



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC OF 2022

B E T W E E N:

BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

-V-

(1) PATRICK GEORGE GAYLE

(2) PAULINE GAYLE

Defendants

WRIT OF SUMMONS

TO:

Mr. Patrick George Gayle
PO Box 12267
Grand Cayman KY1-1011
CAYMAN ISLANDS

AND

Mrs. Pauline Gayle
PO Box 12267
Grand Cayman KY1-1011
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 26th day of July 2022

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 Class 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 For Street, PO Box 31726, George Town, Grand Cayman, KY1-1207, Cayman Islands.
2. The First Defendant and Second Defendant (together, the "Defendants") are both individuals resident in the Cayman Islands with a mailing address of PO Box 12267, Grand Cayman KY1-1011, Cayman Islands.
3. Pursuant to a commitment letter dated 26 November 2009, the Plaintiff agreed to grant to the Defendants a construction loan in the sum of CI\$320,150 plus interest thereon at the rate of 2% above the Bank's Prime Lending rate for Cayman Islands Dollar and, upon completion of the construction, at the rate 1.25% above the Bank's Prime Rate for Cayman Islands Dollar to be repaid by monthly instalments over a 22 year term or, alternatively, upon demand (the "Loan").
4. The Loan was secured by first legal charge against the property legally described as Spotts, Block 24E, Parcel 602 (the "Property") registered on or around 19 February 2010 (the "Legal Charge").
5. Pursuant to a second commitment letter dated 24 June 2010, the Plaintiff agreed to advance to the Defendants a further sum of CI\$25,000 plus interest thereon at the rate of 1.25% above the Bank's Prime Rate for Cayman Islands Dollar to be repaid by monthly instalments over a 22 year term or, alternatively, upon demand (the "Loan Increase").
6. The Defendants failed to maintain the terms of repayment and between on or around 3 October and 9 October 2017, the First Defendant and the Second Defendant were personally served with notices pursuant to Section 64(2) and 72 of the Registered Land Act (as revised) dated 21 September 2017 (the "Statutory Notices"). As at the date of the Statutory Notices, the outstanding balance of the Loan was CI\$320,519.19 inclusive of arrears of CI\$52,442.37.

7. No payments were received from the Defendants as demanded in the Statutory Notices, or at all. The Plaintiff's right of sale crystallised on or around 10 January 2018.
8. The Plaintiff obtained two valuations of the Property and listed the same for sale on the CIREBA Multiple Listing System ("MLS") on or around 12 February 2018 for CI\$380,000.00. Valuations were obtained both prior to and during the listing of the Property on the MLS as follows:
- | | | | |
|----------|---------------|----------------|-----------------|
| a. BCQS | January 2018 | MV CI\$370,000 | SAV CI\$300,000 |
| b. Bould | July 2018 | MV CI\$375,000 | SAV CI\$320,000 |
| c. BCQS | October 2019 | MV CI\$370,000 | SAV CI\$300,000 |
| d. Bould | August 2019 | MV CI\$380,000 | SAV CI\$320,000 |
| e. BCQS | February 2020 | MV CI\$380,000 | SAV CI\$340,000 |
| f. Bould | February 2020 | MV CI\$350,000 | SAV CI\$315,000 |
9. On or around 3 November 2020, the Plaintiff sold the Property for CI\$340,000. Upon closing, the net proceeds of sale of CI\$314,350 were applied to the outstanding balance of the Loan account being CI\$440,712.50 leaving a shortfall of CI\$126,362.50 (the "Outstanding Balance"). The Outstanding Balance was comprised of CI\$23,603.17 principal, CI\$101,137.33 accrued interest and CI\$1,625 late fees.
10. On or around 28 January 2021, the Defendants were personally served with a Letter Before Action dated 25 November 2020, demanding payment of the Outstanding Balance together with interest on the principal within 14 days (the "Demand"). The Defendants failed to comply with the Demand and the Plaintiff has suffered loss and damage as a result.
11. Accordingly, the Plaintiff claims the Outstanding Balance together with interest on the principal at the contractual rate at the 1.25% above the Bank's Prime Rate for Cayman Islands Dollar, presently 3.25%, totalling 4.5% per annum from 6 November 2020 to 13 July 2022 and continuing at the rate of CI\$2.91 per diem until discharged in full.
12. Alternatively, the Plaintiff claims pre- and post-judgment interest on the Outstanding Balance pursuant to section 34 of the Judicature Act (2021 Revision) and the Judgment Debts (Rates of Interest) Rules (2021 Revision) at the statutory rate of 8.375% for such period as the Court thinks fit.
13. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceedings.

AND THE PLAINTIFF CLAIMS:

- a) CI\$126,362.50 being the Outstanding Balance;
- b) CI\$9,658.94 in pre- and post-judgment interest on the principal balance from 6 November 2020 to 19 July 2022 at the rate of 4.5% per annum and continuing at the rate of CI\$15.58 per diem until discharged in full;
- c) Alternatively, pre- and post-judgment interest on the Outstanding Balance pursuant to section 34 of the Judicature Act (2021 Revision) and the Judgment Debts (Rates of Interest) Rules (2021 Revision) at the statutory rate of 8.375% for such period as the Court thinks fit;
- d) Costs; and
- e) Such further and other relief as this Court may deem just.

HSM chambers

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

Dated this 26th day of July 2022

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$126,362.50. The amount of the filing fees to commence the proceeding is CI\$200.00 plus Ad Valorem in the sum of CI\$1,031.81. 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 and 5 above;
2. The prescribed rate of interest is 4.25% per annum;
3. The date from which interest is payable is 6 November 2020; and
4. The amount of interest accruing due each day is CI\$15.58.

This WRIT OF SUMMONS was filed by HSM Chambers, Attorneys-at-Law for the Plaintiff whose address for service is 68 Fort Street, PO Box 31726, George Town, Grand Cayman, KY1-1207, Cayman Islands (ref: 300138.1432)

No.8

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 2022

B E T W E E N:

BUTTERFIELD BANK (CAYMAN) LIMITED

Plaintiff

-v-

1. PATRICK GEORGE GAYLE

2. PAULINE GAYLE

Defendants

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

Ref: 300138.1432

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]