

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 421 OF 2000

BETWEEN: GALLAGHER & COMPANY LTD PLAINTIFF

AND: (1) KERRY ROSITA TIBBETTS

(2) BANK OF BUTTERFIELD

INTERNATIONAL (CAYMAN) LTD DEFENDANTS



WRIT OF SUMMONS



TO: (1) Kerry Rosita Tibbetts (2) Bank of Butterfield International (Cayman)Ltd  
C/o HM Prison Northward PO Box 705  
Northward George Town  
Grand Cayman 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.T., 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 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 22<sup>nd</sup> May 2000**

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 Second Defendant is a bank carrying on business at their branch at George Town, Grand Cayman.
  
2. At all material times the Plaintiff was a customer of the Second Defendant holding account no. 01-101-030022-00 with the Second Defendant ("the Account").
  
3. At all material times the First Defendant was an employee of the Plaintiff. The First Defendant had no authority to act on behalf of the Plaintiff in relation to the Account. The only authorised signatory on the Account was Mr. Rhyal Gallagher ("Mr. Gallagher") a director of the Plaintiff.
  
4. Between 26<sup>th</sup> May 1994 and 15<sup>th</sup> April 1997 the Second Defendant paid the cheques listed below ("the Cheques"), all of which purported to be drawn by the Plaintiff payable to Skells Services and debited the Account with the amount thereof.

### PARTICULARS OF CHEQUES

<u>Cheque No.</u>	<u>Amount</u>	<u>Date Paid</u>
5006	4,763.41	26 May 1994
5012	3,892.46	27 Feb 1995
5018	9,845.61	12 Jun 1996
5017	6,112.62	21 Jun 1996
5022	9,146.34	26 Jul 1996
5023	6,097.56	31 Jul 1996
5026	9,197.56	12 Aug 1996
5029	2,469.00	4 Sep 1996
5031	1,884.88	19 Sep 1996
5051	15,243.90	19 Dec 1996
5049	9,756.10	23 Dec 1996
5050	15,015.69	15 Apr 1997
<b>Total</b>	<b>93,425.13</b>	

5. In fact, the Cheques were not drawn by Mr. Gallagher, nor did he authorise the drawing thereof. In fact, Mr. Gallagher's signature was forged on the Cheques by the First Defendant.
  
6. Pursuant to the provisions of Section 24 of the Bills of Exchange Law (1997 Revision) the Cheques were wholly inoperative and the Second Defendant had no authority to pay the Cheques.

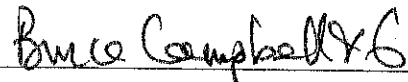
7. Skells Services, the payee of the Cheques is an entity owned and controlled by the First Defendant. Accordingly, the First Defendant has benefited to the extent of the value of the Cheques at the expense of the Plaintiff.
  
8. On or around 9<sup>th</sup> June 1999 the First Defendant was convicted after trial in the Grand Court of the Cayman Islands of 9 counts of theft and 9 counts of making a false instrument by forging Mr. Gallagher's signature on the Cheques. The Plaintiff intends to rely upon the said conviction which is relevant to the issue of whether Mr. Gallagher's signature on the Cheques was forged.

#### **AND THE PLAINTIFF CLAIMS**

1. A Declaration that the First Defendant is liable to reimburse the Plaintiff to the extent of the value of the Cheques plus interest.
  
2. An Order that the First Defendant do pay the Plaintiff the value of each of the Cheques from the date the Cheques were wrongfully debited to the Plaintiffs account, together with interest thereon pursuant to Section 34(1) of the Judicature Law.
  
3. A Declaration that the Second Defendant was not entitled to debit the Account with the amount of the Cheques.

4. An Order that the Second Defendant do repay the Plaintiff the full value of each of the Cheques, together with interest thereon from the date that the Cheques were wrongfully debited to the Account.
  
5. Costs.

**DATED: 22<sup>nd</sup> May 2000**



**BRUCE CAMPBELL & CO**

**Attorneys at Law for the Plaintiff**

**THIS WRIT OF SUMMONS** is filed by Messrs. Bruce Campbell & Co, Attorneys at Law for the Plaintiff, whose address for service is 4<sup>th</sup> Floor, Scotiabank Building, George Town, Grand Cayman. Tel: 949 2648; Fax: 949 8613 (Ref: 8000/JRM/DAS)