

IN THE GRAND COURT OF THE CAYMAN ISLANDS

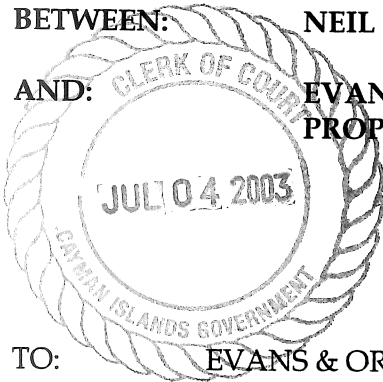
455 ✓
CAUSE NO. OF 2003

BETWEEN: NEIL SMITH

Plaintiff

AND: EVANS & ORACLE HOUSING INSPECTORS AND
PROPERTY MANAGEMENT LTD.

Defendant



WRIT OF SUMMONS

TO: EVANS & ORACLE HOUSING INSPECTORS AND
PROPERTY MANAGEMENT LTD
P.O. Box 30847
Seven Mile Beach
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 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 4th day of July, 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 re-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 a permanent resident of the Cayman Islands and a naturalised British Overseas Territory Citizen. He is a qualified real estate appraiser and has over 30 years' experience in the fields of real estate construction and development.
2. The Defendant is a company incorporated under the Companies Law of the Cayman Islands and carries on the business, *inter alia*, of housing inspections and real estate appraisals.
3. By an employment contract dated 24 June 2002 ("the employment contract") the Defendant employed the Plaintiff as a Senior Consultant/Appraiser. The employment contract became effective on 1 July 2002 and was for an indefinite period subject to termination in accordance with the terms of the employment contract.
4. The Plaintiff's employment was subject to a probationary period of 6 months ending 31 December 2002. Subject to the probationary period the employment contract provides that the Plaintiff's employment may be terminated by the giving by either side of one month's notice of termination. The employment contract further provides as follows:

"The Company may terminate the employment summarily with the Employee (but without prejudice to its rights and remedies for any breach of this agreement by the Employee) if:

- a) *The Employee is guilty of dishonesty or serious or persistent misconduct in connection with the employment; or*
- b) *The Employee commits any material breach or non-observance of any of the terms of the agreement or is guilty of misconduct which is likely to bring himself or the Company into disrepute; or*
- c) *The Employee commits any material breach of the Confidential Relationships (Preservation) Law (1995 Revision) of the Cayman Islands and discloses confidential information either relating to the Company or the Company's clients, which has come or will come in the future, to the Employee's knowledge in the course of or after the employment; or*

- d) *The Employee is suffering from a mental disorder or becomes a patient pursuant to any statute relating to mental health; or*
- e) *The Employee is convicted of any arrestable criminal offence (other than an offence under road traffic legislation in the Cayman Islands or elsewhere) for which the Employee is sentenced to any term of imprisonment (whether immediate or suspended); or*
- f) *The Employee engages in any personal business or affairs which may be detrimental to the operation of the Company."*

5. The employment contract further provides as follows:

"Additionally, the Company reserves the right to dismiss the Employee if he is given three written warnings for misconduct, poor performance, poor work ethics or any of the above scenario's (sic) as may be relating to or affecting the Employees performance."

6. Under the terms of the employment contract the Plaintiff was entitled, *inter alia*, to the following benefits:

- a) A basic salary of CI\$2,500 per month plus a commission of "15% of Employees total accumulated bi-monthly projects assigned, which such commission will be paid every two weeks...";
- b) 15 business days paid vacation leave;
- c) Participation in the Cayman Islands Chamber of Commerce Pension Plan of which the Defendant is a member and in respect of which the Defendant would match the Plaintiff's contribution up to a maximum of 5% of the Plaintiff's gross bi-monthly salary;
- d) Participation in the Defendant's health insurance scheme.

6. By a Memorandum dated 30 December 2002 the Defendant purported to extend the Plaintiff's probationary period under the employment contract for a period of 3 months ending on 31 March 2003. The Plaintiff will contend that the Memorandum dated 30

December was ineffective to extend the probationary period under the employment contract since,

- a) the Plaintiff did not agree to such an extension;
- b) under the provisions of the Labour Law (2001 Revision) the probationary period under a contract of employment may not exceed 6 months in duration.

7. The Plaintiff will therefore contend that the effect of the Memorandum of 30 December 2002 was to confirm the Plaintiff in his employment.

8. By a further Memorandum dated 3 January 2003 the Defendant summarily terminated the Plaintiff's employment. The said termination was wrongful and in breach of the employment contract for the following reasons:

- (a) On the date the Memorandum of 3 January, 2003 was issued the Plaintiff's employment may only have been terminated in accordance with the terms of the employment contract;
- (b) The Defendant failed to give the Plaintiff one month's notice of termination as required by the employment contract or, in lieu of notice, to pay the Plaintiff the salary and commission the Plaintiff would have earned for a period of one month;
- (c) No grounds existed in accordance with the terms of the employment contract for the summary termination of the Plaintiff's employment.

9. Despite demand the Defendant has failed to pay to the Plaintiff the sums to which the Plaintiff is lawfully entitled pursuant to the wrongful termination of the Plaintiff's employment. As a consequence the Plaintiff has suffered loss and damage.

PARTICULARS

	CI\$
1 month's pay inclusive of anticipated commission earnings in lieu of notice	4,000.00
Basic salary due and unpaid for period ending December 31, 2002	1,503.88
Salary due and unpaid for the period 1 January, 2003 through 7 January, 2003	576.75
Outstanding commissions due on property in The Shores (\$67.50) and Beachcomber Condo (\$67.50)	135.00
Refund of Health Insurance premium paid for the month of January, 2003	241.00
Employer's contribution to Pension Fund which was unpaid	<u>1,099.16</u>
	<u>7,555.79</u>

AND THE PLAINTIFF CLAIMS:

1. Damages.
2. Interest pursuant to section 34 of the Judicature Law (1995 Revision).
3. Costs to be taxed.

If within the time for returning Acknowledgement of Service the Defendant pays to the Plaintiff's Attorneys-at-Law the total amount claimed of CI\$7,555.79 together with interest and costs of CI\$2,000.00 all further proceedings will be stayed.

Dated the 4th day of July 2003

Quin & Hampson
QUIN & HAMPSON
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And To: Evans & Oracle Housing Inspectors and
Property Management Ltd.
P.O. Box 30847
Seven Mile Beach
Grand Cayman

THIS WRIT was issued by Messrs. Quin & Hampson, Attorneys-at-Law for the Plaintiff whose address for service and correspondence is P.O. Box 1348, Third Floor, Harbour Centre, George Town, Grand Cayman, 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 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 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.

BETWEEN: NEIL SMITH Plaintiff

AND: EVANS & ORACLE HOUSING INSPECTORS AND PROPERTY MANAGEMENT LTD. Defendant

ACKNOWLEDGMENT OF SERVICE

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.

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.