

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 218 OF 1996

BETWEEN: GALLEON BEACH RESORT LIMITED

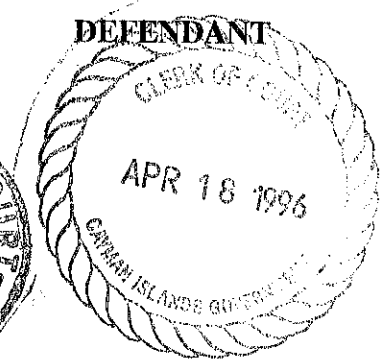
PLAINTIFF

**AND: RIVERBANK NURSERY, LANDSCAPING AND
GARDENING SERVICES LTD.**

DEFENDANT

WRIT OF SUMMONS

TO: Riverbank Nursery, Landscaping and Gardening Services Ltd
Boatswain Bay
P.O. Box 195
West Bay
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 18 day of April, 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.

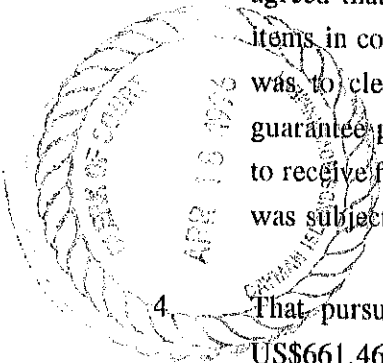
IMPORTANT

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

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a Cayman Islands Corporation which owns property known as the Westin Casuarina Resort ("the Westin") located at Seven Mile Beach, West Bay Road, Grand Cayman, B.W.I.
2. The Defendant is a company that carries on business in the Cayman Islands and provides landscaping services within these Islands.
3. By a written contract dated 26th June, 1995 made between the Plaintiff and the Defendant it was agreed that the Defendant would provide labour materials, equipment, services and any other items in connection with the landscaping at the Westin. As terms of the contract the Defendant was to clean and maintain the landscaping of the Westin for a period of nine months and guarantee plants and trees during the installation and maintenance period. The Defendant was to receive for performance of the work done the contract sum of US\$702,233.38 which such sum was subject to addition and deduction as provided in the contract documents.
4. That pursuant to the contract the Defendant has provided labour and materials and drew US\$661,468.20 from the total contract sum.
5. By a letter dated 8th February, 1996 the General Manager of the Westin as a representative for the Plaintiff informed the Defendant that various landscaping items were outstanding which had not been installed as provided for in the contract specifications and were required as failure to complete these items may prevent the Westin from obtaining a Certificate of Occupancy from the Cayman Islands Planning Department.

By a letter dated 9th February, 1996, the Defendant indicated to the Plaintiff's representative in breach of the said contract that they were unable to incur further expenses towards the landscaping of the Westin.
7. In addition to the breach referred to at paragraph 6 above, the Defendant has failed to maintain the landscaping of the Westin pursuant to the Contract. As a result of the Defendant's breach, trees that died must be replaced which replacements are guaranteed by the Defendant. Also, the Plaintiff has been forced to employ persons to maintain the landscaping installed by the Defendant.
8. The Defendant is in breach of the said contract by failing to provide labour, materials, equipment, services and other items provided for in the said contract and failing to maintain the



landscaping of the Westin for a period of nine months from the month of December 1995 and guarantee plants and trees during the installation and maintenance period.

9. By reason of the Defendant's breaches, the Plaintiff has suffered loss and damage.

PARTICULARS OF DAMAGE

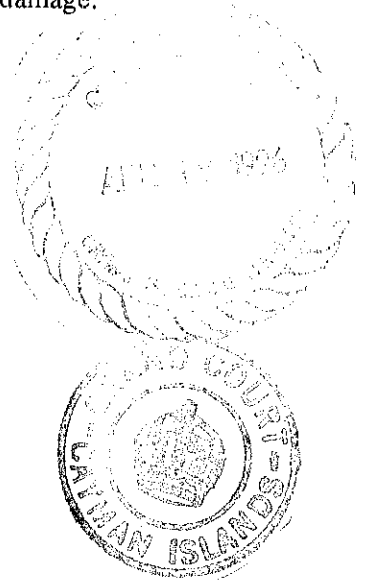
Landscaping not Installed by the Defendant

| | | |
|------------------------|------|-----------|
| 77 Red Oleander | US\$ | 577.50 |
| 89 Mondo Grass | | 200.25 |
| 2822 Wedelia | | 3,527.50 |
| 307 Creeping Fig | | 690.75 |
| 122 Coconut Palms | | 61,000.00 |
| 22 Areca Palm | | 880.00 |
| 5 Euro Fan Palm | | 600.00 |
| 1 Solitare Palm | | 220.00 |
| 5 Washingtonia Palm | | 1,400.00 |
| 6 Chinese Fan Palm | | 660.00 |
| 2 Royal Poinciana | | 700.00 |
| 8 Tree Ligustrum | | 880.00 |
| 5 Frangipani | | 800.00 |
| 2 Mahogany | | 632.00 |
| 16 Silver Trumpet | | 4,320.00 |
| 17 Bougainvilla Bush | | 170.00 |
| 240 Bougainvilla Dwarf | | 2,400.00 |
| 297 Seagrape | | 2,227.50 |
| 2,000 s.f. Bermuda Sod | | 1,820.00 |
| 9867 Sea Oats | | 34,534.50 |
| 15 Crinum Lilly | | 675.00 |

US\$118,915.00

Landscaping which has died during the Maintenance Period

| | |
|----------------|----------|
| 4 Coconut Palm | 2,000.00 |
|----------------|----------|



3

| | |
|---------------------|--------------|
| 2 Washingtonia Palm | 560.00 |
| 4 Mahogany | 1,264.00 |
| 3 Tabebuia | 810.00 |
| | ----- |
| | US\$4,634.00 |

Maintenance Costs of the Plaintiff

| | |
|---------------------------------|---------------|
| Fertiliser | US\$1,165.00 |
| Labour from December | |
| 2 men at 8 hours every | |
| other day for 9 months | 18,439.02 |
| at CI\$7.00/hr. (CI\$15,120.00) | |
| | ----- |
| | US\$19,604.02 |

US\$143,153.02

Less Balance of contract sum

40,765.18

TOTAL

US\$102,387.84

or

CI\$83,958.03

10. Further, the Plaintiff claims interest pursuant to Section 34 of The Judicature Law (1995) Revision at the statutory rate of 7 3/8% per annum from the amount found to be due to the Plaintiff.

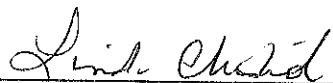
AND the Plaintiff claims:

1. Damages under paragraph 9 above in the sum of CI\$83,958.03.
2. The aforesaid interest pursuant to Section 34 of The Judicature Law (1995) Revision at the

statutory rate of 7 3/8% per annum from the 9th February, 1996 to the date hereof and further interest at the aforesaid rate (ie. CI\$16.96 per day) to judgment or sooner.

3. Interest at the rate of 7 3/8% from the date of Judgment until payment of the Judgment sum.
4. Such further other relief as this Honourable Court may deem just in the circumstances.
5. Costs to be awarded against the Defendant.

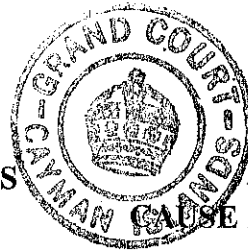
If within the time for returning the Acknowledgment of Service the Defendant pays the total amount claimed of CI\$87,677.85 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or their Attorneys-at-Law.



Myers & Alberga
Plaintiff's Attorney-at-Law



THIS WRIT was issued by Myers & Alberga, Attorneys-at-Law for and on behalf of the Plaintiffs whose address for services is One Regis Place, Fort and Mary Streets, P.O. Box 472, George Town, Grand Cayman B.W.I.



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CAUSE NO: 218 OF 1996

BETWEEN: GALLEON BEACH RESORT LIMITED PLAINTIFF

AND: RIVERBANK NURSERY, LANDSCAPING AND GARDENING SERVICES LTD. 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

[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.

| |
|---|
| Myers & Alberga One Regis Place P.O. Box 472 George Town Grand Cayman, B.W.I. |
|---|

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

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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.