

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 252 OF 2002

BETWEEN: MALCOLM M. STEPHENSON PLAINTIFF

AND: (1) JEFFREY KAYDEN  
(2) ANN GROVES  
(3) CHARLES BRADLEY DEFENDANTS



WRIT OF SUMMONS

TO: (1) Jeffrey Kayden  
7200 Wisconsin Avenue  
Maryland, MD 20814  
U.S.A.  
(2) Ann Groves  
P.O. Box 1876 GT  
Grand Cayman  
(3) Charles Bradley



**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 Fourteen days [14] 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, 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 9<sup>th</sup> day of April, 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 Acknowledgment of Service are given with the accompanying form.

## STATEMENT OF CLAIM

1. The Plaintiff is an Architect and Town Planner carrying on business within the Cayman Islands.
  
2. The First Defendant was the appointed Executor of the Estate of Wayne Kirby, deceased, who died on the 17<sup>th</sup> day of October, 1999, and probate of whose will, dated the 22<sup>nd</sup> day of March 1998, was granted on the 21<sup>st</sup> day of January, 2002 out of the Grand Court of the Cayman Islands to the First Defendant, the Executor named in the said will.
  
3. By an Order of the Grand Court of Cayman Islands, dated the 26<sup>th</sup> day of July, 2000, the First Defendant was granted leave to retire as Executor and the Second Defendant and Third Defendant were appointed joint Personal Representatives, in place of the First Defendant, of the Estate of Wayne Kirby (deceased).
  
4. There is due and owing to the Plaintiff from the First Defendant as such Executor and/or from the Second and Third Defendants as such Personal Representatives the sum of CI\$172,679.00 being the value of the work, services and materials supplied by the Plaintiff for and to the said Wayne Kirby and at his request:

**Agreement 1:**

5. By an agreement made between the Plaintiff and Wayne Kirby (deceased) the Plaintiff agreed to provide project and professional fees for a proposed apartment complex to be situated at Block 23B, Parcel 70 in the Cayman Islands.

**Particulars**

The said agreement between the parties was made partly orally, partly in writing and partly by conduct.

Insofar as it was oral, the said agreement was made at meetings in the months shortly before the 5<sup>th</sup> July, 1996 between the Plaintiff and Wayne Kirby (deceased).

Insofar as it was in writing, the said agreement was contained in or is to be inferred from a letter from the Plaintiff to Wayne Kirby, dated 5<sup>th</sup> July, 1996.

Insofar as it was by conduct, the conduct consisted of or is to be inferred from the following:

- (i) By the course of dealings between the Plaintiff and Wayne Kirby (deceased), it was agreed between them or alternatively the Plaintiff signified to

Wayne Kirby (deceased), that his acceptance of the terms and conditions set forth in the Plaintiff's letter of 5<sup>th</sup> July, 1996 need not be communicated to the Plaintiff or alternatively would be signified if he did not communicate to the Plaintiff any dissent therefrom within a reasonable period of time of receiving the same, which he did not do within a reasonable time or at all.

- (ii) Further, Wayne Kirby (deceased) with full knowledge of the terms and conditions set out in the Plaintiff's letter of 5<sup>th</sup> July, 1996, retained the same without in any way dissenting from or objecting or demurring to any of the said terms and conditions within a reasonable time of seeing the same or at all, and he thereby agreed to and accepted the said terms and conditions and/or signified the same to the Plaintiff or alternatively by his silence and conduct, with full knowledge the Plaintiff would proceed with provisions of the said services, he permitted and induced the Plaintiff to believe, as in fact the Plaintiff did believe, that he had agreed to and accepted the said terms and conditions.
6. It was on express term of the said agreement that the Plaintiff would be paid in accordance with the details set out in his letter of 5<sup>th</sup> July, 1996.
  7. In pursuance of the said agreement the Plaintiff performed the agreed project and professional services.

8. In Breach of the said agreement neither Wayne Kirby (deceased), nor the Estate of Wayne Kirby has fully paid for the said services and the Plaintiff has suffered damage.

Particulars of Damage

Invoice dated 19 <sup>th</sup> September 2000 - Services	CI\$96,000.00
Disbursements	<u>349.00</u>
	<u>CI\$96,349.00</u>
Less payments received	
26 <sup>th</sup> May 1999	CI\$58,500.00
21 <sup>st</sup> September 1999	5,000.00
17 <sup>th</sup> December 1999	2,050.00
18 <sup>th</sup> August 2000	3,000.00
6 <sup>th</sup> February 2001 (US\$7,000.00)	<u>5,740.00</u>
Balance Outstanding	<u>CI\$22,059.00</u>

Agreement 2:

9. By an agreement made between the Plaintiff and Wayne Kirby, deceased, the Plaintiff agreed to provide project and professional fees for a proposed apartment complex to be situated at Block 23C, Parcel 49, in the Cayman Islands.

### Particulars

The said agreement between the parties was made partly orally, partly in writing and partly by conduct.

Insofar as it was oral, the said agreement was made at meetings in the months shortly before the 22<sup>nd</sup> April, 1998 between the Plaintiff and Wayne Kirby (deceased).

Insofar as it was in writing, the said agreement was contained in or is to be inferred from a letter from the Plaintiff to Wayne Kirby dated 22<sup>nd</sup> April, 1998.

Insofar as it was by conduct, the conduct consisted of or is to be inferred from the following:

(i) By the course of dealings between the Plaintiff and Wayne Kirby (deceased), it was agreed between them alternatively the Plaintiff signified to Wayne Kirby (deceased), that Wayne Kirby's acceptance of the terms and conditions set forth in the Plaintiff's letter of 22<sup>nd</sup> April, 1998 need not be communicated to the Plaintiff or alternatively would be signified if he did not communicate to the Plaintiff any dissent therefrom within a reasonable period of time of receiving the same, which he did not do within a reasonable time or at all.

(ii) Further, Wayne Kirby (deceased) with full knowledge of the terms and conditions set out in the Plaintiff's letter of 22<sup>nd</sup> April, 1998, retained the same without in any way dissenting from or objecting or demurring to any of the said terms and conditions within a reasonable time of seeing the same or at all, and he thereby agreed to and accepted the said terms and conditions and/or signified the same to the Plaintiff or alternatively by his silence and conduct, with full knowledge the Plaintiff would proceed with provisions of the said services, he permitted and induced the Plaintiff to believe, as in fact the Plaintiff did believe, that he had agreed to and accepted the said terms and conditions.

10. It was on express term of the said agreement that the Plaintiff would be paid in accordance with the details set out in his letter of 22<sup>nd</sup> April, 1998.
11. In pursuance of the said agreement the Plaintiff performed the agreed project and professional services.
12. In Breach of the said agreement neither Wayne Kirby (deceased), nor the Estate of Wayne Kirby has fully paid for the said services and the Plaintiff has suffered damage.

#### Particulars of Damage

Invoice dated 15<sup>th</sup> July 1998 -- Services

CI\$66,000.00

Less payments received

17<sup>th</sup> May, 2000 (US\$34,000.00)

(CI\$27,880.00)

**Balance Outstanding**

**CI\$38,120.00**

**Agreement 3:**

13. By an agreement made between the Plaintiff and Wayne Kirby, deceased, the Plaintiff agreed to provide project and professional fees for a proposed apartment complex to be situated at Block 23B, Parcel 74 & 75, in the Cayman Islands.

**Particulars**

The said agreement between the parties was made partly orally, partly in writing and partly by conduct.

Insofar as it was oral, the said agreement was made at meetings in the months shortly before the 22<sup>nd</sup> April, 1998 between the Plaintiff and Wayne Kirby (deceased).

Insofar as it was in writing, the said agreement was contained in or is to be inferred from a letter from the Plaintiff to Wayne Kirby dated 22<sup>nd</sup> April, 1998.

Insofar as it was by conduct, the conduct consisted of or is to be inferred from the following:

(i) By the course of dealings between the Plaintiff and Wayne Kirby (deceased), it was agreed between them or alternatively the Plaintiff signified to Wayne Kirby (deceased), that Wayne Kirby's acceptance of the terms and conditions set forth in the Plaintiff's letter of 22<sup>nd</sup> April, 1998 need not be communicated to the Plaintiff or alternatively would be signified if he did not communicate to the Plaintiff any dissent therefrom within a reasonable period of time of receiving the same, which he did not do within a reasonable time or at all.

(ii) Further, Wayne Kirby (deceased) with full knowledge of the terms and conditions set out in the Plaintiff's letter of 22<sup>nd</sup> April, 1998, retained the same without in any way dissenting from or objecting or demurring to any of the said terms and conditions within a reasonable time of seeing the same or at all, and he thereby agreed to and accepted the said terms and conditions and/or signified the same to the Plaintiff or alternatively by his silence and conduct, with full knowledge the Plaintiff would proceed with provisions of the said services, he permitted and induced the Plaintiff to believe, as in fact the Plaintiff did believe, that he had agreed to and accepted the said terms and conditions.

14. It was on express term of the said agreement that the Plaintiff would be paid in accordance with the details set out in his letter of 22<sup>nd</sup> April, 1998.

15. In pursuance of the said agreement the Plaintiff performed the agreed project and professional services.
  
16. In Breach of the said agreement neither Wayne Kirby (deceased), nor the Estate of Wayne Kirby has fully paid for the said services and the Plaintiff has suffered damage.

Particulars of Damage

Invoice dated 23 <sup>rd</sup> June 1999 – Services	CI\$112,500.00
<b>Balance Outstanding</b>	<b><u>CI\$112,500.00</u></b>
17. Further payments received on the consolidated amounts outstanding were received as follows:	
4 <sup>th</sup> May 2001	CI\$ 6,000.00
28 <sup>th</sup> June 2001	CI\$ 7,000.00
10 <sup>th</sup> July 2001	CI\$ 3,059.00
6 <sup>th</sup> September 2001	CI\$ 1,000.00
	_____
	<b><u>CI\$ 17,059.00</u></b>

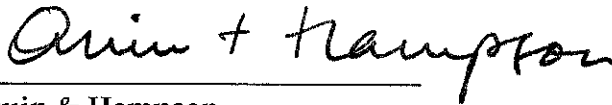
**AND THE PLAINTIFF CLAIMS:**

1. The amount of CI\$155,620.00.

2. The Plaintiff further claims interest pursuant to Section 34 of the Judicature Law on the sum of CI\$155,620.00 at the rate 6.25% from the 6<sup>th</sup> September, 2001 to 30<sup>th</sup> November, 2001 being CI\$2,269.46 and at the rate of 4.5% from the 1<sup>st</sup> December, 2001 until the date herein being CI\$2,509.37 then continuing until the date of judgment or sooner payment at the rate of CI\$19.19 per day.
3. Costs to be assessed or agreed.

If within the time for returning the Acknowledgement of Service, the Defendant pays the total amount claimed of CI\$161,876.93 including interest and costs all further proceedings will be stayed. This money must be paid to the Plaintiff or his attorney.

DATED this 9<sup>th</sup> day of April 2002



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Quin & Hampson  
Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by Messrs. Quin & Hampson, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service and correspondence is P.O. Box 1348, George Town, Grand Cayman, Cayman Islands, B.W.I.

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 Defendants or by the Defendants 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 Plaintiffs (or on the Plaintiffs 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 Plaintiffs 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 installments or otherwise.

*See over for notes for guidance*

### 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2002

BETWEEN: MALCOLM M. STEPHENSON PLAINTIFF
AND: (1) JEFFREY KAYDEN
(2) ANN GROVES
(3) CHARLES BRADLEY 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 Plaintiffs (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 Plaintiffs' Attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.*

Messrs. Quin & Hampson  
Attorneys-at-Law  
Third Floor, Harbour Centre  
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.*