

IN THE GRAND COURT OF THE CAYMAN ISLANDS

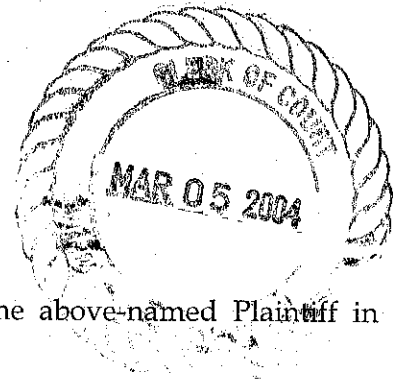
CAUSE NO. 139 OF 2004

BETWEEN: BANK OF BUTTERFIELD INTERNATIONAL
(CAYMAN) LTD. PLAINTIFF
AND: GRAIL HOLDINGS DEFENDANT

WRIT OF SUMMONS



TO: GRAIL HOLDINGS
c/o Its Registered Office
Walker House
P.O. Box 265 GT
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, PO Box 495G, 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 5th day of March, 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 ("the Bank") is a Class "A" Bank licensed to carry on commercial banking business within the Cayman Islands.
2. The Defendant ("Grail") is an exempted company incorporated in the Cayman Islands with limited liability under the Companies Law and has its registered office at Walker House, P. O. Box 265 GT, Grand Cayman.
3. The Bank provides to Electronic Commerce ("E-Commerce") merchants an Internet processing service whereby the Bank on behalf of the E-Commerce merchant processes credit card transactions completed over the Internet and receives payment for the goods or services sold. This service provided by the Bank is known as "Web P@y".
4. E-Commerce merchants who use the Web Pay service are required by the Bank to enter into an Electronic Commerce Merchant Agreement ("the Web P@y Agreement") which sets out the terms and conditions of the Web Pay service. The merchant is also required to sign and accept the General Regulations and Conditions for Conducting Business with [the Bank] ("the General Regulations and Conditions").
5. At all material times the directors and ultimate beneficial shareholders of Grail have been Michael A. Reinstein and Brian Kelly, ("Grail's principals"), both of 2045 Mariposa Avenue, El Segundo, California 90245, U.S.A. Grail's principals are also the ultimate beneficial owners of Promenade Communications, LLC ("Promenade") a limited liability company in California.

6. Promenade carries on the business of the development and sale of fee based membership programmes. The nature of Promenade's business is that it aggregates the buying power of its members who by virtue of their membership in the programme are entitled to discounts on various products and services provided by third party providers. These goods and services include healthcare services such as prescription drugs and healthcare; financial services such as insurance and legal services; retail discounts from national retail chains and restaurants; consumer products such as premium brand merchandise; and travel, accommodation and car rental expenses. Promenade operated an Internet website called www.netpromenade.com.
7. Subscribers to Promenade's programmes are acquired both by telemarketing techniques and over its Internet website. New members are offered a free trial period. If, after the completion of that trial period the member does not notify Promenade that he does not wish to continue his membership the member's credit card is debited with an annual membership fee. Annual membership is automatically renewed unless the member notifies Promenade that he wishes to terminate his membership. Membership is automatically renewed at the end of each term (billing is again direct to the member's credit card) unless the member notifies Promenade that he wishes to terminate his membership.
8. By a Web P@y Agreement dated 10 May 2001 the Bank agreed to provide Web P@y service to Grail subject to the terms and conditions of the Agreement. Grail also accepted the General Regulations and Conditions. Grail is identified in the Web P@y Merchant Agreement as "the Merchant".
9. Pursuant to the Web P@y Agreement, "the Merchant" agreed to sell its service and accept payment by credit cards issued by VISA U.S.A. Inc or Visa International ("Visa")

on the one hand or by MasterCard International ("MasterCard") on the other hand. The Bank would then obtain authorisation, process and settle payment for the Merchant's transaction through the Visa or MasterCard interchange system.

10. Based on the documentation submitted by or on behalf of Grail at the time of the application to become a Web P@y Merchant, it was understood by the Bank that the transactions to be processed under the Web P@y Merchant Agreement related mainly to the sale of Promenade's membership programmes.
11. Having regard to the nature of the transactions being processed pursuant to Web P@y Agreement, Grail, Grail's Principals and Promenade all knew that a number of customers who purchased Promenade's membership programmes would request cancellation of the programme and that many such requests would be made subsequent to the cardholder's Visa or MasterCard being billed for the service. In such an event, the cardholder or the bank which used his credit card would seek to have the charge to the member's credit card reversed. This is referred to in the Web P@y Agreement as a "chargeback".
12. To the knowledge of Grail, Grail's principals and Promenade, where the merchant under a Web P@y Agreement fails to justify any charge which is the subject of a cardholder's request for a chargeback, the Bank, as the processing bank, is required by its obligations to Visa and MasterCard, to pay the amount of the chargeback. Under the terms of the Web P@y Agreement "the Merchant" is liable to indemnify the Bank for any chargebacks paid by the Bank.
13. By Clause 12 of the Web P@y Agreement, "the Merchant" is required to maintain funds on a deposit account with the Bank, which account is designated specifically for, inter

alia, the settlement of any obligations that arise by way of chargebacks and potential chargebacks. By clause 13c. of the Web P@y Agreement, "the Merchant" agreed to indemnify the Bank against any claim or liability arising in respect of the Web P@y Agreement.

14. The first transactions under the Web P@y Agreement were processed in August, 2001. The transactions were processed on behalf of the Bank by First Data Merchant Services Corporation ("FDMS"), a Florida corporation.
15. Commencing in September 2001 and continuing in the months following, there was a large number of chargebacks arising from the transactions processed pursuant to the Web P@y Agreement. The Bank paid the chargebacks in accordance with the Bank's obligations to Visa and MasterCard. The Bank was also required by Visa to pay fines levied on the Merchant by Visa due to a high number of chargebacks arising from the transactions processed under the Web P@y Agreement.
16. The Bank charged the amounts of the chargebacks and fines to Grail's chargeback account maintained pursuant to clause 12 of the Web P@y Agreement. The account had insufficient funds to satisfy the chargebacks and fines and became significantly overdrawn.
17. By facsimile transmission dated 22 March 2002 the Bank terminated the Web P@y Agreement and by letter dated 12 April 2002 the Bank demanded payment of the balance then outstanding on Grail's overdrawn chargeback account and requested a further deposit of US\$200,000.00 to cover future estimated chargebacks and fines.

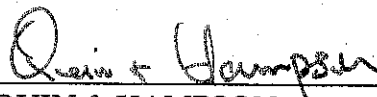
18. As at 16 February 2004 the overdrawn balance on Grail's account stood at US\$452,000.06. The said balance of US\$452,000.06 includes interest of US\$29,176.86. Interest continues to accrue on the sum of US\$452,000.06 at the rate of 11% per annum or at a daily rate of US\$138.11 from 16 February 2004 to the date of payment.
19. Under the terms of the Web P@y Agreement in the event of a claim by the Bank against Grail arising from the Web P@y Agreement, Grail is liable to indemnify the Bank in respect of the Bank's legal fees and expenses on a full indemnity basis.

THE PLAINTIFF THEREFORE CLAIMS AGAINST THE DEFENDANT:

1. The sum of US\$452,000.06;
2. Interest on the sum of US\$452,000.06 at the rate of 11% per annum from the 16 February 2004 to the date of payment or alternatively interest pursuant to Section 34 of the Judicature Law (1995 Revision) at the rate of 3% per annum from the date hereof to the date of judgment or sooner payment.
3. Costs on a full indemnity basis to be taxed if not agreed or, alternatively, fixed costs in the sum of CI\$2,903.20.

If within the time for returning Acknowledgement of Service the Defendant pays to the Plaintiff's Attorneys-at-Law the total amount claimed of US\$452,000.06 together with interest and costs of CI\$2,903.20 all further proceedings will be stayed.

Dated the 5th day of March 2004



QUIN & HAMPSON
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And To: Grail Holdings
c/o Its Registered Office
Walker House
P.O. Box 265 GT
Grand Cayman

THIS WRIT was issued by Messrs. Quin & Hampson Attorneys-at-Law for the Plaintiff, whose address for service is Harbour Centre, Third Floor, PO Box 1348, 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: BANK OF BUTTERFIELD INTERNATIONAL (CAYMAN) LTD. Plaintiff

AND: GRAIL HOLDINGS 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.

Messrs. Quin & Hampson
Attorneys-at-Law
Third Floor, Harbour Centre
PO 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.

[Empty box for defendant's attorney indorsement]