

IN THE GRAND COURT OF THE CAYMAN ISLANDS

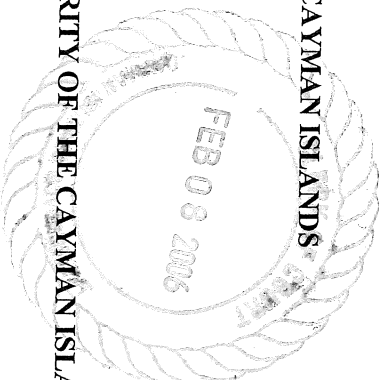
CAUSE NO. 51 OF 2006

BETWEEN: AVA MARZOCCA

PLAINTIFF

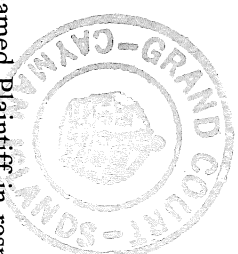
AND: THE PORT AUTHORITY OF THE CAYMAN ISLANDS'

FIRST DEFENDANT



WRIT OF SUMMONS

TO: The Port Authority of the Cayman Islands
PO Box 1358GT
Harbour Drive
Grand Cayman, Cayman Islands, BWI



THIS WRIT OF SUMMONS has been issued against you by the abovenamed 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, George Town, Grand Cayman B.W.I., 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 8th day of February, 2006.

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

1. The Plaintiff is a Caymanian and resides at South Sound, George Town, Grand Cayman. The Plaintiff is the wife of Dr. Joseph Marzouca. Dr. Marzouca has been granted Caymanian status and is a doctor of medicine with a well-established practice as a general practitioner in George Town, Grand Cayman.
2. The Defendant is a statutory body established and existing by virtue of the provisions of The Port Authority Law (1999 Revision).
3. The Plaintiff, after expressing an interest in becoming a tenant of the Defendant by renting space in the Royal Watler Terminal Building which was being constructed for the purpose of going into a tourist related business with her mother Mrs. Mary Rowlandson, received some time in late April 2005 an undated letter from the Honourable W. McKeeva Bush, the then Chairman of the Defendant and Minister for Tourism, Environment, Development and Commerce reading as follows:-

“Dear Mrs Marzouca,

RE: ROYAL WATLER CRUISE SHIP TERMINAL, TENANT SPACE

Thank you for your interest in participating in the development of the Royal Watler Cruise Terminal Facility. Please accept this letter as confirmation of our agreement to provide you with retail space for your business venture. You have been allocated unit 4 at approximately 556 square feet as per the attached site plan.

You will be contacted in due course with the details of your allotted space and please be advised that this letter is subject to a formal three-year agreement being signed and executed between yourself as tenant and the Port Authority as Landlord.

We believe that this terminal will be a huge success for local businesses, George Town and the Cayman Islands as a whole and we look forward to your participation in helping improve and expand on the products, services and value for money we offer our cruise ship passengers.

Yours sincerely,

*Hon. W. McKeeva Bush, OBE, JP
Chairman, Port Authority*

Minister for Tourism, Environment, Development & Commerce

*cc. Mr Paul Hurststone Director
Port Director”*

4. By letter dated the 9th May 2005 the Plaintiff replied to the letter referred to in paragraph 3 above as follows:-

“9 May 2005

Dear Mr Bush

Re: Royal Watler Cruise Ship Terminal – Tenant Space

I am delighted to have received your recent letter confirming that it has been agreed to provide me with a retail space, Unit 4, in the Royal Watler Cruise Ship Terminal. It is with enormous gratitude that I thank you, the Ministry of Tourism and the Port Authority for this opportunity.

I am very excited to commence plans for my store and to providing our valued tourists with a wonderful and gratifying shopping experience. I look forward to receiving the three-year lease agreement in the near future.

Warmest regards.

Yours sincerely

Ava Marzouca (Mrs)

*cc: Mr Paul Hurlston
Director, Port Authority”*

5. The space in the Royal Watler Terminal Building which the Defendant’s Chairman had agreed would be leased to the Plaintiff was clearly identified as Unit #4 which was indicated to be approximately 556 square feet on a site plan headed ‘Royal Watler Terminal – Retail Building’ which accompanied the said undated letter from the Defendant’s Chairman. This space is part of a building being erected on the land comprised in Registration Section George Town Block OPY Parcel 25 of which the Defendant is a registered proprietor.

6. The Plaintiff says that the legal effect of the letters passing between the Defendant’s Chairman and herself which are set out and referred to in paragraphs 3 and 4 above was to bring into being an agreement by the Defendant to lease to the Plaintiff the said Unit #4 in the Royal Watler Terminal Building which said agreement was to be completed by the execution of a standard lease by both the Plaintiff as tenant and the Defendant as landlord which lease was to be created by the Defendant and sent to the Plaintiff.

7. After the change of government in 2005 Mr Wayne Panton replaced the Honourable McKeever Bush as Chairman of the Defendant and by letter dated the 7th September 2005 the new Chairman wrote the following letter to the Plaintiff:-

“September 7, 2005

*Mrs. Ava Marzouca
P. O. Box 30897/SMB
Cayman Islands*

Dear Madam,

Re: Royal Waler Cruise Ship Terminal – Tenant Space

You were recently the recipient of a letter from the former Chairman of the Port Authority, indicating that the Port Authority had, subject to agreement of a formal lease, agreed to provide you with retail space for your business venture at the above location.

That letter was sent to you without the approval of the Port Authority, albeit on terms that were subject to agreement.

The Port Authority is now establishing criteria for awarding the retail units. As soon as the criteria have been agreed, you will be notified and provided with these and any other appropriate requirements. You should then respond within the specified time frame to allow proper consideration of your application.

If your application is subsequently accepted, you will be notified in writing and sent a draft lease agreement for your consideration.

Yours faithfully,

*Wayne Panton
Chairman – Port Authority of the Cayman Islands”*

8. The Plaintiff denies that the undated letter sent to her by the then Chairman of the Defendant was sent without the approval of the Defendant and further denies that no agreement for a lease of the said Unit #4 came into existence. The Plaintiff repeats paragraph 6 hereof. Alternatively, the Plaintiff says that the then Chairman of the Defendant had the actual or ostensible authority to bind the Defendant and did so, whether or not the Defendant knew or approved of the offer to lease contained in the said letter, which offer was accepted by the Plaintiff.

9. By letter dated the 5th December 2005 Mr Nigel Bates, acting as Agent for the Defendant, wrote to the Plaintiff as follows:-

"5 December 2005

Mrs Ava Marzouca
PO Box 30897 SMB
Grand Cayman

Dear Sir / Madam

RE: The Royal Watler Cruise Terminal, George Town

We write to advise you that we have been instructed by the Port Authority of the Cayman Islands to assist them in leasing the retail units at the Royal Walter Cruise Terminal and therefore we shall shortly be advertising their availability to the general public.

However, we understand that you have already expressed an interest in this project and accordingly we enclose an information pack with details of the proposed lease terms and rentals for your consideration prior to our marketing campaign.

We would be grateful if you could confirm your continued interest in this project by filling in the enclosed application form and providing the necessary information requested. The application form is simply an expression of interest, and should be completed and returned by 13 January 2006, not 2005 as stated within the information pack.

As described in the information pack, all applications will be considered on their merits with particular regard to Caymanian and Tourism related businesses.

Should you require any further information or wish to view the property please do not hesitate to contact me on the above number.

Yours faithfully,

NIGAL BATES
CHIEF VALUATION OFFICER
For the Director of Lands & Survey"

10. The information pack referred to in and included with the above letter sent to the Plaintiff indicated *inter alia* the following:-

1. that a standard lease was being prepared which the tenant would be required to sign;
 2. that retail space number 4 would comprise 482 square feet;
 3. that the rental for Unit #4 would be C1\$7,000.00 per month or C1\$84,000.00 per annum;
- and

4. that the term of the lease was to be for a minimum of 5 years.

11. By letter dated in error the 13th December 2006 (the correct date was 13th January 2006 as shown by the fax cover sheet accompanying it), the Plaintiff's attorneys at law, Myers & Albergá replied to the letter of the 5th December 2005 from the Defendant's agent as follows:-

"December 13, 2006

**BY FAX
AND BY HAND**

*The Valuation Office
The Department of Lands & Survey
PO Box 1089GT
Grand Cayman*

*Attention: Nigel Bates
Chief Valuation Officer
For the Director of Lands & Survey*

Dear Sirs

*Re: The Royal Watler Cruise Terminal
Mrs Ava Marzouca
Retail Unit #4*

We act on behalf of Mrs. Ava Marzouca and acknowledge receipt of your letter dated the 5th December 2005.

We wish to bring to your attention the following:-

- (1) Our client had previously expressed an interest to lease space at the Royal Watler Cruise Ship Terminal on completion of the facility.*
- (2) The previous Chairman of the Port Authority, the Honourable Mr. McKeever Bush, who was at the time the Minister of Tourism, Environment, Development and Commerce and Leader of Government Business, as chairman of the Port Authority and Minister, confirmed that the Port Authority had agreed to lease retail space (Unit #4) as per the letter with plan attached. Our client confirmed the agreement ("the Agreement") and was anxiously awaiting the relevant documentation which was to be sent when construction was nearing completion and occupancy was imminent.*

- (3) *Following the letter of the 7th September 2005 from the present Chairman of the Port Authority, our client sought the advice of leading counsel on what appeared to be an effort to terminate the Agreement between the Port Authority and our client.*
- (4) *Our client has been advised that the previous Chairman had the authority to bind the Port Authority and that the Agreement created binding and enforceable obligations and that the Port Authority would be liable should it fail to honour the Agreement.*
- (5) *Our client was advised that the purported termination of the Agreement by the Letter dated the 7th September 2005 was misconceived and if pursued by the Port Authority would give rise to various causes of action.*
- (6) *Our client confirms that she is still ready willing and able to proceed with the Agreement for Retail Unit #4 and that the current rental terms and other matters set out in your documents attached to your letter dated the 5th December 2005 are agreed.*
- (7) *We have advised our client that as the Agreement to lease Unit #4 already exists, that an application for retail space, although it may be applicable to others, is not appropriate in her situation.*
- (8) *We have provided the relevant information for your files which will assist in the preparation of the statutory documentation for registration. Should you require any further information, please let us know and we will be happy to assist you.*

Finally, we would greatly appreciate your confirmation that you have no instructions which would indicate that the Agreement with our client to lease Unit #4 is not going to be completed by the Port Authority by way of letter on or before the 20th January 2006 indicating that the relevant documentation and statutory forms will be sent to us in due course for execution by our client and the appropriate registration.

*Yours faithfully,
MYERS & ALBERGA*

Per:

Enclosures

*Cc: Mr Wayne Panton
The Chairman of the Port Authority”*

The following attachment accompanied the letter from Myers & Alberga referred to in paragraph 11 hereof:-

*“TO: The Valuation Office
Department of Lands & Survey*

RE: *Royal Watler Cruise Terminal*
Retail Unit #4 – Ava Marzouca

1. *Name of Tenant:* Ava Marzouca
2. *Trading Name:* Ava's
3. *Postal Address:* P.O. Box 30897SMB
4. *E-Mail Address:* savlamar@ccandw.ky
5. *Telephone Number:* 949-1320(h)
6. *Fax Number:* 949-6868
7. *Proposed Business:* Retail – *Tourist related novelties and products*
8. *Experience:* *Family (Mary Rowlandson has been in the tourist retail business for over 10 years)*
9. *Attorneys-at-Law:* Myers & Alberga
Phone: 949-0699
Fax: 949-8171
Email: malberga@myersandalberga.com

12. In paragraph 6 of the letter referred to in paragraph 11 hereof, the Plaintiff's attorneys confirm that the Plaintiff is still ready and able to proceed with the agreement to lease Retail Unit #4 and that the rental terms and the provisions of the proposed standard lease that tenants would be required to execute were agreed to and accepted by her. The said letter also indicates by necessary implication the Plaintiff's willingness to accept the reduced area of Unit #4 in place of the originally offered area of approximately 556 square feet.

13. By letter dated the 20th January 2006 Mr Bates replied to the letter from the Plaintiff's attorneys of 13 January 2006 (dated the 13th December 2006 in error) and referred to in paragraph 11 hereof as follows:-

“Our Ref: VAL OPY25
Your Ref:

20 January 2006

Myers & Alberga
P.O. Box 472 GT
Harbour Place, 2nd Floor
103 South Church Street
Grand Cayman
Cayman Islands

By Fax 949 8171

Dear Sirs

RE: THE ROYAL WATLER CRUISE TERMINAL – MRS AVA MARZOUCA

I refer to your letter dated 13 December 2005.

I note that you have advised your client not to submit an application form as requested and as your client has not submitted an application form I regret to advise you that I am therefore unable to make a recommendation on your client's behalf to be allocated a unit at the Royal Watler Cruise Terminal.

Regarding any previous claims to an agreement with the Port Authority I would advise you to take this up directly with them.

Yours faithfully

Nigel H Bates
Chief Valuation Officer

For Director of Lands and Survey

Cc: Port Director, Port Authority”

14. On receipt of the letter referred to in paragraph 13, the Plaintiff's attorneys replied to Mr Bates as follows:-

“January 20, 2006

BY FAX: 949-2187
AND BY HAND

The Valuation Office
Lands & survey Department
2nd Floor, Cayman Corporate Centre
Hospital Road
George Town

Attention: Mr Nigel H Bates
Chief Valuation Officer

Dear Nigel

Re: The Royal Watler Cruise Terminal
Mrs Ava Marzouca
Retail Unit #4

Thank you very much for your letter of January 20, 2006.

I assume that you have understood from the correspondence sent to you that our client already has a binding, valid agreement with the Port Authority for the rental space and I assume from

your letter that you will not be making any allocation of this particular space to any other person. Should you intend to make any allocation of this space other than to Ava Marzouca please let me know in order that we may obtain an injunction from the Court.

We understand that you may be the person responsible for distributing the formal lease documents. Please let me know if this is a fact or not.

Yours sincerely,
MYERS & ALBERGA

Per: _____
Michael L. Alberga

15. Myers & Alberga on the 20th January 2006 also addressed a letter to the Defendant's Chairman as follows:-

"January 20, 2006

BY HAND

*The Chairman
Port Authority of the Cayman Islands
c/o Walkers
Attorneys-at-Law
Mary Street
George Town*

Dear Sir

**Re: The Royal Water Cruise Terminal
Mrs Ava Marzouca
Retail Unit #4**

We enclose a copy of a letter from Mr Nigel Bates in reply to our letter to him dated the 13th January 2006, a copy of which was sent to your Chairman.

In view of the stand taken by Mr. Bates we ask that we receive a reply from the Port Authority within the next 7 days as to whether or not it proposes to honour the agreement between Mrs Ava Marzouca and the Port Authority that she will be given a lease of Retail Unit #4 in the Royal Water Cruise Terminal.

Yours truly,
MYERS & ALBERGA

Per: _____
Michael L. Alberga

Enclosure"

16. By letter dated the 27th January 2006, Rich & Conolly acting on behalf of the Defendant to Myers & Alberga say as follows:-

“27th January 2006

VIA HAND DELIVERY

*Myers & Alberga
PO Box 472 GT
Harbour Place
S. Church Street
Grand Cayman*

For the attention of Michael I. Alberga Esq

Dear Sirs

***RE: THE ROYAL WATER CRUISE TERMINAL
YOUR CLIENT: AVA MARZOUCA***

We act on behalf of the Post Authority of the Cayman Islands of PO Box 1358 GT, Harbour Drive, Grand Cayman and we write further to the above.

Our client has forwarded to us a copy of your letter to the Valuation Office dated 13th December 2006, the Valuation Officer's reply dated 20th January 2006 and your letter to the Chairman of the Port Authority, also dated 20th January 2006.

Our client's position is that there was no binding agreement between the Port Authority and your client arising from the undated letter sent to your client by the then Chairman of the Port Authority/the then Minister for Tourism, Environment, Development and Commerce.

On or about 7th September 2005 your client was notified that the Port Authority was establishing criteria for awarding the retail units at the Royal Water Cruise Terminal. If your client subsequently applied for a retail unit once that criteria had been established, then her application will be considered.

*Yours faithfully
RITCH & CONOLLY*

Robert Jones”

17. The only contention that the Defendant now makes is that there was no binding agreement between the Port Authority and the Plaintiff for the Plaintiff to be granted a lease of Unit #4 in the Royal Water Cruise Terminal. The previous contention of the present Chairman of the Defendant to the effect that the former Chairman of the Defendant had no authority to write the undated letter referred to in paragraph 3 above and to agree that a lease should be granted to Mrs Marzouca is no longer being made.

18. The Plaintiff says that the contention by the Defendant through its attorneys, Ritch & Conolly, that no binding agreement exists between the Plaintiff and the Defendant for the Defendant to grant the Plaintiff a lease of the Retail Unit #4 in the Royal Watler Building is misconceived and denied.
19. The Plaintiff repeats paragraphs 3, 4, 5, 6, 8 and 9 to 18 inclusive hereof and says that as a result of the matters set out in those paragraphs there is a binding and enforceable agreement between the Plaintiff and the Defendant for the lease by the Defendant to the Plaintiff of Retail Unit #4 of which agreement the Plaintiff is entitled to specific performance.
20. In the premises the Plaintiff claims:-
 1. A declaration that there is a binding agreement between the Plaintiff and the Defendant for the lease by the Defendant to the Plaintiff of Retail Unit #4 in the Royal Watler Cruise Terminal Building, such Unit to contain approximately 556 square feet or, in the alternative 482 square feet.
 2. An order specifically compelling the Defendant to create and execute a lease of Retail Unit #4 in the Royal Watler Building for execution by the Plaintiff for a term of 5 years at a rental of C1\$7,000.00 per month for 482 square feet or at an equivalent rate per square foot for the larger area, and in either case in accordance with the standard terms to be included in the leases for tenants of the various spaces in the said building as indicated in the said leasing information pack to all of which terms the Plaintiff has signified her acceptance and agreement.
 3. Alternatively, damages in lieu of or in addition to specific performance.
 4. An injunction restraining the Defendant, its servants and/or agents from allocating the said Retail Unit #4 to any person other than the Plaintiff and from entering into a lease of that unit with any one other than the Plaintiff until these proceedings are heard and determined.
 5. The costs of and incident to these proceedings.
 6. Such further or other relief as to this Honourable Court may seem just.

Dated this 8th day of February 2006.



MYERS & ALBERGA
Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court
AND TO: The Defendants

This WRIT and STATEMENT OF CLAIM was issued and filed by Myers & Alberga, Attorneys-at-Law for and on behalf of the Plaintiff whose address for services is Harbour Place, P.O. Box 472, George Town, Grand Cayman B.W.I.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2006

BETWEEN: AVA MARZOCCA

Plaintiff

AND: THE PORT AUTHORITY OF THE CAYMAN ISLANDS

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.

Myers & Alberga
Attorneys-at-Law
P. O. Box 472GT
Harbour Place, Second Floor, N Wing
103 S Church Street, Grand Cayman
Ref: LDD/cy/M0591-001

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

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**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

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.