

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 136 OF 1998

BETWEEN:

- (1) **LESLIE GOLD**
(2) **LILI GOLD**

Plaintiffs

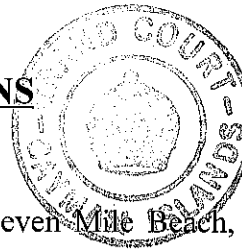
- and -

MARGARET KEOGH

Defendant



WRIT OF SUMMONS



TO: Margaret Keogh

C/o I.D. Associates Ltd., P.O. Box 31491 Seven Mile Beach, 208A Mirco
Commerce Centre, North Sound Road, Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the following pages.

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 Court Office, PO Box 495GT, 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 of Service within the time stated, or if you return the Acknowledgment without stating therein an 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 20th day of February 1998.

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 was issued by Ian Boxall & Co., Attorneys at Law for the Plaintiffs, whose address for service is CIBC Financial Centre, PO Box 1234, George Town, Grand Cayman, Cayman Islands, B.W.I.

STATEMENT OF CLAIM

I. Money Had and Received, Breach of Trust and Breach of Contract

1. The Plaintiffs claim is for US\$31,593.48, being money payable by the Defendant to the Plaintiffs as money had and received by the Defendant to the use of the Plaintiffs.

Particulars

From in or about November 1996 until December 1997 the Defendant was retained as the Plaintiffs' agent to supervise renovations of their house on Grand Cayman. In her capacity as their agent the Plaintiffs provided to the Defendant funds from time to time as requested by the Defendant to progress the renovations. The Plaintiffs have discovered that the following sums, requested of the Plaintiffs by the Defendant for the following purported purposes, were not applied by the Defendant for the stated or any purpose relative to the house renovations or the Plaintiffs' interests:-

- (a) US\$19,000 paid by the First Plaintiff to the Defendant in Michigan on or about 23rd September 1997 to purchase furniture and pay a deposit to a contractor (Neil Armstrong). No furniture was purchased and no deposit was paid by the Defendant to Neil Armstrong.
- (b) US\$1,900 paid by the Plaintiffs to the Defendant at her request to pay a deposit to a tile setter. No such deposit was paid by the Defendant to the tile setter.
- (c) CI\$1,000 paid by the Plaintiffs to the Defendant to pay a deposit to a painter. No deposit was paid by the Defendant to the painter but the Defendant refunded the Plaintiffs only US\$1,000 and has not repaid the balance of US\$219.51.

- (d) US\$5,723.00 was paid by the Plaintiffs to the Defendant for a glass shower door and hardwood flooring. The Defendant admitted by letter of 16th December 1997 that she did not properly apply those funds and is obliged to repay them to the Plaintiffs. The Defendant refuses to repay them.
- (e) US\$4,750.97 was over-paid to the Defendant as remuneration under her contract of employment. The Defendant was contractually entitled to be paid US\$10,878.05 for her services under her contract with the Plaintiffs which sum included a bonus of CI\$2,000 only to be received upon successful completion of the project. The Plaintiffs have in fact over-paid the Defendant in error US\$13,190 (US\$4,750.97 over-payment) and the Defendant has never been entitled to the CI\$2,000 bonus. .

The Defendant has despite repeated requests failed to repay any of the above sums to the Plaintiffs.

2. Further or in the alternative, all monies paid to the Defendant as the Plaintiffs' agent were received by her on trust for the Plaintiffs to be applied solely as directed by them or to their benefit and the Defendant in breach of trust failed to so apply the above sums which she applied in breach of trust to her own benefit without the knowledge or consent of the Plaintiffs and causing the trust funds to be lost to the Plaintiffs.

3. Further or in the further alternative, there were express alternatively a implied terms of the contract between the Plaintiffs and the Defendant that she would hold all funds received from the Plaintiffs strictly to their order and only apply them as directed in the house renovations and in breach of contract the Defendant misapplied the above funds of the Plaintiffs for purposes of her choosing, without benefit to the Plaintiffs, and without their knowledge or consent and causing loss of the funds to the Plaintiffs and damage.

II. An Account and Conversion

4. There were express alternatively implied terms of the agreement between the Plaintiffs and the Defendant that she would:-

- (a) receive monies from the Plaintiffs to be used in the renovations;
- (b) use the said monies to pay contractors and to purchase materials for the renovations;
- (c) keep a record of the payments made to her by the Plaintiffs;
- (d) keep money of the Plaintiffs that was not immediately paid over to Third Parties in a Bank Account until it was required;
- (e) keep a record of the Plaintiffs' money she paid out to Third Parties recording at a minimum the date, amount and recipient of each payment;
- (f) obtain from Third Parties receipts for any of the Plaintiffs' money paid to the Third Parties;
- (g) repay to the Plaintiffs upon demand any surplus or excess funds which it transpired had been paid to her for a purpose for which they were no longer required;
- (h) retain until at least the end of the project all documents and records relating to any and all expenditure(s) by the Defendant using the Plaintiffs' funds and the record of monies received by her from the Plaintiffs.
- (i) on request by the Plaintiffs:
 - (i) render to the Plaintiffs a true and full account of all financial activities/transactions of whatever description undertaken by the Defendant with the Plaintiffs' funds;

- (ii) provide to the Plaintiffs for inspection the books or other documents recording the receiving in, paying out and her keeping/holding of the Plaintiffs' monies;
- (iii) provide to the Plaintiffs any and all receipts or other original records recording provision of good and/or services relative to the house renovations and the Defendant's expenditure of the Plaintiffs' funds by her in relation thereto.

5. From November 1996 through December 1997 the Plaintiffs provided to the Defendant in excess of US\$170,000 to be applied by her in her role as their agent towards the house renovations.

6. By oral requests and faxed requests by letters too numerous to set out *seriatim* the Plaintiffs from October 1997 requested of the Defendant:

- (a) to render to the Plaintiffs a true and full account of all of the Plaintiffs' monies received and expended by her; and
- (b) to produce her books or other documents of account and original or copy receipts and other evidence of expenditure; and
- (c) to pay over to the Plaintiffs all monies improperly applied or paid for purposes for which they were no longer required.

6. Wrongfully and in breach of contract and in further breach of written promises to provide a full account and the records by 8th December 1997 and then 10th January 1998 the Defendant has failed:

- (a) to render to the Plaintriffs a true and full account of all of the Plaintiffs' monies received and expended by her or any account; and
- (b) to produce her books or other documents of account and original or copy receipts and other evidence of expenditure; and

- (c) to pay over to the Plaintiffs all monies improperly applied or paid for purposes for which they were no longer required.

7. By reason of the matters aforesaid the Plaintiffs have suffered loss and damage. The Plaintiffs are unable to give full particulars of loss and damage until after discovery and inspection and/or the administration of interrogatories in this action.

8. Further in the premises the Defendant has converted the documents and records to her own use causing the Plaintiffs loss and damage.

III. Telephone Calls

9. There was an express oral agreement between the Defendant and the Second Plaintiff that the Defendant could use the telephone at the Plaintiffs' house if and only if she agreed to reimburse the Plaintiffs for the cost of the telephone calls she made. The Defendant made telephone calls billed to the Plaintiffs costing CI\$241.68 and despite requests by the Plaintiffs has failed to pay any sum towards the costs of her telephone calls made on the Plaintiffs telephone.

10. Further the Plaintiffs claim interest on damages and the said sum of US\$31,593.48 pursuant to section 34 of the Judicature Law (1995 Revision) at such rate and for such period as the Court may determine.


And the Plaintiffs claim:-

- (1) US\$31,593.48.
- (2) An account of all monies received from the Plaintiffs detailing how, where and when such sums were received, maintained and/or expended by the Defendant.
- (3) An Order for payment by the Defendant to the Plaintiffs of all sums found to be due from the Defendant to the Plaintiffs on the taking of the account under (2) above.

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Issued and filed 20th February 1998

- (4) An Order for delivery up by the Defendant to the Plaintiffs or their attorneys of all documents and records relating to monies received by the Defendant from the Plaintiffs and their subsequent application(s) by the Defendant.
- (5) Damages.
- (6) Further or other relief, including all further necessary or appropriate accounts, inquiries and directions.
- (7) Interest on the said sum of US\$31,593.48 at 7.375% from 1st November 1997 to 31st January 1998 amounting to US\$580.91 and at the rate of 7.875% from 1st February 1998 to the date hereof amounting to US\$136.33 and continuing until full payment be made at the rate of US\$6.82 per day.
- (8) Interest on Damages pursuant to section 34 of the Judicature Law (1995 Revision) as aforesaid.
- (9) CI\$241.68 under paragraph 9 above
- (10) The *ad valorem* fee(s) paid upon issue (CI\$177.06) and payable upon entering the Judgment for damages herein.



Ian Boxall & Co.

Attorneys for the Plaintiffs

Dated this 20th day of February 1998.