

IN THE GRAND COURT OF THE CAYMAN ISLANDS

46
CAUSE NO. OF 2006

BETWEEN:

BANK AUSTRIA CAYMAN ISLANDS LTD

Plaintiff

-AND-

JIM ROBERTSON

Defendant

WRIT OF SUMMONS

TO:

Jim Robertson
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 day of February, 2006

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 is a bank who is licensed to do business in the Cayman Islands and whose address is P.O. Box 31362 SMB, Grand Cayman, Cayman Islands.
2. The Defendant is a contractor/businessman who resides and works within the Cayman Islands.
3. In January 2003 the Defendant on behalf of Waterfront Group Limited (hereinafter the "Waterfront Group") negotiated with the Plaintiff the provision of a line of credit for the Waterfront Group of US\$ 800,000. These discussions culminated in the Plaintiff providing the Defendant a written facility letter dated the 17th of January 2003 which contained the terms and conditions under which the Plaintiff was prepared to extend the line of credit (the "Facility Letter"). The Defendant duly executed the Facility Letter.
4. The Commitment Letter provided, *inter alia*, that:
 - 4.1 The Waterfront Group would be the borrower and would be provided US\$ 800,000 as a decreasing line of credit;
 - 4.2 Security would be provided including a personal guarantee of the Defendant;
 - 4.3 The rate of interest was the six month London Inter Bank Offering Rate ("LIBOR") plus 200 basis points;
 - 4.4 The Plaintiff would have the right to demand full repayment, on becoming aware of any material adverse change in circumstances of the Waterfront Group, or the Defendant and in certain other circumstances to be specified in the detailed security documents;
 - 4.5 In the event of a default the default rate of interest would be 200 basis points over the agreed rate of interest.
5. On or about the 31st of January 2003 the Defendant executed a guarantee (the "Guarantee") in favor of the Plaintiff which provided, *inter alia*:
 - 5.1 The Defendant covenanted with the Plaintiff to pay and satisfy on demand all monies and liabilities whether certain or contingent that at any time shall be due from the Waterfront Group in accordance with the Facility Letter;

- 5.2 The Plaintiff was not bound to exhaust its recourse against the Waterfront Group or others or any securities or other guarantees it may at any time hold before entitled to payment from the Defendant, and the Defendant renounces all benefits of discussion and division;
 - 5.3 The Defendant's liability to make payment under the Guarantee shall arise forthwith after demand for payment has been made in writing on the Defendant;
 - 5.4 The Guarantee is enforceable against the Defendant as if he was liable as principal debtor to the Plaintiff for the aggregate of all monies secured under it and the liability of the Guarantor shall not be affected by any failure by the Plaintiff to take any security or by invalidity of any security taken or by any existing or future agreement between the Plaintiff and the Waterfront Group or any third party.
6. The Plaintiff subsequently extended the line of credit to the Waterfront Group and the Waterfront Group duly paid the interest and principal payments pursuant to the terms of the Facility Letter.
 7. On or about the 17th of October 2005 the Waterfront Group was put into provisional liquidation. On or about the 18th of October 2005 the Plaintiff received a letter from the provisional liquidator informing it of the liquidation.
 8. As a result of this material change in circumstances in the Waterfront Group the Plaintiff demanded the immediate repayment of all sums due to it pursuant to the Facility Letter and sent a demand on the 16th of November 2005 to the Defendant seeking payment of the sums due to it from the Waterfront Group pursuant to the Guarantee.
 9. Despite the demand of the Plaintiff the Defendant has refused or otherwise failed to pay the sums outstanding.
 10. The principal sum due to the Plaintiff is US\$ 440,300 along with interest of US\$ 16,986.53 as of the 17th of January 2006. Interest is accruing at a per diem rate of US\$ 102.25 per day. The rate of interest is pursuant to the terms of Facility Letter and Guarantee and is the six month LIBOR Lending Rate plus 4.0% which presently amounts to 8.36%.

AND THE PLAINTIFF CLAIMS:

- (1) the principal sum of US\$ 440,300 from the Defendant pursuant to the Guarantee; and
- (2) US\$ 16,986.53 in interest as of the 17th of January 2006 and increasing at a daily rate of US\$ 102.25.

(3) Alternatively, interest at such a rate for such a period as this Honourable Court thinks fit.

(4) Costs.

Dated this 2nd day of February 2006

BROADHURST BARRISTERS

Broadhurst Barristers

Attorneys-at-Law for the Plaintiff

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

INDORSEMENT

The amount claimed in respect of the debt is US\$ 440,300 as principal and US\$ 16,986.53 as interest as of January 17, 2006 for a total amount of US\$ 457,286.53 and increasing at a daily rate of US\$ 102.25. The ad valorem fee is US\$ 2,601.50 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

1. The contractual rate of interest is LIBOR Lending Rate plus 2.0% until the 18th of October 2005 after which time the default interest began to accrue and the rate of interest was the LIBOR Lending Rate plus 4.0%.
2. The date at which the interest became payable was from June 30th 2005 at which time it was 5.71%;
3. On the 18th of October 2005 the default interest rate applied which is 8.36%;
4. The total interest claimed as of January 17th 2006 is US\$ 16,986.53. The said interest is presently increasing at a per diem rate of US\$ 102.25; and
5. 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.

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BETWEEN:

BANK AUSTRIA CAYMAN ISLANDS LTD

Plaintiff

-AND-

JIM ROBERTSON

Defendant

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 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.