

COMMONWEALTH OF THE BAHAMAS

**SUPREME COURT**

2014

IN THE SUPREME COURT

OCT 03 2014

CLE/gen/01620

COMMON LAW SIDE

BETWEEN

NASSAU, BAHAMAS

**UBS (BAHAMAS) LTD.**

**Plaintiff**

AND

**JUNKANOO ESTATES LTD**

**First Defendant**

AND

**YURI STAROSTENKO**

**Second Defendant**

AND

**IRINA TSAREVA-STAROSTENKO**

**Third Defendant**

**ELIZABETH THE SECOND**, by the Grace of God, Queen of the Commonwealth of The Bahamas and of her other Realms and Territories Queen, Head of the Commonwealth of The Bahamas, Defender of the Faith:

To: **Junkanoo Estates Ltd**  
**Sears & Co**  
**No. 10 Market Street**  
**Nassau, New Providence**  
**The Bahamas**

To: **Yuri Starostenko**  
**Lyford Cay**  
**New Providence**  
**The Bahamas**

To: **Irina Tsareva-Starostenko**  
**Lyford Cay**  
**New Providence**  
**The Bahamas**

We command you that within 14 days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of: UBS (Bahamas) Limited, Nassau, New Providence, The Bahamas; and take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

Witness the Honourable Sir Michael Barnett, Our Chief Justice of the Commonwealth of The Bahamas, the 2<sup>nd</sup> day of October, A.D. 2014.

3<sup>rd</sup>

### **REGISTRAR**

Note: This writ may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

### **DIRECTIONS FOR ENTERING AN APPEARANCE**

The Defendant may appear hereto by entering an Appearance in person or by attorney either (1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court, British American Building, Marlborough Street, Nassau, New Providence, The Bahamas or (2) by sending them to that office by post.

Note: If the Defendant enter an appearance, then, unless a summons for judgment is served on him in the meantime, he must also serve a defence on the attorney for the Plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

### **STATEMENT OF CLAIM**

#### **The Parties**

1. The Plaintiff, UBS (Bahamas) Ltd., ("UBS") is a company incorporated under the laws of the Commonwealth of The Bahamas and carries on business as a bank.
2. The First Defendant, Junkanoo Estates Ltd, ("Junkanoo") is a company incorporated under the laws of the Commonwealth of The Bahamas.
3. The Second Defendant, Mr Yuri Starostenko, is a resident of the Commonwealth of The Bahamas, and resides in New Providence.
4. The Third Defendant, Mrs Irina Tsareva-Starostenko, is a resident of the Commonwealth of The Bahamas, and resides in New Providence.

#### **The Property**

5. At all material times Junkanoo has been the owner of Lot Number Five (5) in Block Number Seven (7) of the Number One (1) Subdivision of "Lyford Cay" in the Western District of New Providence in the Commonwealth of the Bahamas ("the Property").

## **The Loan**

6. On or about 13<sup>th</sup> August, 2012 Junkanoo opened a corporate account with UBS. Upon the opening of this account Junkanoo expressly agreed to be bound by UBS' Terms and Conditions.
7. On 23<sup>rd</sup> August, 2011 UBS prepared a commitment letter in writing which was duly accepted and signed by Junkanoo ("the Commitment Letter"), through its authorised representatives, and the Second and Third Defendants. It was an express term of the Commitment Letter that the Defendants' indebtedness owing to UBS was repayable on demand. UBS will rely on this Commitment Letter at trial for its full force and effect.
8. Pursuant to the Commitment Letter, UBS agreed to provide and Junkanoo agreed to accept a credit facility ("the Credit Facility") in the sum of USD\$1,400,000.00 at the interest rate of 4.02 per cent per annum on the terms set out in the Commitment Letter and all related and amending documents. This interest rate was fixed at 300 basis points per annum plus UBS costs of funds. Junkanoo agreed to pay quarterly instalments of interest. The term of the Credit Facility was to be for five years with full repayment of the outstanding principal and interest due on maturity.
9. It was an express term of the Commitment Letter that the higher of USD \$500,000.00 (net of any Lombard financing) or 50% of the Credit Facility amount would be kept under management with UBS during the term of the same. It was an express term of the Commitment Letter that Junkanoo would pay UBS Breakage Costs and/or Fees in various circumstances as defined therein. Further, it was an express term of the Commitment Letter that UBS could exercise a right of set off to any and all deposits that Junkanoo had with it to extinguish any and all indebtedness to it under the Commitment Letter or any other agreement.

## **UBS Security**

10. As security for repayment of the indebtedness arising under and pursuant to the Credit Facility, Junkanoo granted UBS a Mortgage ("the Mortgage") dated 18<sup>th</sup> September, 2012, over the Property which has been lodged for record in the Registry of Records in Volume 11712 at pages 87 to 98. UBS will rely on this Mortgage at trial for its full force and effect.
11. By the Mortgage, Junkanoo mortgaged, charged and pledged in favour of UBS the Property for securing payment of the debt owed under the Credit Facility up to USD\$1,400,000.00 plus costs and interest at annual rate of 4.02 per cent per annum, from and including 18<sup>th</sup> September, 2012 until full and final payment and discharge thereof. Pursuant to section two of the Mortgage, Junkanoo covenanted with UBS that on demand made to it, or as and when the Secured Sums (as defined in the Mortgage)

or any part of them are due for payment, it shall pay to UBS the Secured Sums or, as the case may be, the part of them due to be paid.

### **The Guarantee**

12. Further, pursuant to the terms of the Commitment Letter, and for the consideration contained therein, the Second and Third Defendants, agreed to be bound jointly and severally with Junkanoo and each other, for the performance of the covenants, obligations, representations and warranties contained therein. Further, the Second and Third Defendants agreed to be bound jointly and severally with Junkanoo and each other, for the Facility, as defined in the Commitment Letter, and for the fulfilment of and compliance with all the provisions of the Commitment, as defined in the Commitment Letter, and the schedules annexed to the Commitment Letter. UBS will rely on these guarantee terms in the Commitment Letter at trial for their full force and effect.
13. In pursuance of this aforesaid guarantee terms, UBS made advances to Junkanoo of USD\$1,400,000.00.

### **Demand for Payment and Vacant Possession**

14. Junkanoo is in default of its obligations owing to UBS under the Commitment Letter, and has committed Events of Default in that as of 16<sup>th</sup> April, 2013 it failed to keep the higher of USD\$500,000 (net of any Lombard financing) or 50% of the Credit Facility under management with UBS during the term of the same and failed as of the first quarter of 2013 to pay the amounts of interest outstanding when due. Furthermore, in consequence of these failures, Junkanoo is in breach of its covenants and obligations under the Mortgage which the Second and Third Defendants guaranteed.
15. It is a term of the Commitment Letter and the Mortgage that in the event of default being made in any way the whole of the monies secured thereby shall, at the option of UBS, become due and payable. UBS has elected to declare all such monies immediately due and owing.
16. As a result of Junkanoo's default under the terms of the Commitment Letter and Mortgage as set out herein, on 28<sup>th</sup> February, 2014 UBS, through its counsel Lennox Paton, sent a letter to Junkanoo describing the defaults under the Commitment Letter and Mortgage and demanding repayment in full of all amounts due and owing under and pursuant to the Credit Facility and Mortgage by 5:00 pm. on 10<sup>th</sup> March, 2014 otherwise informing it that UBS would take steps to enforce its security under the Mortgage including seeking orders for sale, possession or foreclosure of the Property. UBS will rely on this letter at trial for its full force and effect.

17. The aforesaid letter set out the amounts due and owing to UBS under and pursuant to the Credit Facility and Mortgage as at 28<sup>th</sup> February, 2014 being then USD\$1,548,598.29 excluding legal fees and costs associated with any enforcement proceedings.
18. On 5<sup>th</sup> March, 2014 the Second and Third Defendants wrote to Lennox Paton and admitted *inter alia* that Junkanoo did breach its obligation to keep the higher of USD\$500,000.00 (net of any Lombard financing) or 50% of the Credit Facility under management with UBS during the term of the same. UBS will rely on this letter at trial for its full force and effect.
19. On 11<sup>th</sup> April, 2014 UBS, through its counsel, sent Junkanoo a second letter advising that as a result of the latter failing to make any payments to satisfy the outstanding indebtedness as requested, UBS would exercise its right of set off and would use the USD\$525,323.49 that Junkanoo had on account with it to partially satisfy its indebtedness as expressly provided for by the Commitment Letter and UBS Terms and Conditions. This left USD\$1,013,239.84 due and outstanding to UBS, as of that date. UBS, through its counsel, further requested that this balance be paid immediately. UBS will rely on this letter at trial for its full force and effect.
20. Further, on 23<sup>rd</sup> April, 2014 UBS, through its counsel, advised Junkanoo that as a result of its failure to pay the outstanding indebtedness, it had elected to exercise its right to sell the Property and demanded vacant possession of the same on or before 30<sup>th</sup> May, 2014 so that it could properly effect a sale of the same. UBS will rely on this letter at trial for its full force and effect.
21. On 27<sup>th</sup> August, 2014 UBS, through its counsel, again demanded that Junkanoo deliver up vacant possession of the Property to it on or before 15<sup>th</sup> September, 2014 so that it could properly effect a sale of the same.
22. Notwithstanding the above demands Junkanoo has failed and neglected and continues to fail and neglect to pay all or any of the indebtedness owing to UBS as set out in the aforementioned demand letters or at all. Further, Junkanoo had failed and neglected and continues to fail and neglect to deliver up vacant possession of the Property to UBS to facilitate a sale of the same.
23. As a result of the matters set out above UBS power of sale under the Mortgage has become immediately exercisable and UBS is entitled to possession of the Property.
24. By a letter dated 11<sup>th</sup> April, 2014 UBS made demand on the Second and Third Defendants under the terms of the Commitment Letter to enforce the personal guarantee terms in the Commitment Letter. UBS will rely on this letter at trial for its full force and effect.

25. Notwithstanding this demand, the Second and Third Defendants have failed and neglected and continues to fail and neglect to pay all or any of sums demanded.

**Particulars pursuant to Order 73**

26. The state of account between UBS and the Defendants is as follows:

Junkanoo

- (a) Credit facilities were granted to Junkanoo on or about 23<sup>rd</sup> August, 2012;
- (b) the amount actually lent to Junkanoo was USD\$1,400,000.00;
- (c) the rate of interest charged is 4.02% per annum;
- (d) the contract for repayment was made on or about 23<sup>rd</sup> August, 2012;
- (e) the Commitment Letter and Mortgage were made and signed by Junkanoo's duly authorised representatives;
- (f) Copies of the Commitment Letter were provided to Junkanoo in August, 2012 after it was executed and copies of the Mortgage were provided to it in September, 2012 after it was executed.;
- (g) the amount repaid is \$526,323.49;
- (h) the amount due but unpaid is USD\$1,013,239.84 as of 11<sup>th</sup> April, 2014;
- (i) the sum became due on demand, the last demand being made on 11<sup>th</sup> April, 2014; and,
- (j) the amount of interest accrued due and unpaid as of 11<sup>th</sup> April, 2014 is USD\$1,563.33.

Second and Third Defendants

- (a) Credit facilities were granted to Junkanoo on or about on or about 23<sup>rd</sup> August, 2012. The Second and Third Defendants guaranteed Junkanoo's debt pursuant to the terms of the Commitment Letter;
- (b) the amount actually lent to Junkanoo was USD\$1,400,000.00;
- (c) the rate of interest charged to Junkanoo is 4.020% per annum;

- (d) the Commitment Letter which provided for repayment by the Second and Third Defendants was made on or about 23<sup>rd</sup> August, 2012;
- (e) the Commitment Letter was made and was signed by the Second and Third Defendants on or about 23<sup>th</sup> August, 2012;
- (f) Copies of the Commitment Letter were provided to the Second and Third Defendants after it was executed on or about 23<sup>th</sup> August, 2012;
- (g) the amount repaid is \$526,323.49;
- (h) the amount due but unpaid is USD\$1,013,239.84 as of 11<sup>th</sup> April, 2014;
- (i) the sum of USD\$1,013,239.84 became due on demand under the guarantee as set out in the Commitment Letter, the last demand on Second and Third Defendants being made on 11<sup>th</sup> April, 2014; and,
- (j) the amount of interest accrued due and unpaid as of 11<sup>th</sup> April, 2014 is USD\$1,563.33.

### **Claims**

- 27. UBS is entitled to and claims payment of all sums due and owing from the Defendants under the terms of the Commitment Letter and Mortgage.
- 28. Further, UBS has incurred, and continues to incur costs, charges and expenses in enforcing its rights under the Commitment Letter and the Mortgage against the Defendants. Accordingly, UBS claims the same from the Defendants.
- 29. Further, UBS is entitled to and claims contractual interest and Breakage Costs and/or Fees, as defined in the Commitment Letter, from the Defendants under the terms of the Commitment Letter and the Mortgage.
- 30. Further UBS is entitled to and claims interest pursuant the Civil Procedure (Award of Interest) Act 1992 on any sum found due and owing to it at such rate and for such period as the Court shall think fit.

**AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS JOINTLY AND SEVERALLY:**

1. Payment of all sums due to UBS by Junkanoo under the Commitment Letter and the Mortgage together with interest down to the date or dates of payment along with all other legal or other costs, charges and expenses of this action.
2. Payment of all sums due to UBS by the Second and Third Defendants under the guarantee as set out in the Commitment Letter together with interest down to the date or dates of payment along with all other legal or other costs, charges and expenses of this action.
3. In default of the parties agreeing the amount due all necessary accounts and inquiries.
4. An Order for possession of the Property in favour of UBS.
5. An Order directing the sale of the Property.
6. An Order for foreclosure in respect of the Property.
7. An Order providing no redemption period or as the Court may direct in respect of the Property.
8. An Order for the preservation of the Property pending further Order of this Honourable Court.
9. The appointment of a court appointed receiver over all the assets, property and undertaking of Junkanoo or such assets, property and undertaking as UBS may direct and deem appropriate from time to time.
10. Costs.
11. Interest on any judgment amount in accordance with the applicable rate as set out in the Commitment Letter and/or the Mortgage and pursuant to the Civil Procedure (Award of Interest) Act, 1992.
12. Further accounts and inquiries as may be necessary.
13. Such other relief as the nature of this case may require and as this Honourable Court may deem fit.



DATED this 2<sup>nd</sup> day of October, A.D. 2014.

*Lennox Paton*

**LENNOX PATON**  
Chambers  
3 Bayside Executive Park  
West Bay Street  
Nassau, New Providence  
The Bahamas

Attorneys for the Plaintiff

**INDORSEMENT AS TO ATTORNEYS AND ADDRESS**

This Writ was issued by Lennox Paton, attorneys for the said Plaintiff, whose address for service is 3 Bayside Executive Park, West Bay Street, Nassau, New Providence, The Bahamas.

**INDORSEMENT OF SERVICE**

This Writ was served by me at \_\_\_\_\_ on the  
First Defendant on \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Address)

**INDORSEMENT OF SERVICE**

This Writ was served by me at \_\_\_\_\_ on the  
Second Defendant on \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Address)

**INDORSEMENT OF SERVICE**

This Writ was served by me at \_\_\_\_\_ on the  
Third Defendant on \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 2014

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Address)

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW SIDE  
BETWEEN

UBS (BAHAMAS) LTD.

Plaintiff

AND

JUNKANOO ESTATES LTD

First Defendant

AND

YURI STAROSTENKO

Second Defendant

AND

IRINA TSAREVA-STAROSTENKO

Third Defendant

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WRIT OF SUMMONS

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2014

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LENNOX PATON

Chambers  
3 Bayside Executive Park  
West Bay Street & Blake Road  
Nassau, New Providence  
The Bahamas

Attorneys for the Plaintiff