

Writ of Summons (O.6, r.1)

IN THE GRAND COURT OF THE CAYMAN ISLAND
HOLDEN AT GEORGE TOWN, GRAND CAYMAN



CAUSE NO. 38 OF 1996

BETWEEN
AND:

MR. FOX - PLAINTIFF
THE SPANISH BAY COMPANY LTD. - DEFENDANTS

WRIT OF SUMMONS



TO: The Company Secretary, The Spanish Bay Company Limited, Caledonian Bank & Trust Limited, PO Box 1043 GT, Caledonian House, Mary Street, Grand Cayman, Cayman Islands, BWI.

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 Acknowledgement 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 28 day of January 1996

NOTE - This Writ may not be served later than 6 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

(See Statement of Claim attached hereto)

THIS WRIT was issued by Clyde H. Allen BSc whose address for service is Brooks & Brooks, Attorneys-At-Law, PO Box 1355, Grand Cayman, British West Indies

IN THE GRAND COURT OF THE CAYMAN ISLAND
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 38 OF 1996

BETWEEN

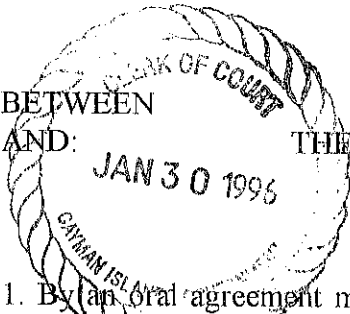
MR. FOX

- PLAINTIFF

AND:

THE SPANISH BAY COMPANY LTD

- DEFENDANTS



STATEMENT OF CLAIM



1. By an oral agreement made between the Plaintiff and the Managing Director, Ernest Smatt ("Mr. Smatt"), of Ernie Smatt Enterprises Limited and evidenced in writing by a letter dated 2 December 1991 ("the Agreement") from Mr. Smatt to the Plaintiff, it was agreed that the Defendants would employ the Plaintiff and the Plaintiff would serve the Defendants as an Accountant Supervisor under a one year contract with a 30 day notice period to be given by either party at a salary of CI\$300.00 to be paid by equal monthly installments commencing on 6 December 1991.
2. The Defendants at all times carried on the business of supplying holiday services at its two hotels in Grand Cayman at Spanish Bay Reef, PO Box 903 SMB, Grand Cayman, BWI and also The Beach Club, PO Box 903 SMB, Grand Cayman, BWI.
3. The contract was renewed annually. The Plaintiff understood that the terms of contract were to apply on an annual basis and subject to the grant of a work permit unless there were any bilateral variations made to them.
4. The Plaintiff was employed as an Accountant Supervisor at both hotels. His hours of employment at each hotel was 48 hours per week at Spanish Bay Reef from 8.00 a.m. until 5.00 p.m. and 24 hours per week at The Beach Club from 11.00 p.m. until 7.00 a.m. The Plaintiff's salary at the latter hotel was or about CI\$175.00. The Plaintiff's salary was paid by the Spanish Bay Reef hotel.
5. The Plaintiff had not received a pay increase in three years and so wrote to Mr. Smatt by way of facsimile transmission dated 16 April 1994 and in it requested a pay rise consistent with the terms of the Agreement.
6. In or about December 1994 whilst in Jamaica and prior to the renewal of the Plaintiff's work permit the Plaintiff informed Mr. Smatt that he would not return to Grand Cayman to work for the Defendants unless he received a pay increase as provided for under the Agreement. Mr. Smatt made an oral agreement with the Plaintiff that if he returned to work for the Defendants he would receive a pay increase. In reliance upon the said representations and induced thereby the Plaintiff returned to work for the Defendants. The work permit was renewed accordingly.

7. The Plaintiff returned to Grand Cayman and made it known to Mr. Smatt that he expected his pay increase to start immediately. The Plaintiff was informed by Mr. Smatt that the hotels were not making a profit. Once they started to make a profit the Plaintiff would automatically be entitled to a pay rise

8. In the meantime, the Plaintiff was told he had to find another source for paying himself the pay increase but that it was not to be reflected on the current payroll as an additional expense. The exact source from where the pay increase was to be taken was never discussed between the Parties. Mr. Smatt told the Plaintiff to deal with the pay increase as he saw fit.

9. In reliance on the said representations the Plaintiff took an increase in wages of US\$150.00 per month from the surplus in the Guest Transfer funds. The funds were debited from the accrued Guest Transfer Funds and credited to the Gratuity Account. Once in this account it was used to pay the wage increase.

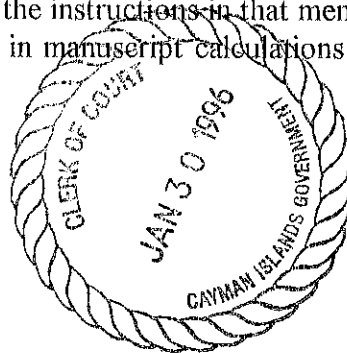
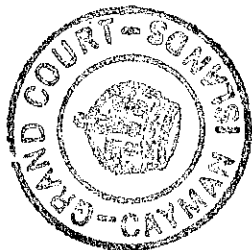
10. The Plaintiff submitted the cheques for his salary to the Defendants each and every month commencing from January 1995. Those cheques clearly reflected the agreed pay increase and were countersigned by Mr. Smatt.

11. Prior to August 1995 the Plaintiff attended a meeting with Mr. Smatt. Also in attendance was Mr. Herbert. Mr. Herbert informed Mr. Smatt that the source from which the money for the pay increase was taken belonged to the company. As a result Mr. Smatt ordered that the increase in payments should be stopped and that monies paid so far should be repaid by the Plaintiff. The pay increase agreed in December 1994 was stopped on 16 August 1995.

12. The Plaintiff received a memorandum dated 8 September 1995 from the General Manager, a Mr. Charles Solomon ("Mr. Solomon"), which informed him that the company were refusing to pay the increase in salary as had been originally agreed.

13. A meeting took place between the parties in September 1995. In attendance were the following individuals on behalf of the Defendants: 1. Mr. Walter. 2. Mr. Smatt. 3. Mr. Solomon. 4. Mr. Herbert. 5. Mr. Carn.

14. The subject matter of that meeting was to discuss the remuneration of employees and, in particular, the Plaintiff. A proposal was made by Mr. Walters as to how the pay increases could be implemented and the possible source of the payment without costing the company any money. Following that meeting Mr. Solomon sent a memorandum dated 26 September 1995 to Mr. Smatt and Mr. Walter. Mr. Solomon passed the memorandum to the Plaintiff who in compliance with the instructions in that memorandum set down in a memorandum dated 1 November 1995 in manuscript calculations as to how a future pay increase could be substantiated.



15. The Plaintiff completed his calculations and passed them to Mr. Solomon who in turn sent them to Mr. Smatt. As a result of that memorandum Mr. Smatt telephoned the Plaintiff and requisitioned him to attend his office and reprimanded him about his calculations. With regard to the pay increase, Mr. Smatt accused him of taking money without authorisation.

16. Following that meeting various memoranda passed between the parties and, in particular:

1. Memorandum dated 6 November 1995 from Mr. Smatt to Mr. Fox.
2. Memorandum in manuscript dated 6 November 1995 from Mr. Fox to Mr. Smatt.
3. Memorandum dated 15 November 1995 from Mr. Solomon to Mr. Fox.

17. Further, and at the same time, the Plaintiff was accused of refusing to pay premiums towards a medical insurance scheme under which the Defendants had taken out cover.

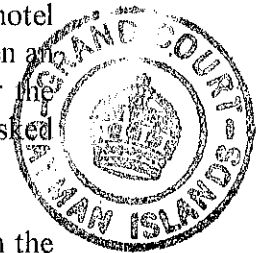
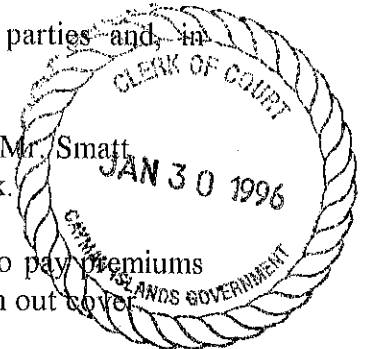
18. The medical insurance scheme was initially for a few expatriate employees at the hotel. The scheme was later expanded to cover further employees and at that stage Mr. Smatt apparently informed a former employee, Mrs. Swabey, that all employees at both hotel should make a 50% contribution towards the scheme. The employees were never given an option to determine whether they wanted to make a contribution and thus to enter the scheme. When some months later they were finally notified about the scheme and asked whether they wanted to contribute to it, the majority refused to be covered under it.

19. The Plaintiff had never seen any documentation or memoranda in connection with the scheme or was ever told either by Mrs. Swabey or any one else that he had to contribute towards it. The Plaintiff explained to Mr. Smatt that it was not until October 1995 that he first new and appreciated that he and the other employees were not being given a choice whether or not to contribute to the scheme but that the cover was mandatory. Further, if he had a choice as to whether or not he wanted to be covered under the scheme, he did not wish to be covered under it if he had to make a contribution towards it.

20. Mr. Smatt sent a memorandum dated 6 November 1995 to the Plaintiff informing him, in short, that he had taken money with out the consent of his employers. On or before 17 November 1995 the Defendants had refused to pay the Plaintiff's wages which included his last two pay cheques amounting to US\$891.01. This figure did not include the pay increase.

21. It was the Defendants intention not to pay the Plaintiff any salary until they considered the Plaintiff had repaid all monies owed to them for unauthorised salary increase and outstanding medical expenses premiums.

22. On or about 1 December 1995 in an effort to clarify matters between the parties the Plaintiff attended a meeting at the offices of the Defendants. In attendance were the following individuals on behalf of the Defendants: 1. Mr. Walter. 2. Mr. Smatt. 3. Mr.



Solomon. 4. Mr. Herbert. The Defendants simply refused to accept any of the Plaintiff's representations.

23. The Defendants acted in repudiatory breach of the implied and express terms of the Agreement in that:

PARTICULARS OF REPUDIATORY BREACH

1. They failed to pay an increase in salary agreed to under the Agreement.
2. The said representations were false.
3. The Defendants failed to pay the increased salary which had been agreed between the parties and had been in force for over eight months.
4. The Defendants told the plaintiff that they were not making a profit.
5. There had been a breach of trust and confidence between the Defendants and the Plaintiff as a result of the Defendants accusing the Plaintiff of taking funds without the authority of the Defendants.

24. The Plaintiff was given no other option but to resign in circumstances where he considered the Defendants had repudiated his contract with immediate effect.

25. Further or in the alternative, by reason of the wrongful repudiation by the Defendants of the Agreement, the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS (US\$)

1. Agreed and outstanding increased salary	23 wk. x 150.00.	3450
2. Payment under the contract in lieu of notice		300
3. Payment of rent under contract	December 1995	750
4. Payment of outstanding salary	4 wk.	400
5. Severance payment		
a) Spanish Bay Reef	4 wk. x 450	1800.00
b) Beach Club	2.5 wk. x 175	437.50
	sub-total	<u>8337.50</u>
6. legal fees so far incurred		<u>1500.00</u>
	TOTAL	<u>9837.50</u>

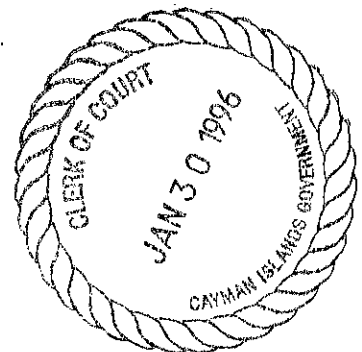
26. Further, pursuant to The Judicature Law (1995 Revision), the Plaintiff is entitled to and claims interest on such sums as are found to be due at such rate and for such period as the Court shall think fit.

AND THE PLAINTIFF claims:

1. Damages.
2. Interest thereon pursuant to The Judicature Law (1995 Revision).
3. Costs.



BROOKS & BROOKS



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HOLDEN AT GEORGE TOWN, GRAND CAYMAN

The Hon Mr. Justice
CAUSE NO: OF 19

BETWEEN

MR. FOX

-PLAINTIFF

AND:

THE SPANISH BAY COMPANY LTD -DEFENDANTS

STATEMENT OF CLAIM

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Messrs. Brooks & Brooks
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British West Indies.