

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC OF 2021

B E T W E E N:

CAYMAN PREMIX LIMITED T/A SUPERMIX

Plaintiff

AND

EVERTON MALCOLM T/A MALCOLM CONSTRUCTION & REPAIR

Defendant



WRIT OF SUMMONS

TO:

Everton Malcolm t/a Malcolm Constructions
& Repair
P.O. Box 152 Savannah
Grand Cayman KY1-1501
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 7 day of January 2021

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 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, George Town, PO Box 31726, Grand Cayman, KY1-1207, Cayman Islands.
2. The Defendant is and was at all material times an individual who resides in the Cayman Islands with a mailing address, P.O. Box 152 Savannah, Grand Cayman KY1-1501, Cayman Islands.
3. The Plaintiff's business involves the supply and delivery of concrete, mortar, cement and other similar products. The Plaintiff agreed to supply concrete to the Defendant to be delivered at a location of the Defendant's choosing, and raise an invoice for payment of the goods and services rendered.
4. Pursuant to a commercial credit account agreement entered into on or around 20 February 2017, it was agreed that the Plaintiff would extend credit to the Defendant in respect of goods supplied, to be repaid by the Defendant in accordance with invoices rendered by the Plaintiff from time to time. The commercial credit agreement included Credit Term and conditions as well as supplier's general terms and conditions (collectively "the **Credit Agreement**").
5. The Credit Terms and Conditions contained, *inter alia*, the following:

““Credit terms” pertains to the 21-day period from the time the goods were received by the Customer

5.e. The Customer agrees to pay all amounts due to the Supplier based on the agreed Credit Terms. In cases wherein payment is not made with the agreed Credit terms, the Customer acknowledges its liability to pay the monthly interest charges equivalent to 2% of the balance due for payment, and further agrees to pay the Supplier any collection expenses incurred by the Supplier in attempting to recover such monies (i.e. legal and agency fees).”

6. Further, the Supplier's General Terms and Conditions contained, *inter alia*, the following:

5. PAYMENT

a) Unless credit has been approved and extended by the Supplier, payment shall be made upon the Supplier's acceptance of the order and prior to the manufacture of the Goods and Services.

b) Payment must be either through Cash, Checks, Bank Drafts, Debit or Credit Card in currencies accepted in the Cayman Islands. Checks and bank drafts must be made payable to CAYMENT PREMIX LIMITED or SUPERMIX.

c) Accounts outstanding after the due date are charged interest equivalent to 2% per month.

d) Unless otherwise stated in this subsection, the Credit Terms and Conditions as set forth under the Credit Application Form shall prevail.

7. The Plaintiff provided the following invoices following delivery of the goods in the name of the Defendant (collectively "the Invoices").

Invoice No	Invoice Date	Amount (KYD)	Credit (KYD)	Balance (KYD)
23681	17/04/2018	\$3,329.00	0	\$3,329.00
23588	09/04/2018	\$13,024.50	0	\$13,024.50
23586	09/04/2018	\$4,025.00	\$1,622.58	\$2,402.42
25190	04/09/2018	\$310.00	0	\$310.00
24431	27/06/2018	\$8,600.00	0	\$8,600.00
24300	16/06/2018	\$6,492.00	0	\$6,492.00
24284	15/06/2018	\$11,040.00	0	\$11,040.00
23818	30/04/2018	\$487.50	0	\$487.50

8. The total amount currently due under the Invoices is CI\$45,685.42.
9. In breach of the Credit Agreement, the Defendant failed to pay invoices as and when due.
10. On or around the 7 August 2019 a formal demand letter was personally served on the Defendant. The balance outstanding at that time was CI\$46,185.42.

11. Since the formal demand was served, the Defendant has made one payment of CI\$500 which has been credited to the account, reducing the outstanding balance to the amount detailed in paragraph 8 above.
12. Therefore, the Defendant is liable to the Plaintiff for all money currently due. Notwithstanding the one payment made, the Defendant has either failed or neglected to make full payment to the Plaintiff.
13. The Plaintiff is owed the principal sum of CI\$45,685.42 plus interest pursuant to the Credit Agreement which continues to accrue at the rate of 2% per month, being CI\$30.04 per day, until the principal sum is repaid in full. Alternatively, the Plaintiff claims pre- and post-judgment interest in accordance with s.34 of the *Judicature Law (2017 Revision)* and the *Judgment Debts (Rates of Interest) Rules, 2012* at the rate of 2.375% for such period as the Court deems fit.
14. The Plaintiff is entitled to, and claims, its contractual fees and all costs of, and incidental to, the enforcement of its rights under the Credit Agreement.

AND THE PLAINTIFF claims:

- a) CI\$45,685.42 being the principal sum due;
- b) Pre-judgment interest from 01 January 2019 to 8 November 2019 at the rate of 2% per month in accordance with the terms of the Credit Agreement as set out in paragraph 5 above;
- c) Pre- and post-judgment interest from 9 November 2019 at the rate of 2% per month in accordance with the terms of the Credit Agreement as set out in paragraph 5 above, continuing to accrue at CI\$30.04 per diem;
- d) Alternatively, pre- and post-judgment interest in accordance with s.34 of the *Judicature Law (2017 Revision)* and the *Judgment Debts (Rates of Interest) Rules, 2012* at the rate of 2.375% for such period as the Court deems fit;
- e) The Plaintiff's costs to be taxed if not agreed; and
- f) 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\$45,685.42. The amount of the filing fees to commence the proceeding is CI\$200.00 along with ad valorem fees in the sum of CI\$356.85. 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 5 above;
2. The prescribed rate of interest is 2% per month;
3. The date from which interest is payable is 1 January 2019;
4. The amount of interest accruing due each day is CI\$30.04.
5. Alternatively, interest at the Court rate of 2.375%;
6. The amount of interest accruing due each day CI\$2.97.

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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AND

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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,

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.

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 68 Fort Street PO Box 31726 George Town Grand Cayman KY1-1207 CAYMAN ISLANDS Ref: 418890.0036
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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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