

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: *474* OF 2006

B E T W E E N:

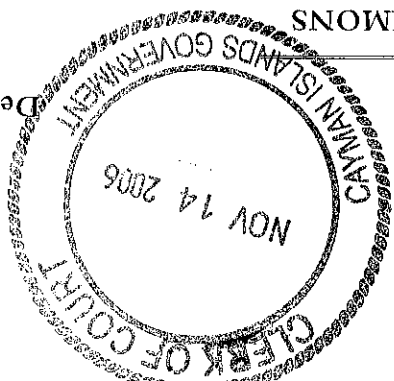
BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

- 1. ERROL LEVY
- 2. PHILIP LEVY

Defendants



WRIT OF SUMMONS

TO: Mr. Errol Levy and Mr. Philip Levy
 P.O. Box 32188
 Grand Cayman KY1-1208
 CAYMAN ISLANDS

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, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgment of Service 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 8th day of November 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.

STATEMENT OF CLAIM

1. The Plaintiff, Butterfield Bank (Cayman) Limited (formerly named Bank of Butterfield International (Cayman) Ltd.), is a Class "A" bank registered and carrying on business in the Cayman Islands. The Plaintiff's address is 68 Fort Street, P.O. Box 705, Grand Cayman, KY1-1107, Cayman Islands. Commercial mortgage lending is within the scope of the Plaintiff's regular business lawfully conducted in the Cayman Islands.

2. The Defendants are residents of the Cayman Islands both with mailing addresses of P.O. Box 32188, Grand Cayman, KY1-1208, Cayman Islands.

3. The Defendants are directors and guarantors of Levy & Sons Realty Ltd. (the "Principal Debtor") which obtained financing from the Plaintiff.

4. In or about January 2001, the Plaintiff agreed to provide financing to the Principal Debtor in the sum of CI\$626,500. This loan sum was increased to CI\$775,000 in August 2001 and to CI\$937,087 in September 2002. The Plaintiff did advance to the Principal Debtor the sum of CI\$937,087 with interest to accrue at the rate of 3% above the Plaintiff's prime lending rate for the Cayman Islands.

5. The loan was secured by:

- a. A Debenture granted by the Principal Debtor as varied;
- b. A collateral charge granted by the parents of the Defendants whereby the parents charged property (the "Collateral Charge") described as Bodden Town, Block 44B, Parcel 33 (the "Property");
- c. Guarantees of each of the Defendants both dated 8 February 2001 whereby each Defendant guaranteed repayment of the debt of the Principal Debtor up to the sum of CI\$625,500, and inter alia, agreed to pay all costs of the Plaintiff on an indemnity basis for enforcement of the Guarantees (the "Guarantees") together with interest on any amount outstanding at the prevailing overdraft rate of the Plaintiff.

6. The Plaintiff will rely on each of the above stated documents at trial for their full terms and effect.

7. The Principal Debtor defaulted on the loan and demand for full payment was made on the Principal Debtor in or about June of 2003.

8. As the Principal Debtor failed to repay the loan or to make any payments on the loan, the Property subject to the Collateral Charge was sold pursuant to the terms of a Court Order dated 20 July 2005 on or about 19 August 2005 for the sum of US\$600,000. The proceeds of sale of the Property were applied against the outstanding principal and interest then due.

9. Following the application of proceeds from the sale of the Property, a balance due remained on the loan of CI\$256,606.22 as of 8 November 2006, plus interest on that amount of CI\$49,395.51 calculated from 21 July 2005 to 8 November 2006. Interest continues to accrue at a daily rate of the prime lending rate for the Cayman Islands plus 7% in accordance with the terms of the Guarantee.

10. The Plaintiff made demand on the Defendants for payment of the outstanding loan debt in February 2004, again in July 2006 and finally in September 2006. No payments were received.

11. As set out in the Plaintiff's demand dated 7 September 2006, the sum then outstanding was CI\$256,606.22, exclusive of accrued interest, which was owed by the Defendants pursuant to the terms of the Guarantee.

12. The Defendants have failed to pay the outstanding sum or any part of it.

13. Based on the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND the Plaintiff claims:

a) The sum of CI\$256,606.22;

b) CI\$49,395.51 interest to 8 November 2006 pursuant to paragraph 5 (c) above at the overdraft rate of the Plaintiff, which at the time of the filing of this Writ is 15.25% (7% above prime rate, which is 8.25% as at the date of issuing this proceeding) per annum in accordance with the terms of the Guarantee;

c) Pre and post judgment interest from 9 November 2006 at the overdraft rate of prime plus 7% in accordance with the Guarantee;

- 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 or standard basis in accordance with the Court Costs Rules 2001; and,
- f) Such further and other relief as this Honourable Court may deem just.

~~Apply Hunter Bailhache~~
 Apply Hunter Bailhache

The principal amount claimed is CI\$256,606.22 plus interest as at the date of filing of CI\$49,395.51. The amount of the filing fees to commence the proceeding is CI\$200.00, plus ad valorem fees of CI\$1,683.03. If, within the time for returning the acknowledgment of service, the defendants pay the plaintiff or its attorneys-at-law the total amount claimed in principal, interest, contractual 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.

INDORSEMENT

1. The contractual term upon which interest is claimed is as set out in paragraph 5 (c) above;
2. The prescribed rate of interest is 15.25% (7% above prime rate, which is 8.25% as at the date of issuing this proceeding) per annum;
3. The date from which interest is payable is 21 July 2005;
4. The total interest claimed as at 8 November 2006 is CI\$49,395.51; and,
5. The amount of interest accruing due each day is CI\$107.21.

INDORSEMENT REGARDING INTEREST

This **WRIT OF SUMMONS** was filed by Appleby Hunter Bailhache, 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: CJJ/00138.487)

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, P.O. 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.

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BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

AND

1. ERROL LEVY
2. PHILIP LEVY

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 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.

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 no

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 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 Hunter Bailhache Attorneys-at-Law 75 Fort Street PO Box 190 George Town Grand Cayman KY1-1104 Ref: CJJ/00138,487
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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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