

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. SC743 of 2001

BETWEEN:

SCOTIABANK (CAYMAN ISLANDS) LTD.

PLAINTIFF

AND:

DARLEY D. STEWART

DEFENDANT

WRIT OF SUMMONS

TO: Darley D. Stewart of PO Box 363 WB, Grand Cayman

**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 GT, 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 judgement may be entered against you forthwith without further notice.

ISSUED this            day of November 2001.

**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 has at all material times carried on the business of banking within the Cayman Islands including Credit Card Finance and has at all such times been the holder of a category "A" licence under the Banks and Trust Companies Law (1995 Revision).
2. By an agreement in writing, referred to as the Cardholder Agreement ("the Agreement") the Plaintiff agreed to issue the Defendant with a credit-token, namely a credit card, upon the terms and conditions therein set out.
3. The Agreement provided, inter alia, that:
  - 3.1 Possession of the said credit card entitled the Defendant to obtain cash advances and/or to purchase goods or services upon production thereof to any supplier for the time being authorized by the Plaintiff, subject to an overall credit limit established by the Plaintiff from time to time;
  - 3.2 The Plaintiff would render to the Defendant monthly statements of account showing the balance owing on the account, such statements covering a period of between 28 to 33 days;
  - 3.3 The Defendant would have the option of paying such balance to the Plaintiff either (a) in full or, (b) by a part payment equal to the minimum payment as stipulated by the Plaintiff or (c) by any payment greater than (b);
  - 3.4 The Plaintiff would charge interest at the rate specified in a Disclosure Statement which accompanied the Agreement being 18% per annum of the outstanding balance or, on overlimits, 25% per annum of the said sum from the payment due date.
  - 3.5 The Defendant would pay to the Plaintiff all legal fees and expenses (on an Attorney-At-Law/Solicitor and client basis) incurred by the Plaintiff in recovering any indebtedness or interest and all expenses incurred by the Plaintiff in taking possession of the credit card;
4. Pursuant to the Agreement the Plaintiff rendered monthly statements to the Defendant showing the balance then due on the account, expressed in US dollars.
5. Despite the receipt of such monthly statements the Defendant has failed and/or neglected to pay the sums due in accordance with the payment provisions set out in paragraph 3.3 above. Alternatively, the Defendant has failed to pay any indebtedness exceeding the credit limit.
6. Accordingly by letters sent to the Defendant on various dates, the last of which being 15<sup>th</sup> November 2000, the Plaintiff advised the Defendant of the default stating the amount of the said balance and requiring the Defendant to pay the


same or make arrangements do so within 14 days of service of such letter. The said letter also requested the Defendant to deliver-up the credit card to the Plaintiff.

7. By the date of issue hereof the Defendant has failed to pay the said balance, or make arrangements to do so and has failed to deliver-up the credit card. The Plaintiff has therefore terminated the said agreement and the full sum currently outstanding on the account of US\$3,342.12 (inclusive of interest to the date of issue hereof) is due and owing.
8. Further, the Plaintiff is entitled to and claims interest on the said outstanding sum of US\$3,342.12 at the rate of 18% per annum from the date hereof until payment at the current daily rate of US\$1.65 for such period as the Court shall see fit.

AND THE PLAINTIFF CLAIMS:-

1. An Order that the Defendant do deliver-up the credit card to the Plaintiff;
2. Payment of the said sum of US\$3,342.12;
3. Interest in the sum of US\$1.65 per day;
4. Fixed costs of US\$182.93 (CI\$150.00) together with Process Servers costs and issue fee, alternatively costs to be assessed.

Dated the 28<sup>th</sup> day of November 2001.

  
RITCH & CONOLLY  
Attorneys-at-Law for the Plaintiff

If within the time for returning the Acknowledgement of Service the Defendant pays the amount claimed of US\$3,342.12 together with fixed attorney's fees of US\$304.88 (CI\$250.00) and filing fees of US\$182.93 (CI\$150.00) and, further, delivers up the said credit card then all further proceedings will be stayed. The money must be paid to the Plaintiff or its attorneys.

TO: The Clerk of the Court  
AND TO: The Defendant of PO Box 363 WB, Grand Cayman

This Writ of Summons was issued by Ritch & Conolly, Attorneys-at-Law, for and on behalf of the Plaintiff herein whose address for service is Fourth Floor, Queensgate House, South Church Street, PO Box 1994 GT, Grand Cayman.

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BETWEEN:

SCOTIABANK (CAYMAN ISLANDS) LTD.

PLAINTIFF

AND:

DARLEY D. STEWART

DEFENDANT

**ACKNOWLEDGEMENT 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 Judgement being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

Yes

No

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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 judgement entered by the Plaintiff (*tick box*)

Yes

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 communications 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*

Messrs Ritch & Conolly  
PO Box 1994 GT  
Grand Cayman  
  
Ref: DAM/Scotibank

*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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## Acknowledgement of Service of Writ of Summons

### DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of *Acknowledgement 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, PO Box 495 GT, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, 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.