

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 673 OF 1998

BETWEEN:

KELLY SPENCER

PLAINTIFF

-and-

ADMIRAL ADMINISTRATION LTD.

DEFENDANT

WRIT OF SUMMONS

TO: Admiral Administration Ltd.

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 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.

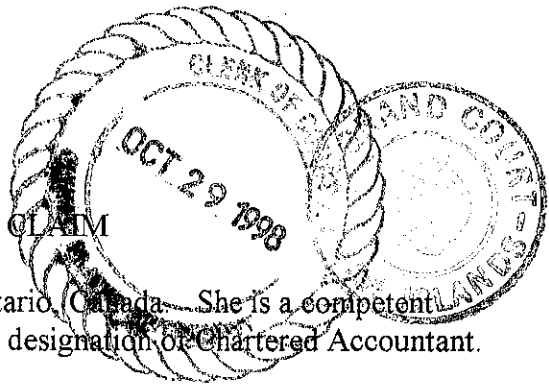
Issued this ^{29th} day of Oct 1998

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.

STATEMENT OF CLAIM



1. The Plaintiff is an individual residing in Ontario, Canada. She is a competent professional having earned the professional designation of Chartered Accountant.
2. The Defendant is a company incorporated pursuant to the laws of the Cayman Islands and carries on business as a financial fund administrator.
3. The Plaintiff became aware of the Defendant's requirement for a fund administrator by way of an advertisement placed on an internet website by the Defendant.
4. Prior to the Plaintiff and Defendant entering into a contract of employment the Defendant made representations to the Plaintiff with regard to the terms of remuneration. These representations were:
 - a. The base salary offered by the Defendant was low by industry standards and the Defendant compensated for this by giving high bonuses;
 - b. The Defendant had recently entered into fund administration operations and thus had to keep fixed overhead, such as salaries, low. Employees would be compensated for this by having high bonuses based, in part, on the net revenues of the Defendant;
 - c. Bonuses would be based on revenues, employee performance and would be consistent amongst employees of similar employment duties and professional qualifications;
 - d. The amount of the bonuses would be fair and reasonable.
5. The Plaintiff relied upon these representations in making her decision to accept employment with the Defendant.
6. In or about December of 1996, the Plaintiff and the Defendant entered into an oral contract of employment the terms of which are as set out below. The Plaintiff was employed by the Defendant as fund administrator from January 2, 1997 through to June 15, 1998 pursuant to a work permit initially granted for a period of six months and later renewed for a period of one year from the date of expiration of the original permit.
7. The terms of employment of the said oral agreement included as follows:
 - a. The Plaintiff would be employed with the Defendant as a fund administrator;
 - b. the Plaintiff would receive base annual remuneration, paid monthly, at a rate of \$US45,000.00;

- c. the Plaintiff would receive other health and pension benefits;
 - d. the Plaintiff would receive bonus payments on a fair and reasonable basis to be allocated based on a number of factors including, the Defendant's net revenue, the Plaintiff's base salary, position, quality of work and the quantum of bonuses of similarly qualified employees;
 - e. the bonus payments would be large by industry standards due to the low base salary and that the Defendant had then very recently began operations as a fund administrator.
8. The Plaintiff states that it was an implied term of the employment agreement that the bonus payment be paid upon or shortly following termination of the employment. Alternatively, the Plaintiff states that the bonus payment is payable at the end of the Defendant's fiscal year.
 9. In violation of s 6 of the Labour Law (1996 Revision or its predecessor) the defendant did not provide written terms of employment enumerating the items required in s 6 (2) of the Labour Law.
 10. The Plaintiff did not agree to nor did the Defendant propose a term of employment that would result in a deduction from the bonus payment upon her completing a work permit year but not a calendar year.
 11. In compliance with the oral terms of employment the Plaintiff received a bonus for the 1997 fiscal year of \$30,000.00 being approximately 67 per cent of her base salary.
 12. In December of 1997, the Plaintiff and Defendant entered into negotiations respecting the Plaintiff's remuneration for the 1998 fiscal year. A representative of the Defendant advised the Plaintiff that she would receive only a 1 per cent increase in base salary and such increase would be paid directly into a company pension plan. Again it was stated by a representative of the Defendant that a higher bonus would be paid due to the low base salary and also because of the low salary increase.
 13. The Plaintiff accepted the 1 per cent pay increase to be paid into a pension fund on the basis and the agreement that the bonus would be generous and fair.
 14. Prior to the termination of her work permit, the Plaintiff advised the Defendant of her intention to not seek to have the permit renewed and to seek employment in Canada.

15. The Plaintiff gave an adequate and professional amount of notice to the Defendant of her intentions.
16. The Plaintiff worked until June 15, 1998 in accordance with the notice given to the Defendant.
17. At all material times the Plaintiff performed the duties assigned to her in a competent and professional manner.
18. On June 12, 1998, the Defendant paid the Plaintiff the sum of \$3000.00 inclusive of bonus and pension contribution, being approximately 6.6 per cent of her base salary. The Plaintiff had worked, at a high level of competence and professionalism, approximately 45 per cent of the Defendant's fiscal year.
19. The Defendant has advised that it will not pay the Plaintiff any further sums notwithstanding the pleaded agreement.
20. By making the payment of a bonus on June 12, 1998, the Defendant acknowledged its obligation to pay a bonus to the Plaintiff.
21. The payment made by the Defendant on June 12, 1998 was below reasonable bonus compensation as had been agreed and to which the Plaintiff was entitled in law. The Plaintiff requested a further bonus payment but the Defendant refused to pay further monies to the Plaintiff.
22. The Plaintiff states that the Defendant's refusal to pay further bonus monies is a breach of the terms of remuneration agreed upon. Alternatively, the Defendant's refusal to pay further bonus monies is an anticipatory breach of the terms of remuneration agreed upon in the event that payment is held to be payable at the end of the Defendant's fiscal year.
23. Further and in the alternative, the Plaintiff is entitled to a further bonus payment on the basis of *quantum meruit*.
24. Accordingly, the Plaintiff is entitled to:
 - a. a declaration that the Defendant has breached the terms of bonus remuneration;
 - b. alternatively, that the Defendant conduct constitutes an anticipatory breach of the terms of bonus remuneration;
 - c. alternatively, payment of further bonus monies on a *quantum meruit* basis;

- d. an accounting of the Defendants means of calculation of the bonus for employees; and
- e. Judgment against the Plaintiff for bonus payment in such amount as to be determined by this Honourable Court.

AND THE PLAINTIFF claims:

1. A declaration that the Defendant has breached the agreement respecting bonus payment to the Plaintiff;
2. Alternatively, the Defendant conduct constitutes an anticipatory breach of the terms respecting payment of bonus;
3. Alternatively, the Plaintiff is entitled to further bonus payments on the basis of *quantum meruit*;
4. An accounting respecting the Defendant's means and methods of calculation of the bonus for the Plaintiff;
5. Judgment in the sum of the unpaid bonus;
6. Interest upon the said damages pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rates of Interest) Rules 1996 at the rate as prescribed of 7 3/8% or at such other rate as may be prescribed or as this Honourable Court deems just from the date of issuance of this proceeding;
7. Costs; and
8. Such further and other relief as this Honourable Court Deems just.

Dated October 27, 1998



COLLINS BROADHURST & FURNISS
Attorneys at Law for the Plaintiff.

This Writ of Summons was issued by Collins Broadhurst & Furniss whose address for service is Collins Broadhurst & Furniss, Attorney-at-Law, P.O. Box 2503, George Town, Grand Cayman, Cayman Islands, British West Indies, Attorneys for the Plaintiff.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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 495, G.T. Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 not endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 within 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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for fourteen 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.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. ____ of 19__.

Between:

KELLY SPENCER

Plaintiff

-and-

ADMIRAL ADMINISTRATION LTD.

Defendant

ACKNOWLEDGEMENT 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:

Notes on address for service

Attorney: where 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 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.

COLLINS BROADHURST & FURNISS

Attorneys-at-Law
40 Linwood St.
P.O. Box 2503, G.T.
Grand Cayman
Cayman Islands, 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.