

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 294 OF 2011

B E T W E E N:

SIMONE WILSON

PLAINTIFF

AND:

WALKERS (A Firm)



WRIT OF SUMMONS



TO: Walkers
Walker House
87 Mary Street
Grand Cayman, KY1-9001
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 495G, George Town, Grand Cayman, 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 Acknowledgment within the time stated, or if you return the Acknowledgment 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 30th day of Septemer 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 issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. At all materials times the Defendant was a firm of attorneys practising from Walkers House, 87 Mary Street, Grand Cayman KY1- 9001, Cayman Islands.
2. By written agreement (the "Contract"), the Defendant offered to employ the Plaintiff as a Paralegal in the Defendant's Cayman Islands office and the Plaintiff accepted the terms and conditions of the said Contract on 21 April 2005. The Plaintiff commenced employment for the Defendant on 15 August 2005 in accordance with the terms and conditions set out in the Contract.
3. Clause 1(b) of the Contract sets out the duties and responsibilities the Plaintiff was required to perform in the role of Paralegal. Clause 1(b) provides *inter alia* as follows:

"Your general responsibilities and duties are to carry out the work of a Paralegal including general secretarial, administrative and associated work on the instructions of a Partner or Associate or any other person authorised by a Partner. You will not, as a Paralegal, give legal advice and assistance to, or provide any form of legal services for, clients of the Firm. You will take instructions from any Partner of the Firm or any other person who may be admitted to the Firm as a Partner, or any other person designated by the Partners of the Firm"

4. It was a term of the Plaintiff's Contract that all hours worked in excess of 37 ½ hours per calendar week would be paid overtime and such clause reflected the minimum standard required by Section 25(1) of the Labour Law (2007 Revision) insofar as the rate at which such overtime shall be paid. Clause 3(d) of the Contract provides *inter alia* as follows:

"You will be paid overtime for all hours worked in excess of 37½ each calendar week at the rate of one and one half times the hourly equivalent of your basic pay provided that by mutual agreement you may receive time off at a mutually agreeable time equivalent to the extra hours worked in lieu of overtime pay"

5. Between 15 August and 19 September 2005 the Plaintiff worked hours in excess of 37 ½ hours each calendar week and in accordance with Clause 3(d) received overtime pay for such hours.

6. On 19 September 2005, the Defendant provided a supplemental contract of employment (the "Supplemental Contract") to the Plaintiff which purported to amend the Contract by replacing Clause 3(d) *inter alia* as follows:

"As a professional person no overtime will be paid to you for any hours worked in excess of regular office hours, although you will be expected to work such hours as are necessary in order to keep abreast of your work load."

7. The Plaintiff was neither a professional employee nor at a managerial level with the Defendant and, accordingly, is entitled to overtime pursuant to Section 25(1) of the Labour Law (2007 Revision).
8. Despite the title of Paralegal, the Plaintiff performed the duties of both a secretary and an administrative assistant as opposed to an employee working at a professional level.
9. Accordingly, pursuant to Section 5(2) of the Labour Law (2007 Revision) the Defendant's Supplemental Contract dated 19 September 2005 is void and has no effect insofar as it purports to amend Clause 3(d) of the Plaintiff's Contract on the basis that it seeks to impose conditions of service below the minimum standard established by the Labour Law as set out in paragraph 6 of this Statement of Claim.
10. In breach of the Contract, to the extent it is purported to be amended by the Supplementary Contract, the Defendant failed to pay the Plaintiff any overtime pay in respect of hours performed in excess of 37½ per week from 19 September 2005 to date.
11. From 19 September 2005, the Plaintiff was required by the Defendant to work 1,352.5 unpaid hours in breach of the Contract in the sum of CI\$82,942.67.

Particulars of Damage

A schedule of loss dealing with the Plaintiff's claim for damages and interest is set out in the attached Schedule.

AND THE PLAINTIFF claims:

1. Damages;

2. Pre-Judgment and Post-Judgment interest in accordance with Section 34 of the Judicature Law (2007 Revision);
3. Such further and other relief as this Honourable Court deems appropriate.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of CI\$91,109.16 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or her Attorney.

Appleby (Cayman) Ltd.
APPLEBY (CAYMAN) LTD.

THIS WRIT AND STATEMENT OF CLAIM was issued by Appleby (Cayman) Ltd. of Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. [SC/403595.0001]), Attorneys-at Law for the Plaintiff

Month/Year	Standard Overtime Hours	Double Overtime Hours (including double overtime amount in CI\$)	Overtime Amount (in CI\$)
October 2005	82.5	1.5 (\$92.31)	\$3,899.68
November 2005	79	11 (\$676.94)	\$4,322.79
December 2005	73.5	9 (\$553.86)	\$3,945.88
<u>Total for 2005</u>	<u>235</u>	<u>21.5 (\$1,323.11)</u>	<u>\$12,168.35</u>
January 2006	60		\$2,769
February 2006	31.5		\$1,453.72
March 2006	93.5		\$4,315.03
April 2006	55.5		\$2,561.33
May 2006	105.5	6.5 (\$433.29)	\$5,707.24
June 2006	66.5		\$3,324.34
July 2006	45		\$2,249.55
August 2006	47		\$2,349.53
September 2006	51.5		\$2,574.49
October 2006	96.5	1 (\$66.66)	\$4,890.70
November 2006	80.5	8 (\$533.28)	\$4,557.48
December 2006	51		\$2,549.49
<u>Total for 2006</u>	<u>782</u>	<u>15.5 (\$1,033.23)</u>	<u>\$39,302</u>
January 2007	33		\$1,980
February 2007	15.5		\$930
March 2007	34.5		\$2,070
April 2007	9		\$540
May 2007	12.5		\$750
June 2007	6.5		\$390
July 2007	4.5		\$270
August 2007	4.5		\$270
September 2007	9.5		\$570
October 2007	5.5		\$330
November 2007	11		\$660
December 2007	12.5		\$750
<u>Total for 2007</u>	<u>158.5</u>		<u>\$9,510</u>
January 2008	12		\$782.28

Month/Year	Standard Overtime Hours	Double Overtime Hours (including double overtime amount in CIS)	Overtime Amount (in CIS)
February 2008	3.5		\$228.16
March 2008	14		\$912.66
April 2008	3		\$195.57
May 2008	12		\$782.28
June 2008	5		\$325.95
July 2008	Nil		
August 2008	Nil		
September 2008	1.5		\$97.78
October 2008	1		\$97.78
November 2008	13		\$874.47
December 2008	23.5		\$1,531.96
Total for 2008	88.5		\$5,828.89
January 2009	28.5		\$1,857.92
February 2009	17		\$1,108.23
March 2009	11		\$717.09
April 2009	14		\$912.66
May 2009	20.5		\$1,336.40
June 2009	22.5		\$1,466.78
July 2009	12.5		\$839.38
August 2009	2.5		\$167.88
September 2009	16.5		\$1,107.98
October 2009	13.5		\$906.53
November 2009	20		\$1,343
December 2009	13		\$872.95
Total for 2009	191.5		\$12,636.80
January 2010	8.5		\$570.77
February 2010	2		\$134.30
March 2010	Nil		
April 2010	2.5		\$167.87
May 2010	2.5		\$167.87
June 2010	8.5		\$570.77
July 2010	13.5		\$906.52

Month/Year	Standard Overtime Hours	Double Overtime Hours (including double overtime amount in C\$)	Overtime Amount (in C\$)
August 2010	8.5		\$570.77
September 2010	1		\$67.96
October 2010	Nil		
November 2010	5		\$339.80
December 2010	Nil		
<u>Total for 2010</u>	<u>52</u>		<u>\$3,496.63</u>
Grand Totals	<u>1,507.50</u>	<u>37 (\$2,356.34)</u>	<u>\$82,942.67</u>

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgement 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, GRAND CAYMAN KY1-1106.

2. A Defendant who states in his Acknowledgement 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 of "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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, 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 Write 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: OF 2011

B E T W E E N:

SIMONE WILSON

PLAINTIFF

AND:

WALKERS (A Firm)

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.

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

Service of the Writ is acknowledged accordingly

_____ Date: _____ 2011

Attorneys for the Defendants

Address for service:

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 KY1-1104 where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Endorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Appleby (Cayman) Ltd. Attorneys-at-Law Clifton House 75 Fort Street PO Box 190 George Town Grand Cayman KY1-1104 Ref: SC/403595.0001

Endorsement 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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