



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 893 OF 2002

BETWEEN:



SCOTIABANK (CAYMAN ISLANDS) LTD.



Plaintiff

AND

LIVINGSTON RANKINE

Defendant

**WRIT OF SUMMONS**

TO: The Defendant  
Grand Cayman, 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 495GT, 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 judgment may be entered against you forthwith without further notice.

Issued this 9 December 2002.

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 a Class A Bank carrying on the business of retail and other banking in the Cayman Islands, its registered office being PO Box 689 GT.
2. The Defendant was at all material times an individual customer of the Plaintiff and resides in the Cayman Islands. The Defendant and his wife, Joydie Rankine were at all material times, jointly and severally liable to the Plaintiff.
3. The Defendant's spouse, Joydie Rankine, has left the jurisdiction.

### **East End, Block 71A, Parcel 98 (hereinafter "Mortgage 1")**

4. In November 1997, the Defendant, entered into mortgage arrangements with the Plaintiff whereby the Plaintiff would loan to the Defendant certain sums, the terms of which are subject to the following instruments:
  - a. A charge of land owned by the Defendant securing the principal debt of CI\$16,000.00 registered against property described as Registration Section East End, Block 71A, Parcel 98;
5. The Plaintiff did advance funds of CI\$16,000 on 14 November 1997 and again on 26 January 1998 increasing the total amount loaned to CI\$24,600.00 to the Defendant on the terms of the instruments referred to at paragraph 4a, which terms included as follows:
  - a) The Defendant, would pay the Plaintiff the sum of CI\$24,600.00 plus interest and costs of enforcement;
  - b) Interest would accrue at the rate of 13% per annum;
  - c) The Defendant would pay all costs and expenses incurred by the Plaintiff, including reasonable legal fees in relation to the enforcement and recovery of the funds owed to the Plaintiff;
6. Although the Defendants have defaulted in the repayment of the sum of the mortgage agreement, and the sum of CI\$33,671.84 is due as of the date of the commencement of this proceedings, this property (Mortgage 1) is unsold and still held as security.
7. Mortgage 1 is collateral to Mortgage 2.
8. The Plaintiff claims legal fees of CI\$1,800.00 on a contractual basis as pleaded at paragraph 5 (c), herein in connection with fees incurred in this proceedings.

East End, Block 72B, Parcel 41 (hereinafter "Mortgage 2")

9. In July 1997, the Defendant entered into mortgage arrangements with the Plaintiff whereby the Plaintiff would loan to the Defendant certain sums, the terms of which are subject to the following instruments:
- a. A charge of land owned by the Defendant securing the principal debt of CI\$70,575.30 registered against property described as Registration Sections East End, Block 72B, Parcel 41;
10. The Plaintiff did advance funds of CI\$70,575.30 on 11 July 1997 and again on 20 November 1997 increasing the total amount loaned to CI\$86,300.00 to the Defendant on the terms of the instruments referred to at paragraph 8a, which terms included as follows:
- a) The Defendant, would pay the Plaintiff the sum of CI\$86,300.00 plus interest and costs of enforcement;
  - b) Interest would accrue at the rate of 15% per annum;
  - c) The Defendants would pay all costs and expenses incurred by the Plaintiff, including reasonable legal fees in relation to the enforcement and recovery of the funds owed to the Plaintiff;
11. The Defendant defaulted on the repayment terms and properties secured by the charge was ordered to be sold pursuant to a Court Order in Grand Court Cause No. 590 of 2001. The property with Registration Section East End Block, 72B, Parcel 41 was sold and the funds from the sale of the property were applied to the outstanding amounts loaned to the Defendant by the Plaintiff.
12. The sale price of property secured by the charge was CI\$75,000.00. From the sale proceeds the costs relating to the enforcement of the charge and sale of the property after which a deficiency of CI\$70,084.25 (principal interest and enforcement costs) remains due and owing to the Plaintiff as of the date of commencement of this proceeding. Breakdown of deficiency as follows:
- |                                  |                      |
|----------------------------------|----------------------|
| a. Principal                     | CI\$10,312.53        |
| b. Legal costs                   | CI\$11,028.42        |
| c. Interest on principal & Costs | <u>CI\$48,653.30</u> |
| Total due and owing              | CI\$70,084.25        |
13. Interest is claimed on the due sum in accordance with the agreement pleaded above at 10(b) at the rate of 15% per year.

14. Notwithstanding requests made by the Plaintiff or its attorneys for the payment of the indebtedness, the Defendants have either failed or refused to make payment.
15. The Plaintiff claims legal fees of CI\$1,800.00 on a contractual basis as pleaded at paragraph 5(c) and 10(c), herein in connection with fees incurred in this proceedings.
16. As a result of the above, the sums claimed herein are due and owing to the Plaintiff.

## AND THE PLAINTIFF CLAIMS

### Mortgage 1

- a. CI\$23,698.30;
- b. CI\$8,298.98 in pre judgment interest to the commencement of this proceeding at 13% as agreed and as claimed at paragraph 5b;
- c. CI\$1,501.00 for enforcement costs from the commencement of the proceedings in Cause No. 509 of 2001 as agreed and as claimed at paragraph 5(c);
- d. Post judgment interest from the commencement of this proceeding at 13% as agreed;
- e. Alternatively pre-and post judgment interest pursuant to the Judicature Law (1995 Revision) and Judgment Debts (Rates of Interest) Rule as amended from time to time;
- f. Such further and other relief as this Honourable Court may deem just.

### Mortgage 2


- g. CI\$10,312.53;
- h. CI\$48,653.30 in pre judgment interest to the commencement of this proceeding at 15% as agreed and as claimed at paragraph 10b;
- i. CI\$11,028.42 in enforcement costs from the commencement of the proceedings in Cause No. 509 of 2001 as agreed and as claimed at paragraph 9(c);
- j. Post judgment interest from the commencement of this proceeding at 15% as agreed;

- k. Alternatively pre-and post judgment interest pursuant to the Judicature Law (1995 Revision) and Judgment Debts (Rates of Interest) Rule as amended from time to time;
- l. Such further and other relief as this Honourable Court may deem just

**Costs**

- m. Costs of CI\$1,800.00 on a contractual basis as pleaded in paragraph 15 herein;
- n. Alternatively, costs as taxed pursuant to the Bill of Costs Rules.

Dated: 9 December 2002



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Hunter & Hunter

FILED by Hunter & Hunter Attorneys-at-Law for the Plaintiff whose address for service is The Huntlaw Building, 75 Fort Street, P.O. Box 190 GT, George Town, Grand Cayman (Ref: WAS/00187.149)

## INDORSEMENT

The principal amount claimed in respect of the debt is CI\$34,010.83 as set out at paragraph 1 and 7, herein. Interest and costs as of the date of the commencement of this proceeding is CI\$69,481.70. The amount of the costs claimed to the issuance of the Writ of Summons is CI\$1,800.00 and the costs of issuing the Writ of Summons is CI\$390.11 (CI\$150.00 plus CI\$240.11 ad valorem). If, within the time for returning the acknowledgement of service, the defendant pays the plaintiff or its attorneys-at-law the total amount claimed in principal and interest, the fixed costs 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

(Order 6 (2)(e) of the Grand Court Rules)

#### Mortgage 1

- i. The contractual term upon which interest is 13% as claimed in paragraph 5(b) above
- ii. The prescribed rate of interest during the entire relevant period from November 1997 is 13%;
- iii. The total interest claimed as at the date of the issue of the writ of summons is CI\$8,298.98;
- iv. The amount of interest accruing each day following the issue of the writ of summons is CI\$10.35.

#### Mortgage 2

- v. The contractual term upon which interest is 15% as claimed in paragraph 9(b) above
- vi. The prescribed rate of interest during the entire relevant period from July 1997 is 15%;
- vii. The total interest claimed as at the date of the issue of the writ of summons is CI\$48,653.30;
- viii. The amount of interest accruing each day following the issue of the writ of summons is CI\$6.72.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2002

BETWEEN:

SCOTIABANK (CAYMAN ISLANDS) LTD.

Plaintiff

AND

LIVINGSTON RANKINE

Defendant

ACKNOWLEDGMENT OF SERVICE

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

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.

**Hunter & Hunter**  
The Huntlaw Building  
75 Fort Street  
PO Box 190 GT  
Grand Cayman  
Telephone: (345)949-4900  
Telefax: (345)949-4901  
(REF: WS/00187.149)

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]

## 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 the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, 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*

## 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.