



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC OF 2022

B E T W E E N:

CAYMAN PREMIX LIMITED T/A SUPERMIX

Plaintiff

-V-

WENDEL CONSTRUCTION LTD

First Defendant

-AND-

WENDEL WENDEL

Second Defendant

WRIT OF SUMMONS

TO:

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

**AND: Wendel Wendel
P.O. Box 11175
Grand Cayman KY1-1008
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: 14th day of February 2022

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 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, George Town, P.O. Box 31726, Grand Cayman, KY1-1207, Cayman Islands.
2. The First Defendant is a company incorporated in, organised in, and carrying on business pursuant to the laws of, the Cayman Islands, having been so incorporated on 6 April 2005.
3. The Second Defendant is an individual who resides in the Cayman Islands with a mailing address of P.O. Box 11175, Grand Cayman, KY1-1112, Cayman Islands, and is the Owner and Director of the First Defendant Company.
4. The Plaintiff's business involves the supply and delivery of concrete, mortar, cement and other similar products.
5. Pursuant to a Credit Application Package, it was agreed that the Plaintiff would extend credit to the First Defendant in respect of goods, to be repaid by the First Defendant in accordance with invoices rendered by the Plaintiff from time to time. The Credit Application Package included *inter alia* the following documents:
 - a. Application Form, containing Credit Terms and Conditions (signed by the Second Defendant in his capacity as Director of the First Defendant, dated 25 June 2014);
 - b. Personal Guarantee and Indemnity (the "Guarantee") (signed by the Second Defendant in his personal capacity, dated 25 June 2014);

- c. Supplier's General Terms and Conditions (signed by the Second Defendant, dated 25 June 2014).

6. The Credit Terms and Conditions contained, *inter alia* the following:

““Credit terms” pertains to the 21-day period from the time the goods were received by the Customer

...

*5.e. The Customer agrees to pay **all amounts due** to the Supplier based on the agreed Credit Terms. In cases wherein payment is not made with the agreed Credit terms, the Customer acknowledged its liability to pay the monthly interest charges equivalent to 2% **of the balance due for payment**, and further agrees to pay the Supplier any collection expenses incurred by the Supplier in attempting to recover such monies (i.e. legal and agency fees).”*

7. Further, the Supplier's General Terms and Conditions contained *inter alia*, the following:

“5. PAYMENT

a) Unless credit has been approved and extended by the Supplier, payment shall be made upon the Supplier's acceptance of the order and prior to the manufacture of the Goods and Services.

b) Payment must be either through Cash, Checks, Bank Drafts, Debit or Credit Card in currencies accepted in the Cayman Islands. Checks and bank drafts must be made payable to CAYMENT PREMIX LIMITED or SUPERMIX.

c) Accounts outstanding after the due date are charged interest equivalent to 2% per month.

d) Unless otherwise stated in this subsection, the Credit Terms and Conditions as set forth under the Credit Application Form shall prevail.”

8. The Guarantee, signed by the Second Defendant, indemnified the Supplier in relation to the debts and liabilities of the First Defendant, and contained, *inter alia*, the following express terms:

“1. I/We will indemnify the Supplier against any losses, costs, charges and expenses of any nature which it might incur as a result of any default of the Customer.

2. I/We will also be responsible to the Supplier for, and guarantee in favour of the Supplier, payment of all outstanding monies due now or at any time in the future, for

Goods and Services which have been supplied or may have been supplied from time to time to the Customer.”

9. At all material times, the Plaintiff delivered goods to a location at the request of the First Defendant, and submitted an invoice subsequently for the payment of the goods. The Plaintiff provided the following invoices following delivery of the goods in the name of the First Defendant (collectively “**the Invoices**”), according with the table below:

Invoice No	Invoice Date	Amount (KYD)	Credit (KYD)	Balance (KYD)
28009	17/05/2019	\$18,596.00	\$12,596.00	\$6,000.00
31960	19/03/2020	\$16,110.00	\$245.00	\$15,865.00
32018	23/03/2020	\$15,245.00	0	\$15,245.00

10. Where part-payment of an invoice was made, this is noted in the table under the “Credit” column. The total amount currently outstanding the invoices is CI\$37,110.00. In breach of the Credit Application Package the First Defendant, respectively, has failed to pay the balance of the Invoices. In breach of the Guarantee, the Second Defendant has failed to pay sums owed by the First Defendant.
11. On 20 December 2021 a formal demand letter was served by sending the same via registered mail to the First Defendant at its registered address. On the 21 December 2021 a formal demand letter was personally served on the Second Defendant.
12. Since the formal demand letters were served, the First and Second Defendant have failed to make any payment towards the outstanding balance as detailed in paragraph 11 above.
13. In addition to the principal sum of CI\$37,110.00 the Plaintiff claims interest pursuant to the Credit Agreement at the rate of 2% per month, from the day after which the Invoices each became due, until the principal sum is repaid in full, the continuing at the rate of CI\$24.40 per day. Alternatively, the Plaintiff claims pre- and post-judgment interest in accordance with s.34 and 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.

14. The Plaintiff is entitled to, and claims, all court fees and costs of, and incidental to, the enforcement of its rights under the Credit Agreement and Guarantee, pursuant to Clause 5e Credit Terms and Conditions as stated at Paragraph 6 above.

AND THE PLAINTIFF claims:

- a) CI\$37,110.00;
- b) Pre judgment interest from the date of the invoices to 11 February 2022 in the sum of CI\$17,373.41, continuing at the rate of 2% per month in accordance with the terms of the invoices at CI\$24.40 per diem;
- c) Pre- and post-judgment interest from 12 February 2022 at the rate of 2% per month in accordance with the terms of the Credit Agreement as set out in paragraph 6 above, continuing to accrue at CI\$24.40 per diem;
- d) Alternatively, 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;
- e) The Plaintiff's costs to be taxed if not agreed; and
- f) 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\$37,110.00 as of the date of filing. The amount of the filing fees to commence the proceeding is CI\$200.00, plus ad valorem fees of CI\$271.10. If, within the time for returning the acknowledgement of service, the First and Second 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 6 above;
2. The prescribed rate of interest is 2% per month;
3. The date from which interest is payable is 16 June 2019; and
4. The amount of interest accruing due each day is CI\$24.40.

This WRIT OF SUMMONS was filed by HSM Chambers, Attorneys-at-law for the Plaintiff whose address for service is 68 Fort Street, George Town, P.O. Box 31726, Grand Cayman, KY1-1207, Cayman Islands (Ref: 418890.0052)

No.8

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 2022

B E T W E E N:

CAYMAN PREMIX LIMITED T/A SUPERMIX

Plaintiff

-V-

WENDEL CONSTRUCTION LTD

First Defendant

-AND-

WENDEL WENDEL

Second Defendant

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
Attorneys-at-Law
68 Fort Street
P.O. Box 31726
George Town
Grand Cayman KY1-1207
CAYMAN ISLANDS

Ref: 418890.0052

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

[Empty box for defendant's Attorney indorsement]