

IN THE GRAND COURT OF THE CAYMAN ISLANDS

484  
CAUSE NO. OF 2006

BETWEEN:

PATRICIA MILLER

Plaintiff

AND:

ALDO GIANNE

First Defendant

AND:

REDWOOD HOTEL INVESTMENT CORP

Second Defendant

**WRIT OF SUMMONS**

TO: ALDO GIANNE, 19130 Pacific Coast Highway, Malibu, California, United States of America.

AND TO: REDWOOD HOTEL INVESTMENT CORP., Cayman International Corporate & Marine Services Ltd., P.O. Box 822, West Wind Building, 70 Harbour Drive, Grand Cayman KY1-1103, 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 28 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 KY1-1106, 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 17<sup>th</sup> day of November, 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 ("Ms Miller") is a citizen of the United States of America and is resident at 11331 Burnham Street, Los Angeles, California.
2. The First Defendant ("Mr Gianne") is a citizen of the United States of America and is resident at 19130 Pacific Coast Highway, Malibu, California
3. The Second Defendant ("Redwood") is an exempted company registered in the Cayman Islands under the provisions of the Companies Law on 22 September 1992
4. Mr Gianne and Ms Miller were married on 22 June 1985 ("the Marriage").
5. Both Mr Gianne and Ms Miller were domiciled in the State of California at the date of the marriage June 22<sup>nd</sup>, 1985 and the matrimonial domicile was the State of California.
6. In the premises the law of the State of California governs the rights obtained by Ms. Miller in the property and assets of Mr. Gianne held as a result of the Marriage whether that property is possessed at the time of the marriage or acquired afterwards.
7. By the law of the State of California, in particular, the California Family Code:
  - 7.1. All the property and assets wherever situated acquired by Mr. Gianne during the Marriage became "community property" (Section 760);
  - 7.2. Any asset to which Mr. Gianne has legal title is community property if and insofar as he acquired that with funds which were themselves community property.
  - 7.3. The respective interests of Mr. Gianne and Ms. Miller in community property during the continuance of the Marriage are equal interests (Section 751);

8. The effect of the application of the law of the State of California in the Cayman Islands is that any assets to which Mr. Gianne had title acquired by him during the Marriage or with funds which represented community property was held by him as trustee for himself and Ms. Miller as joint tenants in equity.
9. Mr. Gianne and Ms. Miller were separated on 7 January 2005. Mr Gianne and Ms. Miller were divorced by means of a Stipulated Judgment in the Superior Court of California County of Los Angeles, Case No BD 422 079 on 6 December 2005.
10. Any equitable interests they had in assets which were community property in equity then became severed so that thereafter those equitable interests became those of tenants in common.
11. It is Ms. Miller's case that during the marriage and in the divorce proceedings by representations set out below and thereafter Mr. Gianne has concealed from her assets which were community property and to which she has an equitable interest.
  - 11.1. From at least January 2005 Mr. Gianne repeatedly represented to Ms. Miller that he was insolvent, had no assets and had lost his source of income as a result of the failure of his business interest in a company called Milano Express and Paragon Apparel.
  - 11.2. In July 2005 in the context of the divorce proceedings then pending before the Superior Court of California Mr. Gianne provided Ms. Miller with a formal declaration that his only substantial asset was the matrimonial home worth about US\$2.1m and that his debts exceeded US\$3.1m.
  - 11.3. In August 2005 Mr. Gianne and Ms. Miller compromised their differences in the divorce proceedings by agreeing to a "Stipulated Judgment":
    - (i.) Mr. Gianne repeated that he had lost his source of income and was unable to pay the substantial spousal support to which Ms. Miller was entitled;

- (ii.) Mr. Gianne also warranted that he did not own any property of any kind not that had not been disclosed to Ms. Miller or specifically accounted for in the Stipulated Judgment.

12. Between 2001 and 2005 Redwood acquired interests in a number or residential strata units in a development known as “The Residences at the Ritz-Carlton, Grand Cayman” (“the Ritz Carlton”) from the developer, Condoco Grand Cayman Resort Ltd (“Condoco”) and thereafter dealt with those interests. The best particulars the Plaintiff is able to give are as follows:

12.1. Unit 105 12C 394/3H1H

- (i.) In August 2000 Redwood entered into an agreement with Condoco to purchase unit 105 for a total price of US\$750,000.00.
- (ii.) On the Coldwell Banker Website this property was recently estimated to have a value of US\$2,775,000.00. By a Consent Order dated 27<sup>th</sup> July 2006 (whilst a Mareva Injunction was still in force) the Inhibition ordered against Unit 105 was discharged to allow Redwood to complete its purchase of Unit 105 pursuant to the Purchase and Sale Agreement and Addendum thereto dated 29<sup>th</sup> August 2000.

12.2. Unit 113, Block 12C 394/3H1H5

- (i.) In November 1999 Sunbridge Enterprises Ltd. entered into an agreement with Condoco to purchase unit 113 for the total sum of US\$1,250,000.00.
- (ii.) The purchase contract for unit 113 was assigned in August 2005 by Redwood Hotel Investment Corp to Mr. Larry Roher and Mr. Christopher Kearney by way of an agreement dated 29<sup>th</sup> April 2005.
- (iii.) This agreement dated 29<sup>th</sup> April 2005 was subsequently assigned by Mr. Roher and Mr. Kearney to Strata 113 Ltd. on 22<sup>nd</sup> December 2005.

(iv.) Unit 113 is estimated to be worth US\$4.5m

12.3. Unit 116 12C 394/3H1H8

(i.) Redwood entered into a contract with Condoco to purchase unit 116 for a total sum of US\$1,550,000.00.

(ii.) The purchase agreement for Unit 116 was assigned by Redwood Hotel Investment Corp to Mr. Thomas Monaghan on 9<sup>th</sup> May 2001 for US\$1,615,000.00.

12.4. Unit 316 12C 394/3H1H24

(i.) In December 1998 Redwood entered into a contract with Condoco to purchase Unit 316 for a total price of US\$1,875,000.00.

(ii.) Unit 316 has a value estimated to be around US\$8,250,000.00

12.5. Unit 411 12C 394/3H1H29

(i.) Redwood entered into a contract with Condoco on 7<sup>th</sup> February 2000 to purchase Unit 411 for a total sum of US\$2,874,000.00.

(ii.) Unit 411 has a value estimated to be around US\$8,250,000.00.

13. The shares in Redwood are held by Mr. Gianne directly or indirectly but on his behalf by his servants or agents or nominee. Ms. Miller does not know the form which Mr. Gianne's interest takes. The best particulars that she can provide prior to full discovery herein is that his interest in the shares of Redwood is to be inferred and that he has a beneficial interest from the following:

- 13.1. Mr. Gianne is the sole director of Redwood and personally conducted all the negotiations relating to the acquisition and dealings with Redwood's property interests;
- 13.2. Mr. Gianne has never disclosed or suggested to Mrs. Miller during the marriage that since about 1998 he has been involved in the management of any property business in Cayman;
- 13.3. The properties held by Redwood were not until recently capable of producing income and did not require management. It is improbable that anyone in Mr. Gianne's position during the marriage would have worked for Redwood unless he was economically interested in those properties;
- 13.4. In numerous proceedings involving Redwood Mr. Gianne has made affidavits or instructed his attorneys to prepare pleadings in which he describes the property interests acquired by Redwood as set out above as if they were his own and does not mention anybody else as interested or involved in the activities of Redwood. In particular;
- (i.) Affidavits and the exhibits thereto dated 3<sup>rd</sup> January 2002 and 11<sup>th</sup> April 2002 in Cause No. 721 of 2001 which concerned Unit No 411 at the Ritz Carlton;
- 13.5. In correspondence Mr. Gianne has repeatedly treated the property interests held by Redwood as his own and not disputed comments and statements made by others in which they treat him as the alter ego of Redwood. In particular
- (i.) In a hand-written fax to Messrs Boxalls on 5<sup>th</sup> February 1999 Mr. Gianne stated that he did not:-

*"receive any final blue print about my condo yet".*

- (ii.) In a further fax to his Attorneys on 11<sup>th</sup> February 1999 Mr. Gianne stated in a hand-written fax that:-

“I do not understand they know based on my deal I have a right to change the inside of the unit any way I want”.

- (iii.) In a letter dated 17<sup>th</sup> March 1999 addressed to Mr. Gianne from the office manager for the condominiums of the Ritz-Carlton Grand Cayman Resorts it is stated that:-

“I have spoken to Brian concerning the constructions blue prints for your unit 207”.

- (iv.) In a letter from Mr. Gianne to his Attorney, dated 25<sup>th</sup> March 1999, Mr. Gianne referred to “*my contract*” for purchasing unit 207 and stated that:

*“My deal with Brian Goldstone is that I have the right to make changes to the unit prior to its completion”.*

- (v.) In a further letter to his Attorney dated 25<sup>th</sup> March 1999 (Tab. 2, p. 21) Mr. Gianne stated in the 2<sup>nd</sup> paragraph of his letter that:-

“Further, I want to withhold any future release of funds to Ritz-Carlton and so we get a satisfactory endorsement from Brian Goldstone. I believe that is necessary to protect my interest in the contract”.

- (vi.) In a letter dated 31<sup>st</sup> March 1999 from Mr. Gianne he advised architects instructed by him that:-

“My intention for unit 207 is to start with an empty shell and build it to my specifications, per my agreement with Brian Goldstone”.

- (vii.) In a further letter to his Attorney dated 21<sup>st</sup> May 1999 Mr. Gianne referred to his architects making changes to the blue print. He also stated:-

“I will incur expenses in order to comply with the deadline, which would include the contract I have to sign with my architect if the builder of the Ritz-Carlton does not get approval from the CPA I will be at a great loss.”

- (viii.) In a letter dated 8<sup>th</sup> July 1999 from Mr. Gianne to the Ritz-Carlton he requested a copy of a contract with the construction company. and stated that:-

“It will permit me to proceed with my contracts for my architects and the interior decorators”.

- (ix.) In an undated further hand-written fax to his Attorney (sent around March 2000), Mr. Gianne stated that he has lost over US\$200,000.00 as result of making a down payment in 1998.

- (x.) In a fax from his Attorney dated 1<sup>st</sup> March 2000 to Mr. Brian Goldstone at the Ritz-Carlton, Mr. Gianne’s own Attorney states that:-

“Further to your earlier telephone and facsimile correspondence with my client regarding a reduction on the purchase price of apartment 411 in consideration of the tremendous investment my client has made in this project and the considerable delays that have arisen”

- (xi.) In an undated fax Mr Gianne stated in the second paragraph:-

*“But my point is that I placed the down payment on 15<sup>th</sup> November 1998 on good faith in understanding that the property was to start. It has been over 15 months and your letter still says the same*

*thing. I am losing money because of the delays. If I just kept the money at 8.5% interest, I would have been better off”.*

- (xii.) In a further fax dated 22<sup>nd</sup> August 2000 to Mr. Gianne from the Ritz-Carlton Chairman it is stated that:-

“Please be advised that the size of your unit as noticed in your contract will not change and that we will provide you with the square footage quoted”.

- (xiii.) In an e-mail sent to his Attorney on 25<sup>th</sup> July 2001, Mr. Gianne states that:-

“I just want him to know that I will sue him in Cayman Courts. Also he must know every unit I own will be checked prior to closing for square foot”.

- (xiv.) In an e-mail from his Attorney dated 30<sup>th</sup> November 2005 it is stated that  
*“Ok, also please note we have just agreed to do the closings for Aldo on 316P, 105R, 411R”*

- (xv.) In an e-mail from Mr. Gianne sent on 3<sup>rd</sup> February 2003 he stated that:-

*“Hi Scott, I’m the owner of the unit 411 and three more other ones. I know we have never met yet”.*

- (xvi.) In an e-mail sent by Broadhurst Da Costa on behalf of Mr. Gianne in Cause no. 70 of 2003 Mr Broadhurst stated:

*“We act for Aldo Gianne and his company Micro Industries Ltd.”*

- 13.6. In a restaurant meeting between Mr., Gianne and one Goldstone, Mr. Gianne made the following statements

*"He [Mr Ryan] is a crook because he steals my space...I might lose this but I will not stop...I have the money and I use it to stop this and get what I want. I will get the money and the space or the whole thing (i.e. the development) will be stopped.*


*"He [Mr Ryan] is stealing my space. I will never stop. I want my space."*

14. The shares in Redwood were acquired with community property and any funds provided to Redwood after its incorporation for or on behalf of Mr. Gianne (other than bank borrowings) represented community funds.
15. Further, it is to be inferred from Mr. Gianne's disregard of Redwood's separate legal personality that it holds the interests in the properties in the Ritz Carlton and any proceeds thereof as Mr. Gianne's agent
16. Alternatively, Mr. Gianne has dishonestly concealed the existence of Redwood from Ms. Miller and dishonestly used Redwood to conceal the existence of community assets from Ms. Miller.
17. In the premises Ms. Miller contends that Redwood's separate legal personality ought to be disregarded and that its assets themselves represent community property or the proceeds of community property.
18. By reason of the matters aforesaid Mr. Gianne is liable to account to Ms. Miller for his dealings with Redwood, its funds and the management of any of the interests in the properties at the Ritz Carlton nominally held by Redwood.

#### **AND THE PLAINTIFF CLAIMS**

1. A declaration of Mrs. Miller's beneficial entitlement to the shares in Redwood and/or to the properties held by it and/or to any other community property in the Cayman Islands.
2. An Order removing Mr. Gianne as Trustee of any community property in the Cayman Islands and appointing a new Trustee.

3. An account of Mr Gianne's dealings with the shares in Redwood and/or any other community property in the Cayman Islands.
4. An account by Redwood of all funds received by it from Mr. Gianne and any other community property received by it.
5. An account of all payments to Mr. Gianne by Redwood or at its direction.
6. Compensation for any diminution in the value of Mrs. Miller's equitable interest in Redwood by reason of payments made to Mr. Gianne.
7. All further necessary accounts and inquiries.
8. Interest pursuant to §34(1) of the Judicature Law (2004) at the prescribed rate and for such periods as the Court thinks fit.
9. Costs



**Ritch & Conolly**  
**Attorneys for the Plaintiff**

17<sup>th</sup> November 2006