

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 161 OF 2006

BETWEEN: RICHARD A. SINGER JR.

PLAINTIFF

AND: THE EMPLOYEE ASSISTANCE PROGRAMME
OF THE CAYMAN ISLANDS

DEFENDANT

WRIT OF SUMMONS

TO: THE EMPLOYEE ASSISTANCE PROGRAMME OF THE CAYMAN ISLANDS
P.O. BOX 1000 GT, 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 **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, PO Box 495GT, 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 judgment may be entered against you forthwith without further notice.

Issued this 28th day of April 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 acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

The Parties

1. The plaintiff, Richard A. Singer Jr., is an individual who holds a Master's Degree in Clinical Psychology, is internationally certified as an Addictions Counsellor, resides on Grand Cayman, Cayman Islands, with a mailing address of P.O. Box 2046GT, Grand Cayman, and makes the allegations, which follow, against the defendant.

2. The defendant, The Employee Assistance Programme of the Cayman Islands, with its registered office at P.O. Box 1000GT, Grand Cayman, is a non-resident non-profit association registered in the Cayman Islands with limited liability under section 80 of the Companies Law and carries on the business of providing to various corporate and government members an employee assistance programme whereby employees of such members (hereinafter "clients") are able to obtain assistance with various problems from certified counsellors employed by the defendant.

The Fixed Term Contract of Employment

3. The plaintiff and the defendant entered into a fixed term contract of employment (hereinafter the "Contract") dated 30 August 2005 whereby the defendant agreed to employ the plaintiff for one (1) year as a full-time EAP Counsellor in Grand Cayman (clauses 1 and 3 of the Contract).

4. The effective date of the Contract, conditional on approval of the plaintiff's work permit (clause 2 of the Contract), was stated, in clause 3 of the Contract, to be 30 September 2005 for a period of one (1) year, that is from 30 September 2005 to 29 September 2006. The Contract was to be renewed automatically, for one (1) year at a time unless either the plaintiff or the defendant gave the other written notice of sixty (60) days prior to an anniversary date that the Contract would terminate at the end of the then current term (clause 3 of the Contract).

5. The plaintiff obtained a work permit in or about October 2005. Therefore, the first year of the Contract was from that date in October 2005 to the corresponding date one year later in the year 2006.
6. The Contract, as aforementioned, was for a fixed term of one (1) year and, pursuant to clause 3 of the Contract and sections 5(2) and 9 of the Labour Law, the Contract could only be terminated, lawfully, at the end of the fixed one year period. The Contract could not be terminated prior to the expiry of the one (1) year period by notice. In the event of repudiation by the employer, accepted by the employee, the employee had to be paid for the rest of the one year period.
7. The plaintiff's salary for the initial one (1) year term was CI \$ 42,000 (CI \$ 3,500 per month) (clause 5 of the Contract).
8. The plaintiff was to report directly to the E.A.P. Programme Manager, Tyra Miller (hereinafter "Miller"), and agreed to devote his time and best efforts to the discharge of his duties diligently and faithfully for the term of his employment (clause 10 of the Contract).
9. The plaintiff agreed not to work or perform duties for any other person, firm or corporation without the specific approval of the Board of Directors of the defendant (clause 12 of the Contract).
10. The Contract contained a provision in clause 15 which stated the following:

"...Employees leaving the service of the Employee Assistance Programme shall not seek employment in the Cayman Islands as a counsellor, for a period of six months working either independently or on the staff of any other counselling service."

This provision will be referred to hereinafter as the "Restrictive Clause".

11. The plaintiff commenced employment in October 2005 and, at all times, performed his duties in accordance with the Contract.

Constructive Dismissal and Repudiation of the Contract by the Defendant

12. On 24 January 2006, the plaintiff was called into a meeting with Graham Walker, the President of the defendant (hereinafter "Walker"), and Miller and, without warning or prior notice, was presented with a letter dated 24 January 2006 signed by Walker as President of the Board (hereinafter the "Letter of Dismissal").
13. The Letter of Dismissal did not allege, but falsely stated as a fact, among other things, that the plaintiff had done/ was guilty of the following misconduct:
 - (1) conflict of interest (paragraph one);
 - (2) dishonesty (stealing employer time for his own purposes) (paragraph three);
 - (3) wilful neglect of duty (that he was not keeping client files up-to-date nor assisting in the development of training programmes) (paragraph six);
 - (4) lack of professional ethics to the prejudice of clients and members (paragraph seven); and
 - (5) illegal conduct (breaking the Immigration Law) (paragraph eight).
14. The Letter of Dismissal constituted a repudiation of the Contract by the defendant and a constructive dismissal of the plaintiff.
15. Following the defendant's repudiation of the Contract, the plaintiff accepted the repudiation and offered to be available for work for the next sixty (60) days. The defendant, instead of allowing the plaintiff to work for the aforementioned sixty days, had the locks changed on the doors of the plaintiff's office on or about 24 January 2006 and paid the plaintiff for the aforementioned sixty (60) days.

