

IN THE GRAND COURT OF THE CAYMAN ISLANDS

350
CAUSE NO. OF 2005

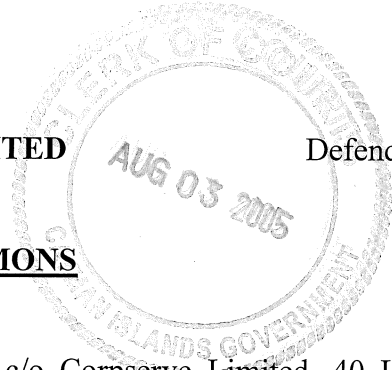
BETWEEN:



SHANE RUTHERFORD

Plaintiff

AND:



WESTTEL LIMITED

Defendant

WRIT OF SUMMONS

To: WestTel Limited whose registered office is c/o Corpserve Limited, 40 Linwood Street, George Town, 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 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 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 4th day of August 2005

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

[Note: All figures are in CI dollars]

1. By a letter dated 10 March 2004, the Defendant offered the Plaintiff employment as Director, Sales & Marketing. On 19 March 2004, the Plaintiff accepted that offer by counter-signing a copy of the said letter. The contract of employment resulting from the Plaintiff's acceptance of the Defendant's offer is hereinafter referred to as "the Contract".

2. The terms of the Contract, as contained in the said letter, included the following:
 - (1) By clause 1, the Plaintiff's starting salary was \$63,000 gross per annum. The Plaintiff's performance was to be reviewed after six months of employment and salaries were to be reviewed periodically based on job performance, skills and market conditions.

 - (2) By clause 2, the Plaintiff was to have the opportunity, based on achieving 100% of his plan, of earning a further \$63,000 gross per annum by way of commission. The Plaintiff was to have a \$63,000 draw account to be paid against future earned commissions.

 - (3) By clause 13.1, the length of notice of termination of employment which the Plaintiff was entitled to receive from the Defendant was three months. The Defendant might also pay three months severance in lieu of notice.

3. From the commencement of his employment until the end of March 2005, the Plaintiff earned not less than \$10,500 per month consisting of \$5,250 base salary and \$5,250 draw.

4. By letter dated 1 April 2005, the Defendant determined the Plaintiff's employment pursuant to clause 13.1 on the Contract and stated that it would pay three months' remuneration, pension and health benefits, as well as any accrued vacation, in lieu of notice, and commission for March 2005, as follows:

Payment in lieu of notice:	\$16,500.00
Accrued vacation of 17 days:	\$ 3,073.97
Commission for March 2005:	<u>\$ 7,105.32</u>
Total:	\$26,679.29

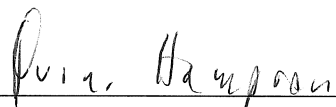
5. The figure of \$16,500, based on an annual rate of \$66,000 or a monthly rate of \$5,500, is incorrect. Had the Plaintiff worked out his notice period, then, on the basis of his performance since the date of the Contract, he would have earned \$10,500 per month. Accordingly, the correct figure for remuneration in lieu of notice is \$31,500 and the total amount due to the Plaintiff, as at 1 April 2005, is \$41,679.29.
6. By a letter dated 4 April 2005, the Defendant wrongly accused the Plaintiff of repudiating the Contract and purported to accept such alleged repudiation. In the said letter, the Defendant further alleged, wrongly, that no further monies were required to be paid by the Defendant to the Plaintiff.
7. The letter dated 4 April 2005 was ineffective to relieve the Defendant of his obligation to pay the Plaintiff the sum of \$41,679.29 referred to paragraph 6 above. In that regard, the Plaintiff will contend that:
- (1) the Defendant had already terminated the Contract on 1 April 2005 and could not terminate it again; alternatively

- (2) there were no grounds for alleging that the Plaintiff had repudiated the Contract; alternatively
 - (3) the acceptance of any such repudiation would not relieve the Defendant of its pre-existing obligation to pay the Plaintiff the sum of \$41,679.29.
8. The Defendant has not paid the Plaintiff the said sum of any part thereof.
 9. The Plaintiff claims interest pursuant to Section 33 of the Judicature Law (2004 Revision) on the said sum of \$41,679.29 at the statutory rate from 1 April 2005 until judgment.

AND the Plaintiff claims:

1. CI\$41,679.29;
2. Interest on the said sum pursuant to Section 33 of the Judicature Law (2004 Revision) at the statutory rate from 1 April 2005 until judgment.
3. Costs.

DATED this 4th day of August 2005



QUIN & HAMPSON
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And to: The Defendant
WestTel Limited
c/o Corpserve Limited
40 Linwood Street,
George Town, Grand Cayman

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 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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 350 OF 2005

BETWEEN: SHANE RUTHERFORD Plaintiff

AND: WESTTEL 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 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.

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

[Empty box for defendant's attorney indorsement]