

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 51 OF 2013

BETWEEN:

BEVERLY BANKS

PLAINTIFF

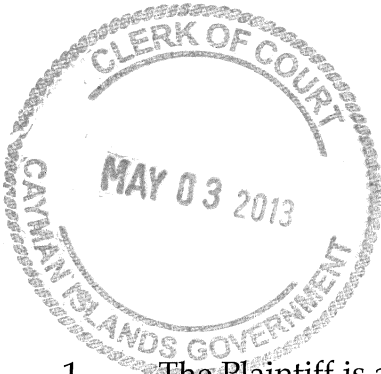
AND:

ALTHEA JUANITA RHODEN

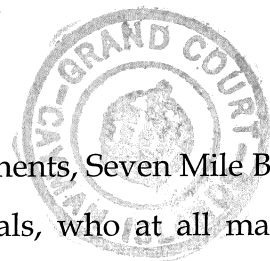
1ST DEFENDANT

JEFFREY DENNIS RHODEN

2ND DEFENDANT



AMENDED STATEMENT OF CLAIM



1. The Plaintiff is a Caymanian resident of Britannia Apartments, Seven Mile Beach. The First and Second Defendants are Jamaican nationals, who at all material times were married to one another and working in the Cayman Islands. They presently reside together at 114 Reverend Blackman Road, West Bay.
2. From sometime in 1994 until late 2004, the First Defendant provided services through an agency to the Plaintiff as a cleaner and housekeeper.
3. In September or October 2004, the Plaintiff employed the First Defendant directly and held her work permit. There was no written contract of employment, instead the terms of the employment contract were agreed orally. The First Defendant's duties were to provide services to the Plaintiff as a cleaner and housekeeper. The First Defendant always had Thursdays and Sundays off unless otherwise agreed in advance. The arrangement was very flexible and the First Defendant would assist the Plaintiff as and when necessary. Initially the First Defendant was paid

CI\$1,000 per month, but this was later increased to CI\$1,200 per month with effect from early 2005.

4. During the period of the First Defendant's employment with the Plaintiff, the First Defendant resided with the Plaintiff in the Plaintiff's home at Britannia Apartments. For the purposes of and in connection with the First Defendant's employment, the Plaintiff provided the First Defendant with a luxury private bedroom and ensuite bathroom.
5. At the commencement of the First Defendant's employment with the Plaintiff, the Second Defendant was permitted by the Plaintiff to reside with the First Defendant at the Plaintiff's home. However, the Plaintiff was troubled by frequent boisterous arguments between the Defendants and became increasingly suspicious that the Second Defendant was subjecting the First Defendant to domestic violence. The Plaintiff required the Second Defendant to leave (and he did leave) in early 2012.
6. On 4 October 2012, the Plaintiff terminated the First Defendant's employment, and required her to leave her home. The Defendant has not lived in the Plaintiff's residence since 6 October 2012.

RETENTION OF VEHICLE IN BREACH OF TRUST

7. The Plaintiff is not a confident driver, and through her own choice, has not driven for approximately twenty years.

8. At the commencement of the First Defendant's employment with the Plaintiff, the First Defendant was unable to drive and did not hold a drivers' licence.
9. In early 2005, the Plaintiff agreed to pay for the First Defendant's driving lessons and examinations. The Plaintiff agreed to pay for the lessons and examinations in consideration for the First Defendant's oral agreement that, upon the First Defendant obtaining her licence, an additional employment duty would be for the First Defendant to drive the Plaintiff from place to place at the Plaintiff's request.
10. Pursuant to this arrangement, the Plaintiff paid for the First Defendant's driving lessons and her examinations. The First Defendant passed her driving test at the second attempt on a date sometime before 16 June 2005.
11. On 16 June 2005, for the purpose of the First Defendant's new employment duty as the Plaintiff's driver, the Plaintiff purchased a brand new white Toyota Land Cruiser vehicle (VIN# JTEBU25J105014367, registration 111 426) (the "**Vehicle**") from Vampt Motors for CI\$41,000.
12. At the time the Vehicle was purchased, it was orally agreed between the Plaintiff and the Defendants that the Vehicle would be registered with the Vehicle & Drivers Licensing Department in the Second's Defendant's name for the sole and specific purpose of allowing the First Defendant to drive the Plaintiff from place to place in accordance with the First Defendant's employment duties with the Plaintiff (the "**Agreement**").
13. The Plaintiff was mistakenly of the understanding that the Vehicle could not be registered in her own name, as she did not have a licence. The Vehicle was registered to the Second Defendant for reasons of convenience only.

14. In accordance with and pursuant to the Agreement, the Vehicle was registered in the name of the Second Defendant by the Department of Vehicle & Drivers' Licensing with a plate number 111 426. Until the Plaintiff terminated the First Defendant's employment, the Plaintiff paid for the Second Defendant to be insured as a driver of the Vehicle, with the First Defendant as a named driver under the policy.
15. From 16 June 2005 until the termination of the First Defendant's employment the Plaintiff paid for the petrol and the maintenance of the Vehicle.
16. In the premises it was the common intention of the Plaintiff, the First Defendant and the Second Defendant, or alternatively, it is to be inferred from the facts pleaded at paragraphs 7 to 15 above that:
 - i) During the course of the First Defendant's employment with the Plaintiff, the Second Defendant would hold the Vehicle in trust for the Plaintiff to be used for the purpose of and in connection with the First Defendant's employment; and
 - ii) in the event of the termination of the First Defendant's employment the Second Defendant would deliver up the Vehicle to the Plaintiff upon the direction of the Plaintiff.
17. The First Defendant's employment with the Plaintiff came to an end on 4 October 2012. On or about the time of the termination of the First Defendant's employment, the Defendants (or others acting on their behalf) without the Plaintiff's knowledge, permission or consent, drove the Vehicle away from the Plaintiff's driveway and have not returned it.

18. The Plaintiff's attorneys wrote to the Second Defendant on 10 January 2013 demanding that the Second Defendant deliver up the Vehicle to the Plaintiff. The Second Defendant has failed or otherwise refused to comply with this demand.
19. In breach of the Agreement, the Defendants have refused to deliver up the Vehicle to the Plaintiff and continue to enjoy the use of the Vehicle without the permission of the Plaintiff.

PARTICULARS OF LOSS FOR BREACH OF TRUST

20. The value of the Vehicle as at 4 October 2012 was CI\$14,000.

AND the Plaintiff Claims

- i) a Declaration that the Vehicle is held by the Second Defendant upon trust for the Plaintiff;
- ii) an Order directing the Second Defendant to deliver up the Vehicle and the keys to the Plaintiff's attorneys;
- iii) an Order directing the Second Defendant to sign and execute all vehicle registration documents necessary to effect the transfer of the Vehicle to the Plaintiff;
- iv) in the alternative to (iii) above, an Order directing the Director of the Department of Vehicle & Drivers' Licensing to effect the transfer of the Vehicle to the Plaintiff upon service on him of a Judgment or Order to that effect by this Honourable Court;

- v) an Order that the Second Defendant account to the Plaintiff for the cost of any repairs, servicing or other work that may be required to restore the Vehicle to the condition it was in on 4 October 2012 as determined and quoted by Vampt Motors or their agents, or alternatively to pay CI\$14,000 in damages to the Plaintiff being the value of the Vehicle at that time should it be deemed to beyond economical repair by Vampt Motors or their agents;
- vi) In the alternative to (ii), (iii), (iv) and (v) above, damages in the sum of CI\$14,000 being the value of the Vehicle as at 4 October 2012;
- vii) Interest in accordance with section 34 of the Judicature Law (2007 Revision) for such period and at such rates as to this Honourable Court seems just;
- viii) Costs; and
- ix) Further or other relief.

BREACH OF LOAN AGREEMENT

- 21. By an agreement made in writing dated 11 May 2009, the Plaintiff loaned CI\$20,000.00 to the First Defendant (the "Loan Agreement").
- 22. The terms of the Loan Agreement were that: it was interest free and that it would be repaid at the rate of CI\$400 until the loan was repaid. It was the common

intention of the Plaintiff and the First Defendant that the repayments would commence on 11 June 2009.

23. The only circumstances provided in the Loan Agreement in which the First Defendant would be released from her obligation to repay the loan, would be in the event that the Plaintiff predeceased the First Defendant .

24. In breach of the Loan Agreement, the First Defendant has failed to repay any of the installments and is presently CI\$18,000.00 in arrears. The failure by the First Defendant to repay any portion of the loan constitutes a fundamental breach of the Loan Agreement which entitles the Plaintiff to terminate the Loan Agreement and to demand immediate repayment of the entire sum loaned.

Demand Letter

25. By letter to the First Defendant dated 7 March 2013 the Plaintiff demanded repayment of the loan. Despite this demand, the First Defendant has failed or refused to repay the loan or any portion of it.

26. As a result of the First Defendant's Breach of the Loan the Plaintiff has suffered loss.

AND The Plaintiff Claims:

i) the sum of CI\$20,000;

- ii) Interest in accordance with section 34 of the Judicature Law (2007 Revision) for such period and at such rates as to this Honourable Court seems just;
- iii) costs; and
- vi) Further or other relief.

CONVERSION OF, AND TRESSPASS TO, THE GOLD BANGLE

- 27. The Plaintiff is and was at all material times the owner of a wide banded 18 carat yellow gold bangle studded with 1 1/2 carats of diamonds (the "Gold Bangle") which was given to the Plaintiff as a gift by her late husband.
- 28. The Gold Bangle has a valued of approximately CI\$1500.
- 29. One day during the employment relationship, the Plaintiff allowed the First Defendant to try on the Gold Bangle. However the Plaintiff did not at any time give permission to the First Defendant to borrow the Gold Bangle or otherwise retain it.
- 30. The Plaintiff made it clear to the First Defendant that the Gold Bangle was the Plaintiff's and the First Defendant was to return it to the Plaintiff. The First Defendant took the Gold Bangle to her room to try it on.
- 31. In August 2012, The Plaintiff requested that the First Defendant return the Gold Bangle to her. The First Defendant explained to the Plaintiff that she did not have it with her as she had taken the Gold Bangle to Jamaica to have it widened for the First Defendant's own use. The First Defendant further explained that the Gold Bangle was still in Jamaica. The Plaintiff had never permitted the First

Defendant to have the Gold Bangle widened, or to retain it for the First Defendant's own use.

Demand for the Return of the Gold Bangle

32. Despite numerous oral demands, The First Defendant has failed to return the Gold Bangle and deliver it up to the Plaintiff.
33. The First Defendant visited Jamaica in August 2012. The First Defendant explained to the Plaintiff upon her return in September 2012 that the First Defendant now does not know where to locate the Gold Bangle.
34. The Plaintiff's claim is for damages against the First Defendant for wrongfully converting the Plaintiff's Gold Bangle to her own use, and for trespass by her interference with the Gold Bangle and arranging to have the Gold Bangle widened without the Plaintiff's permission.

AND The Plaintiff Claims

- i) An Order that the First Defendant deliver up the Gold Bangle to the Plaintiff;
- ii) An Order that the First Defendant indemnify the Plaintiff for the cost of narrowing the Gold Bangle so that the Plaintiff may wear it;
- iii) in the alternative to (i) and (ii) above, the Plaintiff claims the value of the Gold Bangle in the sum of CI\$1,500;

- iv) Interest in accordance with section 34 of the Judicature Law (2007 Revision) for such period and at such rates as to this Honourable Court seems just;
- v) Costs; and
- vi) Further or other relief.

BREACH OF CONDITION OF LICENCE

DAMAGE TO THE PLAINTIFF'S BAMBOO FLOORING

35. During the employment relationship, The First Defendant resided with the Plaintiff at the Plaintiff's home, and slept in a luxury bedroom (the "**First Defendant's Room**").
36. The granting by the Plaintiff to the First Defendant of permission to occupy the First Defendant's Room constituted a licence to reside in the First Defendant's Room for the duration of the employment relationship. It was an implied condition of this licence that the First Defendant would not cause or permit to be caused any damage to the bedroom and the contents which exceeded that which might be expected for normal wear and tear and reasonable use, and to make good for any such damage.
37. Two years after the First Defendant had moved into the Plaintiff's home, the Plaintiff had bamboo flooring (the "**Bamboo Flooring**") installed in all the bedrooms in her home, including in the First Defendant's Room. At the time of its installation in the First Defendant's Room, the Bamboo Flooring was in immaculate condition.

38. In breach of the implied condition of the licence, the First Defendant caused, or permitted, damage to the Bamboo Flooring, leaving deep gouges which far exceed that which could not have resulted from reasonable use or wear and tear. The First Defendant has further failed to make good the damage she caused or permitted to be caused.

39. The cost of repairing the Bamboo Flooring is estimated to be CI\$4,000.

AND the Plaintiff Claims

- i) the cost of repairing the bamboo flooring in the sum of CI\$4,000.
- ii) Interest in accordance with section 34 of the Judicature Law (2007 Revision) for such period and at such rates as to this Honourable Court seems just;
- iii) costs; and
- iv) Further or other relief

CONVERSION OF MISCELLANEOUS ITEMS

40. During the period the First Defendant was resident in the Plaintiff's home, the following items belonging to the Plaintiff were used by the First Defendant with the permission of the Plaintiff:

- i) A king-size quilted mattress cover valued at CI\$145;
- ii) A queen-size quilted mattress cover valued at CI\$125; and
- iii) Two Nokia mobile telephones and chargers valued at CI\$100 each;

41. Since the Plaintiff terminated the First Defendant's employment on 4 October 2012, the items listed at paragraph 40 above have not been returned by the First Defendant.

Demand Letter

42. On 7 March 2013 the First Defendant was served with correspondence from the Plaintiff's attorneys withdrawing the Plaintiff's permission for the First Defendant to hold the items listed at paragraph 40 above and demanding their return. The First Defendant has failed or otherwise refused to comply with this demand.

43. The items listed at paragraph 40 above have been converted by the First Defendant for her own use, occasioning loss to the Plaintiff.

AND the Plaintiff Claims

- i) An Order that the First Defendant deliver up the aforementioned items to the Plaintiff; or
- ii) in the alternative to (i) above, the Plaintiff claims the value of the aforementioned items in the sum of CI\$470;

- iii) Interest in accordance with section 34 of the Judicature Law (2007 Revision) for such period and at such rates as to this Honourable Court seems just;
- iv) Costs; and
- v) Further or other relief.

Dated this 14th 3rd day of ~~February~~ May 2013



MOURANT OZANNES

Attorneys-at-Law for the Plaintiff

THIS AMENDED STATEMENT OF CLAIM was filed by Mourant Ozannes, Attorneys-at-Law for and on behalf of the Plaintiff whose address for service is 94 Solaris Avenue, Camana Bay, P.O. Box 1348, Grand Cayman, KY1-1108. 8004775/56618031/1