

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ⁴¹⁰ of 2013

BETWEEN:

HELEN MANZANO

PLAINTIFF

AND

ESHORE LTD (trading as Eshore Cayman Ltd)

DEFENDANT



WRIT OF SUMMONS

TO: **Eshore Ltd (trading as Eshore Cayman Ltd)**

c/o Focus Management

10 Cayman Center

Dorcy Drive

Grand Cayman

PO Box 32161

Cayman Islands, KY1-1208

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's Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement of Service within the time stated, or if you return the Acknowledgement of Service 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 18th November 2013

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 Acknowledgement of Service are given with the accompanying form.

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STATEMENT OF CLAIM

THE PARTIES

1. At all material times the Plaintiff, a British national, was an Information Technology consultant with extensive project management and analyst experience in software upgrades and migrations.
2. At all material times the Defendant, a company incorporated in the Cayman Islands with its headquarters in the Channel Islands, carried on business in Grand Cayman providing email archiving, online backup and disaster recovery solutions to its clients.

THE CONTRACT

3. By a written contract of employment dated 27 March 2013 [“**the Contract**”] the Plaintiff was employed by the Defendant as a Technical Sales Representative working with the Defendant’s Cayman Sales Department.
4. The express terms of the Contract were *inter alia*, as follows:
 - (i) Clause 7 provided that for the first year of service the Plaintiff was to receive a fixed salary of US\$65,000 per annum payable by equal monthly instalments of US\$5,416.66 on the last business day of every month. The Plaintiff was also to receive a single relocation contribution of US\$3,000 in addition to her airfare travel to the Cayman Islands.

(ii) The third paragraph of Clause 7, entitled "Miscellaneous" further provided that the Plaintiff's employment would commence in the Defendant's office in St Helier, Jersey on 8 April 2013 for training and would continue in its Cayman office from 11 May 2013. The Plaintiff's performance was to be reviewed by management meetings every eight weeks for the duration of her probation period which was to last six months. After a successful six-month review a commission schedule was to be presented to the Plaintiff and incorporated into her salary plan.

(iii) Clause 9 of the Contract provided that the Plaintiff was to be entitled to 20 days' vacation in each holiday year. The Plaintiff's holiday year corresponded to a calendar year. The Plaintiff's vacation entitlement was to accrue month by month.

(iv) Clause 9 of the Contract also provided the Defendant would obtain an initial six-month work visa for the Plaintiff, and thereafter would apply for a full two-year work visa on her behalf.

(v) Clause 12 of the Contract provided that the Plaintiff would be required to join the Defendant's pension scheme, and that 5% would be deducted from her monthly salary by way of employee pension contribution which would be matched by the Defendant.

(vi) Clause 13 of the Contract in its entirety provided verbatim as follows:

"Termination of Employment

The employment of the Employee shall terminate automatically in the event that the Employee ceases to be the holder of a valid work permit.

The employment of the Employee may be terminated by the Company without notice or payment in lieu of notice if the Employee is guilty of any gross default or misconduct in connection with or affecting the business of the Company or in the event of any breach or non-observance by the Employee of any of the stipulations contained in this Contract which is materially detrimental to the Company's interest.

Other than as stated above, either party may at any time terminate this Contract of Employment upon giving to the other sixty (60) days [sic] notice in writing."

For the avoidance of any doubt, clause 13 of the Contract contained no provision for an alternative or reduced period of written notice during the Plaintiff's six-months probationary period.

(vii) Clause 15 of the Contract provided that the Contract was to be governed by and construed in accordance with the laws of the Cayman Islands, and subject to the jurisdiction of the Cayman Court.

5. It was an implied term of the Contract (as being obvious) that if the Plaintiff had not taken all her accrued vacation leave entitlement at the time her Contract was terminated including such leave as would have accrued during her notice period, she would be entitled to monetary compensation in lieu of such contractual vacation entitlement at the equivalent of her usual daily rate calculated by dividing her monthly salary by an average of 22 working days per month.

6. It was further an implied term of the Contract (in order to give business efficacy thereto) that in light of the Plaintiff's long distant relocation from the UK, the considerable effort and personal expense incurred by her to assume her employment with the Defendant in the Cayman Islands and in reliance on the reasonable continuation of such employment for at least six months (and thereafter subject to a full work permit being obtained), that her Contract would not be terminated on trivial or insubstantial grounds.

7. The Plaintiff will rely on the express terms and the implied terms of the Contract for their full terms and effect.

PERFORMANCE OF THE CONTRACT BY THE PLAINTIFF

8. Pursuant to the Contract and in reliance on the express and implied terms therein, in late March and April 2013 the Plaintiff took all necessary steps to attend for training in the Channel Islands, and thereafter to relocate to the Cayman Islands to assume her employment with the Defendant. She surrendered the lease on her London apartment, sold her UK car, resigned from her position as an IT consultant and project manager based in London, declined new employment offers made to her in London and in April 2013 travelled to St Heller Jersey for her training in the Defendant's headquarter office.

9. The Defendant was aware of the steps being taken by the Plaintiff to relocate to assume her employment in the Cayman Islands, since by an email dated 26 April 2013 sent to Andrew Jarrett [“Mr Jarrett”], Chief Commercial Officer of the Defendant's Jersey office, copying Polly Pickering [“Mrs Pickering”] director and regional manager of the Defendant in the Cayman Islands and Caribbean, the Plaintiff itemised the significant out-of-pocket expenditure she had incurred and would incur in the future (in excess of the contractual allowance of US\$3,000) in relocating to Grand Cayman, in the expectation of employment with the Defendant for a

minimum of six months (the duration of her temporary work permit) and thereafter for as long as a work permit could be obtained for her.

10. Pursuant to the Contract, the Plaintiff successfully completed two induction weeks in Jersey, trained specifically by another employee of the Defendant, Ms Loretta Taberman as well as other members of the Defendant's Jersey based staff in the systems and services the Defendant offered. Mr Jarrett, Ms Taberman and other staff at the Jersey office appeared entirely satisfied with the Plaintiff's skill-set and aptitude for her continuing role with the Defendant in the Cayman Islands whilst individually warning her that she would face certain management challenges in such employment, specifically in dealing with Mrs Pickering who was said to be both difficult to work for and disorganised.

11. After the completion of her 2 weeks' training in Jersey, the Plaintiff relocated to the Cayman Islands and began working in the Defendant's Cayman office on Monday 6 May 2013.

12. From Monday 6 May to Friday 24 May 2013 the Plaintiff undertook the following tasks:

- (i) Routine administrative tasks for Mrs Pickering such as data entry;
- (ii) Updating client details and a client data base from a list provided by Mrs Pickering, including telephoning 200 people to RSVP for a client event;
- (iii) Attending a total of 4 client meetings with Kevin Higgs, another IT specialist employed by the Defendant in the Cayman Islands ["**The Client Meetings**"];
- (iv) Providing 2 clients with quotes for enhanced services which they had respectively requested during the Client Meetings.
- (v) Helping to organise the signage for the windows of the Defendant's office.

13. At no time on or prior to Friday 24 May 2013 was the Plaintiff asked by the Defendant to complete any task of any technical complexity whatsoever or for which she would have required any of her extensive technical skills or knowledge beyond a basic technical understanding of the Defendant's services.

14. Between 6 May and Friday 24 May 2013 the Plaintiff attempted to enquire of Mrs Pickering about the nature of her commission package and more specifically whether the Plaintiff would be entitled to receive any commission in respect of the two potential sales from the Client Meetings, if they were ultimately concluded. In response to these enquiries, Mrs Pickering initially responded that there was no commission as such but "*more of a reward due to closing a deal*". When the Plaintiff sought further clarification, Mrs Pickering requested the Plaintiff (a) to book a lunch for them both in Casanova's restaurant on Monday 27th May 2013 and (b) to send her an email detailing the matters (including the Plaintiff's expectations in terms of commission) that the Plaintiff had discussed with Mr Jarrett during her training time in Jersey. The Plaintiff complied with both requests, and in an email, which is now in the

possession of the Defendant, detailed *inter alia* the following representations made by Mr Jarrett about her role in Cayman in answer to concerns raised by the Plaintiff:

- (i) the Plaintiff's role would not be merely a support role to Mrs Pickering and within six months the Defendant's management expected the Plaintiff to be selling in the greater Caribbean market, and this is what Mrs Pickering envisaged too.
- (ii) The Plaintiff was certainly to receive commission and the Defendant's management was expecting the Caribbean market to expand by 30-40% so there was considerable potential for earning significant commission.

TERMINATION OF THE CONTRACT

15. The Plaintiff received a text message from Mrs Pickering on Monday 27th May 2013 informing her that Mrs Pickering had alarmed the office, and instructed the Plaintiff not to go there before her. Upon arrival at the office Mrs Pickering asked the Plaintiff to hand over her Company Blackberry phone on the pretext of something to do with "the account."

16. Later at Casanovas restaurant Mrs Pickering thanked the Plaintiff for sending the email detailing her discussions with Mr Jarrett. She then handed the Plaintiff a letter of termination of employment dated 27 May 2013 ["**The Termination Letter**"], and said it was "regrettable" but the Plaintiff was "*not a good fit for the organisation*", and that by revealing her expectations as confirmed by Mr Jarrett in Jersey, she had "*talked herself out of a job*". Mrs Pickering added that the Plaintiff was not as "*technically skilled as they had previously thought*" without giving any basis for such belief, since the Plaintiff had not been required by the Defendant to undertake anything other than routine administrative work apart from the Client Meetings since commencing her employment in the Cayman Islands.

17. The Termination Letter stated "*for reasons discussed with you on May 27th, 2013 we have regrettably determined that contrary to expectations you are not a good fit within our organization, therefore [the Defendant] is terminating your employment with 24 hour notice. Your final date of employment is 12pm, May 28th 2013.*"

18. At no time during the conversation with Mrs Pickering at Casanova's Restaurant, or in the Termination Letter, was it ever alleged by the Defendant that the Plaintiff was being summarily dismissed for gross default or misconduct, or for breach of the Contract.

19. Prior to receipt of the Termination Letter, the Plaintiff received no oral warning, written warning or indication of any kind from the Defendant that her performance was unsatisfactory, that she had breached any terms of her contract or which would have foreshadowed her contract was likely to be terminated on grounds of misconduct or any other grounds.

PARTICULARS OF DEFENDANT'S BREACH

20. Wrongfully and in breach of Clause 13 of the Contract the Defendant dismissed the Plaintiff on only 24 hours' notice. The Plaintiff did not receive the 60 days' notice to which she was contractually entitled nor pay in lieu of such contractual notice.
21. Wrongfully and in breach of Clause 9 and the related implied term of the Contract, the Defendant failed to compensate the Plaintiff for 5 days' accrued vacation leave (including the 2 days which would have accrued during her contractual notice period of 60 days).
22. Wrongfully and in breach of Clause 12 of the Contract, the Defendant did not pay a further two months' employer's pension contribution into the Plaintiff's pension plan during the 60 days' notice period to which she was expressly contractually entitled.
23. Wrongfully and in breach of the implied term of the Contract, the Plaintiff was dismissed by the Defendant after only 3 weeks' employment on wholly trivial and insubstantial grounds.
24. By reason of the many facts and matters aforesaid the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS

25. The Plaintiff is entitled to and claims 60 days' salary in the sum of US\$10,833,32 in lieu of notice.
26. The Plaintiff is entitled to and claims compensation in respect of 5 days' accrued vacation leave at a daily rate of US\$246.21 (based on an average 22 working days each month) in the sum of US\$ 1,231.05.
27. The Plaintiff is entitled to and claims 2 months' unpaid employer's pension contribution due and owing to the Plaintiff / her Cayman Pension Fund in respect of her 60 days' contractual notice period in the sum of US\$541.66;
28. Further or alternatively, the Plaintiff is entitled to and claims damages for wrongful dismissal.
29. Further or alternatively, the Plaintiff is entitled to and claims damages for repudiatory breach of contract.
30. The Plaintiff is entitled to and claims interest pursuant to section 34 of the Judicature Law (2007 Revision) on the said sums referred to in paragraphs 25 to 27 above and on any

damages awarded, to be assessed, alternatively, pursuant to the equitable jurisdiction of the Court.

31. The Plaintiff will give credit for the sum of US\$ 393 she was paid by the Defendant supposedly in respect of 4 days' additional pay, as a form of payment in lieu of any notice.

AND THE PLAINTIFF CLAIMS:

1. Payment of 60 days' unpaid salary due and owing to The Plaintiff in lieu of notice in the sum of US\$10,833.32;
2. Payment of compensation in respect of 5 days' accrued vacation leave at a daily rate of US\$246.21 per day, in the sum of US\$ 1,231.05
3. Payment of 2 months' unpaid employer's pension contribution due and owing to The Plaintiff in lieu of 60 days' notice in the sum of US\$541.66;
4. Further or alternatively, damages for wrongful dismissal;
5. Further or in the further alternative, damages for repudiatory breach of contract;
6. Interest pursuant to Section 34 of the Judicature Law (2007 Revision) alternatively pursuant to the equitable jurisdiction of the Court at such rate and for such period as the Court deems appropriate;
7. Further and other relief;
8. Costs.

Dated this 18th day of November 2013



Sinclairs
Attorneys for the Plaintiff

TO: The Clerk of the Court

AND TO: The Defendant, Eshore Ltd (trading as Eshore Cayman Ltd)

This **WRIT OF SUMMONS** was issued by Sinclairs, attorneys for the Plaintiff whose address for service is
Third Floor, Genesis Building, Genesis Close, PO Box 498 George Town Grand Cayman, Cayman Islands
KY1-1106

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CAUSE NO OF 2013

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PLAINTIFF

AND

ESHORE LTD (trading as Eshore Cayman 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 No

Service of the Writ of Summons is acknowledged accordingly

(Signed) _____
Attorneys for Eshore Ltd

NOTE ON ADDRESS FOR SERVICE

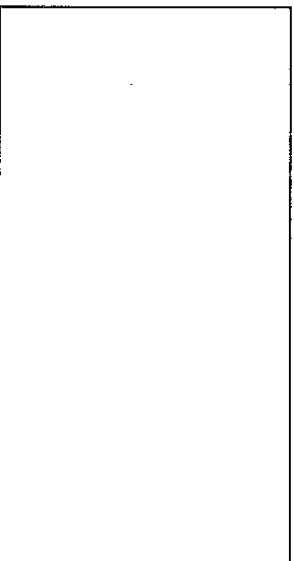
Attorney: Where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a Limited Company "residence" means its registered or principal office.

Indorsement by Plaintiff's Attorneys of his/her name, address and reference, if any, in the box below.

Sinclair's
Attention Sarah Dobbyn/ Allain Forget
Third Floor Genesis Building
Genesis Close
PO Box 498
George Town
Grand Cayman
KY1-1106
Reference SD/AF 1311 - 0501

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



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 the Plaintiff is 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 of Guidance

Notes for Guidance:

1. Each Defendant (if there is 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/her.
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 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.

GROUNDS ON WHICH RELIEF IS SOUGHT
(If there has been any delay, include reasons here)

1. The Applicant's previous attorney originally filed for leave on 22nd October 2010, in Cause number 388 of 2010 in the Grand Court of the Cayman Islands. The Applicant's application for leave was scheduled for hearing on 10th January 2011, however this was then rescheduled for sometime in 2012.
2. The hearing however, did not proceed in 2012, and the Applicant is unaware as to the reasons why. The Applicant however, was advised that the matter was adjourned *sine die*. Following thereon, the matter was relisted again for hearing on 29th August 2013 at 9:30am. This hearing also did not proceed, and the Applicant's application was dismissed thru no fault of her own.

Grounds of Appeal

- i. Whether the Tribunal was wrong in law and/or whether it was contrary to the principles of natural justice in failing to consider the Applicant's appeal in its entirety as opposed to only reviewing the notice of appeal, as per their letter, "*The Tribunal reviewed the Notice of Appeal...stamped 26th September 2007...and the letter of 4 November 2008.*"
- ii. Whether the Tribunal was wrong in law in failing to consider the Applicant's change in circumstances in the following categories;
 - a. *Contribution to the community;* and
 - b. *Funds and salary.*
- Pursuant to section 16(8) of the immigration law (as revised), the Tribunal may take into *account fresh evidence and any change in circumstances* that may have arisen in relation to the parties.
- iii. Whether the Tribunal was wrong in law in failing to provide adequate and sufficient reasons and/or good reasons for their decision.
- iv. Whether the Tribunal's decision to dismiss the Applicant's appeal is in breach of their duty to be fair and its obligation to observe the rules of natural justice by not recognizing or taking into consideration her legitimate expectation of a fair hearing and/or due consideration of her appeal against the refusal of her Permanent Residency and Employment Rights Certificate, after 19 plus years living and working in this country.
- v. Whether the Tribunal's decision to dismiss the Applicant's appeal thereby denying her the right to live and work in the Cayman Islands, is in breach of Article 13 of the Bill of Rights.