

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 360 OF 2002 ✓

B E T W E E N:

PAN AM DEVELOPMENTS LTD

Plaintiff

AND

J. GORDON HEWITT

Defendant

WRIT OF SUMMONS

TO: J. Gordon Hewitt
P.O. Box 1817 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, P.O. Box 495 GT, George Town, 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 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 day of May 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 Cayman Islands Company operating a marina and associated concessions in the vicinity of Yacht Drive, Governors Harbour, West Bay Road, Grand Cayman, under the name and style of the Cayman Islands Yacht Club.
2. The Defendant is a businessman carrying on business in the Cayman Islands whose address is PO Box 1817 GT, Grand Cayman, Cayman Islands, B.W.I. The Defendant is and has at all relevant times been the owner of a 48 ft single engine wooden hulled motor vessel, the "MV Gabion".
3. By agreement between the Plaintiff and the Defendant, the Plaintiff contracted with the Defendant to provide mooring and associated facilities for the MV Gabion. The agreement between the Plaintiff and the Defendant was confirmed alternatively amended, in writing by letter dated 1 November 1999 by which the Defendant agreed to pay to the Plaintiff a monthly rent of CI\$8.00 per foot per month (totalling CI\$384.00 per month), electrical rates metered at CI\$0.22/KwH, and water rates at CI\$0.03 per gallon. The 1 November 1999 letter also indicated that interest on all past due invoices would be charged at 14% per annum and that all slip rental tenants would bear all costs of collection of unpaid sums due.
4. By further letter dated 7 December 1999 from the Plaintiff to inter alia the Defendant, the Plaintiff enclosed a copy of the Cayman Islands Yacht Club terms and conditions (the "Contract") and inter alia indicated that the Plaintiff's customers, including the Defendant, by virtue of their vessels' presence at the facility, "are understood by the Cayman Islands Yacht Club to be in agreement with these terms and conditions". The 7 December 1999 letter further stated that "if this is not an accurate interpretation on our part, the customer is requested to please notify the Cayman Islands Yacht Club in writing, settle any outstanding balance on account and vacate the marina immediately".
5. The Defendant fell into arrears with the payments due to the Plaintiff as aforesaid and despite demands by the Plaintiff a total sum of CI\$4,223.61 was due to the Plaintiff by 31 October 2001.
6. In or about early November 2001 representatives of the Plaintiff were made aware of attempts by the Defendant to sell his vessel to another party for the sum of CI\$4,223.61. However no proof of sale was given to the Plaintiff, nor was any application made to close or change the Defendant's account with the Plaintiff. Accordingly the vessel continued to be moored at the Plaintiff's premises and further charges continued to accrue to the account of the Defendant.
7. Despite numerous demands made of the Defendant and continuous invoicing of amounts due on a monthly basis, the Defendant failed to pay the sums due or enter into any agreement with the Plaintiff in relation to the outstanding charges.
8. On 3 December 2001 the MV Gabion sank at its mooring rendering the docking space unusable by any other vessel and creating an environmental hazard. In

particular, the MV Gabion began to leak oil and/or other pollutants into the water which began to spread through the marina. In so doing, the Defendant breached Clause 9(c) of the Contract which required the Defendant to keep his slip and surrounding water free of pollution.

9. The sinking of the MV Gabion was caused by the negligence of the Defendant in failing to take reasonable steps to ensure that his vessel was seaworthy.
10. The Plaintiff immediately arranged for the situation to be brought to the attention of the Defendant who, despite invitations and requests by the Plaintiff to do so, refused to play any role in relation to the removal of the vessel and/or the remedying of the ongoing danger to the marina environment.
11. The Plaintiff was accordingly forced to enter into protracted communications with the Cayman Islands Department of Environment and others in relation to the situation and was threatened with prosecution under the Marine Conservation Law (1995 Revision). The Plaintiff therefore could not accept the continuing delay in the salvage and removal of the MV Gabion from its docking space and was forced to attend to the same at its own expense.
12. As a result of the sinking of the MV Gabion, the Plaintiff suffered significant damage to its reputation and good name. In particular, the Plaintiff attracted bad publicity in the form of one or more Cayman Islands Television Networks (CITN) news segments which focused on the pollution to the marina environment.
13. The MV Gabion was salvaged and removed on the instructions and at the expense of the Plaintiff on 8 March 2002. A monthly slip rental charge continued to accrue to the account of the Defendant until and including 8 March 2002 when the Defendant's vessel was removed. The Plaintiff was further forced to incur significant costs including daily monitoring of the environmental position, site clean-up and extensive negotiations and correspondence with various Government agencies relating to pollution of the marina and the removal of the vessel. In addition the Plaintiff has incurred and continues to incur considerable legal fees.
14. Under Clause 6(b) of the Contract, the Defendant agreed that, on termination of the Contract for breach, the Defendant would reimburse the Plaintiff for any and all costs and expenses, including legal fees, incurred by the Plaintiff in enforcing its rights, and that interest at the rate of 14% per annum would accrue on any monies due to the Plaintiff from their due date until date of payment. The Plaintiff is accordingly entitled to recover from the Defendant, interest on the sums due to the Plaintiff at the rate of 14% per annum from their due date and all costs and expenses incurred by the Plaintiff, including legal fees, in enforcing its claim.
15. Under Clause 8 of the Contract, the Defendant agreed to indemnify the Plaintiff in respect of any claims against it arising from the use of the slip by the Defendant

or from the presence of the Defendant's vessel. The Plaintiff is accordingly entitled to recover from the Defendant all costs and charges incurred by it, including legal fees, relating to and arising from the sinking of the Defendant's vessel.

16. Further and/or alternatively, the Plaintiff is entitled to recover from the Defendant all costs and charges incurred by it, including legal fees, relating to and arising from the sinking of the Defendant's vessel, as the Plaintiff's conduct constituted reasonable necessitous intervention on behalf of the Defendant.
17. Further and/or alternatively, the Plaintiff is entitled to recover from the Defendant all costs and charges incurred by it, including legal fees, relating to and arising from the sinking of the Defendant's vessel, as the Defendant has been unjustly enriched at the expense of the Plaintiff by payment of the said the amounts on behalf of the Defendant.
18. Further and/or alternatively, the Plaintiff is entitled to damages in tort for loss suffered by the Plaintiff which was caused by the Defendant's negligence in allowing his vessel to become unseaworthy and sink.

PARTICULARS OF LOSS

19. The breaches of contract alternatively negligence of the Defendant pleaded above have caused the Plaintiff to suffer loss as follows:
 - 19.1. CI\$6,050.59 in respect of the amount owing to the Plaintiff for the slip rental, water and electricity, together with accrued interest thereon as at 8 March 2002.
 - 19.2. CI\$6,437.88 in respect of the expenses incurred by the Plaintiff on behalf of the Defendant relating to the sinking of the MV Gabion, as invoiced to the Defendant on 19 March 2002, excluding legal fees.
 - 19.3. CI\$12,949.78 in respect of legal fees incurred by the Plaintiff on behalf of the Defendant relating to the sinking of the MV Gabion as at the date hereof.

AND THE PLAINTIFF claims: -

1. Payment of the sum of CI\$6,050.59 in respect of charges due under the contract;
2. Interest on the said sum at the contractual rate of 14% from 8 March 2001 until date of payment;

3. An indemnity as provided for in the Contract for all costs and sums expended by the Plaintiff arising out of and occasioned by the sinking of the Defendant's vessel in the sum of CI\$19,387.66;
4. Indemnity costs as provided for in the Contract;
5. Further and/or alternatively damages for breach of contract in the sum of CI\$19,387.66;
6. Further and/or alternatively damages in tort in the sum of CI\$19,387.66;
7. Further and/or alternatively, restitution of all costs and sums expended by the Plaintiff arising out of and occasioned by the sinking of the Defendant's vessel in the sum of CI\$19,387.66;
8. Such further and other relief as the Court may feel just.

Dated the 15th day of May 2002

Hunter & Hunter
Hunter & Hunter
Attorneys for the Plaintiff

TO: The Clerk of the Court

AND TO: The Defendant
J. Gordon Hewitt
PO Box 1817GT
Grand Cayman
Cayman Islands
BWI

THIS WRIT was issued by Hunter & Hunter, Attorneys-at Law for the Plaintiff whose address for service is that of their said Attorneys, namely 75 Fort Street, The Huntlaw Building, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref JST/06463.055).

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2002

B E T W E E N:

PAN AM DEVELOPMENTS LTD

Plaintiff

AND

J. GORDON HEWITT

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 the Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged:
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2. State whether the Defendant intends to contest or otherwise participate in 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 of Summons is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

Address for service:

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.

Hunter & Hunter
The Huntlaw Building, 75 Fort Street
PO Box 190GT, Grand Cayman
Cayman Islands, BWI
JST/06463.055

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

DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF ORIGINATING SUMMONS

The accompanying form of Acknowledgement 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 495 GT, George Town, Grand Cayman.

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. If you wish to defend claims made in the Originating Summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the Acknowledgment of Service.
3. 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.
4. 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 Originating Summons)".
5. 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.
6. 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.
7. 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.

8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.