

IN THE GRAND COURT OF THE CAYMAN ISLANDS

422
CAUSE No. of 2004

BETWEEN:

OWEN PREHAY

PLAINTIFF

AND:

FLOWER POWER LIMITED ✓

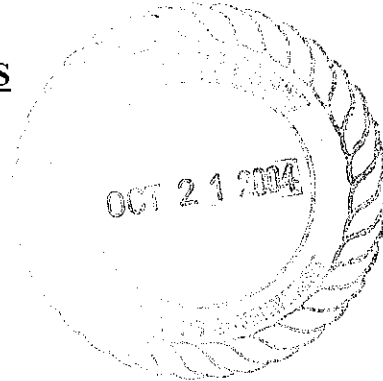
DEFENDANT



WRIT OF SUMMONS

TO:

Power Flower Limited
P.O. Box 30595 SMB
Grand Cayman
Cayman Islands



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 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: 20th October 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

The Parties

1. The Plaintiff, Owen Prehay, a Caymanian citizen of George Town, Grand Cayman, was at all material times an employee of the Defendant, Power Flower Limited.
2. The Defendant, Power Flower Limited, of P.O. Box 30595 SMB, Grand Cayman, Cayman Islands at all material times is a locally registered company in Grand Cayman, Cayman Islands, which employed the Plaintiff for approx eight years, as a landscaper and gardener. i.e. from October 18,1996.

The Employment Contract

3. On 5th March 2004, the Plaintiff was given notice of termination by the Defendant and paid off. The Plaintiff claims that the termination of his contract of employment was because he refused to sign a letter acknowledging that he would defer overtime payment in accordance with section 26 Labour Law (2001 Revision). The Defendant claims poor performance as the reason for the dismissal. S.26 Labour Law (2001 Revision) makes provision for non-managerial employees to agree with their employer that no overtime will be paid by the employer for the extra hours worked by an employee provided that such an agreement shall be requested by the employee and entered into voluntarily by the employee. The agreement must be in writing, and registered with the Labour Tribunal, who must ratify the agreement.
4. No such agreement between the Plaintiff and the Defendant exists, and on termination of the Defendant's employment he was not paid either overtime pay or severance pay as was his entitlement. On further research it would appear that overtime pay was never paid to the Plaintiff during his eight years of service with the Defendant.
5. It was *inter alia* an express and or implied term of the Plaintiff's employment contract at common law that he be paid overtime at the rate of 1.5 hours x the employees basic hourly rate for hours worked in excess of the statutory work week of 45 hours. The Defendant also had a statutory duty to pay employees overtime in accordance with the Labour Law (2001 Revision).
6. In breach of the said express and or implied term of the employment contract and in breach of the Defendants statutory duty, the Plaintiff has suffered loss and damage.

Particulars of Breach of Contract

7. Failure to pay overtime pay for the period 1st January 2004, to 5th March 2004, to be assessed.

8. Failure to pay overtime pay for the period 18 October 1996 to 31 December 2003, to be assessed.
9. Further, the Plaintiff claims pre-judgment and post judgement interest (if applicable) pursuant to the Judicature Law.

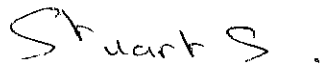
Particulars of Breach of Statutory Duty

10. Failure to comply with s.26 and s.27 (1) (2) Labour Law (2001 Revision) which states that Overtime pay *shall, unless the employer and the employee agree in writing to the contrary, consist of at least one-and-one half times an employee's basic hourly wages per hour.*

And the Plaintiff Claims

- A. Overtime pay to be assessed for the period 1 January 2004 to 5 March 2004
- B. Overtime pay for the years 18 October 1996 to 31st December 2003, such overtime to be assessed in accordance with the Defendants employment records and the discretion of the court.
- C. Further and alternatively, damages;
- D. Prejudgment and post judgment interest in accordance with the Judicature Law ;
- E. Attorney's costs and Court filing fees of this action; and
- F. Such further and other relief as this Honourable Court may deem to be just.

Dated: 20 October 2004



Stuarts
Attorneys at Law for the Plaintiff

This Order was filed by Stuarts, Attorneys-at-Law for the Plaintiff whose address for service is Cayman Financial Centre, 36A, Dr. Roy's Drive, P.O. Box 2510 GT, Grand Cayman, Cayman Islands, IB/ 0714.

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 each Defendant or by each 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 instalments or otherwise.

See over for notes for guidance
Please complete overleaf

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 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.

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BETWEEN: OWEN PREHAY PLAINTIFF
AND: FLOWER POWER LIMITED 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 communication 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.

Stuarts
Attorneys-at-Law
Cayman Financial Centre
36A Dr. Roy's Drive
P.O. Box 2510 GT
George Town
Grand Cayman

Ref: IB/0714
Attention: Irvin Banks

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

