

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: *G0027* OF 2014

BETWEEN:

ERNST & YOUNG (a partnership)

Plaintiff

AND

(1) SAMANTHA WIDMER
(2) PETER WIDMER

Defendants



WRIT OF SUMMONS

TO:

- (1) Samantha Widmer of 31 Jacaranda Court, PO Box 31007, Grand Cayman, KY1-1205, Cayman Islands
- (2) Peter Widmer of 31 Jacaranda Court, PO Box 31007, Grand Cayman, KY1-1205, Cayman Islands

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, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, 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 21st day of February 2014

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 general partnership whose offices are at 62 Forum Lane, Camana Bay, Grand Cayman. At all material times the Plaintiff traded under the name "Ernst & Young".
- 2 The First Defendant is a former employee of Ernst & Young, whose employment commenced in July 2006 pursuant to the terms of a student/trainee agreement dated 12 July 2006 ("**Student Agreement**").
- 3 The Second Defendant is the First Defendant's father, who was and is also a party to the Student Agreement.
- 4 The Student Agreement consisted of a scholarship by which the Plaintiff paid expenses related to the First Defendant's studies and agreed to waive repayment of the expenses so paid in certain circumstances, as contained the following express terms:
 - (a) Pursuant to clause 4, the Firm agreed to pay the costs associated with the First Defendant's studies for her professional accountancy qualification, known as the Uniform CPA Exam;
 - (b) Pursuant to clause 5, after her successful completion of the CPA Exam, the First Defendant agreed to spend at least two years employed by the Firm in Grand Cayman.
 - (c) Pursuant to clause 7, Cayman Islands law was the governing law.

The Plaintiff will rely on the Student Agreement for its full terms, meaning and effect.

- 5 In accordance with its obligations under the Student Agreement, between 8 August 2006 and 8 July 2008 the Plaintiff advanced, or procured the advancement of, sums of money to the First Defendant totalling US\$55,462.36.
- 6 In breach of clause 5 of the Student Agreement, the First Defendant failed to complete her CPA exam and spend at least 2 years employed by the Plaintiff after completion of the CPA Exam.

Particulars

- 6.1 The First Defendant failed to complete her CPA Exam, such that the 2 year period of employment following successful completion of the said exam never began to run.
- 6.2 Despite failing to complete her CPA Exam, the First Defendant remained employed by the Plaintiff and / or its successor company Ernst & Young Ltd until August 2010, when the First Defendant gave notice of her resignation from her employment such that her employment duly ended on 29 October 2010.
- 7 It was a term of the Student Agreement that, if the Plaintiff did not complete the CPA Exam or was otherwise in breach of the Student Agreement such as to cause its termination by the partners of Ernst & Young, the First Defendant and/or Second Defendant would refund the sums advanced to the First Defendant within 6 months of receiving notice to do so.

Particulars

- 7.1 In respect of the Second Defendant, the Student Agreement expressly stated:
- The [Second Defendant] agrees to refund Ernst & Young, within six months of receiving notice to do so, all sums advanced in relationship to [the First Defendant's] studies at university, should she decide, for whatever reason, to discontinue her studies prior to completion, or should the Partners terminate the agreement as a result of a breach of any of the terms of the [Student Agreement].*
- 7.2 In respect of the First Defendant, the same obligation to repay in such circumstances arose either by virtue of the construction of the Student Agreement, or by implication having regard to the express term pleaded above at paragraph 7.1.
- 8 Following the First Defendant's resignation, on 24 November 2010 the Plaintiff by its attorneys at law terminated the Student Agreement by reason of the First Defendant's breach and demanded repayment of the sum of US\$55,462.36 within 6 months from the First and Second Defendants.

- 9 In December 2010 the First Plaintiff complained that she had been unfairly dismissed from her employment. In July 2013, the Labour Tribunal ruled that the First Defendant was not unfairly dismissed and accepted that she had resigned from her employment.
- 10 In breach of the Student Agreement, the First and Second Defendants failed to pay the US\$55,462.36 or any amount, which sum is due and owing to the Plaintiff.
- 11 The Plaintiff claims interest pursuant to s.34 of the Judicature Law (2013 Revision) and the Judgment Debt (Rates of Interest) Rule as amended from time to time.

And the Plaintiff Claims Against the First and Second Defendants Jointly and Severally:

- (1) Judgment for US\$55,462.36.
- (2) Pre and post judgment interest from 24 May 2011 at the rate of 2.38% per annum pursuant to section 34 of the Judicature Law (2013 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
- (3) Costs.
- (4) Such further order, directions or other relief as this Honourable Court deems just and appropriate.

DATED this 21st day of February 2014

Maples and Calder

Maples and Calder

THIS WRIT was issued by Maples and Calder, attorneys for the Plaintiffs, whose address for service is PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands. (Ref:MWI/MXB/060825.49/21086172)

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment 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 495G, 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 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 for guidance

Please complete overleaf

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment 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.

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.

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

Maples and Calder
PO Box 309
Ugland House
South Church Street
George Town
Grand Cayman
Cayman Islands
MWI/MXB/060825.49

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

