

IN THE GRAND COURT OF THE CAYMAN ISLANDS

630 ✓
CAUSE NO. OF 2003

BETWEEN:

BCQS LIMITED

Plaintiff

-AND-

(1) MARTYN C. W. BOULD
(2) CLASSIC HOMES LTD

Defendants



WRIT OF SUMMONS

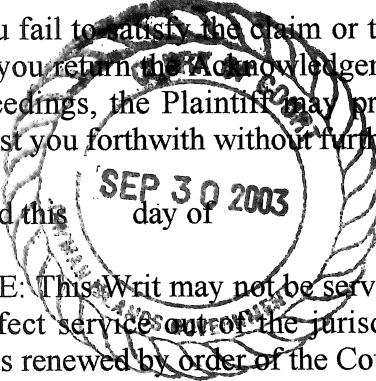
TO: MARTYN C. W. BOULD
P.O. Box 1489 GT
George Town, Grand Cayman
Cayman Islands, B.W.I.

AND TO: CLASSIC HOMES LTD
C/O Registered Office
K. Corporate Services Ltd.
P.O. Box 1371 GT
4th Floor Genesis Building
George Town, Grand Cayman
Cayman Islands, B.W.I.

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 (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 495 GT, Grand Cayman, Cayman Islands, 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  day of 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 issued unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Services are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is a company, which carries on business as quantity surveyors, project managers, appraisers and development consultants. It is a company incorporated in the Cayman Islands and its registered office is in care of K. Corporate Services Ltd, 4th Floor Genesis Building, Jennet Street, P.O. Box 1371 GT, George Town, Grand Cayman.
2. At all material times, the First Defendant was a director and employee of the Plaintiff.
3. The Second Defendant is an entity, which is owned and/or controlled by the First Defendant. It is a company incorporated in the Cayman Islands and its registered office is in care of K. Corporate Services Ltd, 4th Floor Genesis Building, Jennet Street, P.O. Box 1371 GT, George Town, Grand Cayman.
4. As a director and employee of the Plaintiff, the First Defendant owed to the Plaintiff the following duties, *inter alia*:
 - (a) a duty to act bona fide in the interests of the Plaintiff;
 - (b) a duty to act for the proper purposes of the Plaintiff in relation to its affairs;
 - (c) a duty not to make a secret profit;
 - (d) a duty to undertake his work with reasonable care and skill;
 - (e) a duty to render honest and faithful service, which includes a duty to devote his time working to the interests of the Plaintiff;
 - (f) a duty not to act in such a manner as to destroy the relationship of mutual trust and confidence between himself and the Plaintiff;
 - (g) a duty to discharge his fiduciary duty to the Plaintiff in his capacity as a director;
 - (h) a duty not knowingly to mislead the Board.
5. In 1998 the Plaintiff began working for Carribeus Architectural Development Ltd (hereinafter "Carribeus") and L.E. Bell Construction Company Ltd (hereinafter "Bell") in connection with a project known as Cayman Grand Harbour (hereinafter "the Development").
6. In or about November 1999 the First Defendant unknown to the Plaintiff entered into discussions with Carribeus and Bell in which it was intended that the First Defendant (and not the Plaintiff) would be retained to do works for the Development. These discussions culminated in a written agreement between Carribeus, Bell, and the First Defendant who identified himself as "Martyn C.W.

Bould and Associate” in the agreement. The agreement provided for substantial fees to be paid to the First Defendant which included among other terms, the sum of C1\$ 8,000.00 per month along with a sum equal to 5 percent of the value of any part of the Development that was sold.

7. The Plaintiff was not made aware of the above agreement by the First Defendant or at all. On the contrary the First Defendant represented to the board and to the other directors of the Plaintiff that he was still working for Carribeus and Bell on the Plaintiff’s behalf. The First Defendant continued to record his time spent on the Development with the Plaintiff. When asked by the board and the other directors of the Plaintiff about rendering a bill with respect to services provided for the Development the First Defendant stated the works he was doing were in effect promotional works for the Plaintiff and should not be invoiced.
8. In late November 2002, the Plaintiff became aware that the First Defendant had received some compensation personally in connection with the works done by the First Defendant on the Plaintiff’s behalf with Bell and/or Carribeus. The compensation had been provided by way of site fill that had been used on the First Defendants property, which was paid for by Bell and/or Carribeus.
9. In entering into the agreement with Bell and Carribeus and by taking compensation personally the First Defendant was in repudiatory breach and/or breached each of the above terms of his contract and duties as a director in that he acted:
 - (a) *Mala fide* and against the interests of the Plaintiff; and/or
 - (b) For improper purposes in relation to the affairs of the Plaintiff, which included working for himself when he should have been working for the Plaintiff;
 - (c) In breach of trust and/or in breach of his obligations as Director and/or employee of the Plaintiff in that he contracted to make a secret profit at the expense of the Plaintiff;
 - (d) In breach of trust and/or in breach of his obligations as a Director of the and/or employee of the Plaintiff as he received personally compensation which was due to the Plaintiff.

Particulars

- (1) The First Defendant was a Director and employee of the Plaintiff;
- (2) Bell and Carribeus had hired the Plaintiff to do works in connection with the Development;

- (3) The First Defendant entered into an agreement with Bell and Carribeus which was intended to profit the First Defendant directly, and/or "Martyn C.W. Bould and Associate" directly, and not the Plaintiff.

The Plaintiff avers that each breach constituted gross misconduct.

10. As a result of the matters set forth above and when the Plaintiff became aware of the written agreement between the First Defendant and Bell and Carribeus, in December 2002 the Plaintiff accepted the First Defendant's repudiatory breaches and/or terminated his contract of employment and directorship for gross misconduct.
11. By reason of the matters pleaded above the Plaintiff has suffered loss and damage.

Particulars

- (1) Loss of profit in connection with the works done by the First Defendant for Bell and Carribeus;
 - (2) The Plaintiff has paid the First Defendant for works that the First Defendant claimed to be for the benefit of the Plaintiff but were in fact for the benefit of himself.
 - (3) The Plaintiff has also lost all the time spent by the First Defendant working for himself personally when he should have been working for the Plaintiff and all the lost opportunities for obtaining and/or keeping profitable work for the Plaintiff.
 - (4) The First Defendant is obliged to account as a trustee to the Plaintiff for all sums earned by him during his employment and directorship outside his proper remuneration from the Plaintiff.
12. During the course of the First Defendant's employment with the Plaintiff he incurred certain expenses for services and disbursements performed and incurred by the Plaintiff which are presently due and owing from the First Defendant. The Second Defendant also engaged the services of the Plaintiff and there are also outstanding fees owing from the Second Defendant to the Plaintiff.

Particulars

First Defendant

Invoice No.	Amt.	Description
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18346	44.72	Disbursements
18378	8.44	Disbursements
18495	30.83	Disbursements
18564	100.00	Disbursements
18929	201.16	Disbursements
18996	215.83	Disbursements
19041	7,497.00	Disbursements
19042	687.35	Disbursements
19043	59.76	Disbursements
19045	1,050.00	Disbursements
18262	US\$ 5142.11	Professional Services
18261	US\$ 1.235.00	Professional Services

Second Defendant

Invoice No.	Amt.	Description
18358	33.48	Disbursement
18308	1,921.87	Project Management
18171	1,086.55	Project Management
18392	1,500.00	Professional Services
18672	45.00	Disbursements
18454	400.00	Professional Services
18487	125.25	Disbursements
18565	153.83	Disbursements
0246	4,510.00 (US\$5,500.00)	Structural Design

13. It was a term of the First Defendants employment with the Plaintiff that he would be entitled to 25 days of paid vacation. In breach of this terms the First Defendant took 55 vacation days. The Plaintiff is accordingly entitled to be reimbursed for the 30 vacations days for which the First Defendant was paid but were well in excess of his entitlement.

Particulars

The First Defendant's employment and directorship came to an end and/or was terminated on the 13th day of December 2002. His daily salary was CI\$369.23.


December 2002 pay due – 13 days @369.23 =	(4,799.99)
Excess Vacation days - 30 days @369.23 =	11,076.90
	<hr/> 6,276.91

14. The Plaintiff has sent formal demands for payment for the amounts claimed in paragraph 11 and 12 above (CI\$ 25,929.98 & US\$6,377.11) to the Defendants however they have refused or otherwise failed to pay.
15. The Plaintiff further claims against the Defendants interest pursuant to the s.35 of the Judicature Law (1995 Revision) and/or the rules of equity, on the sums claimed at such rate or for such period as to the Court shall seem just.

AND THE PLAINTIFF claims:

- (1) Damages;
- (2) An account of all sums received and/or made by the First Defendant through his agreement with Bell and Carribeus;
- (3) Payment of all sums found to be due to the Plaintiff on taking the account at (2) above;
- (4) A declaration that the First Defendant was in repudiatory breach of his contract of employment and that the Plaintiff was entitled to accept that repudiation and/or that the Plaintiff was entitled to dismiss the First Defendant as an employee and as a director for gross misconduct;
- (5) A declaration that the contract between the Defendant and Bell and Carribeus is assigned to the Plaintiff.
- (6) Interest pursuant to the s.35 of the Judicature Law (1995 Revision) and/or the rules of equity, on the sums claimed at such rate or for such period as to the Court shall seem just;
- (7) Costs;
- (8) Such further or other relief as the Court thinks just.

Dated this 30th day of September, 2003.



BROADHURST DaCOSTA
Attorneys-at-law for the Plaintiff

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. 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 to the Law Courts, PO Box 495, George Town, Grand Cayman.

2. A Defendant *who states in his Acknowledgement of Service* that he intends *to contest the proceedings also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is not endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 judgement 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 fourteen (14) days after his Acknowledgement, 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.

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 fourteen (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 "Palmer 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 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 authorized to act on behalf of the Company, but the Company can take no further steps in proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

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Plaintiff

-AND-

(1) MARTYN C. W. BOULD
(2) CLASSIC HOMES LTD

Defendants

ACKNOWLEDGEMENT 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 judgement 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 judgement entered by the Plaintiff (*tick box*)

Yes []

Service of the Writ is acknowledged accordingly

(signed) _____

[Attorney] for

[Defendant in Person]

Address for service:

Please see 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 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.

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

BROADHURST DACOSTA
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503 GT
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, BRITISH WEST INDIES

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

[Empty box for Defendant's Attorney endorsement]