

IN THE GRAND COURT OF THE CAYMAN ISLANDS

266
CAUSE NO: OF 2010

BETWEEN:

BRITISH CAYMANIAN INSURANCE AGENCIES LIMITED

PLAINTIFF

AND:

JARON LESLIE

DEFENDANT

WRIT OF SUMMONS

TO: Mr. Jaron Leslie
104 Manse Road
Bodden Town
P.O. Box 2148
Grand Cayman KY1-1105
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 Courts Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgement of Service 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 22 Day of July 2010

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.

PARTICULARS OF CLAIM

1. The Plaintiff is a company duly incorporated and domiciled in the Cayman Islands, whose business concerns, *inter alia*, the provision of insurance coverage and wealth management.
2. The Defendant was at all material times employed to the Plaintiff in the role of Financial Planning Consultant whose primary duty and responsibility was the marketing of and consultation on the Plaintiff's full range of life insurance and investment products.
3. On or around 20 January 2009, the Plaintiff made an offer to the Defendant of continued employment to remain in the position of Financial Planning Consultant.
4. The Defendant duly accepted the Plaintiff's offer and, as confirmation of said acceptance, signed a letter of continued employment dated 20 January 2009 ("**the Contract**").
5. The relevant terms of the Contract are as follows (emphasis added):

"2. **Position**

Your job title will be Financial Planning Consultant reporting to Mr. Jonathan Robinson, Sales Manager, for Colonial Life Assurance Company Limited and Barbara Oosterwyk, Life Manager. Your primary

duties and responsibilities will be to market and consult on Colonial Life's full range of life insurance and investment products.

4. Duties

...(iv) The Consultant will at all times comply with all applicable laws and regulations of the Cayman Islands, and before soliciting business he shall obtain and maintain in effect any licence which he may be required to hold by law...

6. Remuneration

*As this is a sales position, remuneration for Consultants is lined to the clearly defined sales and persistency targets and is liable to be varied based on your performance. Your targets are detailed below. Effective January 1, 2009, your remuneration will be \$60,000 per annum paid monthly in arrears on the 28th of each month provided you meet a minimum of your quarterly production target i.e. your annual production target pro-rated by quarters. **Failure to meet the production target of any particular quarter will require you to repay the full amount of the shortfall to Colonial Life during the month immediately following the relevant quarter-end. If you are still employed by Colonial Life, Colonial Life will accept this claw back by way of payroll reduction.** Should Colonial Life not exercise the right under clause 10 to terminate your employment after a shortfall in any quarter and in any subsequent quarter or quarters in the same calendar year he exceeds the quarterly production target, Colonial Life will in the month immediately following the quarter in which the target is exceeded reimburse you any amount previously clawed back under preceding provisions of this clause 6 during the same calendar year, up to but not exceeding the amount of the excess over his quarterly production target, to the intent that, by the end of January in any year, if you have achieved your annual production target for the preceding calendar year, any claw backs in that calendar year will have been reimbursed. You will also be eligible for bonuses as set forth below. (emphasis added)*

10. Consultants not meeting Sales/Persistency Targets

Consultants' production will be monitored weekly by the Sales' Manager who has responsibility for sales management and training.

Consultants will be given quarterly targets based on annual production targets. Consultants not meeting their quarterly sales target in any calendar will be subject to immediate termination at the discretion of Colonial Life in addition to remaining liable to repay the shortfall in accordance with clause 6 above. It should be understood that failure to exercise the right to terminate a Consultant after any shortfall in a quarterly target is not to be taken as a waiver of the right to terminate after a shortfall in any succeeding quarter, whether or not the quarters with a shortfall are consecutive.

Consultants not meeting production standards may be put on probation instead of being terminated. During periods of probation, the Sales Manager and Life Manager will work closely with the Consultant, providing mentoring, coaching and training as needed.

14. Notice Period

*The required notice period of termination is one month's notice in writing. Consultants are required to work their notice period, **but this may be waived or reduced at Colonial Life's discretion. Colonial Life reserves the right to pay salary in lieu of notice.** Dismissal for serious misconduct does not require a notice period or payment in lieu. During any probation period either party may terminate employment for any reason without notice. (emphasis added)*

19. Set-Off

Colonial Life has the right at all times to offset against any compensation due to the Consultant, and to withhold there from the amount of any debt, obligation or liability due or owing by the Consultant to Colonial Life and such withholding and offset shall not create any cause of action against Colonial Life. The term "debt" shall include, without limitation, any financial obligation or liability of the Consultant to Colonial Life, arising out of any transaction whatsoever." (emphasis added)

6. Over the period commencing on or about 6 August 2007 and ending 18 January 2010, the Defendant continuously and consistently failed to meet the production targets allocated to him by the Plaintiff ("**the Shortfalls**").

7. It was the practice of the Plaintiff to hold weekly meetings with its Consultants to evaluate the performance of said Consultants. During the course of these meetings, the Defendant was informed by both his Sales Manager, Jonathan Robinson and his Life Manager, Barbara Oosterwyk of both the Shortfalls as well as his obligation to repay the amount of the Shortfalls to the Plaintiff pursuant to Clause 6 of the Contract. The Defendant specifically acknowledged the same.
8. Due to the Shortfalls and pursuant to Clause 6 of the Contract, the Plaintiff informed the Defendant by way of letter dated 13 January 2010 that the Plaintiff would begin recouping the amount due by way of monthly payroll deductions from the Defendant's salary. The first and only payroll deduction was made from the Defendant's January 2010 salary emolument in the amount of CI\$3,588.89 ("**the Deduction**").
9. Further, pursuant to Clause 4(iv) of the Contract, the Defendant was required to obtain and maintain any and all necessary licenses as mandated by law. In an attempt to assist the Defendant in this regard, an agreement was signed by the parties dated 6 January 2010 that the Plaintiff would pay the necessary licence fees on behalf of the Defendant on the condition that the Defendant would reimburse the Plaintiff for any and all sum expended in this regard ("**the Licence Agreement**").
10. Accordingly and in pursuance of the Licence Agreement, on or about 13 January 2010, the Plaintiff paid Four Hundred Cayman Islands Dollars (CI\$400.00) to the Cayman Islands Monetary Authority to renew the Plaintiff's mandatory licence pursuant to Section 4(12) of Insurance Law (2008 Revision) ("**the Licence**") on behalf of the Defendant.
11. Further, and at all material times, the Defendant also held a Homeowner's Insurance Policy with the Plaintiff under Homeowner's Combined Policy # 58631 ("**the Policy**"). The policy required a premium payment of CI\$4,255.00 to be paid by the Defendant to the Plaintiff ("**the Premium**").
12. To date, the Defendant has not paid the Premium in full and has an outstanding balance of CI\$1,446.69 owing.
13. On or around 18 January 2010 the Defendant, by way of letter, sought to give the requisite one month's notice of his intention to terminate the contract and resign his position of Financial Planning Consultant with the Plaintiff ("**the Resignation Letter**").
14. On or around 18 January 2010 the Plaintiff, by way of return letter ("**the Acceptance Letter**") informed the Defendant of the following:

- a. That the Plaintiff was exercising its right to commute the notice period and to pay the Defendant salary in lieu of notice;
- b. That the Defendant was still liable to the Plaintiff for sums related to the Shortfalls, the Licence and the Premium ("**the Sums**").
- c. That the Plaintiff was also exercising its right under Clause 19 of the Contract to withhold the Defendant's final salary payment of CI\$4,549.04 to offset the indebtedness of the Defendant to the Plaintiff; and
- d. That the Defendant was required to repay the remaining balance of CI\$11,320.76 in seven (7) instalments.

15. The relevant paragraphs of the Acceptance letter are as follows:

"Monies Owed

In accordance with your employment contract, you previously acknowledged a shortfall in achieving your sales targets compared to the salary paid to you. The amount of the shortfall acknowledged by you and owing to the Company was in the amount of US\$21,600.00/CI\$17,712.00 as at end of December 2009 of which a repayment of CI\$3,588.89 was made through payroll deduction in your January 2010 salary payment. The remainder of CI\$14,123.11 remains owing as of the date hereof.

In addition, you also owe the Company the following:

- *CI\$300.00 as the balance owing for the Agent's license fee paid on your behalf.*
- *CI\$1,446.69 as the balance owing for policy #58631*

Therefore, the total amount of your indebtedness to the Company is CI\$15,869.80.

Final Salary Advance

...In accordance with Section 19 of your employment contract, the Company can withhold any money owing to you against your indebtedness to the Company. Since your final paycheque does not cover the full amount due, you are required to pay the remaining balance of CI\$11,320.76 by August 31, 2010 in 7 instalments as follows:

- *6 payments of CI\$1,750.00; payments to be made on:*
 - *February 26, 2010*
 - *March 31, 2010*
 - *April 30, 2010*
 - *May 31, 2010*
 - *June 30, 2010*
 - *July 30, 2010*

 - *1 payment of CI\$820.76; payment to be made on August 31, 2010*
16. Having received no response from the Defendant, the Plaintiff wrote to the Defendant on two (2) subsequent occasions. The first letter dated 1 April 2010 was sent by registered mail and the second, dated 16 April 2010, was delivered by hand on the 22nd.
 17. Each letter urged the Defendant to contact the Plaintiff in order that a repayment schedule, reasonable to both parties, could be entered into.
 18. To date, the Plaintiff has received no response from the Defendant.
 19. Furthermore, the Defendant has failed to repay the Sums or any part thereof, notwithstanding his receipt of the Acceptance Letter and other subsequent correspondence sent by the Plaintiff.

AND THE PLAINTIFF claims:

1. CI\$11,320.76.00 as the debt currently due and owing.
2. Pre-judgment and post-judgment interest pursuant to Section 34(1) of the Judicature Law and at a daily rate of interest established by the Judgment Debts (Rates of Interest) Rules 2008 as prescribed or alternatively at the discretion of this Honourable Court.
3. Costs
4. Such further and other relief as this Honourable Court may deem just and equitable.

STATEMENT OF INTEREST

1. The rate of interest claimed is 5.00% per annum.
2. The pre-judgment interest from 18 January 2010 to date is CI \$286.90 and accruing at a daily rate of CI\$1.55

Dated 22 July 2010

Stuarts Walker Hersant
STUARTS WALKER HERSANT
Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court

AND TO: The Defendant, PO Box 2148, Grand Cayman, KY1-1105, Cayman Islands

BETWEEN:

COLONIAL LIFE ASSURANCE COMPANY LIMITED

PLAINTIFF

AND:

JARON LESLIE

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, 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.

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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

Service of the Writ of Summons is acknowledged accordingly

(Signed) _____
Attorney for

NOTE 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/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her 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/her name, address and reference, if any, in the box below.

Anthony Akiwumi/Christopher Levers
STUARTS WALKER HERSANT
Attorneys-at-Law
4th Floor, Cayman Financial Centre
36A Dr. Roy's Drive
P.O. Box 2510 GT
George Town
Grand Cayman, KY1-1104
Cayman Islands

Tel: 345 949 3344
Fax: 345 949 2888
Ref: **AA/CLJ4772**

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

[Empty box for Defendant's Attorney endorsement]

DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of ***Acknowledgment of Service*** should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion, it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, 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 installments or otherwise.

See over for Notes of Guidance

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/her.
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 authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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.