

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 447 OF 2005

BETWEEN:

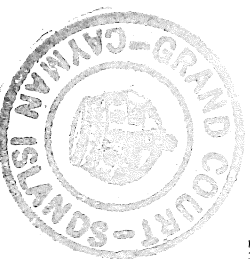
SOPHIA A. DILBERT

PLAINTIFF

AND

MAPLES AND CALDER (A FIRM)

DEFENDANT



WRIT OF SUMMONS

TO: MAPLES AND CALDER  
Ugland House  
South Church Street  
PO Box 309GT  
Grand Cayman



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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 this 29 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 issue unless renewed by order of the Court.

**IMPORTANT**

Instructions for Acknowledgment of Service are given with the accompanying form.

## STATEMENT OF CLAIM

The Plaintiff is an attorney-at-law and was admitted to practice as such in the Cayman Islands in September 1996. Prior to her call to the Caymanian Bar in September 1996 the Plaintiff had attended the Cayman Islands Law School from which school she graduated in 1995 with a Bachelor of Laws Degree (Hons) (Liverpool University) and thereafter she was called to the Bar of England and Wales by the Honourable Society of the Middle Temple in July 1996.

2. The Plaintiff since 1<sup>st</sup> October 2004 has been employed as an associate attorney by the firm of Stuarts Walker Hersant.

3. At all material times the Defendant Firm carried on business as attorneys-at-law under the style and/or firm name Maples and Calder at Ugland House on South Church Street, George Town, Grand Cayman.

4. By a written agreement dated 16<sup>th</sup> August, 1996 the Defendant Firm agreed to employ the Plaintiff and the Plaintiff agreed to serve the Defendant Firm as an associate attorney at law on the terms set out in the said written agreement. The Plaintiff will refer to the said written agreement at the trial of this action for its full terms and legal effect.

5. Clause (ii) of the said written agreement provided as follows:

“The Firm shall review within six months of commencement of employment and annually thereafter the salary paid to the Assistant.”

The Plaintiff's initial salary was US\$36,585.00 per annum and between the years 1997 and 2002 the Plaintiff received salary increases as follows:

<u>Dates</u>	<u>Amount of Increase</u>	<u>Total Annual Salary</u>
October 1997 to October 1998		£55,000.00
November 1998 to December 1999		US\$85,000.00
January 1999 to December 1999	US\$20,000.00	US\$105,000.00
January 2000 to December 2000	US\$30,000.00	US\$135,000.00
January 2001 to December 2001	US\$15,000.00	US\$150,000.00
January 2002 to June 2002	US\$25,000.00	US\$175,000.00
July 2002 to January 2004	US\$50,000.00	US\$225,000.00

6. The Plaintiff received no increase in her salary after 12<sup>th</sup> July, 2002 and for the period July 2002 to the 31<sup>st</sup> December, 2003 the Plaintiff was paid a salary of US\$225,000.00 per annum by the Defendant Firm.

7. Between the period September 1996 and December 2000 the Plaintiff became aware that the remuneration and training offered to the Caymanians including herself was inferior to that offered to non-Caymanians and especially to those who were recruited by the Defendant Firm from the United Kingdom. The Plaintiff sought to address her concerns about this to Mr. Anthony Travers, one of the senior partners of the Defendant Firm but received an aggressive response to the effect that this was a subject that she should not raise again.

8. The disparity between the remuneration and training given to Caymanians and particularly to the Plaintiff, and other employees of the firm recruited from overseas remained for some time a source of

complaint by the Plaintiff to the various partners of the Defendant Firm under whom she was required to work.

Sometime in the year 2002 the Plaintiff was assigned to work under Mr. Charles Jennings a partner of the Defendant Firm and from this time until her departure from the Defendant Firm in 2004 the Plaintiff was subjected to a campaign of harassment and humiliation by Mr. Jennings. He made numerous unfounded verbal and written complaints about the Plaintiff's performance and competence and further particulars of harassment by him are as follows:-

- (i) In or about January 2003 Mr. Jennings called the Plaintiff into his office and requested that she make a recommendation to the partners that her secretary Barbara Boddan should be fired as if it was her own wish to dismiss Mrs. Boddan. Mr. Jennings stated that if the Plaintiff was willing to do this it would be looked upon favourably by the partners of the firm. The Plaintiff refused to comply with this request and thereafter noted a marked change in Mr. Jennings' attitude towards her and specifically observed that Mr. Jennings became indifferent and at times abusive towards her.
  - (ii) On the 22<sup>nd</sup> May 2003 Mr. Jennings sent the Plaintiff an email expressing his disappointment at her not attending a meeting with a client of the Defendant. The Plaintiff explained that she was unaware of the meeting as it had been arranged by Mr. Jennings without her knowledge. Subsequently, Mr. Jennings barged into the Plaintiff's office and verbally abused her causing her to feel very embarrassed and humiliated and that as a result of his action he was expressing his lack of respect for her.
  - (iii) During the last few years of her employment the Plaintiff was required to do much pro bono work for staff of the Defendant and its ancillary company Maple Finance Limited. Throughout this time the Plaintiff made several requests of the Defendant to re-allocate some her duties and to assign her to additional fee earning work. Despite this, the Defendant refused to allow the Plaintiff the opportunity to advance her position in the firm or enhance her practice and she was told on numerous occasions by Mr. Jennings that she was the lowest fee earner in the firm.
  - (iv) The Plaintiff received no further increases after she was assigned to work under Mr. Charles Jennings.
  - (v) The Plaintiff was not given any exposure to or any training in the more lucrative fields of work by Mr. Jennings.
10. During the period following her assignment to work under Mr. Jennings the Plaintiff was not only concerned about herself and the treatment that she was receiving but her anxiety was increased by her observations as to the disputes that were also developing between the Defendant and other of her Caymanian colleagues who were then employed by the Defendant firm.
  11. In January 2004 the Defendant suddenly and unexpectedly informed the Plaintiff that her salary would be reduced by US\$25,000.00 per annum.
  12. The Defendants unilateral reduction of the Plaintiff's pay and consequent diminution of the value of her salary package undermined the foundation of the contract of employment between the Plaintiff and the Defendant. This amounted to a denial by the Defendant of its obligation to pay the salary agreed upon as from the 12<sup>th</sup> July, 2002 and amounted to a repudiation by the Defendant of its contractual obligations to the Plaintiff.

13. This unilateral imposition by the Defendant of a reduction in the agreed remuneration of the Plaintiff either standing alone or taken in conjunction with the other matters set out in paragraphs 7 to 10 amounted not only to a breach of contract of the term of trust and confidence which is implied in all contracts of employment but constituted a constructive dismissal by the Defendant of the Plaintiff from its employment.

14. The Plaintiff protested against the unilateral reduction of her salary but notwithstanding this protest she decided to continue to work with the Defendant until such time as it became appropriate for her to leave.

15. Due to the fact that the Plaintiff has a family to support and many other financial obligations to honour, despite the Defendant's conduct, she remained at work with the Defendant as she was entitled to do until she found another job to go to and after having done so she gave notice to the Defendant by letter dated the 25<sup>th</sup> June 2004 as follows:

“25<sup>th</sup> June, 2004

Charles Jennings, Esq.  
Maples and Calder  
Ugland House  
South Church Street  
Grand Cayman

Dear Charles,

It is indeed with deep regret that I write this letter but I feel that due to the circumstances surrounding my employment with this firm, and in particular, the unilateral and substantial reduction in my salary of US\$25,000.00 per annum as of January of this year that I am constrained to take this course of action.

I am left without a doubt that the said salary reduction, which I have been advised is unlawful and a breach of my contract of employment with the firm, was intended by the Partnership to convey the partner's indifferent attitude towards my career as an associate attorney at law of the firm.

Although I have been employed in the mutual funds department for the past three years, I have been deliberately excluded from playing any real part in the mutual funds group. I have always felt that the partners have deliberately sought to deprive me, despite my efforts, of the relevant experience I feel was needed for the advancement of my career.

As a result of this I have been excluded from bonuses that I otherwise would have obtained. Additionally, I have been consistently assigned pro-bono staff conveyancing and other work with the concomitant reduction in billings. I have been told by you personally that my billings and collections would not be prejudiced by such work yet when my salary was reduced in January 2004 I was told that the primary reason for it was that I was the lowest fee earner in the firm. I am therefore left without a doubt that this manipulative measure was used by the partners to undermine my collections.

Furthermore it goes without saying that my numerous personality conflicts with you, due to your boorish, arrogant and abusive attitude towards me generally throughout my employment with the firm has only served to erode my confidence in the firm and to undermine our working relationship. You have created an unpleasant and intolerable atmosphere in which to work.

In the circumstances, after much careful consideration, as a result of the reduction in my salary and your demeaning and discriminatory treatment as well as the repudiatory breach of my contract of employment, I feel that I am therefore left no choice but to resign from my duties. However, as I am aware that my contract of employment requires three months notice I am willing to continue my employment until 25 September, 2004.

I wish to make it abundantly clear however, that I have been advised that your conduct is tantamount to constructive dismissal and I am therefore reserving my position in relation to all options open to me arising from the several breaches on your part of my employment contract as well as the Labour Law (2001 Revision) and Immigration Law (2003 Revision).

I am also putting the firm on notice that I intend to claim, without prejudice to any other right or remedy to which I am entitled, the damages which I am entitled to in respect of the reduction of my salary as of January, 2004 as well as the additional damages which I will suffer as a result of my decision to resign which has been brought about by your unfair and unwarranted treatment of me.

Yours sincerely,

Sophia Dilbert

cc: Management Committee”

16. The Defendant by letter dated 28<sup>th</sup> June 2004 indicated that it did not want the Plaintiff to remain at their office and indicated that they were suspending her with immediate effect on full pay during the notice period contemplated by her contract of employment.
17. The Plaintiff began work at another firm of attorneys at law on the 1<sup>st</sup> October 2004.
18. The Plaintiff's new employment is with a much smaller firm, and consequently is less well paid and will offer less prospects of advancement. The Plaintiff's annual salary is only US\$150,000.00 per annum and it will take many years for her to reach the level of US\$225,000.00 per annum or a figure in excess of that amount.
19. In the premises the Plaintiff has suffered loss and damage as a result of the constructive wrongful and unlawful dismissal of her by the Defendant and as a result of the Defendant's breach of its contract of employment.

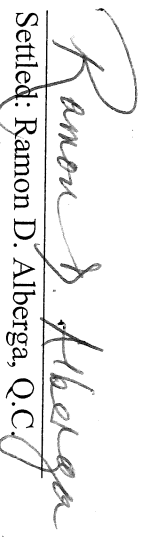
**AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT:-**

1. Loss of salary between 1<sup>st</sup> January 2004 to 30<sup>th</sup> September 2004 of US\$18,749.99;
2. Damages for wrongful dismissal;
3. Loss of the bonus which she would have received in December 2004 and July 2005;  
Loss of US\$75,000.00 for the period of time it will take for the Plaintiff to reach the salary of US\$225,000.00 per annum at Stuarts Walker Hersant;
5. The costs of and incident to these proceedings;

6. Such further and/or other relief as may be just to this Honourable Court.

Dated the 29<sup>th</sup> day of September 2005.

  
\_\_\_\_\_  
J. Samuel Jackson  
Attorney-at-Law for the Plaintiff.

  
\_\_\_\_\_  
Settled: Ramon D. Alberga, Q.C.

**THIS WRIT OF SUMMONS** was issued by J. Samuel Jackson, Attorney-at-Law of P.O. Box 10638APO, Suite #30, The Strand, West Bay Road, Grand Cayman, Cayman Islands, British West Indies, Attorney-at-Law for the Plaintiff whose address for service is that of its said Attorney-at-Law.

**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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN:

CAUSE NO: 447 OF 2005

SOPHIA A. DILBERT

PLAINTIFF

AND

MAPLES AND CALDER (A FIRM)

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                       no  
 \_\_\_\_\_

Service of the Writ is acknowledged accordingly

(Signed).....

\_\_\_\_\_  
orney for

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 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.

J. Samuel Jackson  
Attorney-at-Law  
P. O. Box 10638APO  
Suite #30, The Strand  
West Bay Road  
Grand Cayman  
Cayman Islands

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

--