

IN THE GRAND COURT OF THE CAYMAN ISLANDS

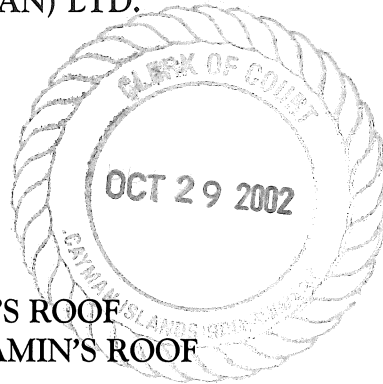
CAUSE NO: 787 ✓ OF 2002

B E T W E E N:

TOURIST PUBLICATION (CAYMAN) LTD.



AND



Plaintiff

1. MIKE PLATHE T/A BENJAMIN'S ROOF
2. BARBARA PLATHE T/A BENJAMIN'S ROOF

Defendants

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WRIT OF SUMMONS

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TO: MIKE PLATHE T/A BENJAMIN'S ROOF  
BARBARA PLATHE T/A BENJAMIN'S ROOF  
PO Box 185 West Bay  
Grand Cayman, Cayman Islands.

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 28 October 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.

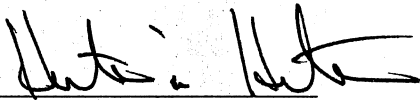
## STATEMENT OF CLAIM

1. The Plaintiff is a company organized and carrying on business under the laws of the Cayman Islands and has its registered office at PO Box 1544 GT.
2. The 1<sup>st</sup> Defendant is an individual who at all material times carried on business in partnership with the 2<sup>nd</sup> Defendant in the operation of a restaurant known locally as "Benjamin's Roof".
3. The 2<sup>nd</sup> Defendant is an individual who at all material times carried on business in partnership with the 1<sup>st</sup> Defendant in the operation of a restaurant known locally as "Benjamin's Roof".
4. The First and Second Defendants together at all material times carried on business as a partnership in the business of operating "Benjamin's Roof" as a restaurant with a view to a profit. Accordingly, all debts and liabilities incurred by either of the Defendants for or on the behalf of "Benjamin's Roof" is a debt of the Defendants jointly and severally.
5. The Plaintiff and 1<sup>st</sup> Defendant on behalf of the business partnership entered into a Magazine Advertising Contract whereby the Plaintiff agreed to provide advertising services to "Benjamin's Roof". The express or implied terms of the agreement included as follows:
  - a. The Plaintiff would place advertisements of "Benjamin's Roof" in its publications for one year;
  - b. The 1<sup>st</sup> Defendant agreed on behalf of the partnership to pay for advertisement within 30 days of the rendering of the invoice;
  - c. Interest would be charged at the rate of 1.5% per month on balances outstanding from 30 days after rendering of invoices as stated in # 13 if the Terms & Conditions.
  - d. The 1<sup>st</sup> Defendant agreed on behalf of the partnership that in the event of default in the payment of any amount due, and if this account is placed in the hands of an agency or attorney for collection or legal action, an additional charge equal to the cost of collection including agency and attorney fees and court costs incurred and permitted by laws governing these transactions will be collected.

6. The Plaintiff did advertise Benjamin's Roof restaurant in its November 2002 Issue as evidenced by the Invoice #OWN06.
7. Notwithstanding the advertisement, the Defendants were unable or unwilling to make payments on the accounts rendered in breach of the contract pleaded herein.
8. Despite several demands, including a final demand dated 10<sup>th</sup> October 2002, the Defendant has refused to pay and therefore breached the Contract.
9. The total principal amount outstanding by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to the Plaintiff as of 28<sup>th</sup> October 2002 is CI\$3,462.50.
10. The total interest due to the Plaintiff as of 28 October 2002 is CI\$1140.93 and accruing thereafter at the rate pleaded above.
11. As a result of the above, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant is liable to the Plaintiff in the sums as set out in this Statement of Claim.

AND THE PLAINTIFF CLAIMS:

- a) CI\$3,462.50 being principal due to 7<sup>th</sup> October 2002
- b) Pre-Judgment interest, calculated to the commencement of the proceeding (28<sup>th</sup> October 2002), of CI\$1,140.93 at the rate of 1½ % per month as claimed par. 3(c) herein;
- c) Pre and post-judgment interest from 29<sup>th</sup> October at the rate of 1½ % per month;
- d) Alternatively, Pre- and post-judgment interest in accordance with the Judicature Law (1995 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
- e) Legal fees to the commencing of these proceedings at CI\$1,500.00 in accordance with the agreement pleaded above at paragraph 3(d).
- f) Further and alternatively, costs on an indemnity basis or, alternatively, standard basis in accordance with the Court Costs Rules 2001;
- g) Such further and other relief as this Court may deem just;



Hunter & Hunter  
Attorneys for the Plaintiff

This Writ was issued by Hunter & Hunter, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is 75 Fort Street, PO Box 190 George Town, Grand Cayman. (Ref: WAS/09470.003)

## INDORSEMENT

The principal amount claimed in respect of the debt is CI\$3,462.50 and interest as of the date of commencement of the proceeding is CI\$1,140.93. The amount of the filing fees to commence the proceeding is CI\$150.00. If, within the time for returning the acknowledgement of service, the defendant pays the plaintiff or its attorneys-at-law the total amount claimed in principal, interest, costs of CI\$1,000.00 and the costs of issuing the writ of summons, further proceedings will be stayed. The money must be paid to the plaintiff's attorneys-at-law.

### INDORSEMENT REGARDING INTEREST (Order 6 (2) (e) of the Grand Court Rules)

- i. The contractual term upon which interest is 1.5 % per month.
- ii. The prescribed rate of interest during the entire relevant is 1.5 % per month;
- iii. The date from which interest runs is 30 days following the date of the respective accounts rendered.
- iv. The total interest claimed as at the date of the issue of the writ of summons is CI\$1,140.93.
- v. The amount of interest accruing each day following the issue of the writ of summons is CI\$2.22 per day;

This Writ of Summons was issued by Hunter & Hunter, the attorneys-at-law for the Plaintiff, whose address for service is PO Box 190GT, George Town, Grand Cayman, Cayman Islands, British West Indies. (WAS/09470.003)

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.

BETWEEN:

TOURIST PUBLICATION (CAYMAN) LTD.

Plaintiff

AND

- 1. MIKE PLATHE T/A BENJAMIN'S ROOF
- 2. BARBARA PLATHE T/A BENJAMIN'S ROOF

Defendants

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ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

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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/09436.001
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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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