

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁵⁶⁸ OF 2012

BETWEEN:

CAYMAN HEALTH LTD.

Plaintiff

-AND-

TRINCAY MEDICAL SERVICES LTD.

Defendant



WRIT OF SUMMONS

TO: TRINCAY MEDICAL SERVICES LTD.
PO Box 10708
Suite #9, Alexander Place, Dorcy Drive,
Industrial Park, George Town,
Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of Grand Harbour Medical Suites, Box 2458, George Town, Grand Cayman, Cayman Islands KY1 1105, 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, P.O. Box 495GT, 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 Acknowledgement 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 day of December 2012

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 Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is a limited company operating as a laboratory and clinic in the Cayman Islands, with premises situated within Grand Harbour Medical Centre in George Town, Grand Cayman.
2. The Defendant is a limited company operating as a polyclinic with a medical facility based at Suite 1204, 55 Market St, Jasmine Court, Camana Bay, which offers medical services to the public through a team of physicians. The Defendant's registered address is PO Box 10708, Suite #9, Alexander Place, Dorcy Drive, Industrial Park, George Town, Cayman Islands.
3. By agreement between the Plaintiff and Defendant, the Plaintiff agreed to receive biological samples sent by the physicians working for the Defendant, undertake the requested testing of those samples and provide the results of that testing to the Defendant. In turn, the Defendant agreed to pay the Plaintiff fees for the provision of these services.
4. The agreement between the parties was made partly orally, partly in writing and partly by conduct and/or as a result of a course of dealing between the Plaintiff and the Defendant, hereinafter referred to as the "Agreement". The details of the Agreement are set out at paragraphs 5 to 7 below.
5. In so far as the Agreement was made orally, the said Agreement was made at meetings held at the Defendant's premises in Camana Bay in 2010. The first two meetings took place between Carol Wilhelm (Laboratory Manager) acting on behalf of the Plaintiff, and Dr. Howard Deosaran, acting on behalf of the Defendant. A third meeting took place between Carol Wilhelm and Dr. Stephen Pickering, acting on behalf of the Plaintiff, and Dr. Howard Deosaran, acting on behalf of the Defendant. The Plaintiff provided the Defendant with a CD detailing the fees for the services they provided. At the third meeting the agreement was concluded. The agreement included the following terms:
 - (i) The Defendant would place orders for testing in paper form;
 - (ii) The paper orders would be sent with the biological samples to be tested, via the Plaintiff's courier;
 - (iii) The Plaintiff would undertake testing of the samples and provide the results to the Defendant;
 - (iv) Where payment was made by the Defendant within specified periods, discounts would be applied to the fees charged by the Plaintiff;
 - (v) The Plaintiff would issue monthly paper invoices to the Defendant for the services they had provided.

6. In so far as the Agreement was made in writing, it was contained in, or is to be inferred from the following documents, or some or one of them:
 - (i) Various paper orders for testing, endorsed by signatures, accompanying biological samples dated between April 2010 and June 2012;
 - (ii) Monthly paper invoices sent by the Plaintiff to the Defendant;
 - (iii) Email notifications of the applicability of discounts to the charges rendered by the Plaintiff against the Defendant for their services;
 - (iv) Reminders for outstanding fees sent by email by the Plaintiff to the Defendant;
 - (v) The Defendant was notified by written notice in March 2012 that the discount to the fee was withdrawn and the rate of interest that the Plaintiff would charge the Defendant on outstanding fees would be compound interest at a rate of 2% per month.

7. In so far as the Agreement was made by conduct, the conduct consisted of, or is to be inferred from the following:
 - (i) In full knowledge of the matters referred to above, the Defendant continued to place orders with the Plaintiff between April 2010 and June 2012.
 - (ii) Save for a small outstanding balance, invoices rendered by the Plaintiff between April 2010 and September 2011 were satisfied by the Defendant.

This continued course of dealing signified their agreement to the above terms. In the premises the Defendant thereby agreed to, and accepted the terms. In the alternative, by its silence and conduct and with full knowledge that the Plaintiff would proceed with the provision of its services to the Defendant, it permitted and induced the Plaintiff to believe that it had agreed to and accepted the said terms. In reliance upon the same the Plaintiff supplied its services to the Defendant. The Defendant did not communicate its non-acceptance to any of those terms to the Plaintiff in a reasonable time, or at all.

8. The Plaintiff provided the Defendant with its services in accordance with the Agreement.

9. The Plaintiff provided services to the value of KYD \$103,210.88. Interest on outstanding fees was charged at the contractual compound basis of 2% per month. The total accrued interest as at the 30th of November 2012 was KYD \$12,558.29. The Defendant made payments of KYD \$38,661.21 against the principal sum and accrued interest, leaving an outstanding principal balance of KYD \$69,859.15, and outstanding interest of KYD \$7,248.81 as at the 30th of November 2012. The total amount of outstanding fees and interest is KYD \$77,107.96.

10. In breach of contract, the Defendant has failed to make payment to the Plaintiff in the total sum of KYD \$77,107.96.

11. Despite the demands of the Plaintiff for payment, the Defendant has refused and / or failed to pay the Plaintiff the balance of fees and interest owed.
12. In the premises the Defendant is indebted to the Plaintiff in the sum of KYD \$77,107.96.
13. In the alternative, the Plaintiff claims interest in accordance with Section 34 of the Judicature Law (2007 Revision) at the prescribed rate, being:
 - (i) To the date hereof, the sum of KYD \$2,003.23;
 - (ii) From the date hereof at the daily rate of KYD \$4.56 per day.
14. A calculation of interest in accordance with Section 34 of the Judicature Law (2007 Revision) at the prescribed rates is set out in the Schedule attached hereto.

AND THE PLAINTIFF CLAIMS:

1. The principal sum of KYD \$69,859.15;
2. Contractual interest, as at the 30th of November 2012 amounting to \$7,248.81 and continuing at a compound rate of 2% per month;
3. Alternatively, interest in accordance with Section 34 of the Judicature Law (2007 Revision) at the prescribed rate, at the date hereof amounting to KYD \$2,008.72 and continuing at the rate of KYD \$4.56 per day;
4. Alternatively, interest as aforesaid for such periods and at such a rate as the Court sees fit;
5. Costs.

Dated this 7th of December 2012

BROADHURST LLC

Broadhurst LLC

Attorneys-at-Law for the Plaintiffs

This Writ of Summons and Statement of Claim was issued by Broadhurst LLC, Attorneys-at-Law for the Plaintiffs, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, George Town, Grand Cayman, Cayman Islands, British West Indies.

INDORSEMENT

The amount claimed in respect of the breach of contract is KYD \$69,859.15 as principle and KYD \$7,248.81 as interest as at the 30th of November 2012, for a total amount of KYD \$77,107.96 and increasing at a compound rate of 2% per month. If within the time for returning the Acknowledgment of Service, the Defendant pays the Plaintiff or its Attorneys-at-Law the total amount claimed in principle and interest, the ad valorem fees, its legal costs and service and filing fees, further proceedings will be stayed. The money must be paid to the Plaintiff or to its Attorneys-at-Law.

STATEMENT REGARDING INTEREST

Pursuant to Contract

1. Pre judgment and post judgment interest upon the said principal sum is claimed pursuant to the agreed contractual rate of 2% per month on a compound basis;
2. This interest became payable from March 2012;
3. The total interest claimed is KYD \$7,248.81 as at the 30^h of November 2012.

Pursuant to the Judicature Law (2007 Revision)

1. Pre-judgment and post judgment interest upon the said principal sum is claimed pursuant to the Judicature Law (2007 Revision). The applicable rates are set out within the Schedule attached hereto;
2. The date on which the interest became payable was from April 2010;
3. The total interest claimed to the date hereof is KYD \$2,003.23.

Schedule of interest in accordance with Section 34 of the Judicature Law (2007 Revision)

Period	Days	Interest rate pursuant to Judicature Law	Principal amount	Interest due
30/Apr/10-26/Sept/11	514	5%	\$192.26	\$13.54
26/Sep/11-30/Nov/12	438	2.38%	\$69,666.89	\$1,989.69
Total				\$2,003.23

**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, George Town, Grand Cayman.

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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (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.

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 fourteen (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 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 steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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 2012

BETWEEN:

CAYMAN HEALTH LTD.

Plaintiff

-AND-

TRINCAY MEDICAL SERVICES LTD.

Defendant

ACKNOWLEDGEMENT 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

(Signed) _____

[Attorney] for

[Defendant in Person]

Address for service:

Please see 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 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.

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

BROADHURST LLC
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503 GT
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, BRITISH WEST INDIES

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