

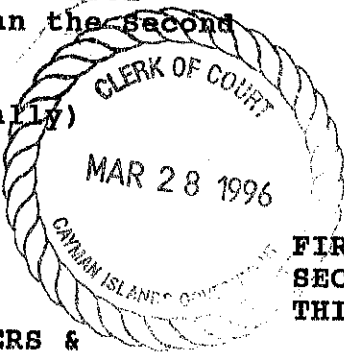
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 170 OF 1996

BETWEEN: (1) FRANK MOYA (A minority shareholder)
on behalf of himself and all other
shareholders of the Fourth
Defendant other than the second
Defendant **FIRST PLAINTIFF**

AND: (2) FRANK MOYA (Personally) **SECOND PLAINTIFF**

AND: (1) KEITH BALDWIN **FIRST DEFENDANT**
(2) SEAN BODDEN **SECOND DEFENDANT**
(3) MICHELLE BODDEN **THIRD DEFENDANT**
(4) GRAND CAYMAN BOTTLERS &
BLENDERS LTD. **FOURTH DEFENDANT**



WRIT OF SUMMONS

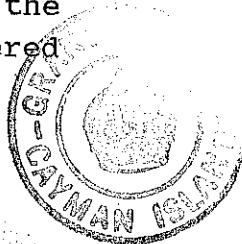
TO: (1) Mr. Keith Baldwin (3) Ms. Michelle Bodden
P.O. Box 1608G, P.O. Box 1608G,
Grand Cayman B.W.I. Grand Cayman B.W.I.

(2) Mr. Sean Bodden (4) Grand Cayman Bottlers &
P.O. Box 1608G, Blenders Ltd.
Grand Cayman B.W.I. P.O. Box 866G,
Grand Cayman B.W.I.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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, George Town, Grand Cayman B.W.I., 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

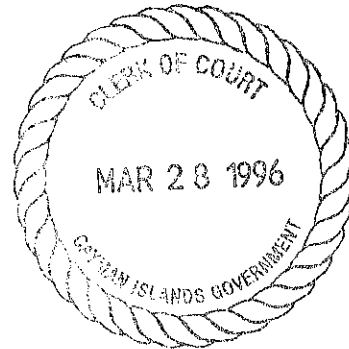


Issued this 28th day of March, 1996.

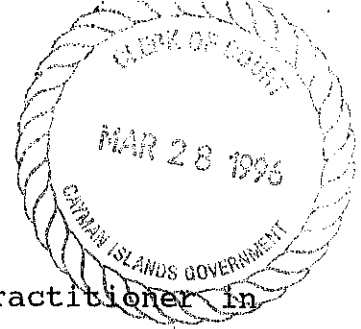
NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

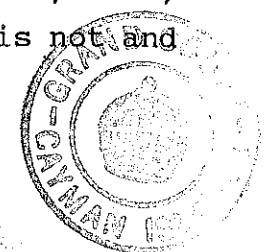
Directions for Acknowledgment of Service are given with the accompanying form.



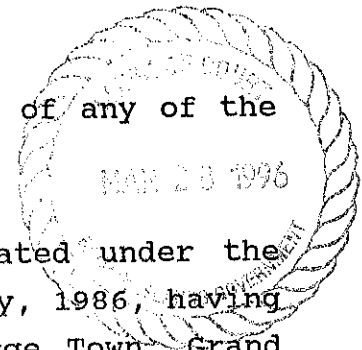
STATEMENT OF CLAIM



1. The First and Second Plaintiff is a Medical Practitioner in Miami, Florida, U.S.A., and is the registered and beneficial owner of 60,000 shares of CI\$1.00 each (for which he has paid in full) in the Fourth Defendant, the total issued share capital of which is 300,000 shares of CI\$1.00 each.
2. The First Defendant is a Canadian citizen who resides and works in the Cayman Islands and is and has since 14th August, 1987, been a Director of the Fourth Defendant. Since 22nd July, 1988, he has been the President and since 10th November, 1994, the Secretary of the Fourth Defendant. He is not and at no time has been registered as the holder of any of the shares in the Fourth Defendant, but the First Defendant was from at least January, 1990, the beneficial owner of the majority of the shares in the Fourth Defendant. The Plaintiffs are unable to say until after discovery exactly what the beneficial shareholding of the First Defendant in the Fourth Defendant actually was from time to time. At all material times up to 12th December, 1994, the First Defendant along with his wife was also the sole shareholder of Jolly Roger Cayman Limited, a Cayman company ("Jolly Roger").
3. The Second Defendant is a Caymanian who is and has since 10th November, 1994, been a Director of the Fourth Defendant and has been since 10th November, 1994, registered as the holder of 180,000 shares of CI\$1.00 each in the Fourth Defendant. The Second Defendant gave no consideration for the transfer of these shares to him and the Plaintiffs believe that the Second Defendant holds these shares on behalf of the First Defendant.
4. The Third Defendant is the daughter of the First Defendant and the wife of the Second Defendant. Since 10th November, 1994, she has been a Director of the Fourth Defendant but is not and



at no time has been registered as the holder of any of the shares in the Fourth Defendant.



5. The Fourth Defendant is a company incorporated under the Companies Law of the Cayman Islands on 9th May, 1986, having its registered office at P.O. Box 866, George Town, Grand Cayman B.W.I., and carrying on the business of blending and bottling liqueurs, wines and other distilled or fermented spirits and importing and exporting, wholesaling and retailing them.

6. According to the Register of Members of the Fourth Defendant on 25th January, 1995, the holders of the remaining 60,000 shares in the Fourth Defendant are:-

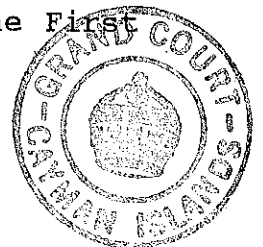
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|-----------------------|----------------------|---|
| George Chamberlain | 5 shares | (held since 9th May, 1986) |
| Michael Quinn | 35 shares | (held since 9th May, 1986) |
| Kurt Tibbetts | 1 share | (held since 7th May, 1988) |
| Eduardo Sanchez | 15,000 shares | (held since 1st October, 1991) |
| Barbara Ann McCormick | 15,000 shares | (held since 1st October, 1991) |
| Joseph Jackman | <u>29,959 shares</u> | (held since 9th May, 1986 and 30th April, 1990) |

TOTAL:- 60,000 Shares

Based on the registered shareholding, all shareholders other than the Second Defendant are accordingly minority shareholders in the Fourth Defendant.



7. The Fourth Defendant issued, *inter alia*, to the Second Plaintiff a document entitled "An Investment Opportunity in the Cayman Islands" on 20th January, 1989 ("the Offer"). The Offer contained *inter alia* a "Trial Balance Sheet as at January 20, 1989", showing "Investor Net Equity" of CI\$265,158.41 and "Projected Monthly Sales for the Period July 1989 to July 1990" showing a "Projected Annual Gross Operating Profit" of CI\$484,800.00 and "Annual Net Income" of CI\$299,250.00 or approximately CI\$1.00 per share on the projected share capital after the Offer of CI\$300,000.00. The Offer offered 175,665 shares of CI\$1.00 each at a price of CI\$2.00 each which it stated was 58.55% of "its outstanding shares" although its Register of Members indicates that until 26th May, 1989, only 100 shares of CI\$1.00 had been issued. The Plaintiffs will refer to the Offer at the trial of this action for its full import and legal effect.
8. On 16th February, 1989, the First Defendant wrote the Second Plaintiff enclosing a "Trial Balance Sheet as at February 15, 1989" showing "Investor Net Equity" of CI\$267,284.00. He stated that he believed "the balance sheet shows a reasonably close financial of our company" and that "All my loans to the Company will be taken in shares at CI\$2.00 and existing promissory notes will be cancelled." The Second Plaintiff did not know and could not reasonably be expected to have known that the First Defendant could not by reason of his not being a Caymanian become a registered shareholder of more than 20% of the shares in the Fourth Defendant (the Second Plaintiff being about to become a 20% shareholder) without a Local Companies (Control) Law Licence being issued to the Fourth Defendant. Such a licence was never obtained by the Fourth Defendant although a Return of Particulars of an Allotment under the Local Companies (Control) Law was prepared on or about 26th April, 1989 and sent to the Second Plaintiff. Presumably because of the lack of such a licence, the First



Defendant has never actually become a registered shareholder of the Fourth Defendant.

9. On 26th April, 1989, relying on the Offer, the letter of 16th February, 1989, and representations of the First Defendant (including a representation that the Fourth Defendant was the First Defendant's company and that the shares held in the Fourth Defendant by Joseph Jackman were held for the First Defendant), the Second Plaintiff became registered as the holder of 60,000 shares in the Fourth Defendant for which he paid US\$146,000.00 on 17th February, 1989. At the same meeting of the Directors of the Fourth Defendant held on 26th April, 1989 at which the Second Plaintiff was allotted his shares, Joseph Jackman was allotted 90,000 shares at a price of CI\$2.00 each. These shares along with another 60 shares shown as allotted to Joseph Jackman on 9th May, 1986, (of which 1 was transferred to Kurt Tibbetts on 7th May, 1988) were entered on the Register of Members, a copy of which was sent to the Second Plaintiff at the time but the Register of Members on 25th January, 1995, sent to the Plaintiffs' Attorneys-at-law while showing the original 60 shares shows no further allotment to Joseph Jackman until 30th April, 1990, when 149,900 shares were allotted to him at an unknown price. Until discovery, the Plaintiffs are unable to say how and when any allotment to Joseph Jackman took place, what number of shares were contained in it or them or how many of those shares (if any) belonged to Joseph Jackman beneficially or to the First Defendant.
10. Joseph Jackman in fact paid nothing at any time for his shares in the Fourth Defendant and no information on the Fourth Defendant prior to the accounts dated 30th April, 1992, has ever been sent to the Second Plaintiff to enable him to see whether the First Defendant ever honoured his written promise to take the Fourth Defendant's debt to him in shares at

CI\$2.00 each. Further, most of the shares (a total of 224,960) shown by the Register of Members on 25th January, 1995, as being issued to Joseph Jackman have been transferred, for the most part (180,000) to the Second Defendant for which no consideration was ever paid to Joseph Jackman. The remaining shares issued to Joseph Jackman which were transferred by him, all without any consideration being paid to him are:-

- (a) 1 share to Kurt Tibbetts; and
- (b) 15,000 shares to Barbara Ann McCormick

leaving 29,959 shares in his name in respect of which the Plaintiffs at present make no allegation. Whether the First Defendant paid the Fourth Defendant on the issue of any of these shares to Joseph Jackman is unknown to the Plaintiffs at this time.

11. The accounts of the Fourth Defendant for the years ended 30th April, 1992 to 1995 inclusive which have been reviewed but not audited by Ronald Smith, a Canadian Chartered Accountant and are in United States dollars, show the share capital of the Fourth Defendant as:-

| | US\$ |
|----------------------------|-------------|
| "Issued and Fully Paid | |
| 300,000 shares | 183,100.00 |
| Premium on issue of shares | 183,100.00" |

On the face of these accounts, the Fourth Defendant and its Directors are in flagrant breach of the Companies Law (which prohibits the issue of shares at a discount without certain procedures being followed, including the obtaining of an order of the Grand Court, which has not been done) as they show the

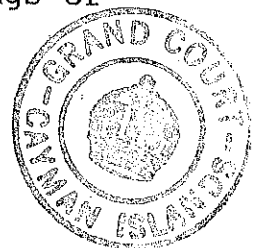
issue "fully paid" of CI\$300,000.00 worth of shares for CI\$150,142.00 (using an exchange rate of CI\$0.82=US\$1.00).

Further, if the minutes of the Directors of 26th May, 1989, are accurate, since the Second Plaintiff, had paid US\$146,000.00 for his shares and Joseph Jackman has been recorded as having to pay CI\$180,000.00 for his, then provided that the First Defendant paid for Joseph Jackman's shares, the Fourth Defendant would have received virtually the whole CI\$300,000.00 which its accounts show as being the total of its share capital and share premium account, so that none of the holders of the remaining 150,000 shares could have paid for them. Alternatively, if the other shareholders paid for their shares, the purported issue of almost 150,000 shares to Joseph Jackman is void for lack of consideration.

12. Notwithstanding that the "trial balance sheets" of the Fourth Defendant contained in the Offer and the letter of 16th February, 1989, from the First Defendant to the Second Plaintiff, showed an "Investor Net Equity" of CI\$265,158.41 and CI\$267,284.00 respectively, the "Statement of Operations" attached to the Fourth Defendant's accounts of 30th April, 1990, shows:-

| | |
|-----------------------------|------------------|
| Deficit at 1st May, 1988 | US\$123,782.00 |
| Loss to 30th April, 1989 | <u>68,740.00</u> |
| Deficit at 30th April, 1989 | 192,522.00 |
| Loss to 30th April, 1990 | <u>12,918.00</u> |
| Deficit at 30th April, 1990 | US\$205,440.00 |

From an Investor Net Equity of CI\$267,284.00 on 15th February, 1989, presumably based on a share capital of CI\$100.00 (which is all that had been issued at that date) and a capital reserve of CI\$41,000.00 (to account for the valuation of licences and goodwill) and accordingly retained earnings of



CI\$226,184.00, the Fourth Defendant had apparently in two-and-a-half months (i.e. from 15th February, 1989 to 30th April, 1989) reduced itself to a deficit in retained earnings of US\$192,522.00 - a massive loss of CI\$384,052.00 or US\$468,356.00. Alternatively, the statements of "Investor Net Equity" as at 20th January, 1989, and 15th February, 1989, were fraudulent inducements to the Second Plaintiff to invest in shares in the Fourth Defendant. In addition, at a meeting between the Plaintiffs' accountant John Smith and the First Defendant on 2nd August, 1994, the First Defendant admitted that all the projections in the Offer were incorrect and, while the First Defendant would not say who prepared them, Ronald Smith stated to the Plaintiffs' Attorneys-at-law that he had never seen them until late 1995 when they were shown to him by the Plaintiffs' Attorneys-at-law.

13. Assuming the correctness of the accounts of the Fourth Defendant (which is not admitted), it had by 30th April, 1994, recouped all its losses up to 30th April, 1992 (which was the last financial year end in the accounts to which a loss is shown), and had retained earnings of US\$111,601.00. By 30th April, 1995, those retained earnings had risen to US\$266,043.00. No dividends have ever been declared despite repeated assurances from the First Defendant to the Second Plaintiff that they would be declared as and when the financial situation of the Fourth Defendant warranted them.
14. During the year ended 30th April, 1994, the accounts of the Fourth Defendant show interest-free loans of US\$156,620.00 and an investment in share capital of US\$651.00 in Jolly Roger, a company owned by the First Defendant and his wife. On the same date, the accounts of Jolly Roger which were only compiled, but not reviewed by Ronald Smith, show only 100 shares of \$1.00 each being issued and interest-free loans from the Fourth Defendant of \$157,721.00. It is clear that at that



date according to Jolly Roger's accounts, no additional share capital had been purchased or subscribed for by the Fourth Defendant and at that date the shares shown as issued must have been still owned by the First Defendant and his wife. One or both of the accounts must be incorrect.

15. The accounts of the Fourth Defendant at 30th April, 1995, indicate that company's investment in Jolly Roger as

| | |
|------------------------|----------------------------------|
| Share Capital | US\$150,000.00 |
| Interest-free Advances | <u>273,206.00</u> |
| | <u>US\$423,207.00</u> |

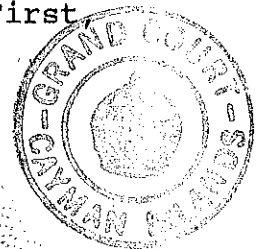
It seems clear, in view of what follows below, that "273,206" is a typographical error for "273,207".

The Balance Sheet of Jolly Roger (no full accounts have ever been provided to the Plaintiffs) at the same date show the Fourth Defendant's investment in Jolly Roger as

| | |
|------------------------|----------------|
| Interest-free Advances | US\$273,207.00 |
|------------------------|----------------|

The accounts of Jolly Roger also show an issued share capital of US\$100.00. The minutes of a meeting of the Directors of the Fourth Defendant on 12th December, 1994, at which the First Defendant, Second Defendant and Third Defendant were all listed as present, indicate that the Directors of the Fourth Defendant resolved to purchase all the issued Share Capital of Jolly Roger from the First Defendant and his wife "in consideration for monies previously lent to Jolly Roger Cayman Ltd. and for other good and valuable consideration". Accordingly, that share capital belongs to the Fourth Defendant.

16. So far as the "investment" in the shares in Jolly Roger is concerned, clearly no investigation was made by the First



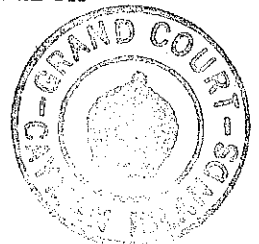
Second and Third Defendants either at the various times when money was advanced to Jolly Roger by the Fourth Defendant or when the shares were "purchased". Based on such accounts as there are of Jolly Roger, any such "investment" on any reasonable objective basis would have been impossible to make. Accordingly, the First, Second and Third Defendants as Directors of the Fourth Defendant were in flagrant breach of the fiduciary duty which they owed to the Fourth Defendant and are accountable for the sums so invested being guilty of defrauding the Fourth Defendant or at least of gross negligence as a result of which the First Defendant benefitted.

17. The minutes of the meeting of the Directors of the Fourth Defendant on 12th December, 1994, indicate on their face a sham transaction.

PARTICULARS OF ALLEGATION OF A SHAM TRANSACTION

If the accounts of the Fourth Defendant and these minutes are to be believed, the Fourth Defendant must have paid the First Defendant US\$150,000.00 for 100 shares of US\$1.00 each in Jolly Roger, a company which was and is insolvent. In this case, the amount owed by Jolly Roger could not have decreased from US\$423,207.00 to US\$273,207.00 as appears to have happened.

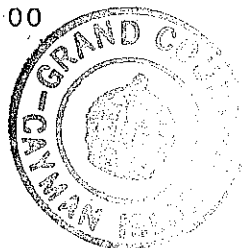
On the other hand, if shares in a company are taken in exchange for a debt owed by that company (assuming that to have been the intention in this case), then the debtor company must issue the shares. The only way the transaction assumed to be envisaged by those minutes of 12th December, 1994, could therefore take place (and then only if those minutes are totally incorrect) is for Jolly Roger to issue 149,900 shares to the Fourth Defendant and reduce its debt to the Fourth



Defendant by the value of those shares. At the same time, if the Fourth Defendant is intended to own the entire share capital of Jolly Roger, the First Defendant would have to transfer his shares in Jolly Roger to the Fourth Defendant. Although it is legal for the First Defendant to transfer his shares in Jolly Roger at a nominal value (this being clearly all that the shares were worth), it is illegal for Jolly Roger (without certain procedures being followed, including the obtaining of an order of the Grand Court, which has not been done) to issue the 149,900 shares for less than par value (US\$1.00 each according to the balance sheet of Jolly Roger), but this amount is nowhere indicated in Jolly Roger's balance sheet at 30th April, 1995, although, by comparison with the accounts of the Fourth Defendant at that date, it is clear that the debt owed by Jolly Roger to the Fourth Defendant was, in Jolly Roger's accounts, reduced by this amount.

If this US\$149,900.00 was inserted into Jolly Roger's balance sheet, the deficit at 30th April, 1995 (presently shown on the balance sheet as US\$44,884.00 - see paragraph 18), would be increased to US\$194,784.00. The First Plaintiff is unable to say until after discovery on what this missing money was spent.

18. On 16th December, 1994, four days after the Fourth Defendant purchased from the First Defendant and his wife the shares in Jolly Roger for, apparently, \$150,000.00 (loans of \$273,207.00 to that company continuing to remain outstanding), that company entered into a Hire Purchase Agreement with E & H Cruises Ltd. ("E&H") whereby E&H could buy "The Nancy" for US\$300,000.00, over a period of some three years, at US\$8,000.00 per month. Based on the assumption that all payments will be made and "The Nancy" purchased by E&H, the accounts of Jolly Roger at 30th April, 1995, show that with no remaining asset other than the balance of US\$264,000.00



payable by E&H, that company has a deficit of US\$44,884.00 which it has no hope of recovering. As stated in paragraph 17, this deficit may well be US\$194,784.00.

The result of this is that the Fourth Defendant can only hope to recover if the balance sheet of Jolly Roger at 30th April, 1995, is correct (which is not admitted) approximately US\$228,323.00 (its loan of US\$273,207.00 less the deficit of US\$44,884.00) for its investment of US\$423,207.00, a loss to the Fourth Defendant of US\$194,884.00 which must have accrued to the benefit of the First Defendant and his wife. As this recoupment can only take place over three years, the actual present day value of the recoupable amount is even less. If the deficit in Jolly Roger is in fact US\$194,784.00 as stated in paragraph 17, the loss to the Fourth Defendant which must have accrued to the benefit of the First Defendant and his wife becomes US\$344,784.00 (US\$194,884.00 plus US\$194,784.00 minus US\$44,884.00).

19. So far as the First Plaintiff is aware, there are no minutes of Directors or shareholders of the Fourth Defendant other than that of 12th December, 1994, referred to above, relating to any transaction with Jolly Roger. Accordingly, there has been no declaration of interest by the First Defendant at any time, nor has there ever been a resolution of the Directors of the Fourth Defendant to make any investment whatever in Jolly Roger other than the shares bought from the First Defendant and his wife. In the circumstances, the First, Second and Third Defendants were in flagrant breach of the fiduciary duty which they owed to the Fourth Defendant as its Directors and therefore the investment both in the shares in and the advances to Jolly Roger is void and they are accountable to the Fourth Defendant for the sums so invested. In addition, the First Defendant is obliged to reimburse the Fourth



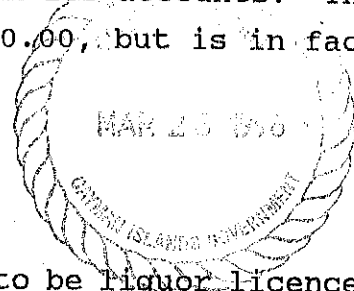
Defendant for all bank interest paid by the Fourth Defendant on money borrowed for on-lending to Jolly Roger.

20. The value of US\$150,000.00 placed by the Fourth Defendant on its shares in Jolly Roger has been attributed by the Defendants to the value of certain licences allegedly still owned by Jolly Roger, but not appearing in its accounts. The value of these licences is not US\$150,000.00, but is in fact nil.

PARTICULARS

These licences, at various times alleged to be liquor licences and watersports licences, are alleged to have retained the value of US\$150,000.00 notwithstanding the sale by Jolly Roger of its only physical asset, "The Nancy", even though liquor licences are not transferable and watersports licences require watersports equipment (which Jolly Roger clearly does not have) to use.

21. While the Memorandum of Association of the Fourth Defendant is wide enough to empower that company to invest in a restaurant (which "The Nancy" is), its "investment" in the circumstances outlined above is a clear misuse of corporate funds for the benefit of a Director, namely the First Defendant.
22. The Fourth Defendant at present owes money to the Bank of Nova Scotia ("BNS"). At 30th April, 1995, this debt was, according to the Fourth Defendant's accounts, US\$375,960.00. If the Fourth Defendant had never made its "investment" in Jolly Roger, this loan would have been unnecessary as the Fourth Defendant would have an additional US\$423,207.00 in the bank. Accordingly, all or a great part of the interest paid to BNS would not have been lost to the Fourth Defendant and the Fourth Defendant's income would also have been increased by

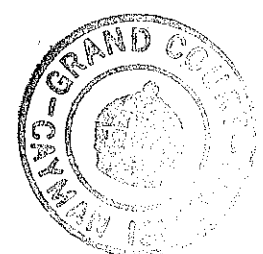
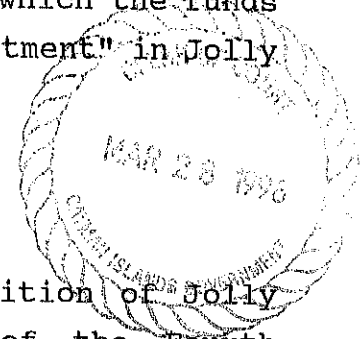


interest earned on depositing the difference of US\$47,247.00 in a bank or by using it more efficiently in the Fourth Defendant's business. The First Plaintiff is unable to say until an account is taken, the amount of the loss to the Fourth Defendant arising from the income which could not be earned owing to the unavailability of the funds "invested" in Jolly Roger.

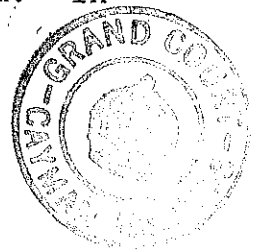
23. The First, Second and Third Defendants as Directors of the Fourth Defendant attempted to conceal from the Second Plaintiff and the other shareholders of the Fourth Defendant the fraudulent or grossly negligent manner in which the funds of the Fourth Defendant were used in its "investment" in Jolly Roger.

PARTICULARS

Notwithstanding the irreversible deficit position of Jolly Roger at 30th April, 1995, the accounts of the Fourth Defendant show no reserve or deduction for loss on investment in Jolly Roger. If this had been done as it ought to have been, it would have highlighted the negligent or fraudulent manner in which that "investment" had been handled by the Directors of the Fourth Defendant. Such a reserve should have been created or deduction made which would have reduced the Fourth Defendant's retained earnings by at least US\$194,885.00 (see paragraph 18) to US\$71,158.00 and possibly to a deficit of US\$78,742.00 if the deficit of Jolly Roger is in fact US\$194,784.00 as stated in paragraph 17. The results for the year ended 30th April, 1995, for the Fourth Defendant would have accordingly shown a loss of either US\$40,443.00 or US\$190,343.00 instead of a profit of US\$154,442.00. Such a loss would no doubt have been questioned both by the shareholders of the Fourth Defendant and by BNS who might have called for a repayment of its loan.



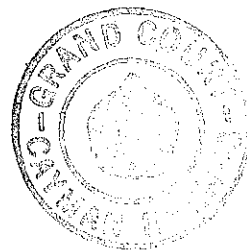
24. A general meeting of the members of the Fourth Defendant was called by the Directors for 15th August, 1995. Present were the First and Second Defendants, Joseph Jackman, the Second Plaintiff by his proxy Bryan Ashenheim and Julian Uzell representing Barbara Ann McCormick but without a proxy. The Second Plaintiff presented a written list of questions to the Directors and it was resolved that the meeting be adjourned until 15th September, 1995, to enable the Directors to provide written answers which could then be discussed at the adjourned meeting. The meeting was not in fact recalled until 9th October, 1995, by consent. Immediately prior to the reconvening of the meeting, the Attorneys-at-law for the Second Plaintiff pointed out to the Fourth Defendant's Attorneys-at-law, Messrs. Truman Bodden & Co., that if certain negotiations which were then in the wind were to proceed amicably it would be better if the meeting was not reconvened at that time. It was agreed that the meeting would not take place on 9th October, 1995, but that the Directors would reconvene it at any time requested by the Second Plaintiff. Instead of the general meeting, a meeting was held by agreement at which Bryan Ashenheim representing the Second Plaintiff, Julian Uzell representing Barbara Ann McCormick, Ian Falconer and Niall Sweetnam representing the Fourth Defendant and Mr. Ronald Smith were present. The meeting which consisted of questions to Mr. Smith from Messrs. Ashenheim and Uzell and his answers was tape recorded by consent by Mr. Uzell and a transcript circulated to all present at the meeting. The First Plaintiff will refer to this transcript at the trial.
25. Notwithstanding the undertaking as to the reconvening of the 15th August, 1995, general meeting, the Second Plaintiff's written request for this through his Attorneys-at-law, Myers & Alberga, to the Fourth Defendant's Attorneys-at-law, Truman Bodden & Co., on 16th November, 1995, has been ignored. In



making the request, the Second Plaintiff's Attorneys-at-law advised Truman Bodden & Co. that the Second Plaintiff would propose a resolution at that meeting, the exact terms of which were set out in writing, that an investigation be conducted by independent lawyers to be chosen by Truman Bodden & Co. as the Fourth Defendant's Attorneys-at-law into the transaction surrounding the "investment" in Jolly Roger and the sale of "The Nancy" and that a general meeting of the members of the Fourth Defendant be convened after the conclusion of the investigation to consider and if thought fit to take any action recommended by the independent lawyers. It is clear that the Directors of the Fourth Defendant have no intention of allowing the Fourth Defendant to take any action against them which leaves the First Plaintiff with no further alternative but to issue this action.

26. The First Plaintiff repeats paragraphs 1 through 25 and says that by reason of the matters therein alleged, the conduct and actions of the First, Second and Third Defendants constitute a conspiracy to defraud the Fourth Defendant or alternatively constitute gross negligence on the part of the First, Second and Third Defendants which resulted in a benefit to all or one or other of them and further resulted in loss and damage to the Fourth Defendant. AND the First Plaintiff's claim on behalf of the Fourth Defendant is as follows:-

- (1) an Order that the Fourth Defendant account to the First Plaintiff for all funds paid in and out of any account in the name of the Fourth Defendant at any bank between 1st January, 1989, and the date on which such account is actually rendered.
- (2) an Order for an enquiry as to such funds.



- (3) an Order that the First, Second and Third Defendants or one or other of them pay to the Fourth Defendant all money found to be due to the Fourth Defendant after the enquiry and the account.
- (4) Under paragraphs 14 to 21 inclusive, an Order that the First, Second and Third Defendants or one or more of them pay to the Fourth Defendant the sum of US\$423,207.00 or such other sum as this Honourable Court may determine to be due to it.
- (5) Under paragraph 22, an Order that the First, Second and Third Defendants or one or more of them pay to the Fourth Defendant such amount by way of interest as determined by this Honourable Court on the sum of which the First, Second and Third Defendants deprived the Fourth Defendant of the use.
- (6) an Order that the Fourth Defendant reimburse the First Plaintiff all the costs on an indemnity basis which he has incurred or is incurring in pursuit of these proceedings.
- (7) costs to be taxed to be paid to the Fourth Defendant by the First, Second and Third Defendants.

27. The Second Plaintiff repeats paragraphs 1 to 5 inclusive, 7 to 9 inclusive and 11 to 13 inclusive and says by reason of the matters therein set out that the First and Fourth Defendants conspired to induce and did fraudulently induce the Second Plaintiff by the fraudulent misrepresentations set out in those paragraphs to invest in shares in the Fourth Defendant at a price greatly in excess of their real value resulting in loss and damage to the Second Plaintiff AND the Second

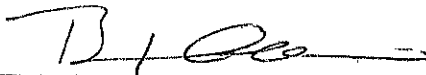


Plaintiff's claim against the First and Fourth Defendants is as follows:-

- (1) damages for fraud being the difference between the price paid by the Second Plaintiff for his shares in the Fourth Defendant (US\$146,000.00) and the price which a reasonable person would have paid for those shares in the Fourth Defendant in the financial condition in which the Fourth Defendant then was.
- (2) Interest on the said sum.
- (3) Costs.


28. The Second Plaintiff further repeats paragraphs 1 through 25 and says by reason of the matters therein set out that it is just and equitable that the Fourth Defendant be wound up to prevent future occurrences of a similar nature which, by reason of his minority shareholding, he will be unable to prevent without further recourse to this Honourable Court AND the Second Plaintiff accordingly prays that the Fourth Defendant be wound up by this Honourable Court on the basis that it is just and equitable to do so.

DATED this 28th day of March, 1996.

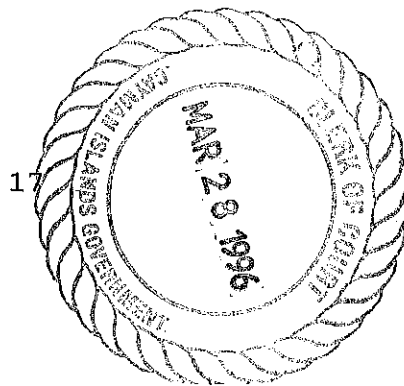


for Myers & Alberga
Attorneys-at-law for the Plaintiffs

SETTLED.



RAMON D. ALBERGA, Q.C.



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 170 OF 1996

**BETWEEN: FRANK MOYA (A minority shareholder)
on behalf of himself and all other
shareholders of the Fourth
Defendant other than the Second
Defendant**

FIRST PLAINTIFF

AND: FRANK MOYA (Personally)

SECOND PLAINTIFF

**AND: (1) KEITH BALDWIN
(2) SEAN BODDEN
(3) MICHELLE BODDEN
(4) GRAND CAYMAN BOTTLERS &
BLENDERS LTD.**

**FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT
FOURTH DEFENDANT**

**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

[First Defendant in person]

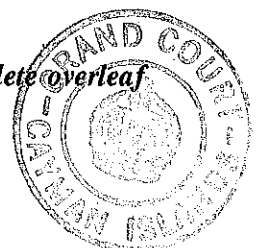
[Second Defendant in person]

[Third Defendant in person]

[Fourth Defendant in person]

Address for service:

Please complete overleaf



Acknowledgment of service of writ of summons (O.12, r.3)

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 instalments 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 its 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.

