

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 926 OF 2002

BETWEEN:

DONALD FELGER

Plaintiff

- AND -

BANK OF BERMUDA (CAYMAN) LIMITED

Defendant

WRIT OF SUMMONS

TO: Bank of Bermuda (Cayman) Limited.
C/O Maples and Calder
Ugland House II
P.O. Box 309 GT
George Town, Grand Cayman
Cayman Islands, BWI

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 fourteen (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 GT, Grand Cayman, 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 18 day of 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 issued unless renewed by order of the Court.

IMPORTANT

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

STATEMENT OF CLAIM

1. The Plaintiff's claim is for US\$60,000.00 being money payable by the Defendant to the Plaintiff as money had and received by the Defendant to the use of the Plaintiff.

PARTICULARS

On the 20th October 1999, the Plaintiff paid or caused to be paid to the Defendant the sum of US\$60,000.00 for the purpose of investing in an enterprise known as "Cash for Titles" through an account in the name of CTI Limited. But on the 15th October 1999 or at the latest 16th October 1999, Cash for Titles had been closed down as a fraud and the account of CTI Limited was on that date frozen. Accordingly there was a total failure of consideration. The Defendant lodged the Plaintiff's US\$60,000.00 into a "suspense" account, but has since failed and refused to return it or any part thereof to him.

2. The Plaintiff further claims pre-judgment and post-judgment interest on the above amount in accordance with the rates prescribed under the Judicature Law (1995 Revision) and the Judgment Debts (Rate of Interest) Rules. The total of said interest, from the 21st of October 1999 to the 18th of December 2002, amounts to US\$ 12,180.64 and is increasing at a per diem rate of CI\$ 7.40. Alternatively, interest at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF claims:

1. The sum of US\$60,000.00;
2. Pre-judgment and post-judgment interest on the said sum of US\$60,000.00 at pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rate of Interest) Rules presently amounting to US\$ 12,180.64 and increasing at a per diem rate of US\$ 7.40;

3. Alternatively, interest on the said sum of US\$60,000.00 at such rate and for such period as the Court thinks fit pursuant to the Judicature Law (1995 Revision);
4. Costs; and
5. Such further or other relief as this court may deem just.

Dated this 18th day of December, 2002

Broadhurst DaCosta
BROADHURST DaCOSTA
Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim was issued by Broadhurst DaCosta whose address for service is 40 Linwood Street, P.O. Box 2503 GT, George Town, Grand Cayman, Cayman Islands, British West Indies, Attorneys-at-Law for the Plaintiff.

INDORSEMENT

The amount claimed in respect of the debt or demand is US\$ 60,000.00 as principal and US\$ 12,180.64 as interest until the issue of the Writ of Summons for a total amount of US\$ 72,180.64. The amount of the fixed costs is CI\$ 500.00 and the costs of issuing the Writ of Summons is CI\$ 150.00 plus the ad valorem fee of CI\$ 420.00. 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.

STATEMENT REGARDING INTEREST

- i. The date from which the interest accrued is from the 21st of October 1999;
- ii, Pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rate of Interest) Rules from the 21st of October 1999 to the 31st of March 2000 the applicable interest rate was 7%. This amounts to a total interest for that period of US\$ 1,864.11;
- iii. Pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rate of Interest) Rules from the 1st of April 2000 to the 31st of May 2001 the applicable interest rate was 8%. This amounts to a total interest for that period of US\$ 5,602.19;
- iv. Pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rate of Interest) Rules from the 1st of June 2001 to the 30th of November 2001 the applicable interest rate was 6.25%. This amounts to a total interest for that period of US\$ 1,880.14;
- v. Pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rate of Interest) Rules from the 1st of December 2001 to the 18th of December 2002 the applicable interest rate was 4.5%. This amounts to a total interest for that period of US\$ 2,834.20;
- vi. The total interest as of the issue of the Writ of Summons (18th of December 2002) is US\$ 12,180.64;
- iv. The amount of interest accruing each day following the issue of the Writ of Summons is US\$ 7.40.

**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, 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (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 installments or otherwise.

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 fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

BETWEEN:

DONALD FELGER

Plaintiff

- AND -

BANK OF BERMUDA (CAYMAN) LIMITED

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

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

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

Yes [] No []

- 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 see 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 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.

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

BROADHURST DaCOSTA
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503 GT
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, BRITISH WEST INDIES

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