

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**CAUSE NO: 86 OF 2019**

**BETWEEN:**

**STEPHEN JOHN MACKEY**

**PLAINTIFF**

**AND:**

**BUNKER INTERNATIONAL LIMITED**

**1<sup>st</sup> DEFENDANT**

**REMY JACOBSON**

**2<sup>ND</sup> DEFENDANT**



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**AMENDED WRIT OF SUMMONS**

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**TO: BUNKER INTERNATIONAL LIMITED** of International Corporation Services Ltd., Harbour Place, 2nd Floor, North Wing, 103 South Church Street, George Town, Grand Cayman

**AND: REMY JACOBSON** of Unit 2002-2711 South Ocean Drive, Hollywood, Florida 33019, USA.

**THIS WRIT OF SUMMONS** has been issued against you by the above named Plaintiff, of P.O. Box 2075, Grand Cayman KY1-1105, Cayman Islands in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands 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 Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 28<sup>th</sup> 17<sup>th</sup> day of May July 2019.

**NOTE** this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

**IMPORTANT**

Directions for the Acknowledgement of service are given with the accompanying form.

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**AMENDED STATEMENT OF CLAIM**

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**Introduction**

1. The Plaintiff, is a **US Canadian** citizen and an individual resident in **Bermuda Bahamas** and the former Managing Director of the 1<sup>st</sup> Defendant.
2. The 1<sup>st</sup> Defendant, is an exempt company, incorporated in the Cayman Islands under registration number 338096.
3. The 2<sup>nd</sup> Defendant is an individual, resident in the United States of America, and a Director and sole shareholder of the 1<sup>st</sup> Defendant.

**The Agreement**

4. In May 2018 the Plaintiff was approached by the 2<sup>nd</sup> Defendant and asked to accept a sales consultancy role as an independent contractor for Bunker Capital LLC (an American Company) which the Plaintiff duly accepted.

5. On or around 5 October 2018 the Plaintiff was asked by the 2<sup>nd</sup> Defendant, in place of that role, to accept a position as Managing Director of the 1<sup>st</sup> Defendant. The Plaintiff entered into discussions regarding this offer with the 2<sup>nd</sup> Defendant and Greg Bachrach, a Partner of Bunker Capital LLC. The 2<sup>nd</sup> Defendant and Greg Bachrach gave the Plaintiff assurances that the 1<sup>st</sup> Defendant would be properly funded, including, but not limited to the funding required to register the 1<sup>st</sup> Defendant as a Special Economic Zone Company.
6. On the basis of the assurances given by the 2<sup>nd</sup> Defendant and Greg Bachrach, the Plaintiff accepted the offer of employment with the 1<sup>st</sup> Defendant.
7. By way of an agreement, confirmed in writing on 15 November 2018, the Plaintiff was employed by the 1<sup>st</sup> Defendant as a Managing Director (the “**Agreement**”). The terms of the Agreement were set out in writing and signed, on or about 15 November 2018, by the Plaintiff, on his own behalf, and by the 2<sup>nd</sup> Defendant on behalf of the 1<sup>st</sup> Defendant.
8. The terms of that Agreement confirmed that the Plaintiff had been employed by the 1<sup>st</sup> Defendant as its Managing Director from 1 November 2018 and included the following express and material terms:
  - i. The Plaintiff was to be paid a salary of US\$180,000 per year (the “**Salary**”);
  - ii. The Plaintiff’s salary was to be made up of monthly installments of US\$10,000, the first installment payable on 15 November 2018;
  - iii. The Plaintiff was to be paid a guaranteed bonus of US\$60,000 on 15 November 2019;
  - iv. The 1<sup>st</sup> Defendant was to pay all required Cayman regulatory expenses, including the Plaintiff’s pension and health insurance contributions;
  - v. Either party to the agreement could terminate the Agreement by way of 90 days’ written notice, unless both parties agreed to terminate sooner and all agreed on compensation had been paid in full; and
  - vi. All Business Expenses were to be paid by the 1<sup>st</sup> Defendant.

## Duties of the 2<sup>nd</sup> Defendant

9. As a Director of the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant owes fiduciary duties to the 1<sup>st</sup> Defendant, including, but not limited to:
  - i. a duty to act in good faith and in the best interests of the 1<sup>st</sup> Defendant;
  - ii. a duty to promote the success of the 1<sup>st</sup> Defendant;
  - iii. a duty to exercise his powers for the purposes for which they are conferred;
  - iv. a duty of trusteeship of the 1<sup>st</sup> Defendant's assets;
  - v. a duty to avoid conflicts of interest and of duty;
  - vi. a duty to disclose personal interest in contracts involving the 1<sup>st</sup> Defendant;
  - vii. a duty not to make secret profits from the directors' office; and
  - viii. a duty to act with skill, care and diligence.
  
10. The 2<sup>nd</sup> Defendant was also jointly and severally liable with the 1<sup>st</sup> Defendant for ensuring that the Plaintiff was paid his Salary on a regular periodic basis, not exceeding a period of one month, in compliance with section 30(1) of the Labour Law (2011 Revision).
  
11. The Defendant was jointly and severally liable with the 1<sup>st</sup> Defendant for ensuring that the health insurance contributions and pension contributions were paid in respect of Plaintiff in accordance with section 5 of the Health Insurance Law (2018 Revision) and sections 47(1) and (3) of the Pensions Law (2012 Revision) respectively.

## The Breaches of the Agreement

12. The 1<sup>st</sup> Defendant breached the Agreement in the following ways:
  - i. The first two Salary payments, each of US\$10,000, were paid to the Plaintiff late, in breach of sections 30(1) and 31(1) of the Labour Law (2011 Revision);
  - ii. No further Salary payments were made to the Plaintiff (in breach of sections 30 and 31 of the Labour Law (2011 Revision));

- iii. No health insurance **contributions** were paid by the 1<sup>st</sup> Defendant on behalf of the Plaintiff in breach of section 5 of the Health Insurance Law (2018 Revision);
- iv. No pension contributions were paid by the 1<sup>st</sup> Defendant on behalf of the Plaintiff in breach of sections 47(1) and 47(3) of the Pensions Law (2012 Revision); and
- v. The 1<sup>st</sup> Defendant failed to pay business expenses, including the annual ~~return~~ fees, as a result of which the 1<sup>st</sup> Defendant is no longer in good standing.

(together the “**Breaches**”).

### **The Second Defendant’s Tortious Inducement of the Breaches**

- 13. The Breaches by the 1<sup>st</sup> Defendant were committed at the direction of the 2<sup>nd</sup> Defendant or induced by the 2<sup>nd</sup> Defendant in that the 2<sup>nd</sup> Defendant;
  - i. Failed to provide or secure the funding needed by the 1<sup>st</sup> Defendant to comply with the Agreement;
  - ii. Failed to pay the 1<sup>st</sup> Defendant’s annual fees in accordance with section 169 of the Companies Law (2018 Revision) causing the 1<sup>st</sup> Defendant to risk being struck off and breaching the Agreement;
  - iii. Directed and or induced the 1<sup>st</sup> Defendant to breach the Agreement with the Plaintiff;
  - iv. Directed and or induced the 1<sup>st</sup> Defendant to breach sections 30(1) and 31(1) of the Labour Law (2011 Revision) by directing and/or inducing the 1<sup>st</sup> Defendant not to pay the Plaintiff his Salary;
  - v. Directed and/or induced the 1<sup>st</sup> Defendant to breach section 5 of the Health Insurance Law (2018 Revision) by directing and/or inducing the 1<sup>st</sup> Defendant not to pay health insurance contributions on behalf of the Plaintiff; and
  - vi. Directed and/or induced the 1<sup>st</sup> Defendant to breach sections 47(1) and 47(3) of the Pensions Law (2012 Revision) by directing and or/inducing the 1<sup>st</sup> Defendant not to pay pension contributions on behalf of the Plaintiff.
  
- 14. The 2<sup>nd</sup> Defendant, at all material times, was acting within the scope of his authority as Director of the 1<sup>st</sup> Defendant in directing and/or inducing the Breaches. The 2<sup>nd</sup>

Defendant, at all material times, had full knowledge that he was inducing the Breaches by the 1<sup>st</sup> Defendant. The occurrence of the Breaches did cause, or risked, causing, reputational damage to the 1<sup>st</sup> Defendant.

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15. In directing and/or inducing the Breaches the 2<sup>nd</sup> Defendant was acting in breach of his fiduciary duties to the 1<sup>st</sup> Defendant including, but not limited to:

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- i. his breach of duty to act in good faith and in the best interests of the 1<sup>st</sup> Defendant;
- ii. his duty to promote the success of the 1<sup>st</sup> Defendant; and
- iii. his duty to act with skill, care and diligence.

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16. The conduct of the 2<sup>nd</sup> Defendant, in directing and/or inducing the Breaches, is such that the 2<sup>nd</sup> Defendant is jointly and severally liable with the 1<sup>st</sup> Defendant for all damages or other remedies accruing to the Plaintiff as a result of the Breaches, or otherwise, whether in contract or tort.

17. The Breaches by the 1<sup>st</sup> Defendant were so serious that they entitled the Plaintiff to resign and amounts to an unfair dismissal of the Plaintiff by the 1<sup>st</sup> Defendant.

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18. The failure to pay the Plaintiff his Salary on a regular periodic basis, or any basis, is also a breach of section 30(1) of the Labour Law (2011 Revision) and an offence committed by both the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant in accordance with section 31(1) of the Labour Law (2011 Revision) and section 278(1) of the Companies Law (2018 Revision). As such the Plaintiff is entitled to recover interest on his unpaid salary at a rate of 10% per annum in accordance with section 31(2) of the Labour Law (2011 Revision).

19. By way of letter dated 7 May 2019 the Plaintiff, through his attorneys, wrote to the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant and Greg Bachrach, accepting the 1<sup>st</sup> Defendant's repudiation of the Agreement, arising from the above Breaches, and terminated the Agreement with immediate effect.

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiffs, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

**TO:**                   **The Clerk of the Grand Court**

**AND TO:**           **The Defendants**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
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**AND:**

**BUNKER INTERNATIONAL LIMITED**

**1<sup>ST</sup> DEFENDANT**

**REMY JACOBSON**

**2<sup>ND</sup> 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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intend to contest the proceedings (tick appropriate box)  
 Yes  No

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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

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Service of the Writ is acknowledged accordingly

Signed .....

Attorney for the Defendant

Address for service:

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

Nelson & Company  
Attorneys at Law  
PO Box 2075  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1105  
Attn: A. Carver

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

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 495, 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**

## 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.