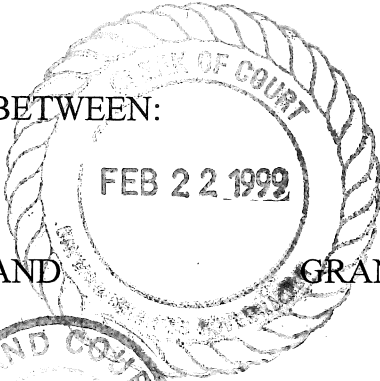


**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

CAUSE NO. 113 of 1999

BETWEEN:



BLOOMIN CARIBE LIMITED

Plaintiff

AND

GRAND CAY INVESTMENTS LIMITED

Defendant

**WRIT OF SUMMONS**



**TO:** GRAND CAY INVESTMENTS LTD.,  
P.O. Box 32333 SMB,  
Grand Cayman.

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

**ISSUED** this 22nd day of February 1999.

**NOTE:** THIS WRIT may not be served later than 4 calendar 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.

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STATEMENT OF CLAIM  
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1. The Plaintiff:
  - (a) is a Cayman Islands company with its registered office a P.O. Box 1234GT, Grand Cayman;
  - (b) is the tenant under a lease executed in the first week of February 1998 of leasehold premises known as West Bay Beach South Registration Section, Block 12C, Parcel 350H19 ("the premises") which consist of a strata lot in building No. 4 at "The Strand" shopping plaza on West Bay Road, Grand Cayman;
  - (c) operates in the premises an "Outback Steakhouse" restaurant.
  
2. The Defendant:
  - (a) is a Cayman Islands company with its registered office at P.O. Box 32333 SMB, Grand Cayman;
  - (b) is the Plaintiff's landlord under the said lease.
  
3. By a Side Letter to the said lease dated 30<sup>th</sup> January 1998 and expressly incorporated into the lease by the final paragraph of the said letter and Clause 1.21 of the lease the parties thereto agreed:
  - (a) that the Plaintiff's plans for the alterations to the premises submitted to the Defendant were approved;
  - (b) that alterations made and/or to be made to the premises in accordance with the plans so approved were approved (work already done) or consented to (work to be done) by the Defendant;

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- (c) that the Defendant would “provide venting and air conditioning units of adequate capacity to serve the premises”.
  
4. The Plaintiff had previously on 12<sup>th</sup> September 1997 entered into an agreement with the Plaintiff to take a lease of the premises to alter and then use same as an Outback Steakhouse on the terms set out in a written lease known between the parties as “the Broadhurst Lease”. The Broadhurst lease contained at Schedule F, Part B, point 4 a covenant that the Defendant:  
  
“will complete, at its sole cost and expense, the following Landlord’s Work . . .-venting and air conditioning units of adequate capacity to service the Leased Premises exclusively. Equipment shall be complete with thermostat unmounted. Ducting shall be clients responsibility and properly sized power wire connect at each unit and terminated in a junction on the underside of the roof deck within ten feet of the units...”.
  
5. In reliance upon the said agreement the Plaintiff occupied the premises and began altering them. At all material times all alterations to and installations in the premises were pursuant to plans previously supplied to the Defendant or its agents and which they had approved.
  
6. Completion/registration of a lease on the terms agreed was delayed because, *inter alia*:
  - (a) unknown to the Plaintiff the Defendant was unable to give good title to the premises because it was in litigation with a Third Party over the premises and that Third Party had registered a caution against them;
  
  - (b) the Strata Plan for the development containing the premises had not been registered;
  
  - (c) the Defendant changed attorneys and its new attorneys sought to completely re-work the lease previously agreed on the basis that the earlier document, then in escrow, was “unworkable”.

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7. The Plaintiff remained in occupation and continued alterations and installations according to its approved plans in reliance upon the representations of the Defendant that:
  - (a) it would be able to eventually give good title;
  - (b) though the lease would be redrafted its terms would remain the same.
8. At all material times the Defendant and its agents were aware and agreed that the nature of the Plaintiff's works in the premises required purchase and installation of air conditioning and venting units to service a 6,127 sq ft high-volume steakhouse but with the Defendant's attentions in relation to the premises diverted elsewhere the Plaintiff was better placed to purchase and commence installation of the air conditioning and venting units in the Defendant's stead so that the works could proceed. The Plaintiff accordingly did purchase the said units and proceeded to install same with the approval of the Defendant's agents. It was an express and/or implied term of the said agreement that the Defendant would pay to the Plaintiff all costs associated with the Plaintiff taking over the Defendant's obligations in relation to the air conditioning and venting of the restaurant.
9. The Plaintiff informed the Defendant on 8<sup>th</sup> January 1998 that it was already owed US\$25,000 at that date for air conditioning and venting work it had carried out on the Defendant's behalf and it sought confirmation that the Defendant accepted that liability and continued to accept liability under point 4, Part B of Schedule F of the Broadhurst Lease.
10. The Defendant confirmed orally by its attorney to the Plaintiff's attorney on or about 12<sup>th</sup> January 1998 that air conditioning and venting at the premises had always been and remained at the Defendant's "sole cost and expense" as per Part B of Schedule F of the Broadhurst Lease and that that obligation would be included in the new lease as paragraph 7 of the Side Letter, drafted by the Defendant's attorneys, eventually executed on 30<sup>th</sup> January 1998.

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11. In reliance upon the aforesaid further representations and the Side Letter the Plaintiff continued the works at the premises including all air conditioning and venting works for the restaurant.
12. Upon completion of the works in or about April 1998 the Plaintiff sought payment from the Defendant in respect of the air conditioning and venting units and works at the premises and in breach of the aforesaid agreement(s) the Defendant has refused and continues to refuse to pay any sum therefor.
13. In the premises the Plaintiff has suffered loss and damage.

Particulars

(a)	Costs in relation to air conditioning units	US\$37,232.31
(b)	Costs in relation to venting units	<u>US\$27,295.64</u>
	Total	<u>US\$64,527.95</u>

Full particulars exceed 3 folios and have been previously supplied to the Defendant

14. Further the Plaintiff is entitled to and claims interest on the said sum of US\$64,527.95 under section 34 of the Judicature Law (1995 Revision) as set out below or at such rate and for such period as the Court may determine.

Particulars of Interest

1. Pre-Judgment Interest:

from 1<sup>st</sup> May 1998 until the date hereof at  
the Court rate of 7.875%

US\$4,148.16

and continuing at the daily rate of US\$13.92 until Judgment or  
sooner payment.

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2. Post-Judgment Interest:

at the rate of US\$13.92 per day or at the daily rate calculated by reference to the then-prevailing Court rate (if different from 7.875% per annum) on the principal sum of the judgment until payment in full.

AND THE PLAINTIFF CLAIMS:

- (1) US\$64,527.95;
- (2) damages;
- (3) interest as aforesaid;
- (4) the Court fees paid to issue these proceedings of US\$667.23 [CI\$547.13];
- (5) Further or other relief;
- (6) Costs.

If within the time for returning the Acknowledgment of Service, the Defendant pays

- (a) **the total amount claimed this day of US\$69,953.10** (being the principal sum due, interest to the date hereof of US\$4,148.16, fixed costs of US\$609.76 [CI\$500.00] and the issue fees of US\$667.23 [CI\$547.13]) plus
- (b) interest from the date hereof until the date payment is made at the daily rate of US\$13.92,

further proceedings will be stayed. The money must be paid to the Plaintiff's attorneys, Boxalls



**Boxalls**

Attorneys-at-Law for the Plaintiff

Dated this 22nd day of February 1999.

This Writ and Statement of Claim is filed by Boxalls, whose address for service is 3<sup>rd</sup> Floor, CIBC Financial Centre, P.O. Box 1234, George Town, Grand Cayman, Cayman Islands, B.W.I.