

IN THE SUMMARY COURT OF THE CAYMAN ISLANDS

CAUSE NO: SC ¹²⁹ OF 2018

BETWEEN:

FIDELITY BANK (CAYMAN) LIMITED

Plaintiff

V

G.I.G SEZC LTD.

First Defendant

AND

JULIAN SCHOEFER

Second Defendant



PLAINT



TO:
G.I.G SEZC LTD.
C/O Estera Trust (Cayman) Limited
PO Box 1350,
Grand Cayman. KY1-1108
Cayman Islands

Mr. Julian Schoefer
P.O. Box 10102
Grand Cayman, KY1-1001
Cayman Islands

THIS PLAINT 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 service of this Plaint on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out full particulars of your defence in the space provided in the Acknowledgment of Service form.

If you fail to satisfy the claim or to return the Acknowledgment of Service form containing full particulars of your defence, the Plaintiff may apply for a default judgment without any further notice to you.

Issued this ^{21st} day of June 2018

See overleaf for particulars of the Plaintiff's claim

PARTICULARS 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, 68 Fort Street, P.O. Box 31726, Grand Cayman, KY1-1207, Cayman Islands.
2. The First Defendant is a company resident in the Cayman Islands with a registered office C/O Estera Trust (Cayman) Limited, 75 Fort Street, PO Box 1350, George Town, Grand Cayman. KY1-1108, KY1-1001, Cayman Islands.
3. The Second Defendant is an individual who resides in the Cayman Islands with a mailing address of P.O. Box 10102, Grand Cayman, KY1-1001, Cayman Islands.
4. Pursuant to a promissory note dated 22 June 2016, the Plaintiff agreed to loan the First Defendant the sum of US\$21,265.00 together with interest at the rate of 16% per annum ("the Promissory Note").
5. The following were terms of the Promissory Note:

"For value received I promise to pay on demand to FIDELITY BANK (CAYMAN) LIMITED or order at its Principal Office George Town, Grand Cayman the sum of US\$21,265.00 (TWENTY ONE THOUSAND TWO HUNDRED AND SIXTY FIVE UNITED STATES DOLLARS) together with interest at the rate of 16%."
6. Pursuant to the credit facility letter dated 21 June 2016, the First Defendant agreed to repay the principal and interest by monthly instalments of C\$602.66 over a term of 48 months ("the Credit Facility Letter"), otherwise, the loan was repayable on demand.
7. The Second Defendant is a Director of the First Defendant Company and personally guaranteed all of the debts and liabilities owing by the First Defendant to the Plaintiff pursuant to a signed guarantee and postponement of claim ("the Guarantee").

8. The following were, *inter alia*, terms of the Guarantee:

"In consideration of the Bank giving credit banking facilities or other accommodation to G.I.G. SEZC Ltd. ("the Customer", Julian Schoefer Law of #35 Sea Spray Drive, Cayman Islands ("Guarantor") hereby guarantees payment to the Bank of all debts and liabilities of whatsoever nature, direct or indirect, absolute or contingent, matured or not, at any time owing by the Customer.

....

And the Guarantor hereby agrees with the Bank as follows:

1. The Bank may without any consent from the Guarantor grant time, renewals, extensions, indulgences, releases and discharges to, take securities (which word as used includes other guarantees) from and give the same and any or all existing securities form or from perfecting securities of, cease or refrain from giving credit or granting loans or advances to, accept compositions from and otherwise deal with the customer and others and with all securities as the Bank may see fit, and may apply all monies at any time received from the Customer or others or from securities upon such part of the liabilities as the Bank deems best and change any such application in whole or in part from time to time as the Bank may see fit, the whole without in any way limiting or lessening the liability of the Guarantor under this guarantee, and no less of or in respect of any securities received by the Bank from the Customer or others, whether occasioned by the fault of the Bank or of any agent or receiver appointed by the Bank or otherwise, shall in any way limit or lessen the liability of the Guarantor hereunder.

2. This guarantee shall be a continuing security and shall apply to and secure any ultimate balance due or remaining unpaid to the Bank from the Customer, until such balance has been discharged in full the Guarantor shall not be entitled to share in any security held or money received by the Bank on account of that balance or to stand in the Bank's place in respect of any security or money. And until such balance has been fully discharged the guarantor will not take any step to enforce any right or claim against the Customer in respect of any moneys paid to the Bank hereunder and will not have or exercise any rights of Surety in competition with the Bank.

3. The Bank shall not be bound to exhaust its recourse against the Customer or others or any securities it may at any time hold before being entitled to payment from the Guarantor of the liabilities.

9. The First Defendant failed to make payments towards the loan to the Plaintiff in accordance with the Credit Facility Letter and Promissory Note.
10. The Plaintiff issued a formal demand against the First Defendant Company for monies due under the Promissory Note which was personally served upon the Second Defendant in his capacity as Director on or around 7 December 2017 and sent by registered mail to the Registered Office of the First Defendant Company on or around 30 May 2018.
11. The Plaintiff also issued a formal demand against the Second Defendant in his capacity as the Guarantor which was sent by registered mail to the Second Defendant on or around 30 May 2018.
12. As at the 20 June 2018, the First and Second Defendant, pursuant to the terms of the Promissory Note and Guarantee, owe the Plaintiff the principal sum of CI\$17,104.16 together with contractual interest thereon from 21 June 2018 at the rate of 16% per annum and continuing at the rate of CI\$7.23 per diem in accordance with the terms of the Promissory Note.
13. Alternatively, the Plaintiff claims statutory interest in accordance with the Judicature Law (2013 Revision) and the Judgment Debts (Rates of Interest) Rules, 2010 at such rate and for such period as the Court deems fit.
14. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) CI\$17,104.16 being the principal sum due as at 20 June 2018;
- b) Pre and post-judgment interest from 21 June 2018 to date at the rate of 16% per annum and continuing at the rate of CI\$7.23 per diem in accordance with the terms of the Promissory Note;
- c) Fixed costs to be assessed pursuant to the Summary Court Rules 2004.

d) 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 the principal sum of CI\$17,104.16 together with contractual interest at the rate of 16% per annum and continuing at the rate of CI\$7.23 per diem in accordance with the terms of the Promissory Note. The amount of the filing fees to commence the proceeding is CI\$25.00 (US\$30.49) together with a claim for fixed costs of CI\$150 upon commencement of a claim (SCR 11(1)). 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 Plaintiff, 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 rate upon which interest is calculated is as set out in paragraph 4 above ;
2. The prescribed rate of interest is 16% per annum;
3. The date from which interest is payable is 21 June 2018;
4. The amount of interest accruing due each day is CI\$7.23.

B E T W E E N:

FIDELITY BANK (CAYMAN) LIMITED

Plaintiff

V

G.I.C SEZC LTD.

First Defendant

JULIAN SCHOEFER

Second Defendant

ACKNOWLEDGMENT OF SERVICE

1. State Defendant's name and address:-

2. State whether the Defendant intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Plaintiff is acknowledged accordingly.

Defendant's Signature

Dated this day of June 2018.

See overleaf

PARTICULARS OF DEFENCE

1. *[Here set out in numbered paragraphs the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him]*

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Defendant's Signature

REMINDER - This form must be taken or sent to the Court Office, PO Box 495, Grand Cayman KY1-1106 within 14 days of receipt otherwise a default judgment may be entered against you.