

THE GRAND COURT OF THE CAYMAN ISLANDS

193
CAUSE NO: OF 2002

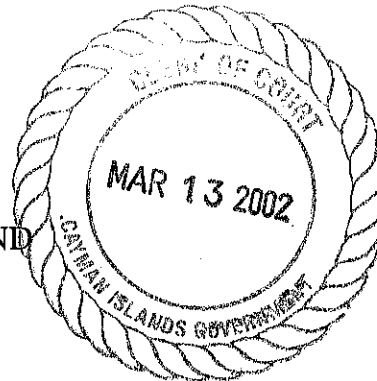
BETWEEN:



COCONUT HARBOR LTD.

AND

YASIN ENTERPRISES LTD.



Plaintiff

Defendant

WRIT OF SUMMONS

TO: Yasin Enterprises Ltd.
In Care of its Registered Office
Collins, Broadhurst & Furniss
PO Box 2503 GT
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 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, PO Box 495GT, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement 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 March 2002.

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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

- 1) The Plaintiff is a company incorporated pursuant to the laws of the Cayman Islands and at all material times was the registered proprietor of property identified as George Town South Registration Section Block 6D Parcel 60 (hereinafter referred to as “the property”). The Plaintiff’s registered office is in care of HuntLaw Corporate Services Ltd. PO Box 190 GT, Grand Cayman, Cayman Islands.

- 2) The Defendant, Yasin Enterprises Ltd., is a company incorporated pursuant to the laws of the Cayman Islands and at all material times was a lessee of the above-described property. The registered office of Yasin Enterprises, Ltd. is: In Care of Collins, Broadhurst & Furniss, PO Box 2503 GT, Grand Cayman, Cayman Islands.

- 3) By a lease dated 1 March 2001, the Defendant leased the above stated premises from the Plaintiff on terms set out in the lease, which terms include as follows:
 - a) Pursuant to Article II of the said lease the term was five years commencing 1 March 2001.
 - b) Pursuant to Article III the Lessee would maintain the Hotel and premises and make repairs/replacements as required at the expense of the Lessee.
 - c) Pursuant to Article IV the annual rent payable was US\$170,000 payable in sums of US\$11,000; US\$12,000; US\$13,000; US\$14,000 for each of the first through fourth months of the term. Thereafter, the payments were to be US\$15,000 per month, subject to annual increases of 5 percent on the anniversary date of the lease.
 - d) Pursuant to Article VII, the Lessee would be responsible for maintaining, repairing and improving the property interior and exterior. Pursuant to Article VII the Plaintiff would advance to the Defendant the sum of US\$100,000 by way of loan for the purpose of renovating, upgrading and improving the Hotel, which sum was advanced by the Plaintiff to the Defendant. It was further agreed that the expenditures required the consent of the Plaintiff.

- e) Pursuant to Article VIII, the Lessee would indemnify the Plaintiff from and against all liability, damages, expenses, fees, penalties, actions, causes of actions and suits, cost claims or judgments arising from its omission to pay any operating expense of the Hotel.
 - f) Pursuant to Article VIII the Defendant was obligated to maintain an insurance against destruction or damage due to fire, wind, earthquake, hurricane lightening, explosions, flood, riot. The insurance policy was to name the charge holder as the insured.
 - g) Pursuant to Article IX the Defendant was to maintain insurance covering damage to the building in the sum of US\$1,800,000, and covering damage to building contents in the sum of US\$200,000. The Defendant was further to obtain business interruption insurance for the sum of US\$40,000.
 - h) Pursuant to Article XV the Plaintiff was entitled to immediate right to re-enter the premises following a 30-day written notice indicating all breaches, save for failure to pay rent which breach granted the Plaintiff to immediate possession following a 15 day grace period.
 - i) Pursuant to Article XV, the Plaintiff could recover from the Defendant, in addition to any other remedy, rent reserved and charged for the remainder of the stated term. The remainder of the rent is immediately due and payable upon termination of the lease as arising from a breach of the lease.
 - j) Pursuant to Article X , the Defendant was responsible for the registration of the lease and for the payment of all fees and to comply with the regulations as set out in the Registered Land Law.
- 4) The Defendant did take occupation at the premises on or about March of 2001, pursuant to the terms of the said lease.
- 5) The Plaintiff did advance the funds to the Defendant in the sum of US\$100,000 in accordance with the terms of the lease and the promissory note signed by the Defendant. The terms of the promissory note included as follows:
- a. the promissory note secured a sum of US\$100,000;

- b. Interest accrued on the outstanding principal at the rate of 10.5 % per year until maturity or default and thereafter at the rate of 12.5 % per year;
- c. The Defendant was to make monthly payments in the sum of US\$2177.14 commencing 1 April 2001;
- d. The sums due on the note were payable on demand;

6) The Defendant did make certain payments to the Plaintiff as follows:

| SCHEDULE OF PAYMENTS | | | | |
|-------------------------|--|-------------------------------|--------------------------|--------------------------|
| Month in 2001 | Amount due for Rent per Lease | Amount due on Promissory Note | Amount Paid by Defendant | Amount overdue for Month |
| March | \$11,000.00 | .00 | \$10,000.00 | \$1000.00 |
| April | \$12,000.00 | \$2177.14 | \$13,177.14 | \$1000.00 |
| May | \$13,000.00 | \$2177.14 | \$14,177.14 | \$1000.00 |
| June | \$14,000.00 | \$2177.14 | \$9877.14 | \$6300.00 |
| July | \$15,000.00 | \$2177.14 | \$2177.14 | \$15,000.00 |
| August to date of Claim | \$15,000 Per month subject to yearly increases | \$2177.14 per month | No Further Payments | Each month \$17,277.14 |

7) The Defendant was entitled to a monthly credit in the sum of US\$1000.00 to be applied to the cost of insurance payment that the Defendant was obligated to obtain and maintain pursuant to the lease. As the Defendant has provided no verification of ever obtaining insurance no such credit is given to the Defendant.

- 8) On or about 3 & 4 November 2001, the property sustained damage as a result of high wind and waves associated with Hurricane Michelle. The Defendant did not reinstate the property to the condition prior to the stated damage nor did it in place valid insurance coverage to cover the loss sustained to the amounts as set out in the lease.
- 9) Further, the Defendant has not made lease or promissory note payments since July of 2001 and is breach of both the terms of the promissory note and lease.
- 10) The Defendant breached the said lease in that it failed to properly, or at all, obtain and maintain insurance in accordance with the obligations set out in the Lease. By reason of the Defendant's failure to insure the premises, there are no insurance proceeds to reinstate the premises and the Plaintiff has suffered loss and damage to the extent that its reversion interest is diminished.
- 11) The Defendant breached it lease obligations in that it failed to maintain or repair the premises. As a result of the said breach the property has deteriorated to a state of disrepair and the Plaintiff has suffered loss and damage to the extent that its reversion interest is diminished.
- 12) The Defendant further breached the lease in that it has failed to make rent payments in accordance with the said lease.
- 13) As a result of the above stated breaches the Plaintiff, through its attorneys, served on the Defendant a Notice dated 26 November 2001 pursuant to section 56 of the Registered Land Law (as amended) and pursuant to the lease specifying the breaches and advising the Defendant that remedies to the specific breaches were required within 30 days for non rent breaches.
- 14) By way of letter dated 26 November 2001, the Plaintiff, by its attorneys, made a Demand for payment on the Promissory Note.

- 15) As of the date of the issuance of a written Notice of Forfeiture on 26 November 2001 rent and promissory note payments were due in the sum of US\$93,008.56 which sum only included 4 months payment then due under the promissory note. Since the date of the issuance of the Notice of Forfeiture no further payments have been made. Further, the Defendant did not seek or obtain the approval from the Plaintiff of expenditures using the loaned sums secured by the promissory note.

- 16) The Defendant failed to remedy any of the above state breaches within the time period set out in the notice or otherwise.

- 17) Further, the Defendant has failed to make payments on the said promissory note and the entire sum outstanding on the promissory note is now due and owing. As of the date of the commencement of this proceeding, the amount due under the said promissory note is as follows:

| | | |
|----|---------------------------|----------------------|
| a. | Principal | US\$ 94,722.68 |
| b. | Interest to March 11 2002 | <u>US\$ 7,234.12</u> |
| | (per diem of US\$32.44) | |
| | | US\$101,956.80 |

- 18) Notwithstanding the delivery of the Notice pursuant to Section 56 of the Registered Land Law, the Defendant has not remedied the breaches as required in the said Notice.

- 19) On or about 18 January 2002, the Defendant delivered up possession of the property to the Plaintiff. As of that date, the Defendant had not remedied any of the breaches as set out in the notice delivered pursuant to s 56 of the Registered Land Law.

- 20) Pursuant to Article XV of the Lease the entire rent for the term of the lease became due and owing. The full amount of rent due under the term of the Lease is now due and owing and claimed by the Plaintiff in this proceeding.

- 21) Further and alternatively, the Plaintiff has received only nominal rent since taking possession of the property due to the damaged state of the premises and the reduced occupation rate of the property. Notwithstanding taking reasonable steps to mitigate its losses, the Plaintiff has suffered and continues to suffer loss of income from the property due to the uninsured damage and the resulting low occupation.
- 22) The Plaintiff is entitled to the amount of unpaid rent accrued under the lease for the period prior to the Plaintiff obtaining possession of the property and, additionally, to the loss of rental income for the period after it took possession. Such loss shall be calculated up to the time when the property can reasonable be reinstated to the condition that it was prior to the damage occurrence and income is derived from the property in sums to be received under the terms of the Lease. The amount and extent of the loss shall be determined prior to trial.
- 23) The Defendant did further breach its obligations pursuant to the lease by not having the said lease registered and the applicable fees paid as required upon registration. As a result of this breach, a stamp duty is payable in the sum of US\$9205.75 plus penalties as prescribed by law.
- 24) As of a result of the said breach of the obligation to insure the leased property, the Plaintiff has suffered loss to the property to the extent of the cost of reinstating the leased premises to the condition of the property at the time of entering into the lease. The particulars of the cost of reinstating the premises to the condition will be produced prior to trial.
- 25) As a result of the foregoing, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF CLAIMS:

- 26) As a result of the above, the Plaintiff is entitled to the following remedies claimed as below:
- a) damages for failure to insure the premises in the sum required to reinstate the property to the condition prior to the occurrence of the damage for which the Defendant did not have insurance at a sum to be determined prior to trial;
 - b) Alternatively, damages to the extent that its reversion interest has been reduced due to the stated damage;
 - c) a declaration that the Lease has been forfeited;
 - d) unpaid rent income up to the date the Plaintiff obtained possession;
 - e) further and alternatively, loss of rent income to the date that the property is reinstated and rented in a sum to be determined prior to trial;
 - f) further and alternatively, rent to completion of the term of the Lease;
 - g) payment of the principal sum of US\$94,722.68 plus interest pursuant to the Promissory note.
 - h) Payment of US\$9205.75 for unpaid stamp duty on the registration of the lease.
 - i) Pre and post judgment interest on the debt due on the promissory note at the rate of 12.5% per annum as pleaded at paragraph 5 b, herein;
 - j) Pre and post judgment interest on all other claims in accordance with the Judicature Law (1995 Revision);
 - k) Costs as taxed on a standard or, alternatively, indemnity basis;
 - l) Such further and other relief as this Honourable Court deems just;

Dated: March 2002


Hunter and Hunter

Filed by Hunter & Hunter, Attorney at Law for the Plaintiff, whose address for service is 75 Fort Street, PO Box 190 GT, Grand Cayman (Ref: WAS/09012.001)

INDORSEMENT

The liquidated amount claimed in respect of the debt or demand is US\$103,928.43 as principal and US\$7,324.12 as interest until the issue of the writ of summons for a total amount of US\$111,252.55. The ad valorem fee payment is CI\$902.22 (CI\$150.00 + ad valorem calculation of CI\$752.22).

INDORSEMENT REGARDING CURRENCY

(Order 6 (2)(d) of the Grand Court Rules)

The amounts claimed in the Statement of Claim are stated in United States Dollars.

INDORSEMENT REGARDING INTEREST

(Order 6 (2)(e & f) of the Grand Court Rules)

- i. The claim for interest on the promissory note is at 12.5% per year as pleaded in paragraph 5 herein;
- ii. The claim for interest on all other sums is in accordance with the Judicature Law (1995 Revision);
- iii. The date upon which interest is claimed on the Promissory Note is August 1 2001;
- iv. The total interest claimed to the date of the commencement of this proceeding is US\$ 7,234.12;
- v. The per diem on the promissory note claim is US\$32.44;
- vi. The date from which loss of rental income is calculated will be from the date upon which each payment was due.
- vii. The date from which interest is calculated is the respective dates of the Plaintiff incurring costs or repair.

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 each Defendant or by each 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 Acknowledgement 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2002

BETWEEN:

COCONUT HARBOR LTD.

PLAINTIFF

AND

YASIN ENTERPRISES 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 communication 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.

| |
|--|
| Hunter & Hunter Attorneys-at-Law 75 Fort Street P.O. Box 190 George Town Grand Cayman Ref: WAS/09012.001 |
|--|

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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