

IN THE GRAND COURT OF THE CAYMAN ISLANDS

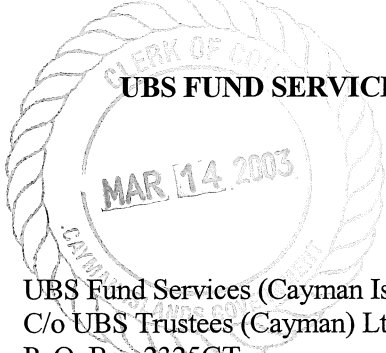
CAUSE NO. 160 OF 2003

BETWEEN: JOANNA WELCOME-MARTINEZ

PLAINTIFF

AND: UBS FUND SERVICES (CAYMAN) LTD.

DEFENDANT



WRIT OF SUMMONS

TO: UBS Fund Services (Cayman Islands) Ltd.  
C/o UBS Trustees (Cayman) Ltd.  
P. O. Box 2325GT  
2<sup>nd</sup> Floor, UBS House  
227 Elgin Avenue  
George Town  
Grand Cayman, B.W.I.



THIS WRIT OF SUMMONS has been issued against you by the abovenamed 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, George Town, Grand Cayman B.W.I., 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 14 day of March, 2003.

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 resides at number 12 Jade Dr., Crystal Valley, West Bay, Grand Cayman, B.W.I. and is a native Caymanian or person holding Caymanian status who does not require a gainful occupation license to work in the Cayman Islands. The Plaintiff has over 14 ½ years experience in the financial industry and as of on or about 16<sup>th</sup> May 2001 was employed by the Defendant as Head of Private Banking Services (“Head PBS”) until 26<sup>th</sup> February 2002.
  
2. The Defendant is a wholly owned subsidiary of UBS AG, Switzerland and was established in 1972 in Cayman as Swiss Bank & Trust Corporation (Cayman) Ltd. (“Swiss Bank”). After the merger of UBS AG, Switzerland and Swiss Bank, the name Swiss Bank was changed to UBS (Cayman Islands) Ltd. (“UBS (Cayman)”) and as a result UBS (Cayman) was incorporated under the laws of The Cayman Islands on 1<sup>st</sup> September 2002 as an Ordinary Resident company and was registered on 8<sup>th</sup> September 2002 pursuant to the Companies Law. Since 1<sup>st</sup> September 2002 UBS (Cayman) changed its name to UBS Fund Services (Cayman) Ltd. and the Defendant has been effectively operating in the Cayman Islands since 1972 (under the name Swiss Bank). The Defendant holds a Class “A” Banker’s License No. 72008 issued under the Banks & Trust Companies Law (2001 Revision) and its registered office is situated at P. O. Box 2325, 2<sup>nd</sup> Floor, UBS House, 227 Elgin Avenue, George Town, Grand Cayman, B.W.I.
  
3. The Plaintiff was at all material times employed as Head PBS since 16<sup>th</sup> May 2001 and her claim herein is for damages against the Defendant for wrongful dismissal arising out of the breach by the Defendant of her contract of employment and for damages for defamation arising out of a letter dated 26<sup>th</sup> February 2002 delivered to the Plaintiff and which said letter was also published by the Defendant to other employees of the Defendant and to others.
  
4. On 3<sup>rd</sup> August 1987 the Plaintiff was hired by the Defendant and at that time was hired to fill the position of receptionist. Throughout her employment, the Plaintiff conducted

several clerical functions in the Paying and Receiving Department and took over as Assistant Supervisor in the Treasury Department. In or about 1<sup>st</sup> July 1996 the Plaintiff was promoted to Associate Director and on or about 1<sup>st</sup> April 2000 she was further promoted to Director. The Plaintiff's main functions and duties included:

- (1) 1991 to 1995: Officer Accounting Department, then Supervisor Accounting Department. Supervision of 4 people and responsibility for all bank account reconciliation tasks.
  - (2) From 1996 to 1999: Deputy Manager PBS Operations, then Manager PBS Operations. Including management of Payments, Wire Transfer and Securities Settlement department and supervision of 8 persons.
  - (3) As of 1999: Head PBS Cayman and duties included management of Payments Wire Transfer and Securities Settlement departments; PBS Front Support (an Operations Middle Office Department) and PBS Internal Services which included the logistical functions, Premises Management, and Physical Security with an overall management of 17 persons.
5. The Plaintiff was a member of local Senior Management team, member of Management Executive Committee, Security Officer and reported to the Regional Head Private Banking Services Caribbean, Latin America and Canada. She also dotted line reporting to the Unit Head UBS Cayman Islands.
6. On or about 9<sup>th</sup> January 2002 the Defendant through its representative, Sean Flynn, the Managing Director, advised the Plaintiff that its operations in the Cayman Islands were being scaled down and were discontinuing the private banking operation. However, by letter dated 11<sup>th</sup> January 2002 the Plaintiff was offered continued employment as Head Operations and Deputy Manager of Operations & Finance in the Plaintiff's Investment Funds Administration, Division UBS Asset Management which offer was accepted by the

Plaintiff in or about 11<sup>th</sup> January 2002. The Defendant agreed to increase the Plaintiff's base salary from US\$100,000.00 to US\$110,000.00 per annum effective as of the date of transfer to Investments Funds with all other terms and conditions of the Plaintiff's employment contract and the employee handbook remaining in effect.

**WRONGFUL TERMINATION**

7. By letter dated 26<sup>th</sup> February 2002 the Defendant acting through Messrs. Walter Eggenschwiler, Chief Executive Officer and Christian Albrecht, Director Human Resources, acted wrongfully and in repudiatory breach terminated the Plaintiff's employment and wrongfully dismissed her from the Defendant.
8. The Defendant had no good cause to dismiss the Plaintiff in such a summary manner or at all.
9. As a direct result of her wrongful dismissal by the Defendant, the Plaintiff has suffered financial loss and damage and severe disruption to her family resulting in considerable emotional distress and distress.
10. In addition the Plaintiff has suffered damage to her feelings, mental distress and loss of dignity and seeks aggravated damages accordingly.

**Particulars of Loss and Damage**

- (i) Salary and other benefits due to the Plaintiff from 26<sup>th</sup> February to 26<sup>th</sup> May 2002

Salary	US\$25,999.99
Health Insurance Premiums (approximately)	1,592.52
Vacation Pay	6,849.50
Life Insurance (approximately)	300.00
Gym allowance	75.00
Pension contributions (approximately)	<u>1,701.81</u>

		US\$36,518.82
(ii)	Bonus payment due to the Plaintiff	<u>55,416.67</u>
	Total	US\$91,935.49

## DEFAMATION

11. Further on or about 26<sup>th</sup> February 2002 the Defendant wrote and published or caused to be written and published falsely and maliciously the following words which are defamatory to the Plaintiff:

*"We refer to today's meeting between yourself, our external auditors and Walter Eggenschwiler. An investigation has been completed showing the following incident: Misappropriation of 45 units UBS (LUX) Money Market Funds by yourself.*

*Accordingly, this letter is our formal notice of termination of your employment with UBS (Cayman Islands) Ltd. with immediate effect. Please note that under the terms of the Labour Law Art. 52(1)(a) you are not entitled to Severance pay or Notice pay in respect of this termination.*

*It is regrettable that we are forced to take this action to terminate your employment, but in these circumstances, we are of the opinion that there is no alternative course of action.*

*Yours sincerely,  
UBS (Cayman Islands) Ltd.*

*Walter Eggenschiler                      Christian Albrecht  
Chief Executive Officer                  Director Human Resources*

*Cc: Alejandro St. John, Mike McLoughlin, Hans Markwalder*

12. The Plaintiff believes that the said words set out in paragraph 11 above were also published to other employees of the Defendant and to others whom she cannot presently specify but

will rely upon their publication thereof to every person to whom she may discover the same to be published.

13. The said words in their natural and ordinary meaning and in the reasonable implications and/or inferences to be derived therefrom and which are inherent in them are defamatory of the Plaintiff and by the said words the Defendant plainly meant and was understood to mean that the Plaintiff was a thief and was guilty of a criminal offence.
14. Further and/or alternatively, the said words bore and were understood to bear the meanings pleaded in paragraph 13 above and also by way of innuendo that the Plaintiff was unfit to act as Head PBS and/or Head Operations and Deputy Manager or to be associated with any aspect of the financial industry of the Cayman Islands.

**Particulars Under GCR O. 82, r. 3(1)**

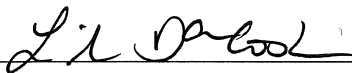
- (a) The Plaintiff repeats paragraphs 1 to 13 of the Statement of Claim herein.
- (b) The words in the said letter dated 26<sup>th</sup> February 2002 clearly and unambiguously refer to the Plaintiff and depicted her as alleged above.
- (c) The facts and matters referred to in paragraphs 1 to 13 hereof were known to the persons referred to at paragraph 12 hereof and to other persons likely to see and read the said letter dated 26<sup>th</sup> February 2002.
- (d) It is clear and unambiguous that the words contained in the said letter referred to the Plaintiff and no one else.
- (e) The said words were calculated to damage and injure the reputation of the Plaintiff, to disparage her in the carrying out of her occupation as Head PBS and/or Head Operations and Deputy Manager and/or were a malicious device to justify her dismissal and also to materially affect her obtaining work in a similar position in the Cayman Islands financial industry similar to the one that she occupied at the Defendant.

15. By reason of the publication of these words contained in the said letter, the Plaintiff has been gravely injured in her credit, character and reputation and by way of her said occupation as a Head PBS or Head Operations and Deputy Manager and has been lowered in the estimation of right-thinking members of society generally and was embarrassed and is/was hurt in her feelings and the Plaintiff has suffered damages and is entitled to aggravated damages.

AND the Plaintiff claims:

- (1) Special damages of US\$91,935.49 in respect of her claim for wrongful dismissal.
- (2) Under paragraph s 11 to 15, aggravated damages.
- (3) Alternatively, damages.
- (4) Interest.
- (5) Damages as for libel as above.
- (6) Aggravated damages for injury as to reputation and injury as to feelings.
- (7) Costs
- (8) Further and/or other relief.

Dated this 14 day of March 2003.

  
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MYERS & ALBERGA

Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by and STATEMENT OF CLAIM filed by Myers & Alberga, Attorneys-at-Law for and on behalf of the Plaintiff whose address for services is One Regis Place, Fort and Mary Streets, P.O. Box 472, George Town, Grand Cayman B.W.I.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

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CAUSE NO. OF 2003

BETWEEN: JOANNA WELCOME-MARTINEZ

PLAINTIFF

AND: UBS FUND SERVICES (CAYMAN) LTD.

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 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 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.*

MYERS & ALBERGA  
C/O One Regis Place  
2<sup>nd</sup> Floor  
George Town  
Grand Cayman, B.W.I.

*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 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 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 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 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 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.