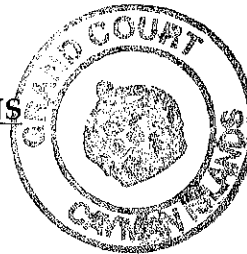




WIMBERLY ALLISON TONG & GOO, INC. Plaintiff

At: (1) **HOTELCO LTD.**
(2) **MRG INTERNATIONAL**
(3) **McGARRITY & COMPANY, LLC**
(4) **OLSON CONSTRUCTION LTD.** Defendants

WRIT OF SUMMONS



TO: (1) Hotelco Ltd.
c/o Caylaw Corporate Services
Third Floor, Kirk House, George Town, Grand Cayman

(2) MRG International
(3) McGarrity & Company, LLC
One Piedmont Center, Suite 416
Atlanta, Georgia 30305, U.S.A.

(4) Olson Construction Ltd.
Barnes Drive, Off North Sound Road
George Town, Grand Cayman



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 Fourteen days [14] after the service of this Writ on the First and Fourth Defendants, counting the day of service, and [] days after the service of this Writ on the Second and Third Defendants, 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 16th day of July, 2001

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

The Parties

1. The Plaintiff ("WATG") is incorporated under the laws of the state of California, United States of America, and carries on, there and elsewhere, the practice of architecture and design.
2. The First Defendant ("Hotelco") is incorporated under the laws of the Cayman Islands as an exempt company. It is a wholly-owned subsidiary of the Second Defendant ("MRG"). WATG is presently unaware of MRG's place of incorporation. MRG is the developer of the Ritz-Carlton Hotel and associated facilities ("the Project") at West Bay Road, Grand Cayman. Hotelco was incorporated by MRG to act as its agent in contracting for the provision of design and other services in relation to the Project.
3. The Third Defendant ("McGarrity") is incorporated under the laws of the state of Georgia, United States of America. McGarrity is retained by MRG as the design and/or development manager for the Project and, as such, it directs the design and construction of the Project on behalf of MRG and/or Hotelco.
4. The Fourth Defendant ("Olson") is incorporated under the laws of the Cayman Islands. It is retained by MRG to carry out construction work relating to the Project.

The Agreement

5. By an Agreement ("the Agreement") dated 1 October 1998 and made between WATG and Hotelco, acting as agent for MRG, Hotelco retained WATG as architects for the Project.
6. In so far as is material, the Agreement provided as follows:

- (1) Article B defined the scope of WATG's Basic Services including the preparation of drawings, specifications and other documents at the Schematic Design Phase, the Design Development Phase and the Construction Documents Phase;
- (2) Article C provided for, and defined, Additional Services;
- (3) Article F.1 provided, inter alia, as follows:

"Drawings, Specifications and other documents prepared by Architect for this Project are instruments of Architect's service for use solely with respect to this Project and, unless otherwise provided, Architect shall be deemed author of these documents and shall retain all common law, statutory and other reserved rights, including copyright. Owner shall be permitted to retain copies, including reproducible copies of Architect's Drawings, Specifications and other documents for information and reference in connection with Owner's use and occupancy of Project. The Architect's Drawings, Specifications or other documents shall not be used by Owner or others on other projects for additions to this Project or for completion of this Project by others, except by agreement in writing and with appropriate compensation to Architect."

- (4) Article H.1 provided as follows:

"This Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination."

- (5) Article H.6 provided as follows:

"Upon termination not fault of Architect, Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph H.7. Architect shall have the right to retain possession of all Drawings, Specifications and other documents until full payment for Basic and Additional Services as described herein has been received by Architect. Architect shall not be held liable for any damages or losses that result from such withholding of Drawings, Specifications and other documents."

- (6) Article H.7 provided for the computation of Termination Expenses by reference to a percentage of the total compensation for Basic and Additional Services to the time of termination, such percentage depending upon the phase in which such termination occurred;
- (7) Article I.1 provided that the Agreement should be governed by the law of the state of California;
- (8) Article J.1 provided for, and defined, Reimbursable Expenses;
- (9) Article K provided for the computation of amounts due to WATG in respect of Basic Services, Additional Services and Reimbursable Expenses. Article K.5.2 provides for interest on amounts unpaid thirty (30) days after invoice date at a rate of 1% per month.

WATG will refer to the Agreement at the trial hereof for its full terms and effect.

Termination of the Agreement

7. By an oral notification to WATG made on 9 May 2000, McGarrity, acting on behalf of MRG and/or Hotelco, purported to terminate the Agreement. Such purported termination was without cause and, in any event, constituted a repudiatory breach of the Agreement, which repudiation WATG accepted by stopping work on the Project. Such termination occurred during the Design Development Phase.
8. The amount due to WATG in respect of Basic Services, Additional Services, Reimbursable Expenses and Termination Expenses as at the time WATG accepted such repudiation was US\$998,080.41 as set out in a Statement of Account dated 5 February 2001. No part of such sum has since been paid.
9. In the premises, Hotelco and MRG are liable to WATG for:
 - (1) US\$998,080.41;
 - (2) interest thereon pursuant to Article K.5.2 of the Agreement;

As at 16 July 2001, interest amounts to US\$118,795.81 and continues at a daily rate of US\$328.14.

- (3) damages for breach of contract.
10. Alternatively, Hotelco and MRG are liable to WATG for
- (1) US\$998,080.41;
 - (2) interest thereon pursuant to Article K.5.2 of the Agreement;
 - (3) compensation pursuant to Article F.1.

Copyright

11. Pursuant to the Agreement, WATG:
- (1) Prepared certain drawings, specifications and other documents (“the Architectural Drawings”);
 - (2) Retained Stanley Lindsey & Associates (“SLA”) to prepare certain structural drawings, specifications and other documents (“the Structural Drawings”) and SLA retained Browder Leguizaman & Associates Inc. (“Browder”) to prepare the Structural Drawings;
 - (3) Retained Thompson Engineering (“Thompson”) to prepare certain mechanical, electrical and plumbing drawings, specifications and other documents (“the MEP Drawings” and, together with the Architectural Drawings and the Structural Drawings, “the Drawings”).
12. Pursuant to their respective retainers, Browder and Thompson duly prepared the Structural Drawings and the MEP Drawings.
13. On 16 May 2001, Browder assigned its copyright in the Structural Drawings to WATG. Such assignment included an assignment of all pre-existing claims and causes of action for prior infringement of copyright.

14. On 14 May 2001, Thompson assigned its copyright in the MEP Drawings to WATG. Such assignment included an assignment of all pre-existing claims and causes of action for prior infringement of copyright.
15. On 18 May 2001, WATG applied for copyright registration of the Drawings as technical drawings by filing Form "VA" with the United States Copyright Office in Washington, D.C. Certificates of Copyright Registration were issued by the United States Copyright Office bearing Numbers VAu 505-247, VAu 505-248, VAu 505-249 with an effective date of registration of 18 May 2001.
16. In the premises, WATG has all the rights of the owner of copyright in the Drawings as protected in the Cayman Islands pursuant to the Copyright (Cayman Islands) Order 1965 ("the 1965 Order").

Copyright Infringement

17. Subsequent to the termination of the Agreement, Hotelco and/or MRG, alternatively, Hotelco acting on behalf of MRG, retained successor architects and consulting engineers to provide services in connection with the Project. Such successors were provided with copies of the Drawings by Hotelco and/or MRG, alternatively, by McGarrity, for the express or implied purpose of copying the same or some of them, or substantial parts of the same or some of them, in order to prepare construction documents, that is, drawings, specifications and other documents of sufficient detail to permit construction work on the Project to commence. Such successors duly prepared the said construction documents in the manner indicated, which documents infringed WATG's copyright in the Drawings. Hotelco and/or MRG and/or McGarrity are liable in respect of such infringements as having, in the premises, authorised the same.
18. In or about April 2001, Hotelco and/or MRG, alternatively, Hotelco acting on behalf of MRG, retained Olson to carry out construction work relating to the Project and, shortly thereafter, such work commenced. The buildings and other works in the course of being constructed, or intended to be constructed, are three-dimensional reproductions of the Drawings, or of some of them, or of infringing copies of the Drawings or of some of

them. Such buildings and other works accordingly infringe, or will infringe, WATG's copyright in the Drawings. Olson is liable in respect of such infringement and Hotelco and/or MRG are liable as having, in the premises, authorised it.

19. McGarrity is also liable as having authorised the infringement, or proposed infringement, pleaded in paragraph 18. McGarrity is the construction manager retained by Hotelco and/or MRG for the purpose of, inter alia, supervising the construction work carried out by Olson pursuant to its retainer by MRG. McGarrity is aware that the buildings are three-dimensional reproductions of the Drawings, or of some of them, or of infringing copies of the Drawings or of some of them. As construction manager, McGarrity gives, or will give, directions to Olson as to the work to be carried out which, expressly or by implication, will confer, or purport to confer, on Olson authority to carry out that work.

20. By letter dated 18 May 2001 from WATG's U.S. attorneys, Barry B. LePatner & Associates LLP ("BLPA") to Hotelco and MRG's U.S. attorneys, Morgan Lewis & Bockius LLP, BLPA asserted WATG's copyright in the Drawings and demanded their return. By letter dated 26 June 2001 from BLPA to McGarrity, BLPA asserted WATG's copyright in the Drawings and demanded that use of them for the purposes of the Project cease. By letter dated 12 July 2001 from Quin & Hampson to Olson, Quin & Hampson asserted WATG's copyright in the Drawings and Olson's continuing infringement of that copyright, as pleaded in paragraph 18 hereof, and stated that, if such continuing infringement did not cease, proceedings would be issued without further notice. Despite such letters, Hotelco, MRG, McGarrity and Olson are proceeding with, or continuing to authorise, the construction works relating to the Project knowing full well that the same constitute an infringement of WATG's copyright in the Drawings. In the premises, WATG seeks additional statutory damages pursuant to section 17 (3) of the Copyright Act 1956 as extended to the Cayman Islands by the 1965 Order.

Interest

21. WATG claims interest pursuant to section 34 of the Judicature Law (1995 Revision) on any compensation assessed pursuant to Article F.1 of the Agreement and on any

damages awarded, whether for breach of contract or infringement of copyright, for such period and at such rate as the Court thinks fit.

AND WATG claims:

Against Hotelco and MRG:

- (1)
 - (i) US\$998,080.41;
 - (ii) Interest on US\$998,080.41 pursuant to Article K.5.2 of the Agreement;
 - (iii) Damages for breach of contract;
 - (iv) Statutory interest on such damages pursuant to section 34 of the Judicature Law (1995 Revision) for such period and at such rate as the Court thinks fit;

Alternatively:

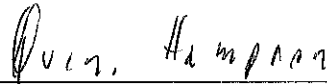
- (2)
 - (i) US\$998,080.41;
 - (ii) Interest on US\$998,080.41 pursuant to Article K.5.2 of the Agreement;
 - (iii) An inquiry as to what compensation should be paid to WATG pursuant to Article F.1 of the Agreement in respect of the use of the Drawings;
 - (iv) Payment of the amount found due upon the making of that inquiry;
 - (v) Statutory interest on the said amount pursuant to section 34 of the Judicature Law (1995 Revision) for such period and at such rate as the Court thinks fit;

Against all Defendants:

- (3) An injunction restraining the Defendants, and each of them, whether by themselves, their respective officers, servants or agents or otherwise howsoever, from doing all or any of the following acts within the Cayman Islands, namely:
 - (i) Copying, whether in two-or three-dimensional form, any of the Drawings or a substantial part of any of the Drawings;
 - (ii) Copying, whether in two-or three-dimensional form, any infringing copies of the Drawings, whether or not such infringing copies came into existence in the Cayman Islands, or such part of the said copies as would constitute the copying of a substantial part of any of the Drawings;
 - (iii) Authorising any of the acts referred to in (i) and (ii);

- (4) Delivery up of the Drawings and all copies thereof, whether infringing or otherwise;
- (5) Damages for infringement of copyright (including additional statutory damages) or, at WATG's option, an account of profits;
- (6) Statutory interest on such damages pursuant to section 34 of the Judicature Law (1995 Revision) for such period and at such rate as the Court thinks fit;
- (7) Further or other relief;
- (8) Costs.

DATED this 16th day of July, 2001



QUIN & HAMPSON
Attorneys-at-Law for the Plaintiffs

THIS WRIT OF SUMMONS was filed by Quin & Hampson, Attorneys-at-Law for and on behalf of the Plaintiffs 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 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 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: WIMBERLY ALLISON TONG & GOO, INC. Plaintiff

AND: (1) HOTELCO LTD.
(2) MRG INTERNATIONAL
(3) McGARRITY & COMPANY, LLC
(4) OLSON CONSTRUCTION LTD. 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]