

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: **504** OF 2006

B E T W E E N :

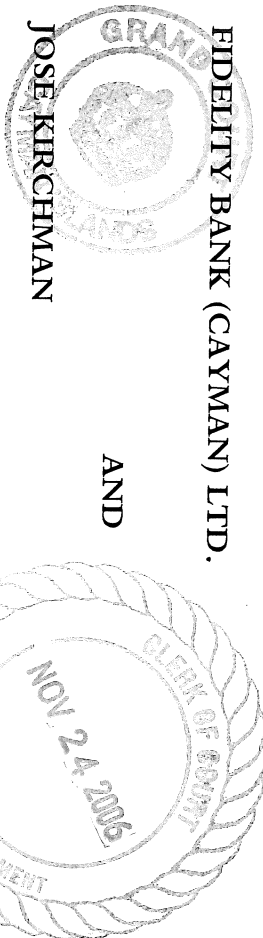
FIDELITY BANK (CAYMAN) LTD.

Plaintiff

AND

JOSE KIRCHMAN

Defendant



WRIT OF SUMMONS

TO: **Jose Kirchman**
PO Box 10294
Grand Cayman KY1-1003
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, PO Box 495, Grand Cayman, KY1-1106, 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 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 is licensed to operate as a Class "A" bank with offices located at Cayman Financial Centre, Dr. Roy's Drive, George Town, Grand Cayman. The Plaintiff's mailing address is PO Box 914, Grand Cayman, KY1-1103, Cayman Islands.
2. The Defendant is an individual with a mailing address of PO Box 10294, Grand Cayman, KY1-1003, Cayman Islands. At all material times the Defendant was residing in Grand Cayman, Cayman Islands.
3. On or about 30 July 2003, the Defendant executed a Bill of Sale with the Plaintiff for a 2003 Chevrolet Trailblazer (the "**Truck**") in the amount of CI\$22,560.00 (the "**Loan**"). The Loan was evidenced and secured by a Promissory Note executed by the Defendant on 30 July 2003 (the "**Promissory Note**"). The terms of the Loan were, *inter alia*, as follows:
 - a. That the Plaintiff would loan CI\$22,560.00 to the Defendant plus interest calculated at the current Prime Lending Rate plus 5% per annum;
 - b. That interest would accrue on unpaid balances at the rate of 18% per annum, in the event of default by the Defendant on any term of the Loan;
 - c. If the Defendant defaulted on payment to the Plaintiff pursuant to the terms of the Loan, the Plaintiff is entitled to, *inter alia*, the following:
 - i. all monies become immediately due and payable;
 - ii. the Plaintiff may enter the premises of the Defendant without notice and take possession of the chattels, including the Truck, and dispose or sell the chattels by sale or auction;

- iii. all expenses incurred by the Plaintiff with respect to taking possession of the chattels as described in paragraph 3 (c) (ii) above shall be paid by the Defendant;
 - iv. any deficiencies in the sale of the chattels shall be paid by the Defendant.
4. The Plaintiff advanced money to the Plaintiff pursuant to the terms of the Loan.
 5. The Defendant defaulted on the terms of payment and as of the date of the commencement of this proceeding the Defendant, pursuant to the terms of the Loan, owed to the Plaintiff the sum of CI\$9,152.93 plus interest of CI\$142.87 exclusive of costs for a total of CI\$9,295.80. Interest on that sum continues to accrue at the rate of CI\$3.32 per day.
 6. The Defendant specifically acknowledged the debt in writing on 30 July 2003 by agreeing to a repayment schedule to retire the debt and repay the Plaintiff. The Defendant defaulted on that repayment schedule.
 7. Notwithstanding the demand for payment pursuant to the terms of the Loan, the Defendant has either failed or neglected to make payment to the Plaintiff.
 8. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) CI\$9,265.90 being the principal sum due;
- b) CI\$142.87 Pre-judgment interest calculated from 13 October 2006 to 24 November 2006 at the rate of 18% in accordance with the Loan;
- c) Pre and post judgment interest from 25 November 2006 at the rate of 18% in accordance with the Loan;
- d) Alternately, 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 Court may deem just.

Appleby Hunter Bailhache
 Appleby Hunter Bailhache
 Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$9,152.93 plus interest of CI\$142.87, as of the date of filing as advanced and contractually due fees and costs of enforcement. The amount of the filing fees to commence the proceeding is CI\$200.00. If, within the time for returning the acknowledgement of service, the defendant pays the plaintiff or its attorneys-at-law the total amount claimed in principal, interest and the costs of issuing the Writ of Summons and Statement of Claim, 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 3(b) above;
2. The prescribed rate of interest is 18% per year;
3. The date from which interest is payable is 13 October 2006;
4. The total interest claimed as at 24 November 2006 is CI\$142.87; and
5. The amount of interest accruing due each day is CI\$3.32.

This WRIT OF SUMMONS and STATEMENT OF CLAIM was issued by Appleby Hunter Bailhache, attorneys-at-law for the Plaintiff, whose address for service is PO Box 190, Grand Cayman, KY1-1104, Cayman Islands (CJJ/09430.084)

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.

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B E T W E E N :

FIDELITY BANK (CAYMAN) LTD.

Plaintiff

AND

JOSE KIRCHMAN

Defendant

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

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

HAVE TO BE RETURNED.

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
Grand Cayman KY1-1104
CAYMAN ISLANDS
Ref: CJJ/09430.084

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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