

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 120 OF 2019

BETWEEN:

CAYMAN HYDROPONICS LTD

AND:

£200
JUL 25 2019
331241

CLARENCE MCLAUGHLIN



WRIT OF SUMMONS

TO: CLARENCE MCLAUGHLIN of Clarence Farm, Registration Section Lower Valley, Block 37A, Parcel 14, Grand Cayman, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, the Cayman Hydroponics Ltd of P.O BOX 199, Bodden Town, Grand Cayman, KY1-1601 in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) 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 25th day of July 2019.

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 that date of original issuance unless renewed by order of the Court

IMPORTANT

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

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2019

BETWEEN:

CAYMAN HYDROPONICS LTD

PLAINTIFFS

AND:

CLARENCE MCLAUGHLIN

DEFENDANTS

STATEMENT OF CLAIM

The Parties

1. Cayman Hydroponics Ltd (*the Plaintiff*) is an ordinary resident company incorporated in the Cayman Islands on 16 July 2012 and registered with the Registry of Companies under Registration Number 270362. The current registered office of the Plaintiff is located at 77 Manse Road, Bodden Town, Grand Cayman, Cayman Islands.
2. The Plaintiff, trading as 'CayFresh' is engaged primarily in the business of cultivating herbs for grocery stores using hydroponic greenhouse and soil-based methods.
3. Mr. Clarence McLaughlin (*the Defendant*) is the registered owner of land known as Registration Section Lower Valley, Block 37A, Parcel 14 (*the Farm*).
4. The Defendant, trading as 'Clarence Farm' (trade and business licence 39840), operates a business from the Farm cultivating fruits and vegetables for sale.

The Shareholders' Agreement

5. In or around 2015, the Plaintiff and the Defendant commenced discussions (*inter alia*) in connection with the use of a 1.5 acre section of the approximately 15-acre Farm for the operation of the Plaintiff's business (*the Site*). The Site is accessible by way of a road which crosses the Farm (*the Access Road*).

6. By an agreement dated 25 October 2015 (executed on 28 October 2015) made between the Plaintiff, by its directors, and the Defendant (***the Shareholders' Agreement***), the Defendant agreed to become a shareholder in the Plaintiff and the parties set out their agreement with respect to the Plaintiff's use and interest in the Site, as well as with regard to the affairs of the Company and how the relationship between the shareholders would be regulated and evolve.
7. At the time of entering into the Shareholders' Agreement (and until 28 June 2019) the Defendant stated and represented to the Plaintiff that he was a joint proprietor of the Farm and had full capacity and authorisation to contract and enter into binding agreements in respect of the Farm.
8. The Shareholders' Agreement provided (*inter alia*);
 - 8.1 the Defendant would indefinitely lease 1.5 acres of the Farm (location to be mutually agreed) to the Plaintiff at an annual rent of \$1.00 (***the Lease***);
 - 8.2 in consideration of the Lease, in addition to the annual rent, the Defendant would receive fifty (50) shares in the Plaintiff;
 - 8.3 the Defendant would purchase a further 10 shares in the Plaintiff from two of its directors, Bill and Anne Mervyn (***the Mervyns***);
 - 8.4 the Plaintiff would pay all the costs of moving to the Site, except improvements to the Site, the costs of which would be immediately shared with the Defendant;
 - 8.5 The Plaintiff would pay the costs of development of the Site and the installation of two to three wells;
 - 8.6 after the Plaintiff had moved to the Site and re-established production;
 - 8.6.1 the Defendant (in the one or two years following) would assume daily management responsibilities for the Plaintiff;
 - 8.6.2 at least fifty (50) per cent of any profit of the Plaintiff would be used to repurchase the Mervyns' remaining shareholding until such time as they no longer held any interest in the Plaintiff; and

8.6.3 once the Mervyns shares had been purchased, at least fifty (50) per cent of any profit of the Plaintiff would be used to repurchase the shares of Bruce Mico and Virginia Pascucci until such time as the Defendant held a seventy (70) per cent shareholding in the Plaintiff with the option to purchase 100% at the Plaintiff's discretion

9. It was an oral term agreed between the Plaintiff and the Defendant or, in the alternative it was an implied term of the Shareholders Agreement that the Plaintiff would have an easement over the Access Road for the duration of the Lease and that the Defendant would maintain the Access Road in a reasonable condition for the Plaintiff's use.

Proprietary Estoppel

10. In reliance on the statements and representations of the Defendant and on the contents of the Shareholders' Agreement, in which the Defendant purported to grant the Plaintiff an interest in the Site by way of indefinite Lease:

- 10.1 the Plaintiff took possession of the Site on or around February/March 2016 when the Plaintiff began the process of relocating its operations, and by October 2018 the Plaintiff's operations were fully established on the Site;
- 10.2 the Plaintiff spent approximately UCI\$105,000 relocating its operations to the Site which did not include any payment to Mr Mico for his labour which had an estimated value of CI\$105,000;
- 10.3 The Plaintiff has spent considerable sums of money constructing buildings and making improvements to the 1.5-acre area of the Site leased to it.;
- 10.4 the Plaintiff has invested significant sums of money in cultivating crops ready for harvesting;
- 10.5 to the best of the Plaintiff's knowledge and belief each and every year on or around 1 January the Plaintiff has paid the Defendant the annual rent due under the Lease;

- 10.6 fifty (50) shares in the Plaintiff were issued to the Defendant on 25 October 2015;
- 10.7 the Defendant purchased ten (10) shares from the Mervyns transferred on or around 15 January 2016; and
- 10.8 the Plaintiff purchased the Mervyn's shareholding commencing in October 2018 and concluding on 29 June 2019.
11. Unknown to the Plaintiff until shortly before the issue of this action, the Defendant asserts that (notwithstanding that he is now the sole registered owner of the Farm) he did not in fact have the authorisation to contract and enter into binding agreements in respect of the Farm or the Site at the date of Shareholder's Agreement.
12. Further, the Defendant now asserts that the Shareholder's Agreement does not in fact grant a Lease for an indefinite period, but instead grants a Licence terminable by the Defendant on thirty days' notice, which the Defendant has now purported to terminate with effect from 1 August 2019.
13. The Defendant has threatened to block the Plaintiff's access to the Site from 1 August 2019 and to sell any of the Plaintiff's property left on the Site after that date without any duty to account to the Plaintiff. As a result of these threats the Plaintiff is concerned that unless restrained, the Defendant will continue to block access to the Site or otherwise interfere with the Plaintiff's rights and interest in the Site. The Plaintiff therefore considers that a permanent injunction is required.
14. At all material times the Defendant:
- 14.1 knew, or ought to have known, the extent of his legal rights and interests in the Farm and the Site; and
- 14.2 knew that the Plaintiff was under the belief, as a result of the Defendant's representations and statements (including the execution of the Shareholders' Agreement), that it had been granted an indefinite Lease of the Site and either by his acquiescence, or encouragement, induced and/or caused the Plaintiff to expend sums of money, issue shares to the Defendant, and repurchase the shares of the Mervyns.

15. The Plaintiff avers that in circumstances where;

15.1 the Defendant has led, (or in the alternative, has allowed), the Plaintiff to believe that it has Indeterminable interest in his Land;

15.2 the Defendant, at all material times, had knowledge that the Plaintiff acted to its detriment in that belief; and

15.3 the Defendant now refutes that the Plaintiff has any such indeterminate interest;

the Defendant's conduct is unconscionable and has given rise to an interest in the Site and/or an equity in favour of the Plaintiff.

AND THE PLAINTIFF THEREFORE CLAIMS

- (1) A Declaration that the Site is subject to a lease in its favour for the lifetime of the Plaintiff, at an annual rent of CI\$ 1.00.
- (2) A Declaration that the Plaintiff has an easement over the Access Road to gain access to the Site.
- (3) An order that the Defendant does execute a conveyance, capable of registration, giving effect to paragraphs (1) and (2) of the prayer above.
- (4) In the alternative, a Declaration that the 1.5 acre Site presently occupied by the Plaintiff is subject to an indefinite Licence which is not revocable.
- (5) Further, or yet in the alternative, a Declaration that the Site is subject to a year by year periodic tenancy, commencing on 1 January each year.
- (6) Further, or yet in the alternative, damages or equitable compensation with interest thereon at the rate of $2\frac{3}{8}\%$ per annum or such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time;
- (7) A permanent injunction preventing the Defendant from interfering with any of the Plaintiff's rights and interest in the Site and the Access Road;

- (8) Such further and other equitable relief as to this Honourable Court may seem just; and
- (9) The costs of this action.

DATED at Grand Cayman this 25th day of July 2019

Nelson & Co.

Nelson & Co.
Attorneys for the Plaintiff

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

TO: The Clerk of the Grand Court

AND TO: The Defendant

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2019

BETWEEN:

CAYMAN HYDROPONICS LTD

PLAINTIFFS

AND:

CLARENCE MCLAUGHLIN

DEFENDANTS

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 intend to contest the proceedings (tick appropriate box)

 Yes No

3. If the claim against the Defendants 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 Plaintiffs (tick box)

 Yes No

Service of the Writ is acknowledged accordingly

Signed

Attorney for

Address for service:

Please complete overleaf

Notes on address for service

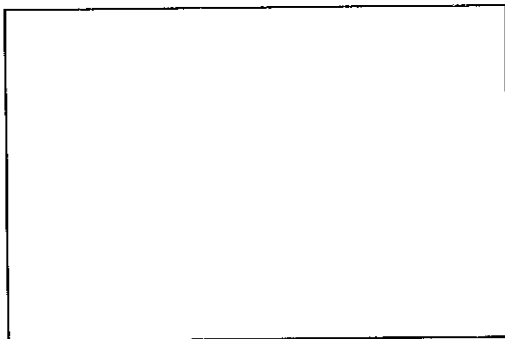
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

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
CAYMAN ISLANDS
Attn: C Flanagan/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

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 (or 28 days in the case of a writ served outside the jurisdiction pursuant to an order of the Court), 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.