

IN THE GRAND COURT OF THE CAYMAN ISLANDS

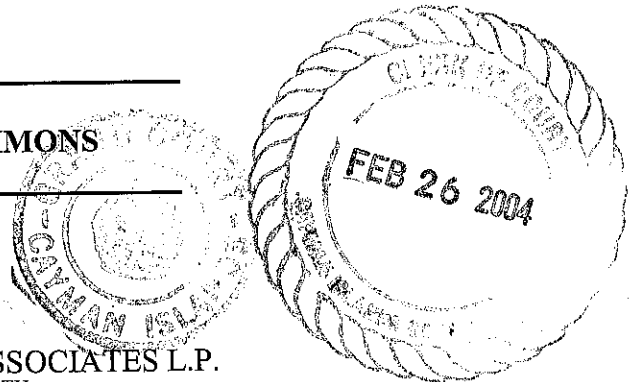
CAUSE NO. ^{PC} OF 2004

BETWEEN BARBARA MACDONALD PLAINTIFF

AND: WESTSPHERE CAPITAL ASSOCIATES L.P. FIRST DEFENDANT

AND: WESTSPHERE CAPITAL INC SECOND DEFENDANT

WRIT OF SUMMONS



TO THE FIRST DEFENDANT:

WESTSPHERE CAPITAL ASSOCIATES L.P.
 444 MADISON AVENUE, 34TH FLOOR
 NEW YORK 10022
 UNITED STATES OF AMERICA

TO THE SECOND DEFENDANT:

WESTSPHERE CAPITAL INC.
 444 MADISON AVENUE, 34TH FLOOR
 NEW YORK 10022
 UNITED STATES OF AMERICA

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, P.O. Box 495 G.T., 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 26th day of February, 2004

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 is an individual who was at all material times resident in the Cayman Islands.
2. The First Defendant is a limited partnership constituted under the laws of the State of Delaware, United States of America. Its address is 444 Madison Avenue, 34th Floor, New York, USA 10022. The Second Defendant is the general partner of the First Defendant and also constituted under the laws of the State of Delaware, United States of America. Its address is also 444 Madison Avenue, 34th Floor, New York, USA 10022. The First Defendant was at all material times the sole shareholder of EMFA Ltd (“EMFA”) and FISCA Ltd (“FISCA”), both of which are companies incorporated in the Cayman Islands.
3. By an agreement made in June 1994 between the Plaintiff on the one part and EMFA and FISCA collectively on the other part, the Plaintiff entered into a contract of service with EMFA and FISCA by which the Plaintiff agreed to serve EMFA and FISCA as office manager and to provide such services as may be required in connection with their businesses. In consideration of such service as aforesaid EMFA and FISCA each paid the Plaintiff a salary.
4. The Plaintiff, EMFA and FISCA entered into a further agreement on 1st August 1998 (“the 1st August 1998 Agreement”) by which the Plaintiff agreed to continue to serve EMFA and FISCA as office manager and to provide such services as may be required in connection with their businesses. In consideration of the Plaintiff providing such services,

pursuant to clause 2 of this agreement, EMFA was to pay the Plaintiff a salary of CI\$3,360.00 per month and FISCA was to pay the Plaintiff a salary of CI\$1,440.00 per month. The amounts payable by EMFA and FISCA in respect of the Plaintiff's salary were subsequently increased by agreement.

5. Upon the coming into force of the National Pensions Law, EMFA and FISCA required to and did make contributions to the Plaintiff's pension fund.
6. By Clause 9 of the 1st August 1998 Agreement it was provided that "*This Agreement is terminable by either party on eight weeks notice.*"
7. By an agreement between the First Defendant and EMFA and FISCA, the terms of which are evidenced by a letter dated 6th February 2002 sent by the First Defendant to the directors of EMFA and FISCA, the First Defendant agreed to meet all the contractual and financial obligations of EMFA and FISCA from that date including the obligation under the 1st August 1998 Agreement to pay the Plaintiff's salary and pension contributions.
8. The Plaintiff consented to the transfer of the obligations to pay her salary and pension contributions so that a new agreement between the Plaintiff and the First Defendant came into existence whereby the First Defendant became liable to the Plaintiff to meet the financial obligations owed to the Plaintiff under the 1st August 1998 Agreement.
9. In addition to the terms of the 6th February 2002 letter, the Plaintiff relied on numerous oral representations made to her by representatives of the First and/or Second Defendants that, inter alia, her salary and pension contributions would be paid by the First and/or Second Defendants.
10. Pursuant to the terms of the 1st August 1998 Agreement (as amended) and the representations referred to in paragraph 9 above, the Plaintiff continued to serve EMFA and FISCA as office manager.

11. Since November 2002, the First Defendant has, in breach of its agreement with the Plaintiff, failed to pay the Plaintiff her salary or pension contributions.
12. It was a further implied term of the 1998 Agreement (as amended) that the First Defendant would place the Plaintiff in funds to enable her to pay the fee for her work permit to cover the period 1st August 2003 to 1st August 2004. In breach of this implied term, the First Defendant did not provide such funds to the Plaintiff and she was therefore unable to be lawfully employed by EMFA and FISCA after 1st August 2003. In failing to provide the said funds the First Defendant caused the constructive dismissal of the Plaintiff on 31st July 2003.
13. In further breach of the 1st August 1998 Agreement (as amended) the First Defendant failed to give the Plaintiff eight weeks notice of the termination of her employment or any such notice.
14. By reason of the First Defendant's repudiation and/or breach of contract, the Plaintiff has suffered loss and damage and, further, pursuant to the Cayman Islands Labour Law (2001 Revision), is entitled to payments by way of severance pay and for unfair dismissal.

PARTICULARS

- 14.1. Unpaid wages November 2002 – July 2003 (9 months at US\$6,497.55 per month): total US\$58,477.95;
- 14.2. Unpaid pension November 2002 – July 2003 (9 months at US\$324.88 per month): total US\$3,248.80;
- 14.3. Severance pay - one week's wage (US\$1,499.43) for each complete year of employment (nine years): total US\$13,494.87;

- 14.4. Unfair dismissal pay – one week’s wage (US\$1,499.43) for each complete year of employment (nine years); total US\$13,494.87;
- 14.5. Wages in lieu of notice – one weeks’ wage (US\$1,499.43) for each week of notice required (eight weeks): total US\$11,995.44.
- 14.6. The Total amount claimed at paragraphs 14.1 to 14.6 inclusive is US\$100,711.93.
15. As general partner of the First Defendant the Second Defendant is liable for any liabilities of the First Defendant and is therefore also liable to the Plaintiff for the sums set out in paragraph 14 above.
16. Further, pursuant to Section 34 (1) of the Judicature Law (2002 Revision) and the Judgment Debts (Rates of Interest Rules) 2001 and 2003 the Plaintiff also claims interest at the rate of 6.25% per annum from 1st August 2003 until 31st August 2003 inclusive (31 days at US\$17.25 per day, a total of US\$534.75) and interest at the rate of 3% per annum from 1st September 2003 until judgment or sooner payment (as at the date of the issue of the Writ of Summons being 179 days at US\$8.28 per day, being a total of US\$1,482.12, the total amount of interest claimed as at the date of the issue of the Writ of Summons being US\$2,016.87.

AND THE PLAINTIFF CLAIMS


1. Damages for breach of contract, and, further pursuant to the Cayman Islands Labour Law (2001 Revision), payments by way of severance pay and for unfair dismissal.
2. Interest, pursuant to Section 34 (1) of the Judicature Law (2002 Revision) and the Judgment Debts (Rates of Interest Rules) 1995 at the rate of 6.25% per annum from 1st August 2003 until 31st August 2003 inclusive (31 days at US\$17.25 per day, a total of US\$534.75) and interest at the rate of 3% per annum from 1st September 2003 until judgment or sooner payment (as at the date of the issue of the Writ of Summons being

179 days at US\$8.28 per day, a total of US\$1,482.12. The total amount of interest claimed as at the date of the issue of the Writ of Summons is US\$2,016.87.

3. Costs.

If within the time for returning the acknowledgment of service form the Defendant pays the total amount claimed of **US\$100,711.93** plus interest in the sum of US\$2,016.87 and interest calculated at the rate of US\$8.28 per day from the date of the issue of the Writ of Summons until payment, plus the sum of CI\$1,025.84 in respect of fees, and in addition the Plaintiff's fixed costs, in the sum of CI\$500.00, further proceedings will be stayed. The funds must be paid to the Plaintiff's attorneys.

Dated this 26th day of February 2004



CAMPBELLS
Attorneys at Law for the Plaintiff

THIS WRIT OF SUMMONS is filed by Campbells., Attorneys at Law for the Plaintiff herein, whose address for service is 4th Floor, Scotiabank Building, George Town, Grand Cayman, Tel: (345) 949 268 Fax: (345) 949 8613 (Ref: JRM/MDJ/10933)

BETWEEN **BARBARA MACDONALD** **PLAINTIFF**

AND: **WESTSPHERE CAPITAL ASSOCIATES L.P.** **FIRST DEFENDANT**

AND: **WESTSPHERE CAPITAL INC** **SECOND DEFENDANT**

**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 judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

2. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged –

3. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

yes no

4. 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 no N/A

Service of the Writ is acknowledged accordingly

Address for service:
 CAMPBELLS
 ATTORNEY –AT –LAW
 P.O.BOX 884 GT
 GRAND CAYMAN
 CAYMAN ISLANDS [REF: JRM/MDJ/10933]

NOTES ON ADDRESS FOR SERVICE

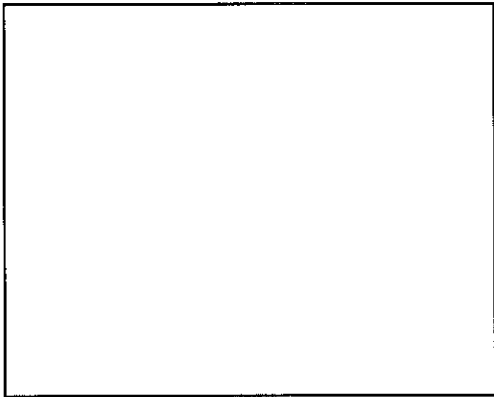
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

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.

**Campbells (Ref: JRM/MDJ/10933)
P.O. Box 884 G.T.
George Town
Grand Cayman**

**Tel: (345) 949 2648
Fax: (345) 949 8613**



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 495, 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.