

IN THE GRAND COURT OF THE CAYMAN ISLAND

CAUSE NO. 375 of 1998

**BETWEEN: OLE JUD'S RESORT LTD PLAINTIFF**  
**AND; JEFFREY FANNING FIRST DEFENDANT**  
**AND: BLUE REEF LIMITED SECOND DEFENDANT**  
**AND: IRONSHORE CORPORATE SERVICES Ltd. THIRD DEFENDANT**  
**AND: IAN BOXALL & COMPANY (A FIRM) FOURTH DEFENDANT**  
**AND: CHARLES ADAMS, RITCHIE & DUCKWORTH (A FIRM) FIFTH DEFENDANT**  
**AND: FRANK CALVARI JR. SIXTH DEFENDANT**

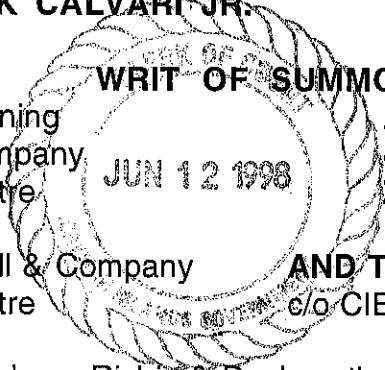


**WRIT OF SUMMONS**

**TO;** Mr Jeffrey Fanning  
c/o Ian Boxall & Company  
CIBC Financial Centre  
**AND TO:** Blue Reef Resort Ltd  
c/o Charles Adams ritchie & Duckworth  
**Zyphyr House**

**AND TO:** Ian Boxall & Company  
CIBC Financial Centre  
**AND TO :** Iron shore Corporate Services  
c/o CIBC Financial Centre

**AND TO:** Charles Adams Richie & Duckworth  
Zyphyr House  
**AND TO:** Mr Frank A. Cavalari Jr.  
c/o Ian Boxall & Company



**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 495 G, 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 Judgement may be entered against you forthwith without further notice.

Issued this 12<sup>th</sup> day of June, 1998

**NOTE:** This Writ may not be served later than 4 calender months beginning with the date of the issue unless renewed by Order of the Court.

**IMPORTANT**

Directions for Acknowledgement of Service are given with the accompanying form

## STATEMENT OF CLAIM

1 The Plaintiff is a corporation duly registered and incorporated under the Laws of the Cayman Islands and has its Registered Office at c/o Brooks & Brooks, Attorneys At Law, 2nd Floor Harbour Centre, P O Box 1355 GT, GRAND CAYMAN

2 The First Defendant is a Director of the Second Defendant and an individual who intermittently resides in the Cayman Islands .

3 The Second Defendant is a corporation duly registered and incorporated under the Laws of the Cayman Islands and has its Registered Office at c/o Charles Adams Ritchie & Duckworth, Zyphyr House, P O Box 709 GT, Grand Cayman or alternatively the Registered Office is located at Ironshore Corporate Services, P O Box 1234 Gt CIBC Financial Centre, George Town, Grand Cayman.

4 The Third Defendant is a corporation duly registered and incorporated under the Laws of the Cayman Islands to carry on the business of company management whose registered office is located at CIBC Financial Centre, P O Box 1234 Gt which corporation is effectively owned, controlled and operated by the Partner (s) of the Fourth Defendant. The Registered Office of the Second Defendant was transferred to the Third Defendant on or about 21st May, 1998, which transfer to date has not been registered with the Registrar of Companies.

5 The Fourth Defendant is a Firm of Attorneys At Law who at the material time provided legal services to the First , Second and Third Defendants .

6 The Fifth Defendant is a Firm of Attorneys At Law who at the material time provided Registered Office facilities for the Second Defendant .

7 The Sixth Defendant is an individual who resides abroad and who purported on the 3rd July, 1997 to loan US\$75,000.00 to the Second Defendant on certain terms and conditions.

8 The Plaintiff was previously the owner of property located at Registration Section: North Side Block 49C Parcel 46 on which it also owned and operated a hotel/bar/restaurant facility. The Plaintiff ceased ownership of the said property on or about 10th September, 1996 at which time the four shareholders/directors of the Second Defendant purported to purchase the said property from the Plaintiff. In order to facilitate the said purchase the four Shareholders/Directors incorporated and registered the Second Defendant the sole reason for the said incorporation and registration being the purchase of the said property from the Plaintiff. The Second Defendant was unable to raise all of the funds in order to purchase the said property so that the Plaintiff agreed to execute various documentation evidencing an outstanding amount of CI\$150,000.00 on the purchase price to the Plaintiff one such document being a Promissory Note which was duly executed by the four shareholders/Directors of the Second Defendant in their personal capacities.

The said Promissory Note is dated 29th August, 1996.

9 The four Shareholders/Directors defaulted on the terms of the Promissory Note and as a result proceedings were commenced against them which proceedings were styled Cause # 347 of 1997. The said proceedings were commenced against the four shareholders/Directors on 2nd June, 1997.

10 On 1st July, 1997 an application was made in those proceedings for Summary Judgement as although an Acknowledgement indicating an Intention to Defend had been filed, no Defence to the action had been filed. On 31st July, 1997 a Consent Order was entered into whereby the four Shareholders/Directors agreed to pay the Plaintiff the funds outstanding on certain terms.

11 The four Defendants defaulted on the terms of the Consent Order and the Plaintiff therefore brought enforcement proceedings to enforce the said Order.

12 At the Hearing of the Judgement Debtor Summons in those proceedings, it was disclosed that the Defendants had no assets in the Cayman Islands other than their shares in the Second Defendant. It was also disclosed that on or about 3rd July, 1997 (approximately 3 weeks before entering into the said Consent Order with the Plaintiff) that two of the Defendants in that matter had transferred their 25% shareholding to the First Defendant for a consideration of US\$12,500.00 each, which left the First Defendant owing 50% of the shareholding of the Second Defendant. The First Defendant at the time of obtaining the said shares was aware of the debt outstanding to the Plaintiff and that the four shareholders/Directors were in default under the terms of the said Promissory Note. The First Defendant was also aware that there were no assets in the Cayman Islands to satisfy the said debt except the shareholding whicheach of the four shareholders/Directors had in the said Second Defendant. At the time of the transfer of the shareholding to the First Defendant it was expressly stated in the Share Transfer forms which are dated 30th June, 1997 and 3rd July, 1997 that the First Defendant would take the said shareholding "subject to the several conditions on which ( the transferor) holds same" . The Plaintiff will rely on the terms of the said Share Transfer Forms for their full legal terms and effect.

13 On or about 3rd July, 1997 the two shareholders of the Second Defendant who had transferred their shares to the First Defendant also resigned their positions as Directors of the Second Defendant and the First Defendant was appointed "an additional Director" with one of the remaining shareholders and was also appointed "Chairman of the Company".

14 On or about 3rd July, 1997 the First and Sixth Defendants also purported to loan US\$75,000.00 each to the Second Defendant on terms whereby a rate of interest of 18% Fixed (Cavalari) and 10 1/2% Fixed (Fanning) was to be charged and the Second Defendant was allowed one year in which to pay of the said debts.

The First and Sixth Defendants were aware of the fact that due to the historical and current financial position of the Second Defendant at the time of the loans that the Second Defendant was not in a position to honour its obligations under the said Loan. The loans were effected by a Resolution of the said Company made on 3rd July, 1997 with the Fourth Defendant acting on behalf of the First, Second and Sixth Defendants. The Plaintiff will rely on the terms of the said Resolution dated 3rd July, 1997 for its full terms and effects. At the time of the said loan facilities being arranged and entered into the Second and Sixth Defendants were aware of the debt outstanding to the Plaintiff by the four shareholders/Directors of the Second Defendant and that they had defaulted on the terms thereof.

15 In order to secure the said loans from the First and Sixth Defendants the remaining shareholders and Directors were required to sign personal guarantees.

16 Subsequent to Discovery taking place in relation to the Second Defendant the Plaintiff issued a Summons for inter alia the transfer of the shares of the two remaining shareholders of the Second Defendant. The Plaintiff also sought to have the First Defendant added as a party to that suit and for the transfer of his shareholding to be set aside.

17 The two remaining original shareholders of the Second Defendant subsequently agreed to transfer their 50% shareholding to the Plaintiff and on that basis the Plaintiff agreed not to pursue the debt against them further and not to pursue, at that stage, the remedies sought against the First Defendant. The Fourth Defendant acted in this matter on behalf of the First and Second Defendant and the condition on which they requested Withdrawal of the Summons on behalf of the Second Defendant were met by the Plaintiff. This Agreement was incorporated into a Consent Order in the said proceedings styled Cause #347 of 1997 which Consent Order was sanctioned by the Court and dated 20th May, 1998. At the time of the sanctioning of the said Consent Order a representative of the Fourth Defendant was present, representing the First and Second Defendants and he took no objection to the contents of the said Consent Order. The Plaintiff will rely on the content of the said Consent Order for its full terms and effects.

18 On 21st May, 1998, the day after the said Consent Order was sanctioned and filed with the Grand Court the First Defendant purported to call a shareholders meeting at which he alone was present, where he removed the only remaining original Director of the Second Defendant effectively appointing himself as the sole Director. A representative of the Plaintiff attempted to attend the meeting and vote on behalf of the other shareholders by Proxy but was effectively prevented from doing so by the First Defendant who was being advised by the Fourth Defendants. Immediately after appointing himself as the sole Director, the First Defendant then proceeded to have a Directors meeting, for which no Notice had been given, at which meeting in his capacity as sole Director he transferred the Registered Office of the Second Defendant to the Third Defendant.

19 On 20th May, 1998 a copy of the said Consent Order was served on the Fifth Defendant at which time they indicated that as the Registered Office of the Second Defendant they would need either a Court Order or a Directors Resolution in order to register the said Transfer of Shares. The Plaintiff therefore obtained an ExParte Order on 22nd May, 1998 to ensure the said registration.

20 Unaware of the transfer of the Registered Office of the Second Defendant to the Third Defendant, on 21st May, 1998 the Plaintiff served a copy of the Ex-Parte Order dated 22nd May, 1998 on the Fifth Defendant only to be informed that the Registered Office had been transferred to the Third Defendant.

21 Since that date the Plaintiff has attempted to have the First, Second, Third, Fourth and Fifth Defendants comply with the two Court Orders and register the said transfers of the shares but they have each neglected and /or refused to register same. No formal challenge has been made to the validity of the said Orders by any of the Defendants although challenges have been made in correspondence.

22 In the meantime Demands were made on the transferors of the shares to the Plaintiff by the Fourth Defendants acting on behalf of the First and Sixth Defendants in relation to the purported loans by them to the Second Defendant. No Demand was made on the Second Defendant, itself. As a result of those Demands proceedings were instituted by the Fourth Defendant on behalf of the First and Sixth Defendants against the transferors of the said shares which matters are styled Cause # 284 of 1998 (First Defendant) and Cause # 285 of 1998 (Sixth Defendant) in which Causes applications were made to serve the transferors out of the jurisdiction in this Honourable Court on Tuesday 2nd June, 1998.

24 The Plaintiff avers that in view of the factors pleaded above the transfer of the said shareholding in the Second Defendant to the First Defendant were fraudulent and designed to prevent it from obtaining same in satisfaction of its Order which was made on 31st July, 1997 in the proceedings styled Cause # 347 of 1997. The Plaintiff further avers that the loans made by the First and Sixth Defendants were also fraudulent since they were aware at the time of the financial status of the said Second Defendant and the fact that there were legal proceedings outstanding against the then Four Shareholders by the Plaintiff in relation to the outstanding debt to it and that the loan payments could not be met by the Second Defendant or the two remaining shareholders.

#### **WHEREFORE THE PLAINTIFF CLAIMS**

(a) A Declaration compelling the First Defendant to register the said transfer of shares and thereby comply with the Grand Court Orders made in Cause # 347 of 1997 on 20th and 22nd May, 1998/

(b) A Declaration that the transaction whereby 50% of the shares in the Second Defendant were transferred to the First Defendant was fraudulent and as such is null and void .

(c) **FURTHER AND IN THE ALTERNATIVE** that the transfer of the shares to the First Defendant in the Second Defendant be set aside on the basis that the transaction was fraudulent .

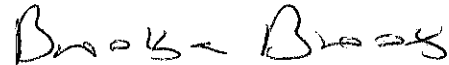
(d) A Declaration that the shares transferred to the First Defendant be transferred to the Plaintiff in satisfaction of the debt outstanding to it by the shareholders who purported to transfer their shares to the First Defendant.

(e) A Declaration that the loans made by the First and Sixth Defendants to the Second Defendants on 3rd July, 1998 are fraudulent and as such are null and void.

(f) Such further or other relief as this Honourable Court shall deem appropriate.

(g) Costs and Attorneys fees

Dated this <sup>12<sup>th</sup></sup> day of June , 1998.



**BROOKS & BROOKS**

Attorneys At Law for the Plaintiff

**THIS WRIT OF SUMMONS** was filed by Brooks & Brooks Attorneys At Law for and on behalf of the Plaintiff herein whose address for service is that of its said Attorneys At Law 2nd Floor Harbour Centre, P O Box 1355GT GRAND CAYMAN