

IN THE GRAND COURT OF THE CAYMAN ISLANDS

589  
CAUSE NO. OF 2005

BETWEEN:

**SCOTIABANK & TRUST (CAYMAN) LTD.**

Plaintiff

**-AND-**

- (1) **HERBERT PEINTNER**
- (2) **MICHAEL BROWN**
- (3) **JOHN ROBERTSON**
- (4) **THE NEW COCONUT HARBOUR LIMITED**
- (5) **PERIWINKLE HOLDINGS LTD**

Defendants

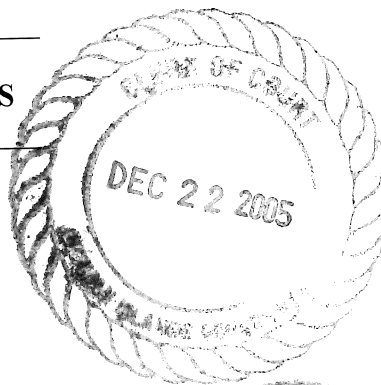
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**WRIT OF SUMMONS**

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TO:

Herbert Peintner  
George Town, Grand Cayman  
Cayman Islands, B.W.I.



AND TO:

Michael Brown  
George Town, Grand Cayman  
Cayman Islands, B.W.I.

AND TO:

John Robertson  
George Town, Grand Cayman  
Cayman Islands, B.W.I.



AND TO:

The New Coconut Harbour Limited  
c/o Truman Bodden & Co  
P.O. Box 866 GT,  
Anderson Square Building, Shedden Road,  
George Town, Grand Cayman,  
Cayman Islands, B.W.I.

AND TO:

Periwinkle Holdings Ltd  
c/o Truman Bodden & Co  
P.O. Box 866 GT,  
Anderson Square Building, Shedden Road,  
George Town, Grand Cayman,  
Cayman Islands, B.W.I.

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 <sup>22nd</sup> day of December, 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 issued unless renewed by order of the Court.

**IMPORTANT**

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

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## STATEMENT OF CLAIM

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1. The Plaintiff is a bank who is licensed to do business in the Cayman Islands and whose address is Scotia Centre, Cardinal Avenue, P.O. Box 689 GT, Grand Cayman, Cayman Islands.
2. The First, Second and Third Defendants are businessmen who reside and work within the Cayman Islands (hereinafter "Individual Defendants").
3. The Fourth and Fifth Defendants are companies incorporated in the Cayman Islands whose registered offices are in care of Truman Bodden & Co, P.O. Box 866 GT, Anderson Square Building, Shedden Road, George Town, Grand Cayman, B.W.I (hereinafter the "Corporate Defendants").
4. On or about the 12<sup>th</sup> of January 2005 the Plaintiff made available to the Individual Defendants credit facilities in the amount of US\$ 4,000,000; the terms and conditions of the credit facilities were set out in a commitment letter dated the 12<sup>th</sup> of January 2005, which was accepted and duly executed by the Individual Defendants and the Fourth Defendant (the "Commitment Letter").
5. The Plaintiff will rely upon the express terms and conditions of the Commitment Letter at the trial of this matter.
6. The Commitment Letter set out the repayment terms and conditions and required certain security to be provided by the Individual Defendants and the Corporate Defendants. In addition, the Individual Defendants on or about the 17<sup>th</sup> of January 2005 executed a promissory note ("Promissory Note") in favour of the Plaintiff the express terms of which are as follows:
  - 6.1 The Individual Defendants jointly and severally promised to pay on the demand of the Plaintiff the sum of US\$ 4,000,000 with interest calculated on a daily basis and payable monthly as well as before demand of payment and/or judgment, and interest on overdue interest;
  - 6.2 The rate of interest was The Bank of Nova Scotia LIBOR Lending Rate for lending United States Dollars in the Cayman Islands from time to time plus 2.5%.
7. The Plaintiff will rely upon the express terms and conditions of the Promissory Note at the trial of this matter.

8. The Commitment Letter required, in addition to other security, that the Corporate Defendants each provide a guarantee as security for the provision of the credit facilities. On or about the 17<sup>th</sup> of January 2005 the Fourth defendant executed a written guarantee which provided, *inter alia*, that the Fourth Defendant guaranteed payment to the Plaintiff of all the debts and liabilities of the Individual Defendants up to US\$ 4,000,000 with interest thereon from the date of demand for payment. On or about the same day the Fifth Defendant executed a written guarantee which provide, *inter alia*, that the Fifth Defendant guaranteed payment to the Plaintiff of all debts and liabilities of the First Defendant up to US\$ 3,000,000 with interest thereon from the date of demand for payment.
9. The Plaintiff will rely upon the express terms and conditions of the guarantees, referred to above, at the trial of this matter.
10. Pursuant to the Commitment Letter and the other related documentation and security the Plaintiff advanced to the Individual Defendants US\$ 4,000,000 and pursuant to their obligations there under the Individual Defendants initially duly adhered to the payment schedule that had been agreed by the parties.
11. In breach of the terms of the Commitment Letter the Individual Defendants failed to make the monthly payment required for the month of July 2005. In further breach of the agreement the Individual Defendants failed to make any further payments to the Plaintiff.
12. Despite the demands of the Plaintiff to remedy the breach the Individual Defendants refused or otherwise failed to do so. Accordingly, on the 21<sup>st</sup> of September 2005 the Plaintiff served formal notice on the Individual Defendants that the entire loan principle of US\$ 3,932,583.43 along with unpaid and accrued interest of US\$ 55,275.68 was due and owing and demanded payment by the 30<sup>th</sup> of September 2005.
13. In further breach of the Commitment Letter and the Promissory Note the Individual Defendants refused or otherwise failed to repay the Plaintiff.
14. On or about the 12<sup>th</sup> of October 2005 the Attorneys for the Plaintiff served formal demands on the Corporate Defendants pursuant to the guarantees. Despite the demands the Corporate Defendants have failed to make payment of the sum demanded.
15. On or about the 13<sup>th</sup> of October 2005 the Attorneys for the Plaintiff served a formal demand on the Individual Defendants pursuant to the Promissory Note requiring the immediate payment of US\$ 3,932,583.43 principle and contractual interest.
16. On or about the 31<sup>st</sup> of October 2005 the Defendants made a payment of US\$ 50,000. Those funds were applied against the Defendants indebtedness on or

about the 1<sup>st</sup> of November 2005. They subsequently made a further payment of US\$ 105,000 on or about the 24<sup>th</sup> of November 2005. Those funds were applied against the Defendants indebtedness on or about the 25<sup>th</sup> of November 2005. No further payments have been made to date.

17. As a result of the above payments the principle sum due from the Individual Defendants is US\$ 3,863,864.28 in principle and US\$ 16,528.22 in accrued interest for a total indebtedness of US\$ 3,880,392.50 as of the 21<sup>st</sup> of December 2005.
18. The Plaintiff is entitled to and claims payment of the sum of US\$ 3,880,392.50 from the Fourth Defendant and the sum of US\$ 3,000,000 from the Fifth Defendant under the terms of the guarantees.
19. Further the Plaintiff is entitled to contractual interest under the guarantees from the date of the demand, October 12<sup>th</sup> 2005, until payment at the Bank of Nova Scotia LIBOR Lending Rate for lending United States Dollars in the Cayman Islands from time to time plus 2.5% which presently amounts to 6.8700%.
20. The Plaintiff claims its costs in this matter on an indemnity basis against the Individual Defendants and Fourth Defendant pursuant to the terms of the Commitment Letter.

**AND THE PLAINTIFF CLAIMS:**

- (1) Against the First, Second, Third Defendants, the sum of US\$ 3,863,864.28 under the Promissory Note; and
- (2) US\$ 16,528.22 in interest as of the 21<sup>st</sup> of December 2005 and increasing at a daily rate of US\$ 737.35.
- (3) Against the Fourth Defendant, the sum of US\$ 3,880,392.50 as of the 21<sup>st</sup> of December 2005 and increasing at a daily rate US\$ 737.35;
- (4) Against the Fifth Defendant, the sum of US\$ 3,000,000; and
- (5) US\$ 38,668.12 in interest as of the 21<sup>st</sup> of December 2005 and increasing at a daily rate of US\$ 572.50.
- (6) Alternatively, interest at such a rate for such a period as this Honourable Court thinks fit.
- (7) Costs on an indemnity basis pursuant to the contract; alternatively on the normal basis.

Dated this 21<sup>st</sup> day of December 2005

BROADHURST BARRISTERS  
**Broadhurst Barristers**  
Attorneys-at-Law for the Plaintiff

This Writ and Statement of Claim is filed by Broadhurst Barristers, Attorneys-at-Law for the Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, George Town, Grand Cayman, Cayman Islands, B.W.I.

## INDORSEMENT

The amount claimed in respect of the debt is US\$ 3,863,864.28 as principle and US\$ 16,528.22 as interest as of December 21, 2005 for a total amount of US\$ 3,880,392.50 and increasing at a daily rate of US\$ 737.35. The ad valorem fee is CI\$ 10,000.00 and the costs of issuing the Writ of Summons is CI\$150.00. If within the time for returning the Acknowledgement of Service, the Defendants pay the Plaintiff or its Attorneys-at-Law the total amount claimed in principal and interest, its legal costs, further proceedings will be stayed. The money must be paid to the Plaintiff or to its Attorneys-at-Law.

## STATEMENT REGARDING INTEREST

The First, Second, Third, and Fourth Defendants

1. The contractual rate of interest is The Bank of Nova Scotia LIBOR Lending Rate for lending United States Dollars in the Cayman Islands from time to time plus 2.5%;
2. The date at which the interest became payable was from January 17 2005;
3. The total interest claimed as of December 21, 2005 is US\$ 16,528.22. The said interest is presently increasing at a per diem rate of US\$ 737.35; and
4. Alternatively, pre-judgment and post judgment interest upon the said damages pursuant to the Judicature Law (1995 Revision).

The Fifth Defendant

5. The contractual rate of interest is The Bank of Nova Scotia LIBOR Lending Rate for lending United States Dollars in the Cayman Islands from time to time plus 2.5%;
6. The date at which the interest became payable was from October 12<sup>th</sup>2005;
7. The total interest claimed as of December 21, 2005 is US\$ 38,668.12. The said interest is presently increasing at a per diem rate of US\$ 572.50; and
8. Alternatively, pre-judgment and post judgment interest upon the said damages pursuant to the Judicature Law (1995 Revision).

**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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2005

BETWEEN:

SCOTIABANK & TRUST (CAYMAN) LTD.

Plaintiff

-AND-

- (1) HERBERT PEINTNER
- (2) MICHAEL BROWN
- (3) JOHN ROBERTSON
- (4) THE NEW COCONUT HARBOUR LIMITED
- (5) PERIWINKLE HOLDINGS LTD

Defendants

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.*

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- 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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- State whether the Defendant intends to contest the proceedings (*tick appropriate box*)  
Yes [  ]      No [  ]
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- 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 [  ]
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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 BARRISTERS**  
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.*

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