

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 304 OF 1998

BETWEEN:

GARY PAUL KULISEK

Plaintiff

AND

- (1) PARROTS LANDING WATERSPORTS PARK LTD
- (2) GREGORY E. MERREN

Defendants

WRIT OF SUMMONS

TO: Parrots Landing Watersports Park Ltd.
218 South Church Street
P.O. Box 1995
George Town, Grand Cayman
Cayman Islands BWI

AND TO: Gregory E. Merren
218 South Church Street
P.O. Box 1995
George Town, Grand Cayman
Cayman Islands BWI

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 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 an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

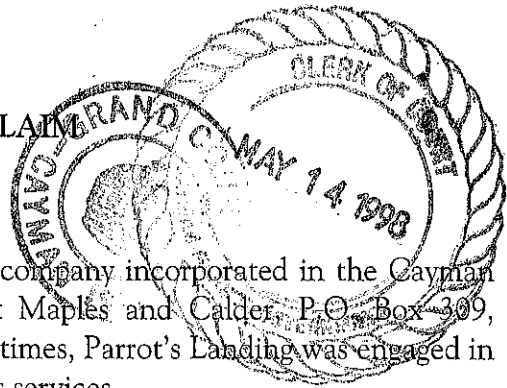
Issued this day of May 1998.

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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

**Introduction**

1. The First Defendant ("Parrot's Landing") is a company incorporated in the Cayman Islands having its registered office address at Maples and Calder, P.O. Box 309, George Town, Grand Cayman. At all material times, Parrot's Landing was engaged in the business of providing diving and watersports services.
2. The Second Defendant is the Managing Director and the proprietor or beneficial owner of Parrot's Landing (or part thereof).
3. The Plaintiff ("Mr. Kulisek") was, at all material times, employed as Operations Manager of Parrot's Landing as pleaded further below.
4. Mr. Kulisek's claim is for damages for wrongful dismissal arising out of the breach of a fixed term employment contract with Parrot's Landing and for damages for defamation arising out of the publication of a defamatory poster together with the writing of a defamatory letter regarding Mr. Kulisek as pleaded further below.

The Contract

5. By an agreement ("the Agreement") made between Mr. Kulisek and Parrot's Landing, Mr. Kulisek, at all material times, worked as the Operations Manager of Parrots Landing .
6. The Agreement was made partly in writing and partly by conduct in the circumstances set out below.
7. Insofar as it was made in writing the agreement was contained in or is to be inferred from a letter from Parrot's Landing to Mr. Kulisek signed by the Second Defendant dated 30 July 1997, wherein Parrot's Landing offered to employ Mr. Kulisek (who was then living in Canada) as the Operations Manager of Parrots Landing, based at 218 South Church Street, Grand Cayman, Cayman Islands for a fixed term of two (2) years commencing 6 October 1997, at a salary of CI\$48,000 per annum to be paid twice monthly in Cayman Islands dollars. Mr. Kulisek will refer to the letter at the trial herein for its full terms and effect.
8. In so far as the Agreement was made and /or completed by conduct, Mr. Kulisek will say that he accepted the offer of employment contained in the letter referred to above orally in a telephone conversation with the Second Defendant on or about 30 July 1997 and following the completion of immigration formalities took up employment for due consideration being the said salary of CI\$48,000 per annum paid twice monthly.

9. It was an express term of the Agreement that:
- a) the contract was for a fixed term of two years
 - b) Mr. Kulisek would participate in the Defendant's corporate health plan and that Parrot's Landing would pay 50% of the contributions in respect of Mr. Kulisek as provided by the said plan;
 - c) Mr. Kulisek would enjoy the unlimited free use of a Company car provided by Parrots Landing; and
 - d) Mr. Kulisek would enjoy paid vacation entitlement of two (2) weeks per annum.

The Breach

10. On Saturday 7 February 1998 (at approximately 1:35 p.m. or thereabouts) Parrot's Landing acting by the Second Defendant wrongfully and in repudiatory breach of the Agreement terminated the employment and wrongfully dismissed Mr. Kulisek therefrom.
11. Parrot's Landing had no or no good cause to dismiss Mr. Kulisek in such a summary manner or at all.
12. Mr. Kulisek in addition to the matters alleged in paragraph 10 and 11 herein further claims exemplary damages by reason of the conduct of Parrot's Landing and the Second Defendant. The conduct of Parrot's Landing and the Second Defendant was calculated to make a profit which may well exceed the compensation payable to Mr. Kulisek in that Parrots Landing and/or the Second Defendant could then continue to operate unsafe practices which Mr. Kulisek had criticised and condemned and would avoid having to incur the expense of completely overhauling the safety systems, equipment and administration practices at Parrot's Landing.

PARTICULARS OF CONDUCT RELIED ON

- a) That on or about the 7 November 1997 Mr. Kulisek informed the Second Defendant that after having obtained the opinion of highly qualified colleagues namely a Master Mechanic called Dan Wetherington, a certified dive compressor technician namely one Franck Le Mellec and a certified high pressure welder namely one Mark Brooker it was considered that the four air banks (pressure vessels) on Parrot's Landing's premises were dangerous, unfit for use and not even capable of being repaired. In fact, Mark Brooker stated to Mr. Kulisek that the said vessels were "a nuclear time bomb". Mr. Kulisek condemned the vessels and declared them unsafe for use. Mr. Kulisek informed the Second Defendant of these findings and opinions and suggested investigating the purchase of new equipment. Mr. Kulisek was, however, told

by the Second Defendant that this was not an important issue and the vessels had functioned for the past 10 years. Mr. Kulisek was dismissed in order to prevent him raising issues of this nature and to enable the Defendants to continue their dangerous practices unchecked. In the event, on 20 March 1998, after Mr. Kulisek and Mr Le Mellec (who was dismissed on or about 1 March 1998) were no longer on the premises and no longer in a position to ensure they were not used, those vessels exploded and caused death and injury.

- b) The Second Defendant had on several occasions ordered Mr. Kulisek to take steps which Mr. Kulisek considered illegal and/or immoral, and which Mr. Kulisek had refused to take. By way of example the Second Defendant told Mr. Kulisek to lie to employees about the progress of applications for work permits. The Second Defendant would apply for a temporary work permit, and told Mr. Kulisek to deceive the employee into thinking that a full permit had been applied for, when it had not, and upon expiry of the temporary permit to tell the employee that the full permit had been refused. Mr. Kulisek refused to co-operate in this deception and was removed in order to permit such practices to continue.
 - c) Further, Mr. Kulisek will state that when he brought to the attention of the Second Defendant the fact that out of approximately twenty seven fire extinguishers on the Parrot's Landing premises and boats only two were operational and Mr. Kulisek proceeded to urgently order replacements he was reprimanded by the Second Defendant and told he was "wasting" money. Again, Mr. Kulisek was removed in order to prevent him from raising matters of this nature.
13. As a direct result of his wrongful dismissal, Mr. Kulisek has had to leave the Islands withdrawing his sons from school in the middle of the academic year. He has suffered financial loss and damage and severe disruption to his family life resulting in considerable emotional strain and distress. In addition, Mr. Kulisek has suffered damages to feelings and loss of dignity and seeks aggravated damages accordingly.

PARTICULARS OF LOSS

- 13.1 Arrears of salary from 31 January 1998 – 7 February 1998 being due and payable by the Defendant to Mr. Kulisek for work done and services rendered during the prior to his dismissal = \$1,000.00.
- 13.2 Loss of salary from 7 February 1998 to 5 October 1999 (the end of the term of employment) = CI\$79,000.00.
- 13.3 Loss of benefit under the said health plan (to be assessed).

- 13.4 Loss of use of the said Company car C1\$2,000.00 (being cost of car purchased by Mr. Kulisek).
- 13.5 Travel and relocation expenses \$3,000.00.
- 13.6 Out of pocket expenses incurred on behalf of Parrot's Landing but not reimbursed \$304.09
14. Further, Mr. Kulisek seeks aggravated damages for damage to feelings and loss of dignity.
15. Mr. Kulisek will give credit herein for such remuneration (if any) as he may receive by virtue of his reasonable attempts to mitigate his said loss during the said period.
16. Further pursuant to statute Mr. Kulisek is entitled to claim and hereby claims interest on the amount found to be due to him at such a rate and for such a period as the Honourable Court may deem fit.

Defamation

17. Further, on or about 9 February 1998 the Defendants wrote and published or caused to be written and published falsely and maliciously in one or more colour computer printed posters ("the Poster") the following words, which are defamatory of Mr. Kulisek:

"Arrest Warrant

For: Gary (The Bullshitter) Kulisak(sic) Gary is wanted in 5 countries for being a compulsive liar, bullshitter, child molester, rapist and for giving orders that have had men KILLED!

Did I say I was here to stay for at least 2 years?"

18. Mr. Kulisek does not know (in advance of discovery and or the administration of interrogatories) precisely who typed the Poster.
19. A copy of the Poster was placed on the official company bulletin board at Parrot's Landing's premises namely in the foyer of the administration building and Mr. Kulisek will say that at all material times, Parrot's Landing, by the Second Defendant, knew that the Poster had been placed on the said bulletin board and was likely to be seen and read by employees and/or clients and customers of the Company as it was in fact by a number of the employees. Mr. Kulisek will say that almost every employee would have seen the Poster by virtue of the fact that they had to walk by the bulletin board in order to clock in for work each day and were in fact required to check the bulletins every morning. The said employees to whom Mr. Kulisek believes the poster was published are identified below:

- | | |
|-----------------------|----------------------|
| 1. Tony Aylett | 12. Brad Marchant |
| 2. Mark Brooker | 13. Kazu Miyagi |
| 3. Sarah Coombs | 14. Shawn Robertson |
| 4. Adam Craven | 15. Naomi Saito |
| 5. Samuel Dawson | 16. Scott Schneider |
| 6. Steve Dittmer | 17. Dan Vote |
| 7. Michael Farrington | 18. Sonia Waldow |
| 8. Stephane Frigon | 19. Patrick Weir |
| 9. Peter Heiss | 20. Darcy Wiebe |
| 10. Marylene Lefebvre | 21. Alexandra Wright |
| 11. Franck Lemellec | 22. Walter Verhoeven |

20. Mr. Kulisek believes the said words were also published to other persons whom he cannot presently specify but will rely upon their publication thereof to every person to whom he may discover the same to have been published.
21. Further, Mr. Kulisek will say Parrot's Landing and/or the Second Defendant took no steps to cause the removal of the Poster or to reprimand its author or authors and in doing so further aggravated the publication thereof.
22. In their natural and ordinary meaning the said words plainly meant and were understood to mean that Mr. Kulisek was a liar and a criminal.
23. Further and alternatively the said words bore and were understood to bear the meanings pleaded in paragraph 22 above by way of innuendo.

PARTICULARS UNDER GCR ORDER 82 RULE 3.1

- a) It is clear and unambiguous that the words contained in the Poster referred to Mr. Kulisek and to no one else.
- b) The said words were calculated to damage and injure the reputation of Mr. Kulisek, to disparage Mr. Kulisek in the carrying out of his occupation and/or were a malicious device to justify his dismissal and also to materially affect his work permit position on the Island. Further, the said words were calculated to injure Mr. Kulisek's feelings.
24. Further on or about 20 February 1998 Parrot's Landing by the Second Defendant wrote and published or caused to be written and published in a letter to the Immigration Department ("the Letter") the following words, which are defamatory of Mr. Kulisek:-

"I write to advise you that Mr. Kulisek's employment with this company was terminated on 7 February 1998 for conduct which is unacceptable

and unprofessional at any level of employment. His behaviour has severely impacted my company's image and reputation locally and internationally. I must say that employing him in my operation is the single largest business mistake I have ever made. I would like to further add that he does not deserve the privilege of continued residency in our Country."

Mr. Kulisek believes that the Letter was drafted by the Second Defendant and typed by his secretary.

25. The Letter was sent to the Immigration Department and the best particulars Mr. Kulisek can give at present is that at all material times the Defendants knew that the Letter was likely to be seen and read by Parrot's Landing employees and employees and members of the Cayman Islands Immigration Board and it so was.
26. Mr. Kulisek believed the said words were also published to other persons whom he cannot presently specify but will rely upon their publication thereafter every person to whom he may discover the Letter to have been published.
27. In consequence, Mr. Kulisek's reputation has been damaged and he has suffered considerable distress and embarrassment.

PARTICULARS UNDER GCR ORDER 82 RULE 3.1

- a) It is clear and unambiguous that the words contained in the Letter referred to Mr. Kulisek and to no one else given Mr. Kulisek's name is set out in the reference line of the letter.
 - b) The said words were calculated to damage and injure the reputation of Mr. Kulisek, to disparage and materially effect Mr. Kulisek in the carrying-out of his occupation and/or were a device to justify his dismissal and also to materially effect his work permit position on the Island and further to deprive him of the right to enjoy a family life with his sons.
28. In consequence and by reason of matters referred to above, Mr. Kulisek's reputation has been seriously damaged and he has suffered distress and embarrassment together with loss and damage.

AND THE PLAINTIFF claims:

1. Quantified damages of CI\$85,304.09 in respect of his claim for wrongful dismissal.
2. Under paragraphs 10-14 exemplary damages; alternatively aggravated damages.
3. Alternatively damages.

4. Interest.
5. Damages for libel as above.
6. Aggravated damages for injury to reputation and injury to feelings.
7. Costs.
8. Further and/or other relief.

Hunter & Hunter

HUNTER & HUNTER
Attorneys for the Plaintiff

THIS WRIT was issued by Hunter & Hunter, Attorneys-at Law for the Plaintiff whose address for service is that of his said Attorneys, namely Hunter & Hunter, The West Wind Building, 2nd Floor, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref: MJ)