

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No: 681 of 2001

BETWEEN:


HBA International, Inc.
(trading as Hirsch Bedner Associates)

Plaintiff

AND:

- (1) **Hotelco Ltd.**
(2) **Condoco Grand Cayman Resort Ltd.**
(3) **Michael Ryan**


Defendants

WRIT OF SUMMONS

- TO: (1) Hotelco Ltd.
c/o Caylaw Corporate Services
3rd Floor, Kirk House, Georgetown, Grand Cayman
- (2) Condoco Grand Cayman Resort, Ltd.
c/o Caylaw Corporate Services
3rd Floor, Kirk House, Georgetown, Grand Cayman
- (3) Michael Ryan

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claims set out on the next page.

Within fourteen (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, Georgetown, Grand Cayman, Cayman Islands 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 2nd day of November, 2001.

NOTE - This Writ may not be served later than four (4) calendar months (or if leave is required to effect service out of the jurisdiction, six (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.

HBA International Inc. v Hotelco Ltd. et al.

STATEMENT OF CLAIM

The Parties

1. The Plaintiff, HBA International, Inc. trading as Hirsch Bedner Associates (“HBA”), is incorporated under the laws of the State of California, United States of America, and carries on, there and elsewhere, the practice of commercial interior design, primarily for luxury hotels and resorts.
2. The First Defendant (“Hotelco”) was incorporated under the laws of the Cayman Islands on 4th May 1998 as an exempt company (#81426) and was or is engaged in the development of a proposed Ritz-Carlton hotel on West Bay Road, Grand Cayman (“the Project”).
3. The Second Defendant (“Condoco”) was incorporated under the laws of the Cayman Islands on 6th May 1998 as an ordinary resident company (#81489) and was or is engaged in the development, marketing and sales of the condominium portion of the Project.
4. The Third Defendant (“Michael Ryan”) holds himself out as the developer of the Project and he sometimes trades as MRG International or Michael Ryan Group International. The Third Defendant and his father John Ryan incorporated the First and Second Defendants as vehicles to carry out aspects of the development of the Project.
5. RR Development Ltd. (“RRDL”) is believed to be an entity organized and existing under the laws of the Republic of Costa Rica which was incorporated by the Third Defendant and his father as a vehicle for another of their property developments in Costa Rica. Commencing in 1998 RRDL also began acting and acted at all times material to these proceedings as the agent of Hotelco and Condoco and Michael Ryan, as principals, in the design and development of the Project.

Factual Background

6. On or about March 25, 1998, HBA received information concerning the development of the Project from a representative of the engineering firm Thompson Company, Inc. (“Thompson”), an American engineering firm. HBA had worked with Thompson on other projects around the world, including the design of other Ritz-Carlton hotels. Thompson had been selected to perform portions of the engineering work for the Project.
7. At or about that same time, a Mr. Henry Wu, a representative of the American architecture firm Wimberly Allison Tong & Goo (“WATG”), the architectural firm selected for the Project, informed David Rissier, marketing director of HBA, that the owners or developers of the Ritz-Carlton in Grand Cayman were or were led by individuals named John Ryan and Michael Ryan. Messrs. Ryan were or are officers, directors, owners, members, principals or employees of Hotelco and/or Condoco. Mr. Wu informed Mr. Rissier that HBA was being

HBA International Inc. v Hotelco Ltd. et al.

- approached for the Project because Michael Ryan liked the design of the Hyatt Britannia in Grand Cayman, which HBA designed.
8. On or about May 21, 1998, RRDL, for and on behalf of the owner(s) or developer(s) of the Project, transmitted a faxed request for a proposal for interior design services for the Project to Mr. Michael Bedner of HBA's Santa Monica, California office.
 9. On May 27, 1998, HBA submitted an initial proposal for design services for the Project to Ricardo Corrales of RRDL.
 10. Thereafter, RRDL notified HBA that HBA had been selected as the interior design firm for the Project.
 11. As the Project proceeded, reductions and additions to HBA's scope of work as set out in the initial proposal documentation aforesaid were requested by the owner(s) or developer(s) of the Project through Mr. Corrales or representatives of WATG. HBA continued performance and provision of its services and the Defendants continued their acceptance of the services. HBA, as requested, submitted revised versions of the aforesaid proposal documentation to reflect these changes in scope on or about June 25, 1998 and June 29, 1998. Each version was submitted to Mr. Corrales.
 12. On or about July 9 and 10, 1998, representatives of HBA attended a Project "kick-off" meeting in Fort Lauderdale, Florida. At that meeting, Mr. Corrales notified other consultants that HBA had been selected as the interior design firm for the Project.
 13. At all material times, RRDL represented itself as an agent for the owner(s) or developer(s) of the Project, believed to be Hotelco and/or Condoco and/or Michael Ryan, and HBA's representatives understood that Mr. Corrales and RRDL acted for and on behalf of the owner(s) or developer(s) of the Project and with their consent. At all times, representatives of HBA understood that Messrs. John and Michael Ryan were officers, directors, owners, members, principals or employees of the owner(s) or developer(s) of the Project.
 14. During the course of HBA's work on the Project, HBA representatives had repeated contacts with both Mr. Corrales and Michael Ryan. As recited above, Mr. Corrales made various requests that HBA modify its fee based upon revised scopes of work for the Project, and HBA's initial proposal documentation was modified to reflect agreed-upon changes in scope.
 15. Representatives of HBA met with Mr. Corrales, Mr. Michael Ryan and others in meetings in Atlanta on July 30 and 31, 1998 and September 15, 1998.
 16. During the course of HBA's performance on and provision of services for the Project, HBA's work product was continually received and accepted by RRDL as agent for Hotelco,

HBA International Inc. v Hotelco Ltd. et al.

Condoco and Michael Ryan, as well as by other agents, representatives or employees of Hotelco, Condoco and Michael Ryan.

17. As per the aforesaid agreed proposal documentation (as varied by agreement) HBA invoiced RRDL for HBA's services for the Project. Neither RRDL nor the Defendants made payment to HBA within 30 days as per condition 10 of the said agreement as varied.
18. In October of 1998, HBA suspended its services for the Project as per condition 12 of the said agreement (as varied) due to failure of payment.
19. Thereafter, representatives of HBA made numerous contacts with Mr. Corrales and other representatives of the owner(s) or developer(s) of the Project concerning failure of payment. Mr. Corrales repeatedly made assurances to HBA's representatives that payment would be forthcoming from the owner(s) or developer(s) of the Project.
20. On or about June 15, 1999, Condoco made payment to HBA via wire transfer in the amount of US\$83,700.00, being payment of HBA's invoice number 4313 dated August 31, 1998.
21. Thereafter, Doug McGarrity of McGarrity & Company in Atlanta, believed to be a consultant to one or more of the Defendants for the Project, solicited a revised agreement from HBA. HBA, as directed by Mr. McGarrity, transmitted a revised Agreement for Interior Design Services to RRDL on or about August 12, 1999.
22. HBA invoiced and/or demanded payment from the Defendants in the total amount of US\$245,627.69. Of this amount, US\$83,700 was paid by Condoco as aforesaid, leaving a principal amount due and owing of US\$161,927.69.
23. The Defendants, as principals, breached the aforesaid agreement based on the proposal documentation as varied by agreement by failing to pay HBA for its work product for the Project as agreed.
24. HBA will refer to the proposal documentation at the trial hereof for its full terms and effect.
25. In the premises, the Defendants are liable, jointly and severally, to HBA for:
 - (a) The principal amount of US\$ 161, 927.69;
 - (b) Interest thereon at the rate of 1½ % per month pursuant to condition 11 of the terms and conditions of the proposal.
23. Further or in the alternative HBA at all material times submitted work product and provided its services to the Defendants for the Project at the instance or request of the Defendants, their servants or agents, such that it was an express or alternatively an implied term of the contract between the Plaintiff and the Defendants that the Defendants should pay to the Plaintiff the fees as set out in the proposal documentation from the Plaintiff, as varied by

HBA International Inc. v Hotelco Ltd. et al.

agreement as aforesaid, or alternatively a reasonable fee, or alternatively it would be unjust for the Defendants to retain the benefit of HBA's work product and services without making payment for the reasonable value of same to HBA.

24. The reasonable value of the services and work product provided by HBA to the Defendants at their request as aforesaid is US\$161, 927.69 or such other or further amount as may be determined.
25. In the event that the Plaintiff does not recover contractual interest as aforesaid the Plaintiff is entitled to and claims interest pursuant to section 34 of the Judicature Law (1995 Revision) at such rate(s) and for such period(s) as the Court may determine.

AND THE PLAINTIFF CLAIMS:

- (1) US\$161, 927.69;
- (2) Alternatively damages for breach of contract;
- (3) Alternatively US\$161,927.69 being the reasonable value of services and work product provided or such other value as is determined to be due to the Plaintiff on a *quantum meruit* basis;
- (4) Contractual interest as aforesaid;
- (5) Alternatively interest pursuant to statute as aforesaid;
- (6) Such further or other relief as may appear just;
- (7) Costs.

Dated this 2nd day of November, 2001.



Boxalls

Attorneys-At-Law for the Plaintiff

THIS WRIT OF SUMMONS and Statement of Claim was filed by Boxalls, Attorneys-at-Law for and on behalf of the Plaintiff herein, whose address for services is: Boxalls, 3rd Floor Queensgate House, P. O. Box 1234 GT, Grand Cayman, Cayman Islands [ref: 1904-0001/jcc]