

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO. *G-0076* OF 2014

BETWEEN:

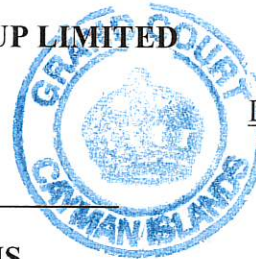
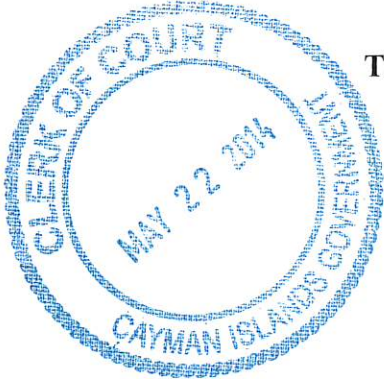
OWEN MERODON

PLAINTIFF

v.

THE BURNS CONOLLY GROUP LIMITED

DEFENDANT



WRIT OF SUMMONS

TO: The Defendant
c/o Foreshore Corporate Services Limited
4th Floor Queensgate Building
113 South Church Street
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 the Court Office, P.O. Box 495 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 22nd day of May 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.

STATEMENT OF CLAIM

1. The Plaintiff is an Australian citizen, and a trained architect.
2. The Defendant was at all material times a resident Cayman Islands company in the business of architecture.
3. On or about 3rd December 2012 the Plaintiff entered into a written contract of employment ("**the Agreement**") as a Senior Project Architect with the Defendant.
4. At the time of entering into the Agreement the Plaintiff was residing in Australia.
5. The term of the Agreement was for 2 years, renewable by the Defendant thereafter. The Agreement could be terminated by either party giving 3 months' written notice.
6. It was a term of the Agreement that the Plaintiff would be paid a salary of C\$7000 per month, paid monthly ("**the Salary Amount**").
7. It was a further term of the Agreement that the Defendant would provide medical and dental insurance ("**the Health Insurance**") for the Plaintiff. The Defendant would pay 50% of the monthly premiums due for the Health Insurance ("**the Employer Premiums**"). The remaining 50% due for the monthly premium would be deducted from the Plaintiff's salary each month ("**the Insurance Deductions**").
8. It was also a term of the Agreement that the Plaintiff would receive 15 working days of vacation per annum.
9. In January 2013 the Plaintiff travelled from Australia to Grand Cayman for the purposes of commencing his employment with the Defendant.
10. On 1st February 2013 the Plaintiff commenced employment with the Plaintiff under the terms of the Agreement ("**the Commencement Date**").

11. In or around 1st April 2013, without notice to the Plaintiff and in breach of the Agreement, the Defendant cancelled the Plaintiff's Health Insurance. Notwithstanding this, on some occasions after 1st April 2013 the Defendant continued to make the Insurance Deductions.
12. In or around May 2013, and in breach of the Agreement, the Defendant began paying the Plaintiff less than the Salary Amount.
13. On 1st August 2013 the Plaintiff emailed Mr Burns Conolly, Managing Director of the Defendant company, asking for an indication as to when he would be paid the Salary owed to him.
14. On 4th September 2013 the Plaintiff emailed Mr Conolly telling him that he needed his Salary.
15. During and following this correspondence the Defendant continued to pay the Plaintiff less than the Salary Amount.
16. As a result of the Defendant failing to pay the Salary Amount and cancelling the Health Insurance, the Plaintiff, in accordance with the terms of the Agreement, gave the Defendant 3 months' written notice to terminate the Agreement on 31st January 2014.
17. On 14th February 2014, and in breach of the Agreement, the Defendant sought to summarily dismiss the Plaintiff, by an email to the Plaintiff from Mr Conolly stating "I suggest you turn in your keys and leave our employment today" ("**the Termination Email**").
18. In the Termination Email Mr Conolly also stated "It has been a pleasure working with you and your back pay will be passed on as soon as the company receives funding".
19. On 15th February 2014 Mr Conolly again emailed the Plaintiff and stated "Your funds that we owe you shall be paid to you when funds are available".

20. The Plaintiff will aver that this is an admission of liability and that a liquidated sum is duly owed.
21. The Agreement terminated on 14th May 2014 (“**the Termination Date**”), being 3 months from when the Defendant gave the Plaintiff written notice to terminate.
22. Between the Commencement Date and Termination Date the Defendant, in breach of the Agreement, failed to pay to the Plaintiff the total Salary Amount of CI\$46,598.14 (“**the Outstanding Salary Amount**”).
23. Between the Commencement Date and Termination Date the Defendant, in breach of the Agreement, failed to pay the Employer Premiums and made the Insurance Deductions resulting in a loss to the Plaintiff of CI\$2,121.28 (“**the Health Insurance Loss**”).
24. At the Termination Date, and in breach of the Agreement, the Defendant failed to pay the Plaintiff for 16.75 unused vacation days, totalling CI\$5,411.38 (“**the Outstanding Vacation Pay**”).
25. Since the Termination date the Defendant has failed to pay the Plaintiff any of the Outstanding Salary Amount, the Health Insurance Loss, or the Outstanding Vacation Pay.
26. Further, as a direct result of the Defendant failing to pay the Outstanding Salary Amount, the Plaintiff has suffered the following loss:
 - a. CI\$1,449.00 in additional kennel fees for a dog he had planned to bring from Australia to Grand Cayman, but could not afford to do so; and
 - b. CI\$945.00 in additional storage fees for personal effects he had planned to bring from Australia to Grand Cayman, but could not afford to do so.
27. The Plaintiff has suffered loss and damage by virtue of the Defendant’s breach of the Agreement.

28. The Defendant is indebted to the Plaintiff in the sum of CI\$56,524.80, representing the Outstanding Salary Amount, the Health Insurance Loss, the Outstanding Vacation Pay, and the further payments the Plaintiff has had to make for kennel fees and storage.
29. Further the Plaintiff seeks interest pursuant to section 34 of the Judicature Law (2013 Revision) on all such sums found to be due to the Plaintiff from the Defendant at the prescribed rate of 2.375% per annum, to be calculated from the date of issue herein until Judgment or payment in full. Interest due will accrue upon the sum of CI\$56,524.80 at a daily rate of CI\$3.68 per day.

AND THE PLAINTIFF CLAIMS:

- (1) Damages for breach of contract;
- (2) Interest on the said damages pursuant to section 34 of the Judicature Law (as Amended); and
- (3) Costs to be assessed.

If, within the time for returning the Acknowledgement of Service, the Defendant pays the total amount claimed of CI\$56,524.80 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.

DATED THIS 22nd day of May 2014



PRIESTLEYS

**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 acting in person).

If a Statement of Claim is 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 not 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 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 fourteen (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 installments 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 fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

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DEFENDANT

**ACKNOWLEDGMENT 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

(Signed) _____

Address for service:

Please see 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 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.

PRIESTLEYS
ATTORNEYS-AT-LAW
UNITS 11 & 12, GALLERIA PLAZA
638 West Bay Road
PO BOX 30310
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, KY1-1202

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