

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 137 OF 2005

BETWEEN: FIRSTCARIBBEAN INTERNATIONAL FINANCE
CORPORATION (CAYMAN) LIMITED

PLAINTIFF

AND: (1) LUKE MCCOY
(2) FRANK MCCOY

DEFENDANTS

WRIT OF SUMMONS



TO: Luke McCoy
P. O. Box 55
North Side
Grand Cayman
Cayman Islands

AND TO: Frank McCoy
P. O. Box 55
North Side
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 hereafter.

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 Courts Office, P. O. Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service form stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated or if you return the Acknowledgment 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 day of March 2005.

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 Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is a banker carrying on business at its branch at FirstCaribbean House, 25 Main Street, P.O. Box 1321GT, George Town, Grand Cayman, Cayman Islands, and elsewhere.
2. The Defendants are and were at all material times customers of the Plaintiff at the said branch.
3. Between May 1993 and June 1995 the Plaintiff loaned the First Defendant a total sum of CI\$135,000.00 (the "Loan") repayable over fifteen years at the rate of CI\$1,385.00 per month. Pursuant to the Loan interest is payable on the sum lent at the rate of 3% per annum over the prime interest rate, effectively 9.5% per annum at the present time.
4. The Loan was granted to assist with the construction of a house. In consideration of the Loan, the First Defendant granted a charge over Registration Section North Side, Block 49C Parcel 17 (the "Property") in favour of the Plaintiff (the "Charge").
5. On 17 July 1995 the First Defendant transferred the Property to the Second Defendant and himself as joint proprietors. By a letter dated 20 July 1995, and agreed to by the Defendants, the Plaintiff agreed to add the Second Defendant's name to the mortgage account in respect of the Loan. The Defendants failed to repay the Loan in accordance with its terms.
6. By letter dated 31 August 2000, the Plaintiff made written demand for repayment of the Loan. The Defendants failed to repay the whole or any part of the sum outstanding.

7. Enforcement proceedings were commenced in relation to the Charge and on 19 September 2000 and 1 February 2001 notices pursuant to Sections 64(2) and 72 (1) respectively, of the Registered Land Law (1995 Revision) were served on the Defendants, but the Defendants failed to repay the whole or any part of the sum outstanding.
8. The Plaintiff obtained valuations of the Property and it was offered for sale by public auction on 30 January 2003. The public auction was unsuccessful with no bids having been received.
9. On 1 July 2003 the Plaintiff made a separate application to the court for leave to sell the Property privately and on 21 August 2003, the Grand Court granted the Plaintiff's application. Pursuant to an offer to purchase dated 22 July 2004, the Property was sold for the sum of CI\$135,000.00.
10. On the sale of the Property, the Plaintiff received a cheque in the amount of CI\$121,425.00 representing the purchase price of CI\$135,000.00 less commission of CI\$9,450.00 paid to Sheena Conolly Real Estate Ltd. and the balance of the deposit in the amount of CI\$4,050.00 held by Sheena Conolly Real Estate Ltd. The Plaintiff deposited the net amount of CI\$121,425.00 into the Defendants' account leaving a shortfall of CI\$102,233.40, with interest accruing at 9% per annum.
11. On 6 September 2004 the Plaintiff's Attorneys made a written demand for repayment of the outstanding balance of consisting of principal in the amount of CI\$75,596.00 and unpaid interest of CI\$26,637.40, but the Defendants have failed to repay the amount outstanding.

12. As at 17 March 2005 the Defendants were indebted to the Plaintiff in the amount of CI\$102,486.06 with interest accruing at the rate of CI\$3.931 per diem.

AND THE PLAINTIFF CLAIMS:

- (a) The sum of CI\$102,486.06;
- (b) Interest pursuant to the Loan at the rate of 9% per annum from 17 March 2004 accruing at the rate of CI\$3.931 per diem until payment or judgment, alternatively, judicial interest;
- (c) Payment of ad valorem Court fees of CI\$912.43;
- (d) Further and other relief;
- (e) Costs, to be taxed if not agreed.

DATED this 22nd day of March 2005.



WALKERS
Attorneys at Law for the Plaintiff

This Writ and Statement of Claim is filed by Walkers, Attorneys-at-Law, P.O. Box 265 GT, Walker House, Mary Street, George Town, Grand Cayman, for the Plaintiff whose address for service is care of its said Attorneys-at-Law.

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DEFENDANTS

**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 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.

Walkers
Attorneys-at-Law
P.O. Box 265 GT
Walker House, 87 Mary Street
George Town, Grand Cayman

Ref: DMM/BG/B2-27268

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

**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.
2. After completion it must be delivered or sent by post to the Courts Office, P.O. Box 495G, George Town, Grand Cayman.
3. 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).
4. 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.
5. 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.
6. If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.
7. 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 Acknowledgment of Service and return it to the Court's 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 Court's office.