

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: **GO 190** /2011

BETWEEN:



- (1) GARY TREES
- (2) TREES HOLDINGS LTD.

PLAINTIFFS

- (1) PHILIP MEWANI
- (2) RSGC HOLDINGS LTD.
- (3) D.M.N.Y. CAYMAN LTD.

DEFENDANTS

WRIT OF SUMMONS

TO: PHILIP MEWANI
C/o Bodden & Bodden, Attorneys at Law
Grand Pavilion, Seven Mile Beach, Grand Cayman

AND TO: RSGC HOLDINGS LTD.
C/o Bodden Corporate Services Ltd (registered office)
Grand Pavilion Commercial Centre,
West Bay Road, Grand Cayman

AND TO: D.M.N.Y. CAYMAN LTD.
C/o Bodden Corporate Services Ltd (registered office)
Grand Pavilion Commercial Centre,
West Bay Road, Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiffs, both of #20 Laguna Del Mar, Seven Mile Beach, P.O. Box 30169, Grand Cayman KY1-1201 in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, 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 any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

ISSUED this 19th day of May 2011.

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 original issuance unless renewed by order of the Court

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form

BETWEEN:

- (1) GARY TREES
- (2) TREES HOLDINGS LTD.

PLAINTIFFS

AND

- (1) PHILIP MEWANI
- (2) RSGC HOLDINGS LTD.
- (3) D.M.N.Y. CAYMAN LTD.

DEFENDANTS

STATEMENT OF CLAIM

1. In this Statement of Claim, the first named Plaintiff, Gary Trees, will be referred to as "GT", the second named Plaintiff, Trees Holdings Ltd, as "TH", the first named Defendant, Philip Mewani, as "PM", the second named Defendant, RSGC Holdings Ltd., as "RSGC" and the third named Defendant, D.M.N.Y. Cayman Ltd., as "DMNY".
2. GT and PM are Cayman status holders. GT resides at #20 Laguna Del Mar, Seven Mile Beach, Grand Cayman, and PM resides in West Bay, Grand Cayman. TH, RSGC and DMNY are companies incorporated and registered in the Cayman Islands. TH has its registered office at #20 Laguna Del Mar, Seven Mile Beach, Grand Cayman, and RSGC and DMNY have their registered offices located at Bodden Corporate Services Ltd, Grand Pavilion Commercial Centre, West Bay Road, Grand Cayman.
3. GT is a director and the moving spirit of TH and at all times represented it. PM is a director, beneficial owner and the moving spirit of RSGC and of DMNY and at all material times represented those companies.
4. TH was until 1 August 2005 the owner of that parcel of commercial property known as the Soto Building, located on Goring Avenue, George Town, Grand Cayman and otherwise described as George Town Central, Block 14BH, Parcel 66. On the said date it sold the property to RSGC.
5. GT was also at all material times a director and beneficial owner of a Cayman ordinary company, known as Cayman Islands T-Shirt Company Ltd which carried on a retail t-shirt business from premises within the Soto Building. PM was at all material times a director and/or the moving spirit of a company Diamonds Fort Street Ltd which carried on the business of a jewellery store in a portion of the lower floor of the Soto Building, under the name "Diamond Marquise".

6. In or about the first half of 2005 PM approached GT and indicated that he wished to open a silver jewellery business in the Soto Building but was short of financing. PM suggested that GT join him in some form of joint venture between them or between their companies (for this purpose TH and RSGC) to run a new silver jewellery business on a basis of equality between their, or their companies', respective interests and to be known as "Silver International".
7. GT and PM accordingly agreed that they, by themselves or by their said companies would carry on the silver jewellery business as "Silver International" operating out of ground floor premises of the Soto Building. GT knew nothing about the jewellery business and it was agreed that all the "know how" and experience would come from PM. It was further agreed that the business would require an investment by each of them or by their companies of US\$250,000 in cash or equivalent contributions. The terms of the proposed joint venture were entirely oral and inchoate and were left to be agreed. GT and TH's primary case is that the proposed joint venture was to be between TH and RSGC, alternatively it was to involve GT and PM. In fact, as set out below, all payments towards the proposed joint venture from the GT and TH side, came from TH and went towards the proposed business or to RSGC.
8. In order to give some semblance of substance to the proposed joint venture and business and to assist PM who was seeking a bank loan to enable RSGC to purchase the Soto Building from TH, PM suggested and GT agreed that, (i) Cayman Islands T-Shirt Company Ltd (which then had a substantial business) would apply for a five year lease of premises on the ground floor of the Soto Building at an annual rent of US\$150,000.00 (i.e. US\$12,500.00 per month) commencing on June 1, 2005, and (ii) the silver jewellery business of the joint venture (the form of which was yet to be agreed) would be carried on from such premises. PM stated that he needed to demonstrate rental income from a third party in order to obtain financing from the bank for the purchase of the Soto Building. To this end and in furtherance of the proposed joint venture, GT caused Cayman Islands T-Shirt Company Ltd (which had no involvement and was to have no involvement in the jewellery business) to apply for and to obtain Trade and Business Licence No. 392370/05 to trade as "Silver International" and a lease, although at no stage was Cayman Islands T-Shirt Company Ltd to have any involvement in the business of silver jewellery.
9. Pursuant to the terms of the proposed joint venture and at the request and direction of PM or RSGC, GT caused TH to advance the total sum (which was intended to be \$250,000 but in fact was \$252,500) by way of TH's or his contribution to the proposed joint venture paid as follows:

<u>Date</u>	<u>Payee</u>	<u>Amount (US\$)</u>
6 May 2005	CIG for stamp duty on lease for "Silver International":	8,620.00
17 June 2005	RSGC Holdings (cheque no. 110): (until recently GT was under the mistaken belief that this payment was \$12,500 and this accounts for the final payment referred to in paragraph 13 below)	15,000.00
17 June 2005	Rent under lease for June 2005 (13 days):	5,416.00
27 June 2005	Ideas in Wood Corp (CNB bank draft) for display cabinets:	45,028.00
30 June 2005	Edward Bodden (cheque no. 119) for store fit out:	12,000.00
1 July 2005	RSGC Holdings (cheque no. 120) July rent:	12,500.00
26 July 2005	RSGC Holdings (cheque no. 121) August rent:	12,500.00
16 August 2005	Edward Bodden (cheque no. 122) for store fit out:	10,000.00
23 August 2005	RSGC Holdings (cheque no. 123) for stock purchases:	100,000.00
30 September 2005	RSGC Holdings (cheque no. 195) Sept and October rent:	25,000.00

10. Shortly before 18th October 2005, PM stated to GT that he (PM) wanted the business in the name of DMNY because he wanted to obtain insurance coverage for the business and inventory. By this time PM had obtained the necessary financing from the bank and the, or any, involvement of Cayman Islands T-Shirts Company Ltd was no longer needed. PM asked GT to write a letter to the Trade and Business Licensing Board stating that Cayman Islands T-Shirt Company Ltd was turning over "ownership" to DMNY because (according to PM) that was what the Trade and Business Licence Board required. PM indicated that this would not affect the proposed joint venture that was to be formed between RSGC and TH alternatively between GT and PM. GT accepted and believed what PM had said and accordingly wrote to the Trade and Business Licensing Board in the terms required by PM by letter drafted by PM and signed on behalf of "T-Shirts of Cayman Ltd" which was PM's incorrect way of referring to that company.

11. Thereafter TH advanced cash (from Cayman Islands T-Shirt Company Ltd initially and reimbursed by cheque) for two bank accounts to be opened at Cayman National Bank for the proposed joint venture.

4 November 2005 CNB – to open two accounts (cheque no. 196) 1,000.00

12. By this stage TH had in fact paid \$247,064.00 towards the joint venture. However GT and PM both erroneously believed that in fact it had paid \$244,564.00.

13. In about mid - January 2006 PM informed GT that a further US\$100,000 would have to be advanced for stock for the business. GT stated that since this exceeded the investment originally agreed and since he knew nothing of the silver business, he was unwilling for TH to advance any further monies and thereupon PM and GT amicably agreed to take the proposed joint venture no further. The monies advanced by TH were agreed to be treated as a loan ("the Loan") by TH or GT to RSGC, alternatively to PM, payable on demand without interest. Whatever assets had been acquired would thereafter belong to RSGC or as PM wished and PM would be free to carry on the business of the sale of silver jewellery as he wished. GT and PM agreed that the amount treated as loaned should be rounded up to \$250,000.00 and in the erroneous belief that \$244,564.00 (instead of \$247,064.00) had been advanced, GT agreed that TH would advance such further sum (i.e. \$5,436.00) as would make up the total advance to \$250,000. Accordingly the following (and final) payment took place shortly thereafter, as follows:-

29 January 2006 RSGC Holdings 5,436.00

Total advanced: US\$252,500.00
(which GT and PM then believed was \$250,000.00)

14. By letter dated 13 November 2009 GT made a formal written demand for payment by 21st November 2009 upon PM, and/or his company, RSGC. In the erroneous belief that the amount advanced was \$250,000.00, such sum was requested. PM and RSGC have failed to repay the Loan upon demand being made and TH, alternatively GT is entitled to payment of such sum with interest from the date of demand.

15. GT and TH's primary case is that TH alternatively GT were entitled to recover the said Loan primarily from RSGC alternatively PM. However, in the further alternative (and contrary to the said primary case) the loan was repayable by DMNY, and TH, alternatively GT, is entitled to payment of such sum from DMNY with interest from the date of demand.

16. In the yet further alternative TH alternatively GT is entitled to recover the sum of \$252,500.00, (i) on a quantum meruit, alternatively, (ii) on a restitutionary basis, alternatively, (iii) as money had and received for no consideration, alternatively, (iv) as held for TH, alternatively GT, on a resulting trust.
17. By letter dated 1 March 2010 from Bodden & Bodden acting on behalf of PM and/or RSGC, PM and RSGC claimed that the Loan was entered into by GT with "an associated company" of RSGC and that it was secured by a "promissory note", which promissory note was not repayable until December 2010 but, at the option of the borrower could be repaid before that date. No such promissory note exists and such statement was false. At no stage (despite requests) has any promissory note ever been produced by the Defendants or any of them.
18. On 17 August 2010 Bodden & Bodden produced a copy of a one page document entitled "Business & Asset Sale and Purchase Agreement" purportedly executed on 8 December 2005 between "T-Shirts of Cayman Ltd" (PM's normal misstatement or misspelling of Cayman Islands T-Shirt Company Ltd) and DMNY. The said document purported to reflect a sale by "T-Shirts of Cayman Ltd" of an interest in Silver International to DMNY for the sum of US\$250,000.00 to be paid by DMNY to T-Shirts of Cayman Ltd within 5 years or earlier at DMNY's discretion.
19. The 8 December 2005 document appears to bear the signature of PM on behalf of DMNY and GT's signature on behalf of "T-Shirts of Cayman Ltd". In fact, the signature on the 8 December 2005 document is not in truth GT's signature, nor did he sign this document, nor authorise the signature nor enter into any such agreement on behalf of Cayman Islands T-Shirt Company Ltd, or at all, nor would he have caused Cayman Islands T-Shirt Company Ltd to enter into an agreement with DMNY. Prior to the production of the copy 8 December 2005 document by Bodden & Bodden GT had never seen the copy or any original of the copy. GT and TH have sought production of the original of the copy provided so that it could be inspected and forensically examined but as at the date of this pleading the Defendants have not provided any opportunity for inspection or for such examination of the original (if one exists).
20. It is the case that some rent was owing by the Cayman Islands T-Shirt Company to RSGC and the Plaintiffs maintain that the transparent purpose of producing the supposed "agreement" of 8 December 2005 was to create a situation where such rent might be set off against the amount owing by RSGC alternatively PM. The Plaintiffs further assert that RSGC alternatively PM or DMNY has through the device of the 8 December 2005 document sought to avoid payment of the sum of US\$252,500.00 owing to TH alternatively GT under the Loan alternatively on the bases set out in paragraph 16 above.
21. TH alternatively GT claims from RSGC, alternatively PM, alternatively DMNY, pre-judgment interest on the sum of US\$252,500.00 owing under the Loan alternatively on the bases set out in paragraph 16 above, from the date of the failure to make repayment on 21 November 2009 at the rate of 5% per annum (US\$34.59 per diem) pursuant s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rate of Interest) Rules (2008), being US\$11,864.37 (343 days @ US\$34.59 per day) and 2½% per annum (US\$16.43 per diem) pursuant to s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rate of Interest) Rules (2010) commencing 1 November 2010, being US\$3,269.57 (199 days @ US\$16.43 per day) calculated to the date of issue of the Writ herein (19 May 2011),

22. The Plaintiffs (in the alternative) claim interest on all fixed or assessed costs and orders running from the date of service of the judgment, order or certificate of taxation respectively at the prescribed rate of 2½% per annum in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules (2010) or other rate then prevailing.

THE SECOND, ALTERNATIVELY THE FIRST PLAINTIFF, THEREFORE CLAIMS AGAINST THE SECOND, ALTERNATIVELY THE FIRST, ALTERNATIVELY THE THIRD DEFENDANT:

- (a) Judgment or restitution in the sum of US\$252,000.00;
- (b) Prejudgment interest on the sum of US\$15,133.94 calculated from 21 November 2009 to 19 May 2011 at the rates more particularly pleaded above;
- (c) Post-judgment interest in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules (2010);
- (d) Fixed costs pursuant to GCR Order 62/7(1) in the sum of CI\$500.00 together with the prescribed fees for issue of the Writ or alternatively their costs to be assessed; and
- (e) Such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 19th day of May 2011.

HAMPSON. CO.

Hampson and Company
Attorneys for the Plaintiffs

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM are filed by Hampson and Company, attorneys for the Plaintiffs, whose address for service is that of their said attorneys, at Citrus Grove, 5th Floor, Goring Avenue, George Town P.O. Box 698, Grand Cayman, KY1-1107.

TO: The Clerk of the Grand Court

AND TO: Philip Mewani

AND: RSGC Holdings Ltd.

AND: D.M.N.Y. Cayman Ltd.