

U.K. company.

4. The Plaintiff and Mr. Eduardo Stamatoy began discussions in early 1997 with respect to the establishment of a corporate vehicle in the United States to be owned on a fifty/fifty basis between Mr. Stamatoy and the Plaintiff. The proposed business was to provide financial services to third parties.
5. In late June or early July of 1997, the Plaintiff and Mr. Stamatoy agreed to pursue the establishment of the proposed business and as a result thereof the Plaintiff went to Chicago, Illinois, U.S.A., and spent approximately one month meeting with professional advisers and researching various regulatory requirements.
6. In August, 1997, the Plaintiff went to Ibiza, Spain, to meet with Mr. Stamatoy for the purposes of discussing the advice of the U.S. attorneys and the preliminary information obtained in Chicago. It was agreed that the proposed venture be pursued. Mr. Stamatoy indicated that he wished his partner Mr. Morcillo, a native of Spain, to be involved. Mr. Morcillo had no real knowledge of the brokerage business, however, was able to provide capital. On 21st August, 1997, after several discussions the Plaintiff met Mr. Stamatoy in the Malibu Club in Spain. An oral agreement was made as to the Plaintiff's responsibilities, equity interest and salary. The Plaintiff reduced to writing the oral agreement on his return to the U.K. and forwarded the same to Mr. Stamatoy by telefax dated 28th August, 1997. The Plaintiff will refer to this document at the trial of this matter for its full terms and legal effect.

7. Mr. Stamatoy in furtherance of the 28th August, 1997, agreement caused a corporate vehicle known as Toro Financial Services LLC to be established in Chicago and the Plaintiff prepared a business plan for the proposed venture.
8. In November, 1997, the Plaintiff and Mr. Stamatoy proceeded to Chicago for further meetings with professional advisers. A decision was made after certain further tax and regulatory advice was obtained that the venture would not achieve the measure of success as had been anticipated, to abandon Chicago and make other investigations. On the return flight to the U.K., a decision was made to investigate setting up in the Cayman Islands.
9. At the request of Mr. Stamatoy, the Plaintiff prepared a preliminary business plan and telefaxed it to Mr. Stamatoy's office in Barcelona. Mr. Stamatoy and Mr. Morcillo then proceeded to the Cayman Islands in early December, 1997, for a meeting with Price Waterhouse to ascertain the possibility of establishing the proposed venture in the Cayman Islands.
10. The Plaintiff was telephoned by Mr. Stamatoy on his return from the Cayman trip and requested to come to Barcelona as soon as possible. The Plaintiff went from London to Barcelona on 17th December, 1997, and remained there until 21st December, 1997. In Barcelona, it was agreed between the Plaintiff and Mr. Stamatoy that the proposed venture would be established in the Cayman Islands and that the following would be the terms of the Plaintiff's involvement therein:-
 - (1) The Plaintiff would be in charge of planning, organising and establishing the

business and consult with Quin & Hampson, attorneys-at-law, recommended by Price Waterhouse. The Plaintiff would become the Chief Operating Officer.

- (2) The Plaintiff would be paid a base pay of US\$12,500.00 per month.
- (3) The Plaintiff would be provided a suitable vehicle.
- (4) The Plaintiff would be given a US\$3,500.00 accommodation allowance.
- (5) The Plaintiff would be provided with adequate medical insurance to include emergency evacuation coverage.
- (6) The Plaintiff would be insured under an assurance policy that would provide the Plaintiff's dependents adequately upon the Plaintiff's death and an endowment payment upon the Plaintiff surviving the term of the assurance.
- (7) The Plaintiff would be entitled to six (6) round trip tickets to the U.K. per annum. (It was agreed that as one of the Plaintiff's parents was ill, the Plaintiff could return as and when needed.)
- (8) The Plaintiff would be entitled to a ten percent (10%) equity interest in the Cayman Islands entity which would be established to conduct the business of the proposed venture.
- (9) The Plaintiff would be paid:-
 - (a) 1% commission of all client deposits obtained by the proposed venture for trading purposes through its activities in the Cayman Islands (i.e. \$10.00 for every \$1,000.00 of funds deposited for investment purposes). (Mr. Stamatoy wished clients from his existing business to be exempted from this definition.) It was agreed that this commission would include - Introducing Brokers accounts, Customer Introducing Sales Company accounts, Private Individuals and Corporate clients wherever they were

based.

- (b) 10% commission of all trading commissions earned by the proposed venture after deduction of direct trading costs. "Direct trading costs" was defined and agreed upon as meaning Exchange fees, Introducing Broker commissions, Executing broker and Citibank Private Bank fees.

These commissions were to be paid on the last day of the month following the month for which the commissions were calculated.

11. The Plaintiff made it clear to Mr. Stamatoy that the Plaintiff was not interested in pursuing the proposed venture on the basis only of the Plaintiff being an employee with a fixed salary. The Plaintiff was given a work permit form, medical forms and other advice on what was necessary for him to be able to work for the proposed venture company in the Cayman Islands and agreement was reached as to the Plaintiff's compensation and expenses pending the establishment of the joint venture business. The Plaintiff left Barcelona on 21st December, 1997, following the oral agreement set out in the previous paragraph.
12. The Plaintiff completed the medical examination for the Cayman Islands work permit application in Scotland on 7th January, 1998, met on several occasions with Mr. Stamatoy in London, and interviewed a Mr. Roger Hambury for the job of head broker and began working on the venture.
13. Mr. Stamatoy advised the Plaintiff that the Defendant company had been incorporated on 9th January, 1998. The Plaintiff signed a work permit application on 31st January,

1998, and Mr. Stamatoy signed the same on 27th February, 1998.

14. On 10th February, 1998, the Plaintiff, Mr. Roger Hambury and his wife, Mr. Mansuet Guixa (a broker and proposed employee) and Mr. Stamatoy proceeded to the Cayman Islands for meetings with Quin & Hampson and for other associated matters related to the set up of the operating entity.
15. The Plaintiff returned to London and then went to Barcelona on 18th February, 1998. The Plaintiff met with Mr. Stamatoy, worked for nine days on matters relating to the Defendant including finalising the terms of employment by the Defendant of Mr. Roger Hambury and Mr. Mansuet Guixa, a Spanish national.
16. After further meetings in London in March between the Plaintiff and Mr. Stamatoy, including a meeting with Zainet on the software systems for the Defendant, the Plaintiff and Mr. Stamatoy flew to the Cayman Islands on 10th March, 1998, after the Plaintiff was granted a work permit on 9th March, 1998, permitting the Plaintiff to work for the Defendant in the Cayman Islands.
17. The Plaintiff was scheduled to stay in Grand Cayman one week, but stayed for two weeks during which meetings were held with Quin & Hampson and Price Waterhouse and others relative to the Defendant. The Plaintiff returned to the U.K. on 25th March and then returned to the Cayman Islands permanently on 1st April, 1998, to work for the Defendant.

18. The Plaintiff began the task of establishing the office and operating procedures necessary to establish a company from inception. With the advice of the Defendant's attorneys-at-law Quin & Hampson, the Plaintiff did the following:-

- (1) established the office;
- (2) prepared and finalised client account application forms;
- (3) prepared and finalised joint account application forms;
- (4) prepared and finalised facsimile indemnity forms;
- (5) established the terms of business and operating procedures;
- (6) prepared and finalised trading agreement forms;
- (7) prepared and finalised introducing client contract forms, and compliance procedures necessary pursuant to Cayman law;
- (8) prepared and finalised broker contracts and the terms of various business requirements;
- (9) dealt with office structure, employee hiring, employee contracts of employment, assisted with work permit applications;
- (10) created advertisements for Compass relating to employee hiring;
- (11) coordinated Cable & Wireless service with Mr. Hurst of IRG Ltd.;
- (12) prepared specifications for all office requirements including telephone, cabling, computer installation, computer points, fixtures and fittings;
- (13) arranged Dow Jones feed cable via Cable & Wireless;
- (14) prepared and completed computer specifications, oversee the entire installation and operation of the completed systems;
- (15) dealt with various international agencies, contacts and businesses on a constant basis;

- (16) assisted in establishing the Zainet back office computer system spent considerable time with employees of Zainet London to correct problems with the system;
- (17) coordinated with Caribbean Network Solutions the establishment of a web site;
- (18) established office procedures.

19. The Plaintiff did a considerable amount of work in a very limited period of time and dealt with and solved numerous problems occasioned with the establishment of the Defendant's new business.

20. The Plaintiff met many of the Defendant's initial expenses from his own personal account and did so until such time as the Defendant was able to repay the same and/or signatories were available to sign cheques.

21. Effective 1st April, 1998, the Defendant paid the Plaintiff pursuant to the oral agreement made between the Plaintiff and Mr. Stamatoy in Barcelona in December, 1997, and set out in paragraph 10 hereof, and thereafter acted upon and adopted the said agreement.

22. The Defendant began actively trading on 26th May, 1998, with some twelve employees in place with the Plaintiff as Director of Operations and Personnel. The Plaintiff was effectively the Chief Operating Officer.

23. In May, 1998, the terms and conditions of the oral agreement under which the Plaintiff was working for the Defendant were reduced to writing. The said contract of employment provided, *inter alia*, that the Plaintiff would be paid and/or be entitled to

the following:-

- (1) a base salary of US\$12,500.00 per calendar month;
 - (2) US\$39,000.00 within four months of employment commencing;
 - (3) ten percent (10%) of all net trading commission on the last day of the month following the month for which the commission was calculated;
 - (4) one percent (1%) of all client deposits generated from activities in the Cayman Islands on the last day of the month following the month for which the commission was calculated;
 - (5) US\$3,500.00 per calendar month towards accommodation on the last working day of each month;
 - (6) a vehicle for the Plaintiff's exclusive use both privately and for the business with all expenses paid by the Defendant except for petrol used for private use;
 - (7) six (6) round-trip flights per annum between Grand Cayman and the United Kingdom at full economy class rates;
 - (8) a health insurance policy to cover all medical expenses including emergency repatriation to the United Kingdom and air ambulance cover;
 - (9) an assurance policy that would provide the Plaintiff's dependents with US\$250,000.00 upon the Plaintiff's death and an endowment payment upon the Plaintiff surviving the term of the assurance;
 - (10) an option to acquire ten percent (10%) of the shares of the Defendant.
24. The contract further provided for an indefinite term of employment with three months notice or salary in lieu of notice in the event of termination without cause.

25. Mr. Morcillo, a national of Spain who speaks little English, met with the Plaintiff between 29th May, 1998, and 1st June, 1998, and proposed through an interpreter that the Plaintiff's contract of employment be re-negotiated by reducing the Plaintiff's commissions. The Plaintiff refused to accept this proposal.

26. By letter dated 20th July, 1998, some two months after the Defendant had begun operations and prior to receipt of any commissions, the Defendant wrongfully determined the Plaintiff's employment with the Defendant and dismissed the Plaintiff. The Plaintiff will refer to the letter of the 20th June, 1998 which made reference to said contract of employment at the hearing of this matter for its full terms and legal effect.

27. By reason of the premises the Plaintiff has suffered loss and damage and has been deprived of the opportunity of earning his commissions and of exercising his option to acquire ten percent (10%) of the shares of the Defendant. The Plaintiff has also been deprived of the enhanced reputation which would have followed the successful operation of the said business.

PARTICULARS OF LOSS AND DAMAGE

- (1) Salary due to the Plaintiff from 1st
August, 1998 to 30th October, 1998
at US\$12,500.00 per month US\$ 37,500.00

- (2) Accommodation allowance due to the
Plaintiff from 1st August, 1998 to 30th

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| October, 1998, at US\$3,500.00 per month | US\$ 10,500.00 |
| (3) Estimated car allowance due to the Plaintiff from 1st August, 1998 to 30th October, 1998, at US\$2,100.00 per month | US\$ 6,300.00 |
| (4) Estimated ten percent (10%) of trading commission due to the Plaintiff from 26th May, 1998 to 20th July, 1998 | US\$ 45,150.00 |
| (5) Estimated one percent (1%) of new client deposits due to the Plaintiff from 26th May, 1998 to 20th July, 1998 | US\$ 26,090.00 |
| (6) US\$39,000.00 pursuant to the contract | US\$ 39,000.00 |
| (7) Expenses disbursed on behalf of the Defendant and due to the Plaintiff | <u>US\$ 6,469.84</u> |
| TOTAL AMOUNT DUE:- | <u>US\$171,009.84</u> |
| (8) The Plaintiff further claims a sum in respect of the trading commissions and new client deposits calculated at the aforesaid rate from 21st July, 1998 to 30th October, 1998, particulars of which the Plaintiff is unable to give until after discovery. | |
| (9) An accounting of the sums due pursuant to (8). | |
| (10) A declaration that the Plaintiff is entitled to an equity interest in the Defendant of 10% of the issued share capital, and an order that the Defendant cause the Plaintiff to be | |

issued 10% equity in the Defendant or alternatively damages to compensate the Plaintiff for the loss of such entitlement.

- (11) The Plaintiff further claims interest pursuant to the Judicature Law (1995 Revision) and the Judgement Debts (Rates of Interest) Rules 1998 on the said sum of US\$45,469.84 (US\$39,000.00 + US\$6,469.84) from 1st April, 1998, at the rate of 7 7/8% per annum amounting to US\$1,667.70 at the date hereof and continuing thereafter until judgement herein or sooner payment at the rate of US\$9.81 per day.
- (12) Interest at the aforesaid rate on the sum of US\$71,240.00 (US\$45,150.00 + US\$26,090.00) from 20th July, 1998, at the rate of 7 7/8% per annum amounting to US\$906.83 at the date hereof and continuing thereafter until judgement herein or sooner payment at the rate of US\$15.37 per day.

AND THE PLAINTIFF CLAIMS:-

- (1) Damages as pleaded.
- (2) Interest as pleaded.
- (3) Costs.
- (4) Such further and other relief as this Honourable Court deems fit.

DATED the 17 day of September, 1998.



MYERS & ALBERGA
Attorneys-at-law for the Plaintiff

THIS STATEMENT OF CLAIM was issued by Myers & Alberga whose address for service is One Regis Place, Fort and Mary Streets, P.O. Box 472, George Town, Grand Cayman B.W.I., Attorney for the Plaintiff.

BETWEEN: JOHN McINTYRE PLAINTIFF

AND: THE CAYMAN FINANCIAL BROKERAGE HOUSE DEFENDANT

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 intends to contest the proceedings (tick appropriate box)
[] yes [] no

3. If the claim against the Defendant 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 Plaintiff (tick box)
[] yes

Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for

[Defendant in person]

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

MYERS & ALBERGA
One Regis Place
P. O. Box 472
George Town
Grand Cayman, B.W.I.

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

[Empty box for Defendant's Attorney indorsement]

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

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.