

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC 18 OF 2019

BETWEEN:



FIDELITY BANK (CAYMAN) LIMITED

AND

VINCE CARDEL SMITH



Plaintiff

Defendant

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WRIT OF SUMMONS

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TO:

**Vince Cardel Smith**  
#50 Manse Road,  
Grand Cayman  
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, 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 5 day February 2019

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 and was at all material times a Bank 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, George Town, Grand Cayman, KY1-1207, Cayman Islands.
2. The Defendant is an individual who resides in the Cayman Islands with a mailing address of P.O. Box 73, Grand Cayman KY1-1205, Cayman Islands.
3. Pursuant to a promissory note dated 6 May 2015, the Plaintiff agreed to loan to the Defendant the sum of CI\$60,000 together with interest at the rate of 17% ("the Promissory Note").
4. It was a term of the Promissory Note that the Defendant agreed to, inter alia, the following:

*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 KYD 60,000 (SIXTY THOUSAND CAYMAN ISLANDS DOLLARS) together with interest at the rate of 17%.)*

*In the event of your incurring costs, charges and expenses with respect to the enforcement or protection of any rights hereunder, I hereby further agree that such costs, charges and expenses may be claimed in a Statement of Claim in the event that an action is commenced in a Court of Law for the recovery of the moneys due hereunder even though a demand has not been made for the payment of the same.*

5. The Defendant failed to make payments to the Plaintiff's satisfaction and on or around 23 April 2018, the Defendant was personally served with a letter of the same date demanding repayment of the current outstanding sums CI\$54,381.33 within 7 days of service ("the Demand").
6. The Defendant failed to comply with the terms of the Demand and, as at 4 January 2019, the Defendant was indebted to the Plaintiff in the sum of CI\$50,462.77 being the principal sum together with interest from 14 December 2018 and thereon at the contractual rate of 17% per annum in the sum of CI\$1,104.65 which continues to accrue at the daily rate of CI\$23.50.
7. 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.

8. The Plaintiff is entitled to, and claims, its contractual fees and all costs of, and incidental to, the enforcement of its rights under the Loan, on an indemnity basis pursuant to paragraph two of Promissory Note.
9. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceedings.

**AND THE PLAINTIFF CLAIMS:**

- a) CI\$50,462.77 being the Principal Sum due as at 4 January 2019.
- b) Pre- and post-judgment interest from 14 December 2018 to 5 February 2019 at the rate of 17% per annum in the sum of CI\$1,245.67 and continuing at the rate of CI\$23.50 per diem in accordance with the terms of the Promissory Note;
- c) Alternatively, pre- and post-judgment interest in accordance with the Judicature Law (2013 Revision) and the Judgment Debts (Rates of Interest) Rules, 2010 at such rate as the Court deems fit;
- d) Costs on an indemnity basis in accordance with paragraph two of the Promissory Note.
- e) Such further and other relief as this Court may deem just.

*HSM Chambers*

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**HSM Chambers  
Attorneys-at-Law for the Plaintiff**

**INDORSEMENT**

The principal amount claimed in respect of the debt is CI\$50,462.77. The amount of the filing fees to commence the proceeding is CI\$200.00 along with ad valorem fees in the sum of CI\$404.63. 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 3 above;
2. The proscribed rate of interest is 17% per annum;
3. The date from which interest is payable is 14 December 2018; and
4. The amount of interest accruing due each day is CI\$23.50.

**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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC OF 2019

B E T W E E N:

FIDELITY BANK (CAYMAN) LIMITED

Plaintiff

AND

VINCE CARDEL SMITH

Defendant

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**ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS**

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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,

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

**THIS FORM MAY  
HAVE TO BE RETURNED.**

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)  
 yes  no

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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

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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  
68 Fort Street  
PO Box 31726  
George Town  
Grand Cayman KY1-1207  
CAYMAN ISLANDS  
  
Ref: 309430.0287

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

[Empty box for defendant's Attorney indorsement]