

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 921 OF 2000

BETWEEN: OVER-C BUSINESS SOLUTIONS LTD. Plaintiff

AND: (1) JOHN P. COLLINS
(2) LAZARO HERNANDEZ Defendants

WRIT OF SUMMONS

To: JOHN P. COLLINS
of 76, Woodland Drive, Grand Cayman

And to: LAZARO HERNANDEZ
of 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 Fourteen days [14] 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 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 this 19th day of December, 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 Plaintiff is a company incorporated in the Cayman Islands and provides accounting and business services there.
2. In or about August 1999, the First Defendant asked the Plaintiff to assist him in the raising of construction finance for the purposes of a residential development which the First Defendant was proposing to carry out on land in West Bay, Grand Cayman, owned, as to part, by the Defendants as proprietors in common in equal shares.
3. Shortly thereafter, the First Defendant informed the Plaintiff that Gulfstream Petroleum Worldwide ("Gulfstream"), a Delaware corporation, had assured the First Defendant that it would be able to obtain a loan of US\$2 million within 15 days subject to the payment of a deposit of US\$35,000 of which US\$30,000 would be refundable should the said loan not be obtained within that period. The First Defendant asked the Plaintiff if it would pay the deposit of US\$35,000 to Gulfstream.
4. By a fax dated 9th August 1999 from Dimitri Pappas, acting on behalf of the Plaintiff, to the First Defendant, the Plaintiff set out the conditions subject to which it would pay the said deposit. Those conditions included:
 - (1) a promissory note to be issued by the First Defendant for the amount of the deposit plus interest and costs;
 - (2) a pledge of "parcel land".
5. On 10th August 1999, the Defendants executed a Power of Attorney in favour of Mr. Pappas in respect of the land of which they were proprietors ("the Land") which power was duly registered pursuant to section 113 of the Registered Land Law (1995 Revision).

6. By a Promissory Note ("the Note") dated 12th August 1999 the First Defendant promised to pay to the order of the Plaintiff the sum of US\$35,000 together with interest from 27th August 1999 at the rate of 11.50% per annum. The Note further provided as follows:

- (1) that unpaid principal and accrued interest should be payable in full on any future date on which the Plaintiff demanded payment ("the Due Date");
- (2) that unpaid principal after the Due Date should accrue interest at a rate of 15% per annum;
- (3) that if the said sum was not paid when due, the First Defendant would pay all costs of collection, including reasonable attorney fees, whether or not a law suit was commenced;
- (4) that the Note was secured by the Power of Attorney and a caution/charge over the Land.

The Plaintiff will contend that the Note was effective to create an equitable charge ("the Charge") over the First Defendant's undivided share in the Land subject to the consent in writing of the Second Defendant which consent was not to be unreasonably withheld.

7. By a Financing Agreement dated 12th August 1999 and made between the Plaintiff and Gulfstream, the Plaintiff agreed to transfer the sum of US\$35,000 to Gulfstream and agreed to use the same for the sole purpose of obtaining a loan of US\$2 million. The Financing Agreement further provided that, should Gulfstream be unable to obtain such loan within 15 days, Gulfstream should immediately refund to the Plaintiff the sum of US\$30,000.

8. The Plaintiff will refer at the trial hereof to the Power of Attorney, the Note and the Financing Agreement for their full terms and effect.

9. On 19th August 1999, the Plaintiff paid US\$35,000 to Gulfstream pursuant to the terms of the Financing Agreement.
10. Gulfstream has not obtained the loan referred to in the Financing Agreement nor has it refunded the sum of US\$30,000 to the Plaintiff.
11. By a letter dated 22nd February 2000, the Plaintiff demanded immediate repayment from the First Defendant of the sum of US\$35,000 referred to in the Note together with interest and costs. Despite the said letter, the First Defendant has failed to make any payment to the Plaintiff whether in respect of the said sum, interest or costs.
12. On 16th March 2000, the Defendants revoked the Power of Attorney.
13. By letter dated 8th December 2000, the Plaintiff's attorneys, Quin & Hampson, requested the Second Defendant's consent in writing to the Charge. The Second Defendant has failed to respond to the said request and has thereby withheld his consent.
14. At the time he executed the Power of Attorney, the Second Defendant was aware that it was part of an agreement between the Plaintiff and the First Defendant whereby the Plaintiff would deposit the sum of US\$35,000 with Gulfstream to facilitate the raising of finance for the development of, *inter alia*, the Land. The Second Defendant was further aware at that time that the Plaintiff was only prepared to enter into such agreement if it obtained the Note from the First Defendant secured by the Charge. The Second Defendant, as the owner of the other undivided share in the Land, stood to benefit from the said agreement and, by executing the Power of Attorney, encouraged the Plaintiff to believe that, if it provided the said deposit, the repayment thereof was secured by the Charge. In the premises, the withholding of consent to the Charge by the Second Defendant is unreasonable.

AND the Plaintiff claims:

Against the First Defendant

- (1) Judgment in the sum of US\$35,000 together with interest of US\$6,303.35 to the date hereof and continuing at a daily rate of US\$14.38;
- (2) A declaration that the amounts payable by the First Defendant pursuant to the Note are charged on the First Defendant's undivided share in the Land;

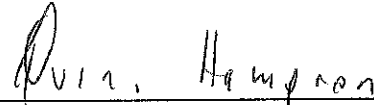
Against the Second Defendant

- (3) A declaration that the Second Defendant has unreasonably withheld his consent to the Charge;

As against both Defendants

- (4) An order for sale of the Land;
- (5) Further or other relief;
- (6) Costs.

DATED this 19th day of December, 2000



QUIN & HAMPSON
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And to: The First Defendant
John P. Collins

And to: The Second Defendant
Lazaro Hernandez

FILED by Quin & Hampson, Attorneys-at-Law for and on behalf of the Plaintiff herein, whose address for service is Harbour Centre, Third Floor, P.O. Box 1348, George Town, Grand Cayman.

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

1. The accompanying form of *Acknowledgment 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 495G, George Town, Grand Cayman

2. A Defendant who states in his Acknowledgment 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 indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 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 not indorsed on the Writ, the Defence need not be served until 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 without 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 Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 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 installments or otherwise.

See over for notes for guidance

Please complete overleaf

Notes for Guidance

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

BETWEEN: OVER-C BUSINESS SOLUTIONS LTD. Plaintiff

AND: (1) JOHN P. COLLINS

(2) LAZARO HERNANDEZ Defendants

ACKNOWLEDGMENT 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:

Please complete overleaf

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

Quin & Hampson
Attorneys-at-Law
Harbour Centre, Third Floor
P.O. Box 1348
George Town,
GRAND CAYMAN

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

[Empty box for defendant's attorney indorsement]