

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 358 OF 2006

B E T W E E N:

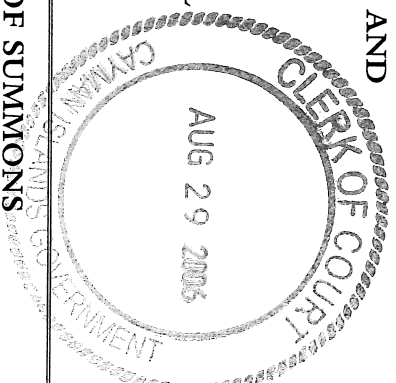
BUTTERFIELD BANK (CAYMAN ) LTD.

Plaintiff

AND

1. ANDREW JONES
2. MERRIN HODGE
3. GUY MARTELL
4. DEBORAH MARTELL
5. BEN MCALISTER

Defendants



WRIT OF SUMMONS

TO: Andrew Jones, Merrin Hodge, Guy Martell, Deborah Martell and Ben McAlister

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 495 GT, 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 24th day of August 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 issue unless renewed by order of the Court.

**IMPORTANT**

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

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**STATEMENT OF CLAIM**

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1. The Plaintiff is a Class "A" bank carrying on the business of retail banking in the Cayman Islands. The Plaintiff's registered office is PO Box 704 George Town, Grand Cayman, Cayman Islands. The Plaintiff's address for service is in care of its attorneys Appleby Spurling Hunter. The Plaintiff changed its name from Bank of Butterfield International (Cayman) Ltd on November 5, 2004.
2. The Defendants, Andrew Jones, Merrin Hodge, Guy Martell, Deborah Martell and Ben McAlister (collectively the "**Defendants**") are all individuals now resident outside of the Cayman Islands who at all material times have been customers of the Plaintiff. At the time of the transactions set out in this Statement of Claim, the Defendants were all resident of the Cayman Islands. The Defendants have all terminated their respective residences in the Cayman Islands and have not provided current address information notwithstanding requests by the Plaintiff for such information.
3. The Plaintiff and Defendants entered into a loan agreement whereby the Defendants agreed to terms set out in the Plaintiff's commitment letter dated 9 June 2004 (the "**Agreement**"). The terms of the Agreement included as follows:
  - a. The Plaintiff would provide financing of US\$135,000 to the Defendants with respect to their purchase of a property located at West Bay South, Block 2C, Parcel 131H33 (the "**Property**");
  - b. Interest would accrue at 0.5% per annum above the Plaintiff's Prime Rate for U.S. Dollar lending;
  - c. Repayments to be made at US\$832.00 per month or as sufficient to repay the loan over a 25 year term;
  - d. The loan would be payable on demand; and,
  - e. The loan would be secured by charge registered against the property.
4. The financing from the Plaintiff was secured by a first legal charge granted by the Defendants and registered against the Property on 2 December 2004 (the "**Charge**"). The terms of the charge included:

- a. The Charge secured the principal debt of US\$135,000;
  - b. Interest would accrue at 0.5% per annum above the Plaintiff's Prime Rate for U.S. Dollar lending;
  - c. The Defendants would pay the loan by monthly payment as specified from time to time;
  - d. Notwithstanding above, the loan would be payable on demand;
  - e. The Defendants would insure the property;
  - f. The Defendants would pay all charges levied by the Strata Corporation; and,
  - g. The Defendants would be liable for all fees and costs incurred by the Plaintiff on an indemnity basis in connection with the enforcement of the charge.
5. The Plaintiff pleads and relies on the terms of the Agreement and the Charge in this action.
  6. The Plaintiff did provide financing to the Defendant in accordance with the terms of the Agreement and Charge.
  7. The Property was destroyed or, alternatively, substantially damaged by Hurricane Ivan on or about 11 and 12 September 2004. Accordingly, it is not commercially reasonable for the Plaintiff to sell the Property by auction, by private treaty or to appoint a receiver for the Property as contemplated by the terms of the Charge.
  8. As a result of damage or destruction to the Property, the Property was rendered insufficient to stand as security for the entire debt. The Defendants have been unable or unwilling to provide further security, which would render the total security sufficient for the entire debt.
  9. The Defendants defaulted in payments as required pursuant to the Agreement and the Charge on or about June 2005. The Defendants have made no monthly or other payments since the date of default and as of the date of the commencement of this proceeding the overdue payments total US\$12,528.75.
  10. As a result of the default in payment, the Plaintiff has made demand on the Defendants for payment of the entire outstanding loan balance. As of the date of commencement of this proceeding, the Defendants have not paid the demanded sum or any part thereof.

11. The following sums are, as of 21 August 2006, due and owing to the Plaintiff:
- a. Principal in the amount of US\$146,016.64 (which sum includes capitalized interest as of 31 March 2006); and,
  - b. Interest (not capitalized) in the sum of sum of US\$5,873.62.
12. In addition to the principal and interest claimed, the Plaintiff is entitled to ongoing interest at a present per diem of US\$35.49 and costs on an indemnity basis.

AND THE PLAINTIFF claims:

- a) US\$ 146,016.64 being the principal sum due to August 21, 2006;
- b) US\$ 5,873.62 interest to August 21, 2006 presently calculated at the rate of 8.75% per annum in accordance with the terms of the Charge;
- c) Pre and post judgment interest from August 21, 2006 at the rate of 8.75% per annum in accordance with the terms of the Charge;
- d) Alternatively, pre and post judgment interest in accordance with the *Judicature Law (2004 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
- e) Costs on an indemnity basis in accordance with the Charge terms and as pleaded at paragraph 4 (g) of the Statement of Claim or, alternatively, standard basis in accordance with the Court Costs Rules 2001; and
- f) Such further and other relief as this Court may deem just.

  
 Appleby Spurling Hunter  
 Attorneys for the Plaintiff

#### INDORSEMENT

The principal amount claimed in respect of the debt is US\$146,016.64 plus interest of US\$5,873.62 as of the date of filing. The amount of the filing fees to commence the proceeding is US\$1,318.01. 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, interest 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**

1. The contractual term upon which interest is claimed is as set out in paragraph 4.1b above;
2. The prescribed rate of interest is **8.75%** per annum;
3. The date from which interest is payable is March 31, 2006;
4. The total interest claimed as at August 21, 2006 is **US\$5,873.62**; and,
5. The amount of interest accruing due each day is **US\$35.94**.

This WRIT OF SUMMONS was filed by Appleby Spurling Hunter, Attorneys-at-Law, for and on behalf of the Plaintiff whose address for service is Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, CAYMAN ISLANDS (ref: WAS/00138.468)

**Acknowledgment of service of writ of summons (O.12, r.3)**

**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 each Defendant or by each Defendant if acting in person.  
After completion it must be delivered or sent by post to the Law Courts, PO Box 495 GT, 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  
Please complete overleaf*

## 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.



**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 communication 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.

Appleby Spurling Hunter  
Attorneys-at-Law  
75 Fort Street  
PO Box 190  
George Town  
Grand Cayman  
  
Ref: WAS/00138.468

Indorsement 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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