

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 56 OF 2014

BETWEEN:

TABITHA PHILANDER
(suing as the Trustee in Bankruptcy of the Estate
of Robert Don Foster, a Bankrupt)



AND:

- (1) GKF HOLDINGS LIMITED**
- (2) GARY KIRK FOSTER**

DEFENDANTS

WRIT OF SUMMONS

TO: GKF Holdings Limited, c/o International Management Services Ltd, Harbour Centre, George Town, Grand Cayman, 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 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 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 15 day of April 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 Acknowledgement of Service are given with the accompanying form.

GENERAL INDORSEMENT

The Plaintiff's claim is for a payment of US\$1,500,000 together with Interest at common law alternatively pursuant to statute in respect of the transfer of land at Little Cayman West Block 82A Parcel 20 (**Bloody Bay**) from Robert Don Foster and Gary Kirk Foster (**Don and Gary**) to Charles Kirkconnell (**Capt Charles**) by a transfer of land form dated 15 September 2009. Bloody Bay was transferred to Capt Charles pursuant to an agreement of 16 April 2008 and another of 30 April 2009 (the **Agreements**).

At the time of the Agreements the First Defendant was indebted to First Caribbean International Bank (**FCIB**) in an amount greater than or equal to \$3,000,000. Capt Charles agreed with FCIB by way of guarantee or indemnity to satisfy the First Defendant's liability to FCIB if by a certain time that liability was not satisfied by the First Defendant itself or on its behalf by Don and Gary or otherwise remained unsatisfied. Don and Gary by the Agreements agreed to indemnify Capt Charles by transferring Bloody Bay to him if Capt Charles were himself required to satisfy the First Defendant's liability to FCIB. Capt Charles was required to and did satisfy the First Defendant's liability to FCIB in the amount of \$3,000,000. Capt Charles received Bloody Bay in return. Bloody Bay was valued at \$3,000,000 in the Agreements between Capt Charles and Don and Gary.

Upon Capt Charles' satisfying the First Defendant's liability to FCIB, Capt Charles became entitled to be indemnified by the First Defendant in the amount of \$3,000,000. Upon Don and Gary transferring Bloody Bay to Capt Charles, they became entitled to be subrogated to Capt Charles' right to an indemnity from the First Defendant in the amount of \$3,000,000. Further or alternatively, there is an implied contract directly between the First Defendant and Don and Gary that the First Defendant would indemnify them in the sum of \$3,000,000 should they be called upon to transfer Bloody Bay to Capt Charles as a result of Capt Charles satisfying the First Defendant's liability to FCIB. Further or alternatively, the above facts and matters give rise to a restitutionary claim in favour of Don and Gary against GKFHL in the amount of \$3,000,000.

PETER MCMASTER Q.C.

APPLEBY (CAYMAN) LTD

If, within the time for returning the Acknowledgment of Service, the First Defendant pays the total amount claimed of US\$1,500,000, together with interest and costs, further proceedings will be stayed. The money must be paid to the Plaintiff or her Attorneys.

Appleby (Cayman) Ltd
APPLEBY (CAYMAN) LTD

THIS WRIT OF SUMMONS was issued by Appleby (Cayman) Ltd of Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. 415570.0003/PMQC/ASJ), Attorneys-at-Law for the Plaintiff, whose address for service is that of her said attorneys.

**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, Cayman Islands.

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 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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, 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 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: _____ OF 2014

BETWEEN:

TABITHA PHILANDER

(suing as the Trustee in Bankruptcy of the Estate
of Robert Don Foster, a Bankrupt)

PLAINTIFF

AND:

(1) GKF HOLDINGS LIMITED

(2) GARY KIRK FOSTER

DEFENDANTS

**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 is acknowledged accordingly

Attorneys for Defendant

Date: _____ 2014

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

Appleby (Cayman) Ltd.
Attorneys-at-Law
Clifton House
75 Fort Street
PO Box 190
George Town
Grand Cayman KY1-1104
Cayman Islands
Ref: PMQC/ASJ/415570.0003

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]