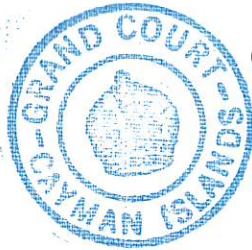


IN THE GRAND COURT OF THE CAYMAN ISLANDS

G-0175
CAUSE NO: OF 2014

BETWEEN ESPERADA HOLDINGS PLAINTIFF

AND CAPTAIN MARVINS WATERSPORTS LTD DEFENDANT



WRIT OF SUMMONS

TO: Captain Marvin's Watersports Ltd, PO Box 1776, 81 Nettie Rivers Lane, West Bay, Grand Cayman KY1-1109, 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, P.O. Box 495G, George Town, Grand Cayman, 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 13th day of August 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.

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THIS WRIT was ISSUED by SOLOMON HARRIS, of 3rd Floor FirstCaribbean House, P.O. Box 1990, George Town, Grand Cayman, KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Plaintiff whose address for service is that of its said Attorneys-at-law.

STATEMENT OF CLAIM

1. The Plaintiff is a company incorporated in the Cayman Islands whose registered office is c/o Bodden Corporate Services Ltd, Grand Pavilion Commercial Centre, PO Box 10335, Grand Cayman KY1-1003.
2. The Defendant is a company incorporated in the Cayman Islands whose registered office is at PO Box 1776, 81 Nettie Rivers Lane, West Bay, Grand Cayman KY1-1109, Cayman Islands.
3. On or about 1 September 2008, the Plaintiff and the Defendant entered into a written agreement (the "Sale Agreement") whereby the Plaintiff agreed to buy, and the Defendant agreed to sell, the Defendant's water-sports business, as a going concern, along with certain assets of the Defendant (altogether the "Business").
4. Anna's Watersports Ltd was included as a party to the Sale Agreement for the purpose of transferring ownership of two assets, namely the motor vessels "Miss Jackie" and "High Rider", which were registered in the name of Anna's Watersports Ltd but which were included in the assets being transferred to the Plaintiff pursuant to the Sale Agreement.
5. The salient terms of the Sale Agreement were:
 - 5.1. The Plaintiff would pay US\$4,000,000.00 (the "Purchase Price") to the Defendant for the purchase of the Business;

- 5.2. Completion of the sale and purchase ("Completion") would take place at the offices of the Defendant's Attorneys (or at such other place as the Parties may agree) when the Defendant delivered to the Plaintiff:
- 5.2.1 *"the Equipment, the Records (duly completed and up-to-date), the Stocks, the Assignment of Leases together with the original Land Certificate and any Discharges of Charges or permissions to assign the leases over the Property and all other Assets which are capable of physical delivery (provided that the Purchaser shall accept delivery of the same by their being left at the Property) together with all documents of title pertaining thereto in the possession of the Vendor at the Time of Sale";*
- 5.2.2 *"a valid, duly executed assignment (in the Agreed Form) in favour of the Purchaser of the Goodwill; and valid bills of sale over the Equipment in the form annexed hereto as the Sixth Schedule".*
- 5.3. The date for Completion (the "Completion Date") would be 30 September 2008 or such earlier date as the parties agreed.
- 5.4. The Purchase Price would be paid as follows:
- 5.4.1. A deposit of US\$400,000.00 (the "Deposit") to be paid immediately to RE/MAX Cayman Islands ("RE/MAX") and held in escrow pending Completion; and
- 5.4.2. The balance of the Purchase Price of US\$3,600,000.00 to be paid on the Completion Date subject to the fulfilment of the Defendant's obligations under the Sale Agreement.

- 5.5. If Completion did not occur on the Completion Date, either party could serve on the other a notice to complete, requiring the other party to complete within 14 days of service of such notice.
6. On 2 October 2008 the Deposit, which prior to that date had been held on escrow by RE/MAX, was paid to the Defendant.
7. By addendum dated 8 October 2008 (the "October 2008 Addendum"), the parties agreed to vary the Sale Agreement. The terms of the October 2008 Addendum were, inter alia:
 - 7.1. the Completion Date was changed to 15 December 2008;
 - 7.2. the Deposit was to be transferred from RE/MAX to the Defendant (although as set out in paragraph 6 above this had in fact already occurred) ;
 - 7.3. the Plaintiff was to pay to the Defendant US\$700,000.00 towards payment of the Purchase Price; and
 - 7.4. the balance of the Purchase Price of US\$2,900,000.00 would be paid on Completion.
8. On 10 October 2008, US\$700,000.00 was paid by the Plaintiff's attorneys for and on behalf of the Plaintiff to the Defendant pursuant to the October 2008 Addendum (the "10 October Payment").
9. At the time the 10 October Payment was made, it was understood and intended by the Plaintiff and the Defendant that this payment did not form part of the Deposit.

10. At the time the 10 October Payment was made, it was understood and intended by the Plaintiff and the Defendant that this payment was a part payment which would be held by the Defendant and applied to the Purchase Price upon Completion but which would be returned by the Defendant to the Plaintiff in the event Completion did not or could not occur.
11. On or around 14 October 2008, US\$500,000.00 was paid to the Defendant for and on behalf of the Plaintiff (the "14 October Payment").
12. At the time the 14 October Payment was made, it was understood and intended by the Plaintiff and the Defendant that this payment did not form part of the Deposit.
13. At the time the 14 October Payment was made, it was understood and intended by the Plaintiff and the Defendant that this payment was a part payment which would be held by the Defendant and applied to the Purchase Price upon Completion but which would be returned by the Defendant to the Plaintiff in the event Completion did not or could not occur.
14. On or about 21 November 2008, US\$400,000.00 was paid to the Defendant for and on behalf of the Plaintiff (the "21 November Payment").
15. At the time the 21 November Payment was made, it was understood and intended by the Plaintiff and the Defendant that this payment did not form part of the Deposit.
16. At the time the 21 November Payment was made, it was understood and intended by the Plaintiff and the Defendant that this payment was a part payment which would be held by the Defendant and applied to the Purchase Price upon Completion but which would be returned by the Defendant to the Plaintiff in the event Completion did not or could not occur.

17. On 14 July 2009, the Defendant's attorney served on the Plaintiff, via the Plaintiff's attorneys, a notice to complete requiring the Plaintiff to complete the Sale Agreement within 21 days of service.
18. By email dated 4 September 2009, the Defendant, through its attorneys, agreed a final extension of the Completion Date to 15 September 2009.
19. By letter dated 26 October 2009, the Defendant terminated the Sale Agreement (the "Termination").
20. By letter dated 30 October 2009 (the "Formal Demand"), the Plaintiff confirmed the Termination by the Defendant and thereafter made formal demand on the Defendant for return of all part payments made by the Plaintiff towards the Purchase Price, details of which are set out above at paragraphs 8, 11, and 14 (together the "Part Payments").
21. The Defendant has refused to return the Part Payments, however as the grounds put forward by the Defendant for its refusal are unclear and/or inconsistent, the Plaintiff will not attempt to anticipate or deal with them in this statement of claim, but will respond as necessary to the grounds, if any, asserted and relied upon by the Defendant in its pleaded case.

(i) Claim For Breach of Agreement

22. In the first instance, the Plaintiff's claim is for breach of contract, whereby the Part Payments were paid by the Plaintiff to the Defendant towards the Purchase Price in anticipation of Completion of the Sale Agreement and on the express and/or implied agreement that in the event that Completion did not or could not occur, the Part Payments would be returned by the Defendant to the Plaintiff (the "Repayment Agreement").

23. The Defendant has breached the Repayment Agreement as Completion did not and cannot occur as a result of the Termination, however the Defendant has refused to return the Part Payments notwithstanding the Formal Demand by the Plaintiff.
24. The Plaintiff has suffered loss as a result of the Defendant's breach of the Repayment Agreement in the amount of US\$1,600,000.00 plus all accrued interest.

(ii) Claim for Restitution

25. In addition and/or in the alternative, the Defendant has been unjustly enriched to the detriment of the Plaintiff.
26. The Part Payments were made by the Plaintiff, and were had and received by the Defendant, on the basis that Completion was to occur.
27. As Completion did not and cannot occur as a result of the Termination by the Defendant, there has been a total failure of the basis upon which the Part Payments were made, and by retaining the Part Payments and not returning them to the Plaintiff as it is required to do, the Defendant has been unjustly enriched at the Plaintiff's expense in the amount of the Part Payments.

(iii) Claim For Breach of Trust

28. In addition and/or in the alternative, on the Defendant's receipt of the Part Payments, a trust was formed, based on the common intention shared by the Plaintiff and the Defendant that the Part Payments were made for the specific purpose of being payments towards the Purchase Price that would be applied upon Completion but which would be returned by the Defendant to the Plaintiff in the event Completion did not or could not occur.

29. It was at all material times understood and intended by the Plaintiff and the Defendant that the Part Payments were not intended to be applied by the Defendant for its own benefit, save in the event that Completion was achieved. Further, it was not understood or intended by either the Plaintiff or the Defendant that the Part Payments constituted a gift to the Defendant, nor could such an understanding or intention be construed. The Part Payments consequently remained the property of the Plaintiff, and were held on trust by the Defendant, as trustee, for the Plaintiff, as beneficiary, until Completion was achieved.
30. Upon Completion becoming impossible due to the Termination by the Defendant, the Defendant was, pursuant to the terms of the trust, required to return the trust properties, being the Part Payments, to the Plaintiff.
31. In breach of trust the Defendant has refused to return the Part Payments to the Plaintiff, and has instead kept the Part Payments for itself.
32. As a result of the Defendant's breach of trust the Plaintiff has suffered loss in the amount of at least US\$1,600,000.00.

Wherefore the Plaintiff claims against the Defendant:

1. Damages for breach of the Repayment Agreement, particulars of which are set out at paragraphs 22 to 24 above;
2. A declaration that the Defendant has been unjustly enriched to the detriment of the Plaintiff, particulars of which are set out at paragraphs 25 to 27 above, and an order that the Defendant provide restitution to the Plaintiff in the amount of not less than US\$1,600,000.00;

3. Compensatory damages for breach of trust, particulars of which are set out at paragraphs 28 to 32 above, together with an order that the Defendant do account to the Plaintiff for:
 - a. the Part Payments;
 - b. any and all profits derived by the Defendant from the Part Payments retained by it.
4. Interest on any and all judgment sums pursuant to s. 34 of the Judicature Law (2007 Revision) and/or pursuant to the jurisdiction of the Court; and
5. Costs.

Dated this 13th day of August 2014



Solomon Harris
Attorneys for the Plaintiff

**DIRECTIONS FOR ACKNOWLEDGEMENT
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.
2. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman, Cayman Islands.
3. 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.

4. 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2014

BETWEEN **ESPERADA HOLDINGS** **PLAINTIFF**
AND **CAPTAIN MARVIN'S WATERSPORTS 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 is acknowledged accordingly

(Signed).....

Attorney for

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.

Solomon Harris
Attorneys-at-law
3rd Floor, First Caribbean House
P.O. Box 1990
Grand Cayman, KY1-1104
Cayman Islands

Tel: (345) 949-0488
Fax: (345) 949-0364
Email: sdawson@solomonharris.com

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