

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>320</sup> OF 1997

BETWEEN:

GOLFCO LTD.

PLAINTIFF

AND:



GREEN THUMB NURSERY & LANDSCAPING LTD. and  
GODFREY DAWKINS

DEFENDANT

WRIT OF SUMMONS

TO: Green Thumb Nursery & Landscaping Ltd

AND TO: Godfrey Dawkins



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, P.O. 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 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

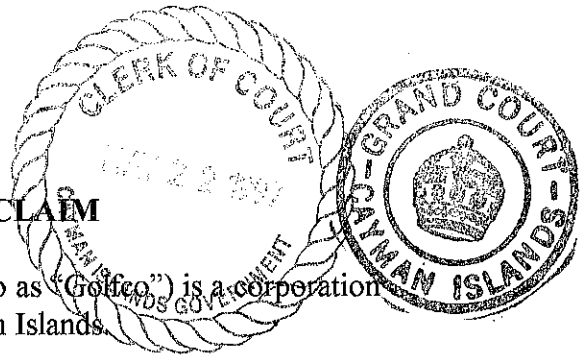
Issued this <sup>22nd</sup> day of <sup>May</sup> 1997

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.

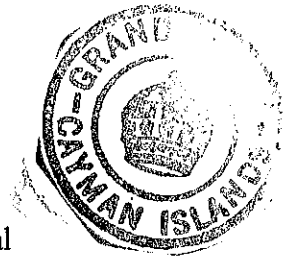
**IMPORTANT**

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

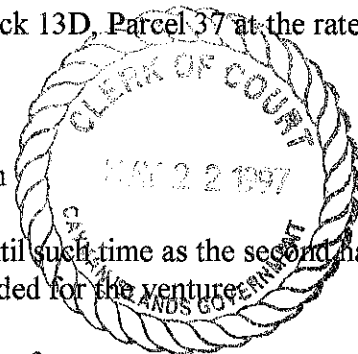
**STATEMENT OF CLAIM**



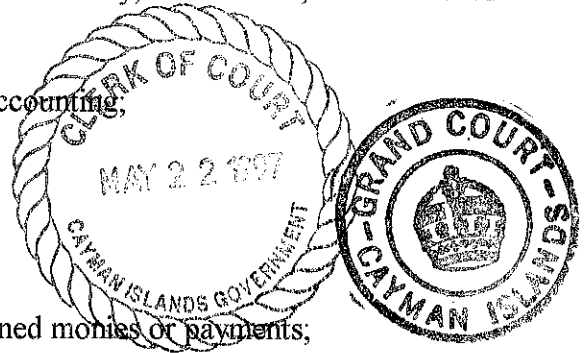
1. The Plaintiff, Golfco Ltd (hereinafter referred to as "Golfco") is a corporation incorporated pursuant to the laws of the Cayman Islands.
2. The Defendant, Green Thumb Nursery & Landscaping Ltd (hereinafter referred to as "Green Thumb") is a company incorporated pursuant to the laws of the Cayman Islands and at all material times carried on business as a green house, nursery and landscaping operation in the city of George Town, Grand Cayman and elsewhere.
3. The Defendant, Godfrey Dawkins (hereinafter referred to as "Dawkins") is an officer and a director of Green Thumb and its operating mind and management.
4. At all material times Dr. Harold Brown was authorized to advance monies, on the behalf of Golfco, to Green Thumb.
5. Brown met Dawkins in about 1991 shortly after which time Dawkins became employed by Brown or one of his companies as a handyman and caretaker.
6. In about 1992 Dawkins entered into the nursery and landscaping business on a relatively small scale. In or about that time Dawkins first approached Brown for the purpose of Brown becoming a participant in the nursery and landscaping business by way of Brown, or one of his companies, financing Dawkins and his nursery and landscaping business.
7. In or about April of 1993 as a result of discussions entered into between Dawkins and Brown, a Joint Venture Agreement was entered into between Dawkins, Green Thumb and Golfco. The material terms of the Joint Venture Agreement included the following:
  - a. That Green Thumb would thereafter be the Joint Venture entity and would carry on business as a nursery and landscaping business;
  - b. Initial capital would be provided or guaranteed by Golfco;
  - c. The ownership interests in the Joint Venture and its net profits would be divided equally between Dawkins and Golfco;
  - d. Loans to or payments owed by the Joint Venture would be secured by all present and after acquired property of Dawkins or Green Thumb;
  - e. The Joint Venture would, upon request, execute a promissory note in support of loans or payments;



- f. Proper financial records would be accessible to the parties and a general accounting of profits, losses and other financial matters would be prepared within 120 days of a year end being December 31 of each year.
  - g. Loan repayments to Golfco would have priority over all other payments save for taxes or fees paid to government entities.
  - h. The Joint Venture would commence upon execution of the Joint Venture Agreement and continue as long as the venture had business activities.
  - i. Dawkins shall be limited to a draw of \$500.00 and a salary of \$500.00 per month.
  - j. The Joint Venture would pay rent to Golfco for the rental of one half of the real property described as George Town Central, Block 13D, Parcel 37 at the rate of
    - i. \$0.00 first month of operation
    - ii. \$250.00 second month of operation
    - iii. \$500.00 each subsequent month until such time as the second half of Parcel 37 was used or needed for the venture
    - iv. \$750.00 each and every month thereafter.
  - k. No person could lease, sell hypothecate, loan, write checks or otherwise dispose of any Joint Venture property without consent of the Joint Venture partners for any value exceeding \$500.00
8. The Plaintiff pleads and relies upon the above terms of the Joint Venture Agreement and others as set out therein.
9. The parties to the Joint Venture Agreement agreed that an advance made in April 6, 1993 by Dr. Hal Brown of \$15,000.00 would be considered a loan under the Joint Venture Agreement. The said advance was to accrue interest at the rate of 10 per cent per annum.
11. The Defendant, Dawkins, was personally bound to perform or to insure the performance of all obligations as set out in the Joint Venture Agreement by virtue of his being personally a party to that Agreement.
12. At all material times, Dawkins represented himself as being indistinguishable from Green Thumb in matters pertaining to the operation of the nursery business.



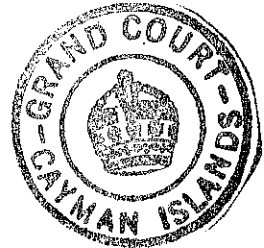
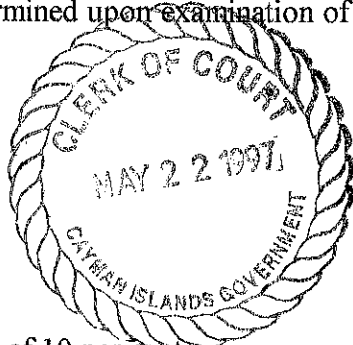
13. In accordance with the Joint Venture Agreement and in the pursuance of the business of the Joint Venture the following events occurred:
  - a. Golfco or Brown advanced as loans to the Joint Venture the sums of \$15,000.00 and \$24,000.00;
  - b. The Joint Venture commenced and continued with business until at least the date of this Writ of Summons.
  - c. The Joint Venture occupied lands formerly belonging to Golfco for which rents were payable pursuant to the Joint Venture Agreement.
  
14. The Defendants, Green Thumb and Dawkins or, alternatively, one of them, have breached the Joint Venture Agreement in that:
  - a. They have failed to provide to Golfco an accounting;
  - b. They have failed to repay loaned monies;
  - c. They have failed to pay profits;
  - d. They have failed to provide security on loaned monies or payments;
  - e. They had failed to pay rent;
  - f. They have failed to paid to Dawkins sums exceeding the limits as set out in the Joint Venture Agreement;
  - g. They have paid to third parties sums exceeding \$500.00 without the consent of Golfco.
  
15. As a result of the forgoing, Green Thumb and Dawkins are liable to the Plaintiff for sums presently unknown but which shall be provided prior to trial.
  
16. Further and alternatively, Dawkins was the sole operating mind of Green Thumb and used Green Thumb as his alter ego and, accordingly, is personally responsible for all obligations owed to the Plaintiff by Green Thumb
  
17. Further and alternatively, Dawkins aided, abetted and induced Green Thumb to breach the Joint Venture Agreement as set out above.



18. Further and alternatively, Dawkins was unjustly enriched by the said breaches having received the benefit of salary, profits, free rent and other items the precise extent and details of which being unknown to the Plaintiff as a result of the Defendants' failure to provide an accounting in accordance with the Joint Venture Agreement. As a result of such unjust enrichment the Plaintiff is entitled to restitution to the extent of said enrichment of either Dawkins or Green Thumb or both.
19. Further and alternatively, Dawkins breached a fiduciary duty owed to Golfco by either participating, permitting or conducting the said breaches in paragraph number 13, above.
20. In May of 1996, Green Thumb acquired the lands and premises described as George Town Central Block 13D, Parcel 37. Pursuant to the Joint Venture Agreement, the Plaintiff is entitled to this property as security.
21. The Plaintiff claims entitlement to interest from the Defendants at a rate of 10 per cent per annum on the sum of \$15,000.00 advanced on June 4, 1993 as was agreed in the Joint Venture agreement.
22. Further and alternatively, the Plaintiff claims entitlement to interest upon all damages pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rates of Interest) Rules 1996 at the rate as prescribed of 7 3/8% or at such other rate as may be prescribed or as this Honourable Court deems just calculated from the date of that the cause of action arose as may be determined upon examination of the accounts of the Joint Venture.

AND THE PLAINTIFF claims:

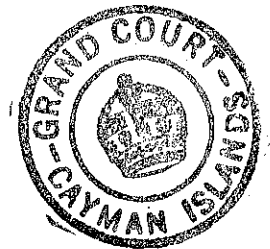
1. Damages for Breach of Contract;
2. Interest from the Defendants at a rate of 10 per cent per annum on the sum of \$15,000.00 advanced on June 4, 1993 as was agreed in the Joint Venture agreement;
3. Interest upon all damages pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rates of Interest) Rules 1996 at the rate as prescribed of 7 3/8% or at such other rate as may be prescribed or as this Honourable Court deems just calculated from the date of that the cause of action arose as may be determined upon examination of the accounts of the Joint Venture;
4. Mesne Profits;



5. A declaration that the Plaintiff is entitled to security on the property described as George Town Central, Block 13D, Parcel 37, and such other property that may be owned by the Defendants;
6. An Order for Specific Performance requiring the Defendants to give security on the property described as George Town Central, Block 13D, Parcel 37, and such other property that may be owned by the Defendants;;
7. An interim and final order requiring the Defendants to provide a full accounting of all matters pertaining to the Joint Venture;
8. Rent for George Town Central Block 13D, Parcel 37 until May 1996 at the rate as specified in the Joint Venture Agreement
9. Costs; and
10. Such further and other relief as Counsel may request and that this Honourable Court may deem just.

Dated: May 22, 1997.

  
COLLINS BROADHURST & FURNISS  
Attorneys-at-Law for the Plaintiff



This Writ of Summons was issued by Collins Broadhurst & Furniss whose address for service is Collins Broadhurst & Furniss, Attorney-at-Law, P.O. Box 2503, George Town, Grand Cayman, Cayman Islands, British West Indies, Attorneys for the Plaintiff.

**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, P.O. Box 495, G.T. 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 not 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 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 within 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 fourteen 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.

**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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 320 OF 1997

Between:

GOLFCO LTD.

Plaintiff

-and-

GREEN THUMB NURSERY & LANDSCAPING LTD. and  
GODFREY DAWKINS

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 judgement being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.*

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)  
Yes [ ] No [ ]

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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 judgement entered by the Plaintiff (*tick box*)  
Yes [ ]

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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 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.

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

**COLLINS, BROADHURST & FURNISS  
ATTORNEYS-AT-LAW  
P.O. BOX 2503 ELIZABETHAN SQUARE  
GEORGE TOWN, GRAND CAYMAN  
BRITISH WEST INDIES**

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

[Empty box for Defendant's Attorney indorsement]