

GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ^{G 0087} OF 2014

T W E E N:

A.L. THOMPSON BUILDING SUPPLIES LTD.

Plaintiff

AND

LENWORTH BAILEY

Defendant



WRIT OF SUMMONS

TO:

Lenworth Bailey
P.O. Box 783
Grand Cayman KY1-1103
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, 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 11th day of June 2014

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

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

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands. The Plaintiff's address for service is care of its attorneys, HSM Chambers, Suite 3 Buckingham Square, 720 West Bay Road, PO Box 31726, Grand Cayman, KY1-1207, Cayman Islands.
2. The Defendant is an individual who resides in the Cayman Islands with a mailing address of PO Box 783, Grand Cayman, KY1-1103, Cayman Islands.
3. On or about 6 September 2012, the Defendant entered into a credit agreement with the Plaintiff (the "**Credit Agreement**"). The terms of the Credit Agreement were, *inter alia*, as follows:
 - a. That the Plaintiff would advance credit to the Defendant;
 - b. Invoices will be issued by the Plaintiff for purchases made under the Credit Agreement. Payment of the purchase price shall be made pursuant to the terms set forth on each invoice. Under the terms of the invoices, all invoices are due by the 15th of the following month. All past due accounts will be charged a service charge of 1.5% per month or an annual percentage of 18%. All merchandise returned for credit should be within 30 days from the purchase dates and will be subject to a restocking fee of 10%.
 - c. The Plaintiff requires all invoices to be signed at the time of ordering a credit purchase or at the time of delivery of the goods or services ordered;
 - d. The Defendant will be liable to the Plaintiff for payment in accordance with the terms on the invoice whether or not the Defendant in fact signs the invoice;
 - e. The date of shipment shall be deemed to be the date of the invoice for purposes of payment and assessment of late payment charges;
 - f. If the Defendant fails to pay the Plaintiff in accordance with the Credit Agreement, the Plaintiff has the right, subject to any right by law, to collect your default, to declare the entire balance of the account immediately due and payable;

- g. If any unpaid balance is referred to an attorney for collection, the Defendant will pay the extent permitted by law, reasonable attorney's fees, all costs and accrued late payment charges on unpaid balance in accordance with the late payment charge rate schedule; and
 - h. A late payment charge will be computed on the statement date on any invoice which falls in a past due position on the monthly closing date. The late payment charge begins to accrue the day after the due date of the invoice. The late payment charge is computed monthly at the rate of 1.5% on the outstanding balance past due after all payments and credits received by the closing date of the statement have been deducted.
4. The Plaintiff advanced credit to the Defendant from time to time in accordance with the terms of the Credit Agreement.
5. The Defendant personally guaranteed payment in full of the charges incurred pursuant to the Credit Agreements by signing a Personal Guarantee. A term of the Personal Guarantee was, *inter alia*, that the Defendant shall be liable to the Plaintiff and its subsidiary companies for all monies due to the Plaintiff by the Defendant.
6. 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 Credit Agreement, owed to the Plaintiff the principal sum of CI\$21,108.47 plus interest of CI\$9.76, exclusive of costs for a total of CI\$21,118.23. Interest on that sum continues to accrue at the rate of CI\$9.76 per day.
7. Notwithstanding a demand for payment made prior to the commencement of these proceedings, the Defendant has either failed or neglected to make full 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\$21,108.47 being the principal sum due as of 9 June 2014;
- b) CI\$9.76 interest from 10 June 2014 to 11 June 2014 at the rate of 18% per annum in accordance with the Credit Agreement and as set out in paragraph 6 above;
- c) Pre and post judgment interest from 12 June 2014 at the rate of 18% per annum in accordance with the terms of the Credit Agreement being CI\$9.76 per day;

- d) Costs on an indemnity basis in accordance with the terms of the Credit Agreement;
- e) Such further and other relief as this Court may deem just.

HSM Chambers
HSM Chambers
Attorneys for the Plaintiff

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$21,108.47 plus interest of CI\$9.76 as of 11 June 2014. The amount of the filing fees to commence the proceeding is CI\$200.00, plus ad valorem fees of CI\$111.08. 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 6 above;
2. The prescribed rate of interest is 18% per annum;
3. The date from which interest is payable is 10 June 2014;
4. The total interest claimed as at 11 June 2014 is CI\$9.76; and
5. The amount of interest accruing due each day is CI\$9.76.

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.

B E T W E E N:

A.L. THOMPSON BUILDING SUPPLIES LTD.

Plaintiff

AND

LENWORTH BAILEY

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 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.

HSM Chambers Attorneys-at-Law Suite 3 Buckingham Square 720 West Bay Road PO Box 31726 George Town Grand Cayman KY1-1207 CAYMAN ISLANDS Ref: LV/309773.0014

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

--