

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ⁸⁷⁴ OF 2002

B E T W E E N:

KIRKCONNELL BROTHERS LTD.

Plaintiff

AND

- 1. MALCOLM STEPHENSON
- 2. SHAN STEPHENSON

Defendants

WRIT OF SUMMONS

TO: Malcolm Stephenson
 Shan Stephenson
 PO Box 31678 SMB
 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 ²⁵ November 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.

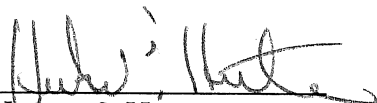
STATEMENT OF CLAIM

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 72 GT.
2. The Defendants are individuals residing in the Cayman Islands who at all material times were guarantors of the accounts, charges, obligations or debts of a restaurant known locally as "Blackthorne's Beacon" and later, "Café Tabu" (described collectively as "Café Tabu"). The proprietors of the restaurant were, at time of entering into the agreement pleaded herein, Malcolm Stephenson, Shan Stephenson and Angele Ginn and used a local mailing address of PO Box 31678 SMB, Grand Cayman, Cayman Islands.
3. Alternatively, the proprietor of Café Tabu was a locally incorporated company, "PADJ LIMITED" with a mailing address of PO Box 31678 SMB, Grand Cayman, Cayman Islands.
4. The Plaintiff and the proprietors of Café Tabu entered into a credit agreement whereby the Plaintiff agreed to supply goods Café Tabu on credit as may be granted from time to time. The express or implied terms of the agreement included as follows:
 - a. The Plaintiff at its discretion would extend credit to Café Tabu for the supply of various goods sold by the Plaintiff;
 - b. The proprietors of Café Tabu would pay for goods received on credit within 10 days of the rendering of the account for the goods received;
 - c. The proprietors of Café Tabu would pay a service charge or interest of 1.5 per cent per month on all sums unpaid following a period of 30 days from the rendering of an account.
5. The Defendants each provided a personal guarantee of the accounts, charge, obligations or debts due by the proprietors of Café Tabu to the Plaintiff.
6. The Plaintiff did extend credit by supplying goods to the proprietors of Café Tabu from time to time and rendered accounts for the amount of credit extended.
7. The proprietors of Café Tabu were unable or unwilling to make payments on the accounts rendered in breach of the agreement pleaded herein.
8. Demand was made on the Defendants as guarantors for payment of all principal and interest in connection with the operation of Café Tabu.
9. Despite several demands, including a final demand dated 12th September 2002, the Defendants have refused to pay the sums outstanding.
10. The total principal amount outstanding by the Defendants, as proprietors and guarantors, to the Plaintiff as of 25 November 2002 is CI\$32,581.44.

11. The total service charge or interest in accordance with the pleaded agreement is CI\$16,492.57 as of the date of the commencement of this proceeding (25 November 2002).
12. As a result of the above, the Defendants are liable to the Plaintiff in the sums as set out in this Statement of Claim as proprietors of Café Tabu and as guarantors of the debt of that business.

AND THE PLAINTIFF CLAIMS:

- a) CI\$32,581.44 being principal due to 25 November 2002
- b) Pre-Judgment interest, calculated to the commencement of the proceeding (25 November 2002), of CI\$16,492.57 at the rate of 1½ % per month in accordance with the agreement pleaded in the Statement of Claim at paragraph 3 c, above;
- c) Pre and post-judgment interest from 26 November 2002 at the rate of 1½ % per month in accordance with the agreement pleaded in the Statement of Claim at paragraph 3 c, above;
- 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) Costs on an indemnity basis or, alternatively, standard basis in accordance with the Court Costs Rules 2001;
- f) 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/09431.001)

INDORSEMENT

The principal amount claimed in respect of the debt is CI\$32,581.44 and interest as of the date of commencement of the proceeding is CI\$16,492.57 for a total amount of CI\$49,074.01. The amount of the filing fees to commence the proceeding is CI\$375.85 (CI\$150.00 plus CI\$225.85 ad valorem). If, within the time for returning the acknowledgement of service, the Defendants pay the plaintiff or its attorneys-at-law the total amount claimed in principal, interest, (costs of CI\$2,000.00) 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 as claimed in paragraph 3(c) of the Statement of Claim, above.
- ii. The prescribed rate of interest during the entire relevant is 1.5 % per month;
- iii. The date from which interest runs is 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\$16,492.57.
- v. The amount of interest accruing each day following the issue of the writ of summons is CI\$16.0676 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/09431.001)

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 Defendants.

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:

KIRKCONNELL BROTHERS LTD.

Plaintiff

AND

- 1. MALCOLM STEPHENSON
- 2. SHAN STEPHENSON

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/09431.008
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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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