

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 417 OF 2005

BETWEEN:

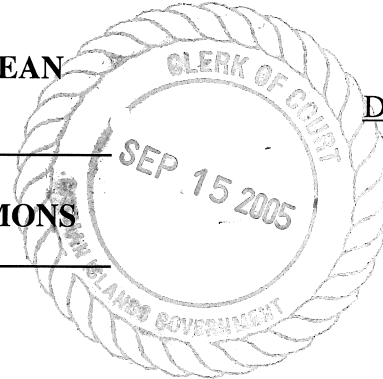
**RICHARD POTTER**

Plaintiff

- AND -

**DONALD MCLEAN**

Defendant



**WRIT OF SUMMONS**

TO: Donald McLean  
P.O. Box 453 GT  
Grand Cayman  
Cayman Island

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, P.O. Box 495GT, 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 15<sup>th</sup> day of September 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 issued unless renewed by order of the Court.

**IMPORTANT**

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

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## STATEMENT OF CLAIM

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1. On or about November 1998 the Plaintiff and the Defendant entered into a written agreement (the "Agreement") whereby the Defendant purchased from the Plaintiff shares in Harbour House Sails & Canvas Limited (the "Company"). The Company was in the business of the sail repairs and the provision and repair of marine upholstery.
2. The following were express terms of the Agreement:
  - (i) That the Defendant would purchase from the Plaintiff 60 of the 100 shares in the Company for the purchase price of US\$ 50,000. The payment of the US\$ 50,000 was to be paid over a two year period;
  - (ii) That the Defendant had an option to purchase the remaining 40 shares in the Company for US\$ 20,000 if the Plaintiff had not returned to reside within the Cayman Islands three years after the date of the Agreement;
  - (iii) That until the Defendant had exercised the option referred to above the Plaintiff would receive 40% of the net profits of the Company. Net profits was defined as the profit remaining after the deduction of wages, rent, telephone bills and materials necessary for the Company's business;
  - (iv) That the Plaintiff would be paid his share of the net profit every three months commencing on the 1<sup>st</sup> of March 1999.
3. The following were implied terms of the Agreement:
  - (i) That the Defendant would use his best endeavors to run the business profitably as a going concern and that he would not dispose of the assets of the Company or abandon it as a business vehicle for the enterprise;
  - (ii) That the Defendant would cause the Company to maintain proper accounts and records in order that the Plaintiff's share of the net profits could be calculated and that the Defendant would provide copies of these account to the Plaintiff.
4. In any event, as a co-shareholder and or co-director he owed a duty to the Plaintiff to use his best endeavors to run the company properly and to act bona fide in the interest of the Company and for proper purpose and not to make a secret profit.

5. Pursuant to the agreement, the Plaintiff transferred 60 shares to the Defendant and the Defendant paid the Plaintiff the US\$ 50,000 over the following two years. The Defendant also paid US\$ 2,000 to the Plaintiff in 1999 as the Plaintiff share of the profits.
6. In breach of the Agreement and or duty, the Defendant:
  - (i) Failed or otherwise refused to pay 40% of the net profits of the Company to the Plaintiff from January 2000 until the present;
  - (ii) Failed to cause the Company to maintain proper accounts and records and/or failed to provide the statement of the Company's accounts and records to the Plaintiff from December 1999 until present.
  - (iii) Abandoned the Company as a vehicle for running the business of the Company and transferred the assets and goodwill of the business to another entity or company in breach of his obligations to the Plaintiff and to the Company. Alternatively, the Defendant sold the assets of the Company and has wrongfully failed to provide the Plaintiff with 40% of the proceeds of that sale.

#### Particulars

In or about 2001 the business of the Company began operating under the name of "Windward Sailing and Canvas". The Plaintiff caused the employment of the Company's sole full time employee to the new entity. The Plaintiff further caused the assets and equipment of the Company to be transferred and used by the new entity. Further the Plaintiff caused the new entity to take over the premises where the Company had been doing business. The new entity continues to use the phone number which belonged to the Company and the entity has a listing in the Cayman Islands 2004-2005 Service Directory in which the Company's name is still listed with the phone number which is now used by the new entity.

Further the Plaintiff failed to pay the annual fees for the Company and/or failed to file the annual return for the Company and/or otherwise to keep the Company in good standing with the Register of Companies and thereby allowing the Company to be struck from the Register of Companies.

The Plaintiff reserves the right to plead further particulars upon discovery and when further inquiries have been completed.

7. As a result of the above the Plaintiff has suffered loss and damage.

Particulars of loss and damage

A 40% share of the net profit of the Company from January 2000 onwards. A 40% share of the net profits of the new entity from its inception onwards in the event that the new entity is beneficially owned by the Defendant. In the event that the Company or its assets were sold to an arms length purchaser then the Plaintiff claims a 40% share of the proceeds of that sale.

Full Particulars of the Plaintiff's loss will be provided in due course. The Plaintiff reserves the right to plead further particulars upon discovery and when further inquiries have been completed.

8. The Plaintiff also claims pre-judgment and post-judgment interest on the above as prescribed by the Judicature Law (1995 Revision) and the Judgment Debts (Rates of Interest) Rules.

AND THE PLAINTIFF claims:

1. The provision of a full and proper accounting of the Company from January 2000 onwards;
2. 40% of the net profit of the Company from January 2000 onwards;
3. Further or alternatively, 40% of the net profit of the new entity;
4. Damages;
5. Pre-judgment and post-judgment interest upon the said damages pursuant to the Judicature Law (1995 Revision) and the Judgment Debts rates of interest rules.
6. Costs.

Dated the 15<sup>th</sup> day of September 2005

BROADHURST BARRISTERS  
**Broadhurst Barristers**  
Attorney-at-law for the Plaintiff

This Writ of Summons and Statement of Claim is filed by Broadhurst Barristers, Attorneys-at-Law for the Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503 GT Grand Cayman, Cayman Islands.

**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 or sent by post 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 *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 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 not 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 "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 authorized to act on behalf of the Company, but the Company can take no further steps in the 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 417 OF 2005

BETWEEN:

RICHARD POTTER

Plaintiff

- and -

DONALD MCLEAN

Defendant

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ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS

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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.*

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

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  2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)  
Yes [ ] No [ ]

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  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 [ ]
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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 BARRISTERS  
ATTORNEYS-AT-LAW  
40 LINWOOD STREET  
PO BOX 2503 GT  
GEORGE TOWN, GRAND CAYMAN  
CAYMAN ISLANDS, BWI**

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