

No. 1

Writ of Summons (O.6, r.1)



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

Cause No. 416 of 2011

BETWEEN: STEVE JACKSON T/A JACKSON HEAVY EQUIPMENT SERVICES 1ST PLAINTIFF

MR STEVE JACKSON 2ND PLAINTIFF

MR JEROME JACKSON 3RD PLAINTIFF

AND: JAMES SAMUEL JACKSON 1ST DEFENDANT

JACKSON HEAVY EQUIPMENT SERVICES LTD 2ND DEFENDANT

TO: James Samuel Jackson, Esq
c/o Stuarts
Attorneys At Law
George Town
GRAND CAYMAN

AND TO: Jackson Heavy Equipment Services Ltd
Suite 25, Grand Pavillion Business Suites
West Bay Road, Grand Cayman



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 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 495G , George Town, Grand Cayman, the accompanying Acknowledgment 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 _____ day of October, 2011.

Re-issued this _____ day of April, 2013

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.

AMENDED STATEMENT OF CLAIM

- 1 The First Plaintiff is an individual who has successfully and effectively traded for over 14 years as “Jackson Heavy Equipment Services” which is a heavy equipment business, that has carried on and continues to carry on the business of excavators, suppliers of marl, fill, etc, all types of heavy equipment, providing bulldozers, loaders, heavy equipment transport etc. for approximately 40 years and has as its address P O Box 303, West Bay Grand Cayman Ph/fax 9493204 and cellular 916 2673. The business has always been operated and continues to be operated out of the district of West Bay .
- 2 The Second Plaintiff is the principal of the First Plaintiff, the father of the 3rd Plaintiff and the uncle of the 1st Defendant. At all material times, he operated a business with the 3rd Plaintiff, his son, in West Bay, under the terms of a Trade & business License, which business is styled “Steve Jackson t/a Jackson Heavy Equipment Services”.
- 3 The Third Plaintiff is the son of the 2nd Plaintiff and the cousin of the First Defendant, who has assisted his father in the operation of the First Plaintiff for a period in excess of 10 years.
- 4 The 1st Defendant is an Attorney at Law licensed to practise law in the Cayman Islands where he has practiced for approximately 18 years, and at the material time, pursuant to an ongoing oral agreement, he acted as the attorney on behalf of the 1st, 2nd and 3rd Plaintiffs. The 1st Defendant has also acted as attorney for the 1st, 2nd and 3rd Plaintiffs previously. He is the nephew of the 2nd Plaintiff and the cousin of the 3rd Plaintiff. He carries on his business as a sole legal practitioner at Suite No. 25, Grand Pavilion Business Suites, West Bay Road Grand Cayman.
- 5 The 2nd Defendant is a company incorporated by the 1st Defendant, with himself as the sole Director/Shareholder sometime in April, 2011, the exact date of which the Plaintiffs are unsure of.
- 6 Pursuant to an ongoing oral agreement, the 1st Defendant was appointed to act as attorney at law for the 1st, 2nd and 3rd Plaintiffs in a proposal which they were in the process of making to DECCO Ltd, which, as far as the Plaintiffs are aware, is a limited liability company owned by a Mr Dart. The Plaintiffs are also now aware that DECCO Ltd. is also a client of the 1st Defendant.
- 7 On or about February, 2011, the exact date of which the Plaintiffs are uncertain, the 1st, 2nd and 3rd Plaintiffs met with a Mr Nigel Bates, as a representative of DECCO Ltd/ Dart to discuss the possibility of their undertaking extensive excavation work on behalf of the said DECCO Ltd. at property located at Block 10A Parcel 50 also known as “Uncle Luke’s Pond”, which property had been

purchased by DECCO Ltd and which was adjacent to other property being excavated by the 1st, 2nd and 3rd Plaintiffs namely, Jackson Pond.

8 In furtherance of those discussions, the Plaintiffs were requested by a representative of DECCO Ltd./Dart to provide an estimate for the work involved in the said excavation of Uncle Luke's pond.

9 Consequently, and in accordance with the ongoing oral agreement with the 1st Defendant, on or about 1st March, 2011 the Plaintiffs compiled a written estimate for the said works which estimate was dated 1st March, 2011, a copy of which they provided to the 1st Defendant as their attorney at law for his review and advice.

10 On 7th March, 2011, the 1st Defendant, pursuant to the ongoing oral agreement to provide legal services to the Plaintiffs, sent an email to the Plaintiffs indicating that he had revised the "quotation letter" and "changed it up a bit" because he felt that it was necessary "to record as much details as possible at this stage, so that noone can say that they were confused about what (we) are proposing." The Plaintiffs will rely on the said proposal, email and revised letter for their full terms and legal effect.

11 The revised letter, as "revised" by the 1st Defendant, was hand-delivered to the offices of DECCO Ltd. on 8th March, 2011 on the headed-notepaper of the 1st Plaintiff, and signed by the 2nd Plaintiff. This document was subsequently included as the proposed "Exhibit B" to the Services Agreement for the blasting and excavation of Uncle Luke Pond, between "DECCO Ltd. and Jackson Heavy Equipment Services Ltd."

12 It was an expressed and/or alternatively an implied term of the ongoing oral agreement that the 1st Defendant would draft the necessary contract between the Plaintiffs and Decco Ltd relating to the excavation, blasting and stockpiling of the fill at the said Uncle Luke's Pond.

13 During one of the early discussions relating to the project, which the Plaintiffs had with the 1st Defendant, he pointed out to them that rather than be paid a fee for his legal services that he would like to get "something" from the contract. It was therefore agreed that he would obtain CI\$.50c on each cubic yard of "shot-rock" which was produced as compensation for his legal services.

14 During these early discussions the 1st Defendant also suggested to and advised the Plaintiffs that for liability reasons they should incorporate a company so that if they were sued as a result of the said contract, then their liability would be limited to those assets which that company owned, and that they "could not be cleaned out by Dart". He also advised that this is what Dart/Decco Ltd, would do and has done with all of their projects, in order to limit their own liability.

15 The Plaintiffs trusted the 1st Defendant and his legal advice and agreed with the 1st Defendant that such an entity should be incorporated. Implicit in the discussions was that the Plaintiffs would be the shareholders/directors of the company as it would be literally a continuation of the “unincorporated entity”, Jackson Heavy Equipment Services, and that they would use the 1st Defendant’s office as the registered office of the company and for any legal services necessary.

16 Subsequently the 1st Defendant explained to the Plaintiffs that the name of the new company would be “Jackson Heavy Equipment Services Ltd.” to which the Plaintiffs had no objection as they had traded under that same name for over 14 years, without the addition of the word “Ltd” at the end, and had already agreed that this company would be literally a continuation of the existing unincorporated entity.

17 The Plaintiffs continued to meet with the 1st Defendant to discuss the many revisions of the draft Contract, and also authorized him to negotiate on their behalf with Scotts Development Company, who would provide the blasting of the shot-rock as they had a blasting license.

18 The Plaintiffs trusted the 1st Defendant as their attorney and family member to act in their best interests in the said ongoing negotiations.

19 Previously, when excavating the Jackson Pond, the 1st Defendant, acting as the Plaintiffs’ attorney at law, successfully represented them in a matter relating to the excavation of that Pond, as can be seen from the letter from the 1st Defendant to the Chairman of the Central Planning Authority dated 23rd September, 2009 headed “Re: Continuation of Excavation at Jackson Pond” in which the 1st Defendant states at the first paragraph:

“I write on behalf of Mr Steven Jackson of Jackson Heavy Equipment Services in respect of the captioned matter.”

20 A copy of this letter was sent to the 1st and 2nd Plaintiffs as the clients of the 1st Defendant and they will rely on the contents of the said letter for its full terms and legal effect .

21 In fact when the said negotiations with DECCO Ltd./Dart were being advanced, the 1st Defendant was instructed by the Plaintiffs to pursue the permission to have the said Uncle Luke’s Pond excavated based on the previous successful application which he had made on the Plaintiffs’ behalf in the Jackson Pond application, which he did, as can be seen from his letter to the Chairman of the Central Planning Authority dated 29th March, 2011 headed “Continuation of Excavation at Uncle Luke’s Pond” in which he states:

“I write on behalf of Jackson Heavy Equipment Services in respect of the captioned matter.”

This letter was also copied to the 1st and 2nd Plaintiffs as clients of the 1st Defendant and it is the Plaintiffs belief that at the date and time of this letter the Second Defendant had not yet been incorporated.

22 It is also clear from the extract of the meeting held on 30th March, 2011 at 10am of the Central Planning Authority (CPA/06/11) item 6.1 that the 1st Defendant was representing the Plaintiffs, which extract states as follows:

“6.1 UNCLE LUKE POND

The Director summarized a letter from a local attorney that had been received regarding the ongoing excavation of Uncle Luke Pond. It was explained that this matter is virtually the same as the Jackson’s Pond situation that the Authority had dealt with in October, 2009 (CPA/26/09; item 7.4). The Authority considered the mater and determined that while not explicitly concurring with the attorney’s interpretation of the Water Authority Law, the excavation activity within the existing perimeter of Uncle Luke Pond has been ongoing for well over three years and is exempt from enforcement action per the Development and Planning Law (2008 Revision).”

23 In breach of the ongoing verbal agreement and his fiduciary duty to them, the Plaintiffs have discovered that the 1st Defendant has failed to carry out their instructions but instead in or about April, 2011, the 1st Defendant incorporated the 2nd Defendant, and rather than having the Plaintiffs as the Directors/Shareholders, he appointed himself as sole Director/Shareholder of the 2nd Defendant thereby effectively utilizing the name under which the Plaintiffs have traded for some time now, with its attendant goodwill, without their knowledge and/or consent and thereby diverted the benefit of the said contract from the Plaintiffs .

24 When confronted with this allegation, the 1st Defendant has sought to state that it was always the agreement that he would incorporate the 2nd Defendant with himself as the sole director/shareholder.

25 The Plaintiffs deny this and contend that had they known of the 1st Defendant’s intention and/or his actions in incorporating a company of which he is the sole Director/Shareholder, with their “trade name” that they have used to successfully trade for over 14 years, that they would never have agreed to that.

26 The Plaintiffs have also learnt that in his capacity as sole director/shareholder of the 2nd Defendant that the 1st Defendant has signed off on the contract with DECCO Ltd. and/or Crymble Landholding Ltd, a company which the

Plaintiffs understand has been incorporated for the purpose of this transaction, by DECCO Ltd./Dart.

27 The Plaintiffs also now understand that the 1st Defendant, despite his long-standing career solely as an attorney at law, has recently purchased heavy equipment and other ancillary equipment to carry out the said works pursuant to the contract, knowing that in or about 20th July, 2010 he provided legal advice to one of his and the Plaintiffs' relatives in order to facilitate the loan facilities for the Plaintiffs' purchase of heavy equipment for approximately C\$450,00.00 for the First Plaintiff in order for them to continue with projects such as that which forms the basis of this action .

28 By reason of the premises the Plaintiffs have suffered loss and damage.

Particulars of loss and Damage

Full particulars will be supplied after discovery herein.

29 Wherefore the Plaintiffs claim:

- (a) A Declaration that at the material times, the 1st Defendant was the legal advisor of the Plaintiffs pursuant to an ongoing oral agreement between the Plaintiffs and the 1st Defendant;
- (b) ~~An injunction to prevent the 1st Defendant from continuing as the sole Director/Shareholder of the 2nd Defendant;~~
- (c) A Declaration that the 1st and 2nd Plaintiffs are the lawful Directors/Shareholders of the 2nd Defendant;
- (d) Further or alternatively ; Damages for Breach of Contract.
- (e) Statutory Interest
- (f) Costs
- (g) Further or other relief.

~~Dated this 19th day of October, 2011~~
Re-dated this 10th day of April, 2013

Brooks & Brooks
BROOKS & BROOKS
ATTORNEYS AT LAW
FOR THE PLAINTIFFS HEREIN

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM was filed by Brooks & Brooks, Attorneys At law whose address for service of process is Two , Artillery Court, George Town, GRAND CAYMAN

FORM 8

Acknowledgement of Service of Writ of Summons Rule (O.12 r.3)

DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS

IF YOU INTEND TO INSTRUCT AN ATTORNEY TO ACT FOR YOU GIVE HIM THIS FORM IMMEDIATELY

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 signed by the Defendant and his Attorney (if any) and must be delivered or sent by post to the Law Courts, P.O. Box 495 GT, 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 acknowledgement of 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 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 money by instalments or otherwise.

See over notes for guidance

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

**Brooks & Brooks
Attorneys At Law
P O Box 1355
GRAND CAYMAN KY 1 - 1108**

(Two, Artillery Court, Shedden Road, George Town, Grand Cayman)

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

- 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 is acknowledged accordingly

Signed: _____

Attorney For:

(Defendant in Person)

Address for Service

Please complete overleaf
