

IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN:

CAYMAN NATIONAL BANK LTD.

Cause No. 115 of 2002 ✓

PLAINTIFF

AND:

CLIFF BODDEN

DEFENDANT

WRIT OF SUMMONS

TO: Cliff Bodden, P.O. Box 31450 SMB, 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 G, 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.

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.

Issued this day of February 2002.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

See overleaf for particulars of Plaintiff's claim.

STATEMENT OF CLAIM


1. For valuable consideration, the Defendant herein entered into a Guarantee dated 16th March 1999 whereby he guaranteed payment to the Plaintiff of all debts and liabilities present and future, direct or indirect, of Bodden & Company, a Customer of the Plaintiff. The Plaintiff will refer to the said Guarantee for its full terms and effect in Law.
2. The Guarantee, inter alia, included the following terms:-
 - “1.(B) The undersigned’s liability under this Guarantee shall include all and any interest accrued or accruing thereon (both before as well as after Judgment) at such rate or rates as the Bank may in its absolute discretion determine from time to time and all and any bank charges together with all costs and expenses recoverable from the customer and all costs and expenses incurred by the Bank in enforcement of this Guarantee and where the undersigned’s liability is limited such limitation shall be exclusive of any sums included under this clause 1(B).*
 - 2.(A) The undersigned hereby undertakes to keep the Bank fully and effectually indemnified against all losses, damages, costs, claims, and expenses arising out of or in connection with any failure on the part of the Customer to pay any of the sums aforesaid as and when the same shall fall to be paid or perform any of the obligations to be performed in pursuant of the terms of the facilities extended to the Customer.*
 - 2.(I) The Bank shall not be bound to exhaust its recourse against the Customer or others or any securities it may at any time hold before being entitled to payment from the undersigned of the outstanding debts or liabilities due hereunder.*
 - 2.(J)(i) Upon default in payment of any debt or liability owing by the Customer to the Bank at any time, the Bank may treat the whole of the indebtedness hereby secured as due and payable and may forthwith collect from the undersigned the total amount hereby guaranteed and may apply the sum so collected upon the Customer’s debt or may place it to the credit of a special account.”*
3. In accordance with the said provisions, demand was made of the Defendant by way of a letter from the Plaintiff dated 19th April 2000. The said sums outstanding under the Guarantee at that stage amounted to US\$53,217.09.
4. Despite service of such demand, the Defendant has failed to discharge the full sums due and owing.
5. At the date hereof (under the terms of the aforementioned Guarantee) the Defendant remains indebted to the Plaintiff in the sum of US\$33,516.85.

6. Pursuant to Clause 1(B) of the Guarantee, the Defendant agreed to pay interest on the outstanding sums at the rate of 10.75% per diem.

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT:-

1. Payment of the said sum of US\$33,516.85;
2. Interest on the sum of US\$33,516.85 from the date hereof until Judgment or sooner payment at the rate of 10.75% per diem, amounting to US\$10.01 per day;
3. Costs;
4. Further or other relief.

Dated the 7th day of February 2002.



RITCH & CONOLLY
Attorneys at Law for the Plaintiff

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PLAINTIFF

AND:

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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.

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 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

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.