

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 406 OF 2012

BETWEEN:

MORNE BOTES

PLAINTIFF

AND:

ELIAS KOZAILLY

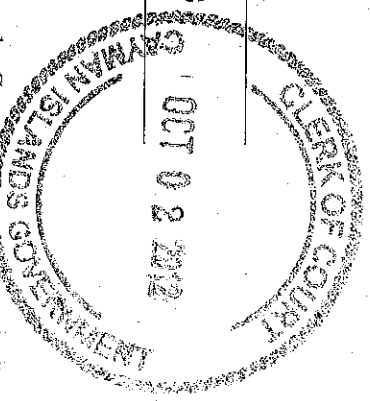
FIRST DEFENDANT

KOZAILLY DESIGN LTD

SECOND DEFENDANT



WRIT OF SUMMONS



TO:

- 1. **ELIAS KOZAILLY** of 36, The Avenue, South Sound, George Town, Grand Cayman, Cayman Islands
- 2. **KOZAILLY DESIGN LTD** of P.O. Box 30198 SM, 1 Alexandra Place, Industrial Park, Grand Cayman, Cayman Islands

**THIS WRIT OF SUMMONS** has been issued against you by the above named Plaintiff, Morne Botes of, P.O. Box 30121, KY1-1102, Grand Cayman 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 1<sup>st</sup> day of October 2012.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO:            OF 2012

**BETWEEN:**

**MORNE BOTES**

**PLAINTIFF**

**AND:**

**ELIAS KOZAILY**

**FIRST DEFENDANT**

**KOZAILY DESIGN LTD**

**SECOND DEFENDANT**

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**STATEMENT OF CLAIM**

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1. The Plaintiff, Morne Botes, is a United Kingdom Citizen and permanent resident of the Cayman Islands of P.O Box 30121, KY1-1102, Grand Cayman.
2. The First Defendant, of 36, The Avenue, South Sound, George Town, Grand Cayman and insofar as is known to the Plaintiff, is the director, owner and operator of the Second Defendant, a company duly incorporated in the Cayman Islands carrying on as a business providing services including but not limited to architectural services, interior design services, project management and construction management known as Kozaily Design Ltd whose registered office is P.O Box 30198 SM, 1 Alexandra Place, Industrial Park, Grand Cayman, Cayman Islands.
3. The Plaintiff was at all material times the owner and title holder of property known as 140 Websters Drive, George Town, Grand Cayman ("the Property").
4. On or about 24 March 2011 the Plaintiff engaged the services of the Second Defendant in connection with the provision of works and services at the Property.
5. In order to facilitate the works and services for which it had been engaged the Second Defendant provided the Plaintiff with a large haulage container to enable the Plaintiff's personal goods and effects to be temporarily and safely stored whilst works were being carried out to the Property. The haulage container was not to be removed from the Property.

**The Container Goods and Effects**

6. The Plaintiff's personal goods and effects were duly stored in the haulage container in a manner suitable for temporary storage only and not in a manner secure manner for shipping or any form of transportation.

7. Full particulars as to the description of the personal goods and effects stored within the haulage container will be provided at trial.
8. On or about 27 August 2012 the First Defendant and/or Second Defendants and/or their servants and/or agents entered onto the Property without permission and wrongfully and/or negligently removed the said haulage container which held the Plaintiff's personal goods and effects from the Property and took the said goods to a location unknown to the Plaintiff thereby causing trespass and converting the Plaintiff's property.
9. In so doing, the First and/or Second Defendants and/or their servants or agents:
  - a) conduct was inconsistent with the proprietary rights of the Plaintiff;
  - b) conduct was deliberate;
  - c) conduct was so extensive an encroachment on the rights of the Plaintiff as owner of the said goods as to exclude him from use and possession of the goods;
  - d) failed to inform the Plaintiff as to their intentions;
  - e) failed to exercise any or any reasonable due care, skill and/or attention, in or about the transport of the haulage container
  - f) failed to foresee the consequences of their acts;
  - g) wrongfully seized and detained the Plaintiff's property;
  - h) acted contrary to the Plaintiff's instructions; and
  - i) failed at any time or at all to have any or adequate consideration for the way the said goods were packed in the container;
  - j) failed at any time or at all to take reasonable care of the Plaintiff's property
10. After reporting the matter to the Royal Cayman Islands Police Service on or about 27 August 2012 the Plaintiff orally and by email demanded the return of his personal goods and effects, but the First and/or Second Defendants refused to return them, wrongfully detaining them, whereby the Plaintiff suffered loss and damage.
11. By further letter to the First Defendant dated 29 August 2012, the Plaintiff repeated his demand for the return of his goods, whereupon they were returned to him on 30 August 2012, save for:
  - a) Quartz shelves
  - b) Marble table top
  - c) 9 black plastic gutters;
  - d) 2 ceiling fans;
  - e) 30" Kraftmaid bathroom cabinet;
  - f) 36" Kraftmaid bathroom cabinet; and
  - g) 3 boxes blue glass subway tiles.which the First Defendant refuses to return and continues to wrongfully detain thereby causing the Plaintiff to suffer loss and damage.
12. A number of the said goods were damaged by the First and/or Second Defendant and or their servants or agents in or about the wrongful trespass and negligent removal of the haulage container from the Property. Full particulars of special damage will be provided at trial.
13. In securing the return of the said goods the Plaintiff was required to employ persons to collect and transport the said goods back to his Property.
14. As a result of the trespass by the First and/or Second Defendants and/or their servants or agents the Plaintiff has suffered loss and damage. Full particulars will be provided at trial.

**Other Goods and Effects**

15. As a part of the Plaintiff's engagement of the Second Defendant certain other items of the Plaintiff's goods and effects were permitted to be in the custody of the First and/or Second Defendant for safe keeping, namely:

- a) A 47" LED LCD television;
- b) Items of garden furniture comprising a white bar set, white round sofa set, white sunlounger chairs and patio umbrella with granite base;
- c) 2 Iris mirrored chests;
- d) 1 box glass mosaic tiles;
- e) 1 box glass white tiles; and
- f) 3 boxes jazz brown tiles.

16. On or about 27 August 2012, as a result of the matters pleaded above concerning the haulage container, the Plaintiff orally and in writing demanded the return of these goods and effects. They were not returned.

17. On or about 13 September 2012, the Plaintiff through his attorney made further demand for the return of these goods and effects.

18. The First and/or Second have failed to return the said goods wrongfully detaining them, whereby causing the Plaintiff to suffer loss and damage.

**AND THE PLAINTIFF THEREFORE CLAIMS FROM THE DEFENDANT**

- (a) The return and delivery of all the said goods and damages;
- (b) Damages
- (c) Aggravated Damages
- (d) Pre-judgment Interest in accordance with s34 of the Judicature Law (2007 Revision);
- (e) Post-judgment interest accordance with s34 of the Judicature Law (2007 Revision);;
- (f) The costs of this action; and
- (g) Such further and other relief as to this Honourable Court may seem just.

**DATED** at Grand Cayman this 1<sup>st</sup> day of October 2012



Nelson & Co.  
Attorneys for the Plaintiff

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, and Grand Cayman KY1-1105 Cayman Islands.

**TO:** The Clerk of the Grand Court

**AND TO:** The First Defendant

The Second Defendant

BETWEEN:

MORNE BOTES

PLAINTIFF

AND:

ELIAS KOZAILY

FIRST DEFENDANT

KOZAILY DESIGN LTD

SECOND 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 intend to contest the proceedings (tick appropriate box)

Yes  No

3. If the claim against the Defendants 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 Plaintiffs (tick box)

Yes  No

Service of the Writ is acknowledged accordingly

Signed .....

Attorney for

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

**Indorsement by Plaintiffs' Attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.**

Nelson & Company  
Attorneys at Law  
PO Box 2075  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1105  
CAYMAN ISLANDS

**Indorsement 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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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 the Defendant or by the Defendant if acting in person.  
  
After completion it must be delivered or sent by post to the Law Courts, P.O. 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 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 Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service (or 28 days in the case of a writ served outside the jurisdiction pursuant to an order of the Court), 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.

**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 that date of original issuance unless renewed by order of the Court

**IMPORTANT**

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