

IN THE GRAND COURT OF THE CAYMAN ISLAND

CAUSE NO. 446 of 2005

BETWEEN: DAVID HAWKINS PLAINTIFF

AND; HENRY MARSH FIRST
DEFENDANT

AND: MARSH SALVAGING LTD SECOND
DEFENDANT



WRIT OF SUMMONS

TO; Mr Henry Marsh

AND TO: Marsh Salvaging Ltd
c/o Mr Henry Marsh



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, George Town, Grand Cayman, 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 Judgement may be entered against you forthwith without further notice.

Issued this day of September 2005.

NOTE: This Writ may not be served later than 4 calendar months beginning with the date of the issue unless renewed by Order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form

STATEMENT OF CLAIM

- 1 The Plaintiff is a resident of the Cayman Islands and at the material time, he entered into a written Partnership Agreement with the Defendant.
- 2 The First Defendant is a resident of the Cayman Islands and at the material time, he entered into a written Partnership Agreement with the Plaintiff.
- 3 The Second Defendant is an entity which was formed by the First Defendant and which was stated to be carrying on the business of salvaging and shipping of motor vehicles on behalf of various insurance companies. At the material time, the Plaintiff "joined" the business as a partner which partnership was effective from 21st October, 2004.
- 4 On or about 21st October, 2004 the Plaintiff and the First Defendant executed a written Partnership Agreement for the purpose of salvaging and selling motor vehicles.
- 5 In the said Partnership Agreement it was agreed that the parties would utilise two entities to carry out their objectives of salvaging and selling motor vehicles. Those two entities were identified as : Marsh Salvaging Ltd, which entity was expressed to be a partnership between the Plaintiff and the First Defendant, and whose function was to be the salvaging of motor vehicles, ("The Second Defendant") and the other entity was to be incorporated and to be known as "HM Auto Sales" which entity was to be used to sell motor vehicles in the Cayman Islands.
- 6 Under paragraph 4.0 of the Partnership Agreement the initial capitalisation of the Partnership was dealt with whereby the Plaintiff was to provide an initial CI\$20,000.00 on the commencement date (21st October, 2004) and thereafter within 90 days he was to provide a further CI\$20,000.00. The Agreement stipulated that the first CI\$20,000.00 was to be regarded as "capital advancement" and was to be paid to the First Defendant on behalf of the Second Defendant and that this amount, together with the second CI\$20,000.00 were to be regarded as an interest free loan to be repaid by the use of 10% of the sales of vehicles, with payment being made at the time of each sale by either entity.
- 7 In conformity with the terms of the Partnership Agreement the Plaintiff paid a sum of CI\$20,000.00 to the First Defendant on 21st October, 2004 by means of a Bank of Butterfield cheque dated 21st October, 2004; cheque No. 486253 in the name of the First Defendant. The receipt of the said cheque by the First Defendant is acknowledged in the said Partnership Agreement.
- 8 At the time that the Agreement was entered into and subsequently the Partnership owned approximately 13 cars which cars were to be disposed of and the proceeds of sale disbursed in accordance with the content of paragraph 4.02 (a) of the Partnership Agreement whereby the Plaintiff would obtain 10% of the sale prices. It was also a provision of paragraph 5.01 that each month the Partners would draw CI\$2,000.00 as salary for themselves and under paragraph 6.0 that proper accounts would be kept and available for inspection by each of the partners at all times.
- 9 In breach of the said terms of the Partnership Agreement, the First and/or the Second Defendant have disposed of some, if not all, of the said vehicles, without reimbursing the Plaintiff any of the said CI\$20,000.00 loaned to them.

10 As a result of the breach, the Plaintiff refused to pay over the second CI\$20,000.00 provided by the Partnership Agreement to be paid over within 90 days on the basis that he required an accounting as to what had happened to the first CI\$20,000.00.

11 Despite this however, to date, the Plaintiff has still not been reimbursed the funds which he paid to the First Defendant nor has there been any accounting for the proceeds of the vehicles which have been sold.

12 The Plaintiff has also not received any salary from the First and/or Second Defendant in accordance with paragraph 5.01 of the Partnership Agreement and has seen no books of account nor any other documentation required to be kept under the terms of the Partnership Agreement.

13 As a result of the said breach of the Partnership Agreement, the Plaintiff has suffered loss and damage.

WHEREFORE THE PLAINTIFF CLAIMS

- ((a) Payment of the principal amount outstanding of CI\$ 20,000.00
- (b) Loss of salary from 21st Octobe, 2004 to date and continuing (11 months @ CI\$2,000.00 per month = CI\$22,000.00)
- (c) Damages
- (d) Interest at the statutory rate as from the date of Judgement
- (e) Costs and Attorneys fees

Dated this 26th day of September, 2005

B. Brooks & B. Brooks
BROOKS & BROOKS
 Attorneys At Law for the Plaintiff

THIS WRIT OF SUMMONS was filed by Brooks & Brooks Attorneys At Law for and on behalf of the Plaintiff herein whose address for service is that of his said Attorneys At Law One, Artillery Court , P O Box 1355GT GRAND CAYMAN

(Attorney) for

(Defendant in Person)

Address for service:

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 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 the Plaintiff's Attorney (or by the plaintiff if suing in person) of his name, address and residence, if any in the box below

**Brooks & Brooks
Attorneys At Law
P O Box 1355 GT
GRAND CAYMAN**

(One, Artillery Court, George Town, Grand Cayman)

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