

IN THE GRAND COURT OF THE CAYMAN ISLAND

CAUSE NO. 486 of 1999



BETWEEN: SHANE CONOLLY

PLAINTIFF

AND; PADJ LIMITED

DEFENDANT

WRIT OF SUMMONS

TO; PADJ LIMITED

c/o Collins, Broadhurst & Furniss  
Attorneys At Law  
George Town  
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 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 August, 1999

**NOTE:** This Writ may not be served later than 4 calendar 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 an individual who at the material time was involved in the construction/renovation of a restaurant owned and operated by the Defendant which restaurant is located at Bay Harbour Centre, West Bay Road. The Plaintiff subsequently became an employee of the Defendant so that at the material times the Plaintiff was involved both in the construction/renovation of the restaurant and an employee of the Defendant.

2 The Defendant is a limited liability company which is duly incorporated under the laws of the Cayman Islands with a registered Office located at Collins, Broadhurst & Furniss and at the material time the Defendant was in the process of setting up a restaurant to be called "Blackthorne's Beacon" which restaurant commenced business at the said premises on or about 7th March, 1997. The Defendant owned and operated the said restaurant.

3 Sometime in or about December, 1996 the Plaintiff was requested by a Ms Angelle Ginn, a Director and shareholder of the Defendant and the then person in charge of the restaurant operations on behalf of the Defendant, to assist with the construction/renovation of the premises to facilitate the opening of the said restaurant. As a result of this approach the Plaintiff, who was previously acquainted with Ms Ginn agreed to assist with the renovations.

4 The Plaintiff was subsequently offered a job as a Manager/ Matrie'd at the Plaintiff's restaurant in anticipation of its imminent opening which offer the Plaintiff accepted. The offer of employment to the Plaintiff took place in February, 1997. It was an expressed term of the verbal employment agreement between the Plaintiff and the Defendant that the Plaintiff would be the Manager/matrite'd of the restaurant and that he would be paid CI\$500.00 per week as salary. Whilst the renovations were in progress the Plaintiff learnt that the restaurant was having financial difficulties and in order to have the restaurant opened on time he was requested to loan certain funds to the Defendant which funds the Plaintiff now believes were used to pay the duty on equipment, which belonged to the Defendant's restaurant, which equipment, at the time, was at the Cayman Islands Port and had been transported by IMP Agency. It was an expressed term of this verbal agreement that the Plaintiff would advance the funds to the Defendant and that the Defendant would reimburse the Plaintiff for these funds shortly. In reliance on this agreement the Plaintiff advanced the funds to the Defendant which funds, it is believed, were used to pay the duty to the IMP Agency in the amount of CI\$6,744.69. The Plaintiff advanced the sum of CI\$6,800.00 to the Plaintiff which amount was debited from the Plaintiff's account # 1467069 at CIBC Bank and Trust Company on 23rd December, 1996 and credited to the Plaintiff's account # 722261 at the same bank. The Plaintiff will rely on the debit slip from the said Bank for its full terms and content. The Plaintiff will also rely on the Defendant's Bank Statement for the relevant period which shows the said amount was credited to the Defendant's account on the said date as a transfer credit.

The Plaintiff will also rely on the IMP Invoice # 188988 dated 12th December, 1996 in the amount of CI\$6,744.69 for its full terms and legal effect.

5 In addition to the above the Plaintiff during the period December, 1996 to January, 1997 also paid approximately CI\$3,200.00 on behalf of the Defendant to various of its creditors including but not limited to Cox Lumber Company, A L Thompson's Home Depot and Kirk Home Centre . The Plaintiff will rely on the various invoices from Cox Lumber, A L Thompsons Home Depot and Kirk Home Centre for their full terms and legal effect. The Plaintiff in order to assist the Defendant also borrowed a sum of CI\$4,100.00 from his aunt in the United Kingdom to assist the Defendant in the start up costs of the restaurant .

6 The Defendant opened the said restaurant on or about 7th March, 1997 and in order for the Plaintiff to be employed there the Defendant obtained a work permit on his behalf. In order to have the work permit issued the Plaintiff completed Part 1 of the application form and turned the form over to management of the restaurant with Part 2 of the form blank as this portion of the application was to be filled by the employer. The Plaintiff did not see the form prior to its submission to the Immigration Department. At the time that the restaurant was opened the Plaintiff was working both as a Manager and in the kitchen because the said restaurant was shortstaffed.

7 The Plaintiff was employed with the Defendant from 7th March, 1997 to 16th October, 1998 at which time the Plaintiff terminated his own employment due to the fact that in breach of the verbal agreement he had not been paid outstanding funds by the Defendant which were outstanding to him. During the initial 44 weeks of the Plaintiff's employment (March, 1997 to December, 1997) the Plaintiff was supposed to be paid CI\$500.00 per week as had previously been agreed. However, he agreed that because of the financial status of the company (as was explained to him) when it opened that he would not receive his salary on a regular basis but instead would receive irregular cash payments from the Defendant. In or about January, 1998 the Plaintiff's salary was reduced to CI\$400.00 per week due to the lack of sales at the Defendant's restaurant. The Plaintiff continued however, to not receive his regular wages but instead he received the irregular cash payments. The Plaintiff agreed to this state of affairs as he was promised by the Defendant's representative that he would be paid all funds outstanding to him shortly. The Defendants are estopped from reneging on this promise. The Plaintiff will further aver that during a meeting of the Directors and officers of the Plaintiff on or about 14th May, 1998 at 4pm which meeting was held at the company's registered office, it was agreed by the persons attending at the meeting that an amount of CI\$23,000.00 was outstanding to him (to 3rd April, 1998) which amount included the salary and other payments made by him on behalf of the Defendant. The Plaintiff will rely on the content of the Minutes of this meeting together with Article 29.02 of the Defendant's Articles of Association for their full terms and legal effect.

The Plaintiff will also rely on an undated Memorandum prepared by a Mr Stephenson, one of the Directors and shareholders of the Plaintiff, indicating that his salary was initially CI\$500.00 per week and later reducing that amount to CI\$400.00 per week, in which the said Mr Stephenson attempted to calculate the amount outstanding to the Plaintiff, for its full terms and legal effect.

7 At the meeting of the Plaintiff's Directors and officers of 14th May, 1998 it was resolved to negotiate payment of the outstanding amount to the Plaintiff. However, despite many demands for payment of the outstanding amount, in breach of the agreement to pay the amount outstanding the Defendant has refused to pay same. The Plaintiff will aver that the total amount outstanding to him is now CI\$31, 077.32 plus accrued interest. The particulars of the calculation of this claim was communicated to the Defendant in a schedule sent to it's registered office on 3rd August, 1998.

8 The Plaintiff will aver that during his employment with the Defendant in addition to cash payments which he received as representing part payment of salary, and part payment of funds outstanding to him that he also received funds to be paid exclusively on behalf of the Plaintiff for its restaurant business. The Plaintiff will aver that three such cheques were as follows:

(a) Cheque # 205 drawn on CIBC Bank and Trust Company, the proceeds of which were used exclusively to pay the salaries of the employees of the restaurant, and the Plaintiff will rely on the document signed by some of the employees verifying same and the Defendant's financial ledger which shows that this amount was also recorded as used for "payroll".

(b) Cheque # 241 Drawn on CIBC Bank and Trust Company the proceeds of which were used to pay a part of the rent for the Defendant's restaurant and the Plaintiff will rely on the financial ledgers of the Defendant which show that this amount was paid for the restaurant's rent.

(c) Cheque #325 drawn on CIBC Bank & Trust Company, the proceeds of which were used to pay a bill at Cayman Distributors Ltd. for alcohol which had been purchased for the Plaintiff's restaurant. The Plaintiff will rely on the invoice dated 18th November, 1997 in the amount of CI\$170.90 to the Plaintiff's restaurant which was paid on the same day for its full terms and legal effect.

In addition to the above the Plaintiff will also rely on the memo from Jim Dwyer and Malcolm Stephenson to Angele of 1st April, 1998 at paragraph 3 in which there is an admission that funds are outstanding to him by the Defendant.

9 Despite the above and many demands, in breach of the verbal agreement to pay same, the Defendant has refused to reimburse and compensate the Plaintiff for the funds outstanding to him by it.

### **WHEREFORE THE PLAINTIFF CLAIMS**

(a) The total amount outstanding as principal of CI\$31,077.32 with accrued interest calculated at CI\$2,336.16 from 3rd August, 1998 to date at the statutory rate of 7 3/8%.

(b) Interest at the Statutory rate of 7 3/8% per annum pursuant to the Judgement Debts (Rates of Interest) Rules 1996 from the date of the filing of this Writ to the date of payment such interest accruing at the rate of CI\$6.28 per day.

(c) Costs.

Dated this 10th day of August, 1999

*Brooks & Brooks*

**BROOKS & BROOKS**

Attorneys At Law for the Plaintiff

**TAKE NOTE** that further proceedings will be stayed if, within the time limited for acknowledging service, the defendant pays the said CI\$33,413.48 (CI\$31,077.32 + CI\$2,336.16) plus accrued interest and Costs to the Plaintiff, his attorneys at Law or his agent.

**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 her said Attorneys At Law One, Artillery Court, P O Box 1355GT GRAND CAYMAN



(Attorney) for

(Defendant in Person)

Address for service:

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

**Brooks & Brooks  
Attorneys At Law  
P O Box 1355 GT  
GRAND CAYMAN**

**(One, Artillery Court, George Town, Grand Cayman)**

Indorsement by the defendant's attorney (or by the defendant if suing in person) of his name , address and residence, if any in the box below