the principal sum together with interest computed in the manner hereinbefore provided by such monthly instalments as the Chargee shall from time to time direct...which shall be paid to the Chargee one month after the date hereof and on the same date in each calendar month thereafter...

...Such instalments shall be calculated so as to amortise the principal sum and interest thereon payable under the Statutory Charge, this deed and any variation thereof over a period of not more than twenty (20) years from the date of the Statutory Charge and of this deed.

(x). The Chargor shall pay all fees and expenses of and in connection with the inspection and valuation of the charged property, the examination of the title thereto, the preparation of the Statutory Charge of his deed and any variation thereof together with the stamp duty and registration fees now or hereafter payable thereon and together also with all fees and expenses that may hereafter be incurred by the Chargee of and incidental to the protection and enforcement from time to time of the Chargee's rights;

9. The Defendants failed to maintain the terms of repayment as set out in the Loan and Legal Charge and subsequent variations. As at 6 February 2018, the Defendants were indebted to the Plaintiff in the sum of CI\$785,644.37, including arrears at that time of CI\$34,855.15.
10. The First and Second Defendants were personally served with notices pursuant to Sections 64(2) and 72 of the Registered Land Law (2018 Revision) (now 'Act', "the RLA") dated 8 February 2018 ("the Statutory Notices"), on or around 13 February 2018 and 23 February 2018, respectively. The Statutory Notices demanded payment of CI\$785,644.37 plus further interest from 7 February 2018 accruing at a rate of CI\$104.18 per day. The arrears owed at that time were CI\$34,855.15.
11. No payments were received within the requisite period to pay the sums detailed in the Statutory Notices as demanded, or at all. The Plaintiff's right of sale arose and crystallised on or around 23 May 2018.
12. The Raw Land was listed for sale by the Plaintiff and sold. CI\$85,560.00 of the proceeds of this sale was applied to the Defendants' account in September 2018.
13. In accordance with the Grand Court Practice Directions, the Plaintiff obtained two valuations of the Property and listed the same for sale on the CIREBA Multiple Listing System ("MLS") on 25 May 2018 for CI\$900,000. In June 2019, the listed price was reduced to CI\$860,000 and, in June 2020, further reduced to CI\$830,000.
14. Valuations were obtained both prior to and during the listing of the Property on the MLS as follows:
- | | | | |
|----------------|-------------|----------------|-----------------|
| a. BCQS | March 2018 | MV CI\$900,000 | SAV CI\$720,000 |
| b. Bould | May 2018 | MV CI\$860,000 | SAV CI\$730,000 |
| c. BCQS | March 2019 | MV CI\$900,000 | SAV CI\$720,000 |
| d. Charterland | August 2019 | MV CI\$860,000 | SAV CI\$690,000 |
| e. Bould | July 2020 | MV CI\$800,000 | SAV CI\$650,000 |
- {SAV = Special Assumption of a marketing period of 180 days}
15. Various offers to purchase were made to purchase the Property which either fell through or were rejected by the Plaintiff. On or around 22 February 2021, the balance owing was CI\$871,571.66, including the arrears of CI\$322,958.28.

16. The Plaintiff ultimately accepted an offer to purchase the Property and on or around 12 March 2021 sold the Property, as the Chargee exercising its power of sale under the RLA.
17. On 12 March 2021 the total loan balance outstanding was CI\$877,119.34. The sale price of the Property was CI\$750,000.00. The net proceeds received by the Plaintiff from that sale, in the amount of CI\$703,300.00, was applied to reduce the Defendants' indebtedness to the Plaintiff.
18. As at 15 March 2021 the balance owed by the Defendants to the Plaintiff following the sale of the Property was CI\$173,850.06 (the Liquidated Debt").
19. The First and Second Defendants were personally served on or around 9 June 2021 and 21 April 2021, respectively, with a Letter Before Action, dated 19 March 2021, demanding payment of the Liquidated Debt within 14 days ("the Demand").
20. The Defendants failed to comply with the terms of the Demand and the Plaintiff claims the Liquidated Debt together with interest thereon at the contractual rate of 0.5% above the Bank's Prime Lending rate for Cayman Island Dollars presently 3.25%, which continues to accrue at the daily rate of CI\$17.86.
21. Alternatively, Interest upon damages pursuant to section 34 of the Judicature Act (2021 Revision) and the Judgment Debts (Rates of Interest) Rules (2021 Revision) at the rate of 2.375%.
22. The Plaintiff is entitled to, and claims, its contractual fees and all costs of, and incidental to, the enforcement of its rights under the Loan and Legal Charge.
23. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceedings.

AND THE PLAINTIFF CLAIMS:

- a) CI\$173,850.06, the liquidated debt;
- b) CI\$2,179.08 in pre- and post-judgment contractual interest from 15 March 2021 to 15 July 2021 at the rate of 3.75% per annum and continuing at the rate of CI\$17.86 per diem in accordance with the terms of the Loan and Legal Charge;
- c) Alternatively, interest upon damages pursuant to section 34 of the Judicature Act (2021 Revision) and the Judgment Debts (Rates of Interest) Rules (2021 Revision) at the rate of 2.375%.

- d) Costs;
- e) Such further and other relief as this Court may deem just.

HSM Chambers

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

Dated this 15 day of July 2021

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$173,850.06. The amount of the filing fees to commence the proceeding is CI\$200.00 plus ad valorem fees of CI\$1,269.25. 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 8 and 20 above;
2. The prescribed rate of contractual interest is 3.75% per annum;
3. The date from which interest is payable is 15 March 2021; and
4. The amount of interest accruing due each day is CI\$17.86.
5. Alternatively, pre- and post-judgment interest in accordance with s.34 Judicature Act (2021 Revision) and the Judgment Debts (Rates of Interest) Rules, (2021 Revision) at 2.375% per annum.
6. The amount of interest accruing due each day is CI\$11.31.

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.

B E T W E E N:

BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

(1) OLIVAIRE WATLER

(2) SANDRA EDUN-WATLER

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: 300138.1425

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

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