



D COURT OF THE CAYMAN ISLANDS

CAUSE NO. GC OF 2024

BETWEEN

CARIBBEAN UTILITES COMPANY, LTD.

Plaintiff

AND

**SERVE-PRO CAYMAN LTD
T/A EASTERN AVE RUBIS**

First Defendant

MR. ROGER TATUM

Second Defendant

WRIT OF SUMMONS

TO: (1) Serve-Pro Cayman Ltd.
 142 Eastern Avenue
 P.O. Box 191
 George Town
 Grand Cayman, KY1-1104
 Cayman Islands

(2) Mr. Roger Tatum
 142 Eastern Avenue
 P.O. Box 191
 George Town
 Grand Cayman, KY1-1104
 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 20th day of March 2024

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, P.O. Box 31726, George Town, Grand Cayman, KY1-1207, Cayman Islands.
2. The Plaintiff is, and was at all material times, a business engaged in the generation, transmission and distribution of electricity to residential and commercial properties.
3. The First Defendant is, and was at all material times, a Cayman Islands incorporated company (Company No. 378780) with a registered office address of 142 Eastern Avenue, P.O. Box 191, George Town, Grand Cayman, KY1-1104. The First Defendant's business was a petrol station located on Eastern Avenue in George Town, Grand Cayman.
4. The Second Defendant is, and was at all material times, an individual who resides in the Cayman Islands with a mailing address of 142 Eastern Avenue, P.O. Box 191, George Town, Grand Cayman, KY1-1104. The Second Defendant is a Director of the First Defendant.

Payment Agent Agreement

5. A Payment Agent Agreement was executed on 30 August 2021 by the Plaintiff and the Second Defendant acting in his capacity as Director of the First Defendant (the "**PAA**"). The purpose of the PAA was to enable customers of the Plaintiff to attend the premises of the First Defendant in order to make payments in relation to the supply of electricity to their premises. Through the PAA, the First Defendant agreed to act as an agent of the Plaintiff to collect such payments and to pay forward the collected funds to the Plaintiff in accordance with its terms. The PAA had an initial term of two years.
6. The PAA contained *Inter alia* the following terms:

"5. Payment

...

5.2 *By the fifth (5th) Business Day of each month, the Agent will provide to the Principal at itemized report of the Agent's fees for the previous month, along with an invoice for the itemized amount. All documentation shall be transferred by the Agent to the Principal as specified in Clause 5 of Schedule "C".*

7. Clause 5 of Schedule C to the Payment Agent Agreement required the First Defendant to maintain a summary of all transactions carried out for the Plaintiff and deposit monies collected into the Plaintiff's bank account no later than the following business day.
8. In breach of the PAA, and without lawful authority, the First Defendant failed to pay forward collected sums to the Plaintiff and failed to provide an accurate record of the transactions.
9. On or around 26 April 2023, the Plaintiff served upon the First Defendant a Notice of Breach demanding that the First Defendant pay money which had been collected from the Plaintiff's customers, but not then paid forward to the Plaintiff, in the sum of C\$133,521.24 and further requiring the First Defendant to provide an accurate record of the transactions from 1 March 2023 to date. The Plaintiff also suspended the First Defendant's ability to act as a payment agent.

Promissory Note

10. On 5 June 2023, by way of a Promissory Note executed in the form of a Deed, the terms of which were agreed between the Plaintiff and the First Defendant, the First Defendant agreed to pay to the Plaintiff the outstanding principal sum of C\$130,512.24 representing monies due under the PAA together with interest thereon at the rate of 8.38% per annum calculated from 26 May 2023, payable by instalments of C\$25,000.00 per month commencing 29 June 2023 and by the 29th of each consecutive month thereafter until the principal and interest was discharged in full (the "**Promissory Note**").
11. It was a term of the Promissory Note that if any monthly instalment was not paid within seven (7) days of its due date, all unpaid amounts shall become due and payable, without demand or notice.

12. Further, it was a term of the Promissory Note that the First Defendant agreed to pay in full, on an indemnity basis, all legal fees, costs and disbursements reasonably incurred in the recovery and collection of the sums owing.

Personal Guarantee

13. Pursuant to a Deed of Guarantee and Indemnity between the Plaintiff and the Second Defendant dated 5 June 2023, the Second Defendant guaranteed on demand to pay to the Plaintiff all monies and discharge all obligations owed to the Plaintiff by the First Defendant including interest thereon and all legal fees (the "**Personal Guarantee**").

Deed of Variation

14. Pursuant to a Deed of Variation dated 30 August 2023, clause 3 of the Promissory Note was varied to require payment of the principal sum and interest thereon by a smaller instalment of CI\$5,000 by 4:00pm on 1 September 2023, then instalments of CI\$25,000 on 25 September 2023, CI\$25,000 on 25 October 2023, 25 November 2023, CI\$3,535.26 on 23 December 2023, and the full balance of legal fees by 23 December 2023 (the "**Deed of Variation**").
15. The Second Defendant agreed to join and sign the Deed of Variation in his capacity as Guarantor to record his consent to the variations.

Breach

16. In breach of the Promissory Note (as varied), the First Defendant failed to pay the instalments as and when due. On or around 27 November 2023, the Plaintiff served upon the First Defendant a letter before action dated 20 November 2023, demanding payment of the outstanding principal of CI\$75,512.24 together interest thereon and legal fees.
17. On or around 27 November 2023, the Plaintiff served upon the Second Defendant a formal demand dated 20 November 2023, calling in the Personal Guarantee and demanding payment of the outstanding principal of CI\$75,512.24 together interest thereon and legal fees.

18. Notwithstanding the written demands for payment, neither the First Defendant nor the Second have discharged the sums owed to the Plaintiff. The Plaintiff has suffered loss and damage as a result.
19. Accordingly, the Plaintiff claims from the First Defendant and Second Defendant the principal sum of CI\$60,512.24
20. The Plaintiff also claims pre- and post-judgment interest from 26 May 2023 to 20 March 2024 at the contractual rate of 8.38% per annum in the sum of CI\$5,400.29 and continuing at the rate of CI\$13.89 per diem in accordance with the terms of the Promissory Note and/or Personal Guarantee.
21. Alternatively, the Plaintiff claims 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.
22. As a result of the above, the Plaintiff is entitled to the relief claimed in these proceedings.

AND THE PLAINTIFF CLAIMS:

- a. CI\$60,512.24 being the principal sum due;
- b. CI\$5,400.29 pre- and post-judgment interest from 26 May 2023 to 20 March 2024 at the contractual rate of 8.38% per annum and continuing at the rate of CI\$13.89 per diem;
- 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. Costs; and
- e. Such further cost and other relief as this Court may deem just.

HSM Chambers

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

INDORSEMENT

The amount claimed in respect of the debt is CI\$60,512.24. The amount of the filing fees to commence the proceeding is CI\$200.00 plus Ad Valorem in the sum of CI\$505.12. 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 10 above;
2. The prescribed rate of interest is 8.38% per annum;
3. The date from which interest is payable is 26 May 2023; and
4. The amount of interest accruing due each day is CI\$13.89

This WRIT OF SUMMONS was filed by HSM Chambers, Attorneys-at-Law for the Plaintiff whose address for service is 68 Fort Street, PO Box 31726, George Town, Grand Cayman, KY1-1207, Cayman Islands (ref: 417737.0382)

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 2024

BETWEEN

CARIBBEAN UTILITES COMPANY, LTD.

Plaintiff

AND

SERVE-PRO CAYMAN LTD
T/A EASTERN AVE RUBIS

First Defendant

MR. ROGER TATUM

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: 418890.0382

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]