

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

CAUSE NO **359** OF 2006

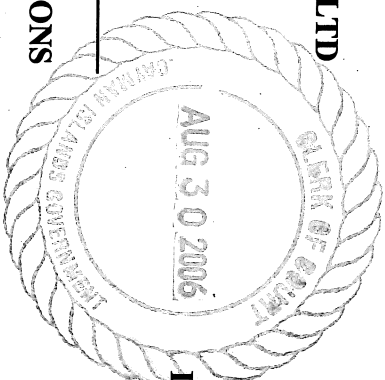
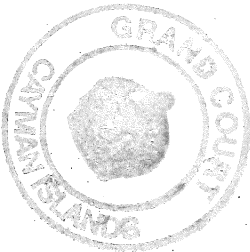
**BETWEEN: TROPICAL L'ATTITUDE LTD**

**PLAINTIFF**

**AND: (1) MARK JOHNSON**

**(2) KENITA JOHNSON**

**DEFENDANTS**



**WRIT OF SUMMONS**

**TO:** Mark Johnson and Kenita Johnson  
Both of D1 Poinsettia,  
West Bay Road,  
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, 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        day of August 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.**

The Plaintiff claims:

1. The Plaintiff, Tropical L'Attitude, is a company incorporated as an ordinary resident company pursuant to the Companies Law (2005 Revision) (the "Company").
2. The Company carries on the business of selling gifts and memorabilia to tourists and visitors to the Cayman Islands from premises at Butterfield Place, Edward Street, George Town, Grand Cayman.
3. The Company was established in April 1998. The sole director of the Company is Ms Harriett Lott. Until 19 August 2006, the shareholders of the Company were Campbell Nominees Ltd, holding 60% of the issued share capital of the Company on behalf of Harriet Lott and Campbells Directors Ltd holding 40% of the issued share capital of the Company on behalf of Mark and Kenita Johnson, the First and Second Defendants herein. By way of a written instrument dated 19 August 2006 the First and Second Defendants surrendered their beneficial interest in the shares in the Company held on their behalf by Campbells Directors Ltd. Those shares have since been treated as returned to the Company and the relevant share certificate has been cancelled.
4. Until their resignation without notice on 19 August 2006, the First and Second Defendants were employees of the Company. The Second Defendant was the office coordinator of the Company's trading premises and also responsible for ordering and accounting for stock and the input of sales and stock information into the Company's computer system. The First Defendant was employed as a warehouse attendant.
5. As employees of the Plaintiff the First and Second Defendant owed to the Plaintiff duties of fidelity and good faith and a duty to account to the Plaintiff for all property of the Plaintiff entrusted to them or received by them from third parties. Further the Defendants owed to the Plaintiff a duty not to make a secret profit at the expense of the Plaintiff.


6. The First and Second Defendants are registered proprietors of two warehouses situated at North Sound Road, registered at the Land Registry as Block 20B Parcels 357H 2 and 357H 3 (“Warehouse 2” and “Warehouse 3” collectively the “Warehouses”). Warehouse 2 was registered in the names of the First and Second Defendants on 20 April 2004. Warehouse 3 was registered in the names of the First and Second Defendants on 28 June 2004. Warehouse 2 and Warehouse 3 have been used to store inventory, stock and equipment belonging to the Plaintiff
7. In early 2004 it was agreed between the Defendants and Ms. Harriet Lott the sole director of the Plaintiff that in order to avoid the Plaintiff having to continue to rent a warehouse in which to store its inventory, stock and equipment the Plaintiff would purchase a warehouse as an investment. Unbeknownst to the Plaintiff the Defendants purchased Warehouse 2 in their own personal name. Such purchase was funded either in whole or in part through finance provided by Bank of Butterfield International (Cayman) Ltd secured by way of a mortgage against the title to Warehouse 2. The First and Second Defendants caused the Company to pay for a professional valuation of the warehouse. In breach of their duties to the Plaintiff, the First and Second Defendants caused the Plaintiff to make monthly payments to their account at Bank of Butterfield International (Cayman) Ltd in order to discharge their obligations under the terms of the aforementioned mortgage. In further breach of their duties to the Plaintiff, the First and Second Defendants paid the deposit for the purchase of Warehouse 3 by way of a cheque drawn on the Plaintiff’s account with Bank of Butterfield International (Cayman) Ltd dated 21 April 2004 in the sum of C1\$2000. As a result of the breaches of duty on the part of the Defendants the Plaintiff has suffered loss and damage.
8. In further breach of their duties of fidelity owed to the Plaintiff, the First and Second Defendants caused the Plaintiff to discharge the periodic strata fees for Warehouse 2 and Warehouse 3 by making payments drawn on the Plaintiff’s bank account with Bank of Butterfield International (Cayman) Ltd to Proprietors Strata Plan 202 as a result of which the Plaintiff has suffered loss and damage.

9. Further and or in the alternative, the effect of the conduct of the Defendants is that the Plaintiff in fact financed the purchase of Warehouse 2 and discharged its periodic maintenance cost. The Plaintiff seeks a declaration that Warehouse 2 is held by the First and Second Defendant as trustees for the Plaintiff and an order that the Register for Warehouse 2 be amended pursuant to Section 140(1) of the Registered Land Law (2004 Revision) by registering the Plaintiff as the proprietor of Warehouse 2.
10. Further, the Plaintiff seeks and is entitled to interest, pursuant to section 34 of the Judicature Law (2004 Revision) on any sum that may be found to be due to the Company at such rate from such date and on such amount as the Court thinks fit.

**AND THE PLAINTIFF CLAIMS:**

- (1) Damages.
- (2) Further or in the alternative a declaration that the warehouse registered as Block 20B Parcel 357H2 is held by the First and Second Defendants as trustees for the Plaintiff and an order that the Register for Warehouse 2 be amended pursuant to Section 140(1) of the Registered Land Law (2004 Revision) by registering the Plaintiff as the proprietor of Warehouse 2.
- (3) Costs
- (4) Further and other relief as the Honourable Court deems just.

DATED this 8<sup>th</sup> day of August 2006.

  
\_\_\_\_\_  
**CAMPBELLS**  
Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by Campbells, Attorneys-at-Law for the Plaintiff whose address for service is PO Box 884GT, 4<sup>th</sup> Floor, Scotia Centre, George Town, Grand Cayman Tel: 949-2648 Fax: 949-8613 (Ref: AJW/ /aac/07068)

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 495, 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 installments or otherwise.

*See over for notes for guidance*

## 1. 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 his 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.

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PLAINTIFF

AND: (1) MARK JOHNSON

(2) KENITA JOHNSON

DEFENDANTS

ACKNOWLEDGEMENT 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.

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

3. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)  
 yes  no

4. 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) \_\_\_\_\_

[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 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 a any, in the box below.*

Campbells Attorneys-at-Law  
P.O. Box 884 GT  
Scotiabank Building  
George Town  
Grand Cayman  
  
Tel: 949 2648  
Fax: 949 8613  
Ref: AJW/07068

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