

IN THE GRAND COURT OF THE CAYMAN ISLANDS

99  
CAUSE NUMBER: of 2020

BETWEEN:

1. DAVID HOLDEN  
2. MICHELLE HOLDEN

Plaintiffs

GIGLIOLI & COMPANY (A FIRM)

Defendant

WRIT OF SUMMONS



Giglioli & Company  
c/o Ritch & Conolly, Attorneys-at-Law  
PO Box 1994 GT  
4<sup>th</sup> Floor, Queensgate House  
Grand Cayman, KY1-1104  
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 17<sup>th</sup> day of June 2020.

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.

**THIS WRIT AND STATEMENT OF CLAIM WAS FILED BY** Etienne Blake, Attorneys-at-Law for the Plaintiffs, whose address for service is: 3<sup>rd</sup> Floor, Bayshore Centre, 31 Warwick Drive, George Town, PO Box 2496, Grand Cayman, KY1-1104, Cayman Islands

## STATEMENT OF CLAIM

### **Introduction**

This is a claim brought by the Plaintiffs against their attorney for the loss of the purchase price due on the purchase of a property. The Defendant was at all material times instructed to act for the Plaintiffs in this conveyancing transaction. All relevant communications between the parties, including payment instructions for the purchase price were conducted through email. Unknown to the Plaintiffs was the fact that the Defendant's email / data server had been breached by persons unknown and described hereafter as Third Parties, through a phishing scam. The Plaintiffs' case is that at all material times, the risk of security breach of the Defendant's email / data server was a well known and insurable risk, in respect of which the Defendant failed to take any or adequate steps to protect its email / data server from breach. The Plaintiffs' case is that by reason of this omission, confidential attorney / client information, which the Defendant was professionally bound to protect, was intercepted, read and altered by a Third Party to the prejudice of the Plaintiffs, who lost US\$523,998.48.

1. The Plaintiffs reside at 54 Galway Quay, Crystal Harbour, situated in Grand Cayman, Cayman Islands.
2. The Defendant is a firm of Attorneys-at-Law, whose principal place of business is situated at 4<sup>th</sup> Floor, Kirk House, George Town, Grand Cayman. The principal of the firm is Mr. George Giglioli.
3. The Defendant and its principal were, at all material times, registered and / or licenced to practice Cayman Islands law.
4. At all material times, the Plaintiffs were clients of the Defendant and their primary point of contact was the Defendant's principal.
5. In or around 6<sup>th</sup> August 2019, the Plaintiffs made an offer to purchase Unit 213, a property situated at Britannia Estates, described on the Land Register as WBBS 12D Parcel 25 H29. The offer to purchase was stipulated, in a standard form, on a CIREBA Offer to Purchase (the "contract") with an agreed price of US\$535,000.00.
6. At execution of the contract, the Plaintiffs paid US\$1.00 by way of deposit, which payment was required to be followed by an additional deposit in the amount of US\$49,999.00 payable by the Plaintiffs within five (5) days of acceptance by the seller of the Plaintiffs' offer to purchase. On completion on terms stipulated by the contract, the Plaintiffs were obligated to pay the balance of US\$485,000 with additional fixed Cayman Islands Government Stamp Duty and ancillary fees amounting to US\$39,140.23.
7. The Plaintiffs appointed the Defendant to advise on this conveyancing transaction, hereinafter referred to as the "engagement". Materially, all relevant communications between the parties concerning this engagement were to be effected via email from the following valid addresses:

1. Plaintiffs' email: [dnh4private@gmail.com](mailto:dnh4private@gmail.com)

II. Defendant's email: office@studiogiglioli.com.

8. At 12:02 on 21<sup>st</sup> August 2019, the Plaintiffs, from their address as previously pleaded at paragraph 7 (I), transmitted an email to the Defendant, at its office@studiogiglioli.com address in the following terms:

Subject Matter: "Transfer Details"

Body of email:

*"Hi George*

*Can you please send me the amount and transfer details"*

*Regards*

*Dave"*

9. The Plaintiffs aver that this email was intercepted and quarantined by a Third Party, who had hacked the Defendant's studiogiglioli.com server on or about 12:02 on 21<sup>st</sup> August 2019. The Plaintiffs aver that the Third Party fraudulently altered the email and Plaintiffs' email address, as pleaded at paragraph 8 and thereby substituted and / or generated the following false dnh4private@gmail.com address on to a message, sent to the Defendant, in like terms as the Plaintiffs' original email.
10. The Plaintiffs aver that they have neither had the email address dnh4private@gmail.com nor have they ever sent an email from that address to the Defendant or at all.
11. The Third Party's false email, simulating that it had been sent by the Plaintiffs, but from the dnh4private@gmail.com, was transmitted to the Defendant at 12:59 PM on 21<sup>st</sup> August 2019, namely 57 minutes after the Plaintiffs' genuine email earlier "sent" to but not received by the Defendant.
12. In accordance with the scope of its engagement, the Defendant, in writing, purportedly transmitted *via* email dated and timed 21<sup>st</sup> August 2019@ 2:30 PM, a message with an attached "Draft Completion Statement", requiring the Plaintiffs to pay, *via* wire transfer, the amount of US\$523,998.48 to the Defendant's "account" in satisfaction of the outstanding transaction fees, heretofore pleaded. The particulars of the account stipulated on the Draft Completion Statement were:
- "For the further credit to: Giglioli & Company, A/C No.01 1010 3176200 Quoting Ref: "H160"*
- For the account of: Bank of New York, 48 Wall Street, NY NY Route 021 0000 18*
- For the Further credit to: The Bank of Butterfield International (Cayman) Limited, George Town, Grand Cayman, A/C No. 01 1010 3176200, Quoting Ref: "H160"*

13. The Plaintiffs aver that the Defendant's email was intercepted and quarantined by the Third Party who altered the payment instructions pleaded at paragraph 12 above to read the following:

*"For further credit to: Sisapa Servicios Indegradados Spei/ Giglioli & Company, IBAN.01218001034111?1533, Quoting Ref: "H160"*

*Bank Address: Av. Central 120 Emiliano Zapata 1ra section Ecatapec EMorelos C.P. 55140*

*For the Further Credit to:*

*The Bank of BBVA,*

*Swift Code: BCMRMXMM*

*Quoting Ref: "H165"*

14. The Plaintiffs aver that these particulars, as pleaded in paragraph 13 above, were subsequently discovered to be false and had been received by him at his paragraph 7 (I) email address from an email purportedly sent by the Defendant, at 7 PM on 21<sup>st</sup> August 2019 from the Defendant's office@studiogiglioli.com address. The Plaintiffs aver that they did not receive the Defendant's email as particularised at paragraph 12 above either at the time purportedly sent by the Defendant and / or in respect of the bank transfer details stipulated at paragraph 12 above.
15. As pleaded at paragraph 13 above, the Plaintiffs aver that the Defendant's email was intercepted, quarantined and its attachment modified by the Third Party (who had breached the Defendant's office@studiogiglioli.com server) for a period of 4.5 hours from 2:30 PM until the email attaching the false bank payment instructions was sent by the Defendant's email server at 7 PM on 21<sup>st</sup> August 2019 as pleaded in paragraph 14.
16. At all material times, the Plaintiffs had no knowledge either that the Defendant's email server had been compromised / breached by a Third Party and / or that emails, purported to have been sent by the Defendant, were being manipulated by the Third Party to provide falsified payment information.
17. Acting on the instructions pleaded at paragraph 13 above, the Plaintiffs, on 26<sup>th</sup> August 2019, through their local bank, Royal Bank of Canada, initiated and authorised the transfer of US\$523,998.48 to the account particularised in the Draft Completion Statement they had received from the Defendant on the date and time pleaded at paragraph 13 above. The Plaintiffs aver that they were induced to act on the instructions pleaded in paragraph 13 above because:
- I. The Defendant's email address as displayed and received by the Plaintiffs at the time and date stipulated at paragraph 15 above appeared to be genuine;
  - II. The Defendant had not at the inception of the engagement and throughout, required the Plaintiffs, whether explicitly in writing or at all, to confirm all payment instructions with the Defendant prior to acting on and or effecting payment;
  - III. They had every expectation that the Defendant, as an experienced firm of attorneys, would take all reasonable steps to ensure that all communications between itself with clients in general or the Plaintiffs were secured and kept confidential.

18. The Plaintiffs aver and the Defendant never received the funds particularised at paragraph 17 above.
19. The Plaintiffs aver, further, that the particulars pleaded at paragraph 13, received from the Defendant on the date and time previously pleaded, were the result of the Defendant's office@studiogiglioli.com email server having been compromised as a consequence of a phishing breach by the unidentified Third Parties of the said server.
20. Notwithstanding the Plaintiffs having initiated and authorised the transfer of funds as pleaded at paragraph 15 above and the Defendant not having received the funds, the Defendant continued to communicate with the Plaintiffs, *via* email, inquiring about the whereabouts of the funds. The Plaintiffs aver, by way of samples only, that the following emails demonstrate how email correspondence between the parties was intercepted by the Third Party and modified:

29<sup>th</sup> August 2019

- I. Plaintiffs' 6:19 email to the Defendant "Subject: Your Wire" intercepted and sent by Third Party to the Defendant under same "Subject: Your Wire";
  - II. Defendant reply 7:51 email to Plaintiffs' email at I. above under same heading "Subject: Your Wire", which email is intercepted and modified by the Third Party;
  - III. Third Party 9:43 email simulating that it was transmitted by the Defendant, under different header "Subject 524,000 pdf." received by Plaintiffs;
  - IV. Defendant email at II. above substantially edited by Third Party when received by Plaintiffs;
  - V. Plaintiffs never received Defendant's email at II. above;
  - VI. Plaintiffs' 10:16 email to the Defendant under heading "Subject 524,000";
  - VII. Third Party's simulated responsive 11:36 email to the Defendant under heading "Subject: Your Wire";
  - VIII. Defendant's 12:58 email to Plaintiffs under heading "Subject: Your Wire" which email is intercepted by the Third Party;
  - IX. Third Party's simulated 16:05 email to the Plaintiffs under heading "Subject: 524,000.pdf."
21. The emails pleaded above in paragraph 20, namely III., VII. and IX., purporting to have been sent by either the Plaintiffs or the Defendant from respectively dnh4private@gmail.com or office@studiogiglioli.com addresses, were as previously pleaded, false and created by the Third Party who, having breached the Defendant's server, monitored and altered all genuine email correspondence emanating between the Plaintiffs and the Defendant concerning the whereabouts of the funds pleaded at paragraph 17 above.

22. The Plaintiffs aver that a hallmark of the breach and modification of emails was the delay, as indicated on the time logs, the modification of email "subject title" of each genuine email sent by the Plaintiffs and the Defendant on the whereabouts of the funds. The Plaintiffs will, at trial rely on these emails as further evidence of the Defendant's breach of its duty and retainer with respect to the engagement particularised at paragraph 5 above.
23. The Plaintiffs aver that having initiated the bank transfer of funds particularised at paragraph 17 above, the Defendant was by 27<sup>th</sup> August 2019 aware of the following:
- I. That its account had not been credited with the funds previously particularised;
  - II. The Plaintiffs on 27<sup>th</sup> August 2019 *via* an email timed at 17:49 enquired of the Defendant, whether, *inter alia*, it had "receive the funds?" The Plaintiffs aver that this email was intercepted and modified by the Third Party to read, "you received the funds yet?" and subsequently transmitted from the [dnh4private@gmail.com](mailto:dnh4private@gmail.com) address to the Defendant at 6:11 PM, a delay of 22 minutes from the time the original, genuine email was sent by the Plaintiffs;
  - III. The Defendant purportedly issued a responsive email timed at 6:30 PM addressed to the Plaintiffs, which email was modified by the Third Party; in that the Defendant's phrase "No funds as at 4 this afternoon" was changed to "Kindly send transfer slip to allocate payment because no funds have arrive (*sic*) as at 4 this afternoon."
  - IV. The Plaintiffs never received the Defendant's email at II. above;
  - V. The Plaintiffs received the modified email at III. above at 18:46 PM, 16 minutes after the Defendant's email at II. above had been sent.
24. By 28<sup>th</sup> August 2019, funds had still not been credited to the Defendant's account. The Plaintiffs, via email of the same date and timed at 8:21 with subject heading: "524,000.pdf." provided the Defendant with the particulars of the account purportedly received from the Defendant *per* paragraph 13 above.
25. The Plaintiffs aver that upon receipt of this information, the Defendant ought to have been put on immediate inquiry about:
- I. A likely fraud given the fact that by then it was aware that the payment instructions it claimed to have sent to the Plaintiffs had been significantly altered to include the details of an entity unconnected with the Defendant;
  - II. Taking such immediate steps as were necessary to ensure that his email communications in particular and his [office@studiogiglioli.com](mailto:office@studiogiglioli.com) had not been compromised.
26. Instead of taking one or both of the steps identified at paragraph 25 above, the Defendant sent an email to the Plaintiffs, timed at 8:53 to the following effect:

"Dave,

I think you need to follow up with your wire – it looks as if the bank has confused my data with some other data – I have extracted the relevant bits below (the highlighted bits are nothing to do with us: \_ ...”

27. The Plaintiffs aver that it should have been obvious to the Defendant, from his review of the data, that the coincidence of the strange data and the Defendant’s data and the fact that funds which had been ordered two (2) days earlier to be credited to the Defendant’s account, the details of which are pleaded at paragraph 4 above, should have given rise to a suspicion of fraud and / or of a compromise of the Defendant’s email system, requiring the Defendant to take all steps to protect the Plaintiffs’ interests, including alerting the Plaintiffs and the Plaintiffs’ Bank of the possibility of the fraud.
28. Not only did the Defendant fail to take any such steps, he compounded matters by emailing the Plaintiffs as pleaded at paragraph 26 above, which email was duly intercepted by the Third Party who responded via email timed at 10:41 AM, one hour and forty eight minutes (1 hour and 48 minutes) after the Defendant’s email. Indeed, the Plaintiffs aver that they never received the Third Party’s email.
29. By his email timed at 7:51 AM on 29<sup>th</sup> August 2019, which the Plaintiffs never received, the Plaintiffs aver that that the Defendant suspected illegality in that he stated the following:

“Hi Dave,

Great news. In my mind I saw this elderly, overweight, bald Mexican guy struggling to pronounce his new, misspelled Italian name and how he could spend half a million on Coronas and fajitas before the Federales caught up with him and we had to share.”

30. As pleaded at paragraph 20 sub-paragraphs II. and IV. above, the Plaintiffs never received this email. This fact notwithstanding, the Defendant failed to take any steps to protect the Plaintiffs’ interests as particularised at paragraph 25 above.
31. The Plaintiffs aver and the Defendant admits that the Defendant’s server was at all material times compromised. By its attorney’s letter of 15<sup>th</sup> April 2020, the Defendant states the following:

“Giglioli took ample precaution to secure his email and online systems. Regrettably, like many other firms and large businesses with internal IT departments his firms email account was hacked despite these precautions. Giglioli is not vicariously liable for an email server and it is not accepted that the mere “hacking of an organizations email account amounts to negligence.”

The Plaintiff will, at trial, rely on the Defendant’s following admissions for their full terms and effects:

- I. “his firms email account was hacked despite these precautions”;
- II. the Defendant’s and its principal’s acceptance of its / his obligation to secure “email and online systems” as well as the “hacking” thereof.

Insofar as the Defendant asserts that it took "ample precaution" to secure his email and online systems, the Plaintiffs put the Defendant to strict proof, in each and every material particular of all steps it claims to have undertaken to secure its "email and online systems".

32. The Defendant's server was at all material times compromised, which is corroborated a review and Digital Analysis undertaken by a Royal Cayman Islands Police Service (RCIPS) Digital Forensic Examiner of the (3) log data files that the Defendant's IT manager voluntarily disclosed to the RCIPS. Insofar as it is material, the Digital Analysis also found that that although the origin of the breach was from a location situated in Lagos, in the Federal Republic of Nigeria, the perpetrator of the breach utilised a VPN to mask his / her location throughout his / her fraudulent activities.
33. The Plaintiffs further aver that upon expert forensic review of the email correspondence by Deloitte Forensic, it is apparent that the Defendant was solely responsible for the fact that sensitive communications between the parties were intercepted, manipulated and caused substantial loss as pleaded.
34. As a client of the firm, the Defendant and or its principal owed the Plaintiffs the following express and / or alternatively implied duties:
  - I. To provide legal services to the Plaintiffs with reasonable skill and care in accordance with expected professional standards;
  - II. To, at all times, preserve the confidentiality of any and / or all information disseminated to and / or received from the Plaintiffs pursuant to the terms of the engagement;
  - III. To ensure that all work product (including emails, attachments and / or other documents or data) created by reason of its retainer with the Plaintiffs was kept confidential and secure from unauthorised disclosure, misuse, alteration or otherwise during the currency of its engagement by the Plaintiffs;
  - IV. To ensure that all communications and records relevant to the engagement, howsoever generated, including but not limited to electronically stored data, provided to the Plaintiffs by the Defendant and *vice versa*, were secured kept secure from disclosure to unauthorised Third Parties;
  - V. To ensure that all storage devices, including servers and / or cloud-based data systems were secured, via current cyber security mechanisms, from intrusion and / or interception and / or manipulation by unauthorised Third Parties;
  - VI. In performance of (I) to (V) to ensure that it had in place systems (including but not limited to passwords, firewalls and multi-step authentication security systems) to ensure that its computer servers were, at all times, protected from unauthorised breaches by Third Parties;

- VII. Comply with the standards of professional conduct applicable to Cayman Islands attorneys including but not limited to professional conduct rules applicable to the preservation of confidentiality of its client's information.
35. The Plaintiffs reposed full trust and confidence in the Defendant to act in utmost good faith and in his best interests as his Cayman Islands attorney.
36. In addition to the duties hereinbefore pleaded, the Defendant owed the Plaintiffs:
- I. A general fiduciary duty of loyalty;
  - II. A fiduciary duty to act in good faith in the best interests of the Plaintiffs; and
  - III. A fiduciary duty to protect and preserve confidential information and / or documentation belonging to the Plaintiffs, including, but not limited to a duty to take active steps to prevent any breach of such duties occurring.
37. Further, the Plaintiffs hereby repeat paragraph 34 (II) to 34 (V) as particulars of the Defendant's fiduciary duty to the Plaintiffs, which subsisted throughout the period that the Defendant acted as the Plaintiffs' attorney.
38. By reason of the Defendant's breaches duty as particularised at paragraph 34 (I) to 34 (V) above and the Defendant's breach of fiduciary duty, the Plaintiffs have suffered loss and claims to be entitled to damages and / or equitable compensation for the Defendant's breach of duty.

#### **PARTICULARS OF LOSS**

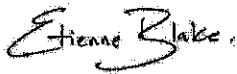
39. As a direct result of the Defendant's breaches of duty of care and breaches of fiduciary duty, the Plaintiffs suffered the following losses:
- I. US\$523,998.49, namely the balance due under the terms of the engagement by the Plaintiffs for the Defendant to act on their behalf in respect of the purchase of the property hereinbefore pleaded;
  - II. Legal fees associated with instructing overseas counsel to take proceedings to investigate and take such steps as are necessary to prevent the dissipation of the funds pleaded in (i) above from being dissipated / removed by the third party from the bank account hereinbefore particularised.
40. The Plaintiffs are entitled to and claim interests on the sums found to be due pursuant to section 34 of the Judicature Law (2017 Revision) or the equitable jurisdiction of this Honorable Court;

#### **AND THE PLAINTIFFS CLAIM**

- I. Damages and / or equitable compensation for breach of fiduciary duty;
- II. Damages for breach of duty of care;

- III. Damages for breach of confidentiality;
- IV. Interest pursuant to section 34 (1) of the Judicature Law (2017 Revision) or alternatively, pursuant to the equitable jurisdiction of the Court;
- V. Costs on an Indemnity Basis; and
- VI. Such other relief as the Court deems fit.

Dated this 17<sup>th</sup> Day of June 2020



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**Etienne Blake**  
Attorneys at Law for the Plaintiffs

**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 495G, 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, 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.



**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.

Etienne Blake  
Attorneys at Law  
3<sup>rd</sup> Floor, Bayshore Centre  
31 Warwick Drive, George Town  
P.O. Box 2496  
Grand Cayman, KY1-1104  
Cayman Islands

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