

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *549* OF 2006

BETWEEN:

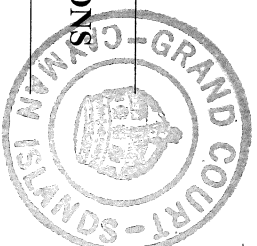
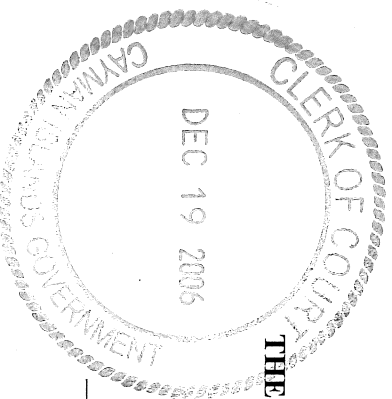
CRAIG BROWN

PLAINTIFF

AND:

**THE CAYMAN ISLANDS HEALTH
SERVICES AUTHORITY**

DEFENDANT



WRIT OF SUMMONS

**TO: The Cayman Islands Health Services Authority of Box 915, Grand Cayman
KY1-1102, 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 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 495, George Town, Grand Cayman KY1-1106 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 judgement may be entered against you forthwith without further notice.

ISSUED this 19th day of December 2006.

NOTE – This Writ may not be served later than 4 calendar 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

1. The Plaintiff was, prior to the Contract of Employment referred to in paragraph 9 below, Chief Executive Officer of the Blind River District Health Centre, Ontario and prior to that, Chief Executive Officer of the Coaldale Health Care Centre, Coaldale, Alberta.
2. The Defendant is a statutory body established pursuant to the provisions of the Health Services Authority Law, Law 7 of 2002 (and now the Health Services Authority Law (2005 Revision)) ("the Health Services Authority Law").
3. The Health Services Authority Law provides that:
 - "3(1) *There is established the Cayman Islands Health Services Authority having the powers and duties conferred or imposed upon it by this Law and any other law.*
 - (2) *The Authority shall be a body corporate having perpetual succession and a common seal and, subject to this Law, shall have power to buy, sell, hold, deal and otherwise acquire and dispose of land and other property of any kind and to enter into contracts and to do all things necessary or desirable for the purposes of its duties and functions.*
 - (3) *The Authority may sue and be sued in its corporate name and it shall have exclusive right to use the name "the Cayman Islands Health Services Authority".*
4. The Health Services Authority Law also provides that:
 - "5(1) *The Authority shall, subject to this Law and any other law, manage the health care facilities and any property appurtenant thereto.*
 - (2) *It shall be the duty of the Authority -*
 - (a) *to provide health care services and facilities in the Islands in accordance with the National Strategic Plan for Health prepared from time to time by the Government;*
 - (b) *to administer the health care facilities in an efficient manner and in such a way as to maintain and promote the health and wellness of the patients of those facilities;*
 - (c) *to co-ordinate the administration and operation of the health care facilities;*
 - (d) *to make recommendations to the Minister on the development of the health care facilities and the health care services in the Islands and*

- (e) *on such matters as the Minister may refer to the Authority for advice;*
- (f) *to give effect to any direction given by the Minister or the Governor in Cabinet under this Law;*
- (g) *to provide public health programmes as determined by the Minister acting on the recommendations of the Board; and*
- (h) *to provide healthcare for employees of the Government, indigent persons and such other persons as may be agreed from time to time with the Minister."*

5. Pursuant to Section 8 of the Health Services Authority Law it is provided that:

- "8(1) *The Authority shall have a board of directors which shall be responsible for the policy and general administration of the affairs and business of the Authority.*
- (2) *The Board shall be responsible for the financial performance of the Authority including for ensuring that the Authority –*
 - (a) *delivers the outputs specified in the purchase agreement prepared in accordance with section 26; and*
 - (b) *achieves the ownership performance specified in the ownership agreement prepared in accordance with Section 27.*
- (3) *The Board shall have power to –*
 - (a) *act by sub-committee; and*
 - (b) *delegate any of its daily administrative duties and powers from time to time to such sub-committees and to any of their own number and to the employees and agents of the Authority.*

except that where the Board sets up a sub-committee which consists of members other than directors and employees of the Authority, it may only act or delegate its duties or powers to such sub-committee with the approval of the Governor in Cabinet.
- (4) *The Board shall consist of –*
 - (a) *the Financial Secretary or his nominee;*
 - (b) *the Permanent Secretary to the Ministry of Health or his nominee;*
 - (c) *the Chief Executive Officer;*

- (d) *the Medical Director of the Authority;*
- (e) *the Medical Officer of Health; and*
- (f) *not less than eight nor more than ten other directors appointed by the Governor in Cabinet ...*
- (6) *There shall be a chairman and a deputy chairman of the Authority, each of whom shall be appointed by the Governor in Cabinet from among the directors.*
- (7) *The Board shall appoint a person, not being a member, to be the secretary of the Authority, who shall be present at all meetings and shall take minutes of the business transacted."*
6. Pursuant to Section 14 of the Health Services Authority Law it was provided that:
- Section 14(1) The Board shall appoint, at such remuneration and on such terms and conditions as the Board may think fit, a Chief Executive Officer who shall be –*
- (g) *a full-time officer and employee of the Authority; and*
- (h) *the principal executive officer of the Authority entrusted with the day-to-day management and administration, to the extent of the authority delegated to him by the Board.*
- (2) *The Chief Executive Officer shall render his services exclusively to the Authority and shall be answerable to the Board for his acts and decisions.*
7. In or about October 2005 the Defendant authority invited applications for the post of Chief Executive Officer of that authority and the successful candidate was required, inter alia, to enhance the organisation's public and professional image, maintain fiscal stability and achieve organisational goals and objectives "*as specified in the Strategic Plan*".
8. By its letter dated 15th February 2006 the Defendant offered the Plaintiff the post of Chief Executive Officer, subject to a mutually acceptable employment contract being signed by both parties.
9. On 24th February 2006 a Contract of Employment was executed by the Plaintiff and the Defendant providing, inter alia,
- "1. *The person engaged agrees to undertake the duties of Chief Executive Officer and is considered as an employee of professional level as defined by the Labour Law (2001 Revision) as amended from time to time.*

2. *The person engaged shall be paid an initial salary for the post in the amount of One Hundred and Sixty-nine Thousand, Three Hundred and Forty-Four Cayman Islands Dollars (CIS\$169,344) per annum with one month's salary paid every month.*

After one year of satisfactory performance, the salary will increase to One Hundred and Seventy-Two Thousand, Eight Hundred and Seventy-Two Cayman Islands Dollars (CIS\$172,872) per annum.

After the second year of satisfactory performance the salary will increase to One Hundred and Seventy-Six Thousand, Four Hundred Cayman Islands Dollars (CIS\$176,400) per annum.

- ... 3. *TERM OF ENGAGEMENT: The term of engagement shall be for thirty-six (36) months commencing on the 1 day of April 06 and terminating on the 31 day March 2009 (sic)..*

- ... 6. *TRANSPORTATION: The person engaged will be provided with a family-sized motor vehicle for the duration of the contract. Costs for insurance, licensing and maintenance will be covered by the Health Services Authority. Costs for fuel will be borne by the person engaged.*

- ... 9. *DUTIES: In addition to any attached job description and or job plan, the usual duties of the office of the person engaged will be required to undertake such reasonable duties as may be specified by the Board of Directors of the Health Services Authority, including duties associated with disasters or hurricanes. The person engaged shall not, either directly or indirectly, engage in or be concerned in any trade, private professional practice or employment other than that specified under this Agreement except with the specific and prior approval of the Board of Directors of the Health Services Authority and the Immigration Authorities of the Cayman Islands.*

- ... 11. *PASSAGES: The Health Services Authority shall provide the person engaged with paid passage to the Cayman Islands. The Health Services Authority will provide air passages for the person engaged and his dependent(s) at the cheapest available rate from his current domicile to the Cayman Islands, up to a cost of CIS\$6,000 at the commencement of this contract and the end of the final contract*
...

- ... 12. *BAGGAGE: The person engaged shall be entitled to: -*

A Settlement Allowance of up to CIS\$10,000.00 to assist with the cost of bringing personal possessions to the Cayman islands, to assist with any other initial set up costs at the commencement of the

contract, and for the purpose of shipping personal items back to his place of domicile at the end of the final contract.

- 14. *MEDICAL COVER: In accordance with the Terms and Conditions of Employment, medical cover is provided for the person engaged, and for the following dependent(s):*

List dependents – Gloria C. Brown

provided that the person engaged and each named dependent landed in the Cayman Islands under this Agreement and are ordinary residents of the Cayman Islands. This cover is under review and subject to change in writing at the direction of the Board of Directors.

- 16. *DISMISSAL: If the person engaged shall, at any time after the signing of this Agreement become subject to dismissal by reason or reasons of misconduct, poor performance or as identified in the General Terms and Conditions, Policies, Employment Rules, Disciplinary and Grievance Procedures, then the Health Services Authority may terminate the engagement forthwith and thereupon all rights and advantages reserved to the person engaged by this Agreement shall cease.*

- 20. *PENSION PROVISIONS: The person engaged shall be subject to the pension provisions identified in the General Terms and Conditions of Employment of the Health Services Authority.*

- 24. *EXPRESS TERMS: The person engaged shall receive copies of (i) the General Terms and Conditions of Employment and (ii) Policies of the Authority at the commencement of the initial fixed term contract, and thereafter shall receive the said latest General Terms and Conditions of Employment, and Policies, as they become available on the HSA intranet service. It is the responsibility of the person engaged to peruse and be familiar with the latest General Terms and Conditions and Policies, as these may change from time to time. The person engaged must comply with the HSA General Terms and Conditions of Employment, rules and procedures and policies.*

- 27. *INTERPRETATION: This Agreement is to be interpreted in accordance with the Laws of the Cayman Islands and the Authority and the person engaged hereby submit to the exclusive jurisdiction of the courts of the Cayman Islands. The Cayman Islands Government's General Orders is not applicable to this contract of employment (sic).*

28. *This fixed-term contract of employment supersedes, revokes and replaces any previous Terms of Employment between the Health Services Authority and the person engaged."*

10. The Defendant's job description for the post of Chief Executive Officer provided that:

1. *JOB PURPOSE*

To translate the vision of the HSA into actions that will optimise the goals and objectives of the organisation. To plan, formulate, and recommend for the approval of the Board basic policies and programs that will further the objectives of the HSA. To execute all decisions of the Board.

... 2. *DIMENSIONS*

The Chief Executive Officer is the principal officer of the Authority entrusted with the day to day management and administration to the extent of the authority delegated by the Board.

The CEO reports directly to the HSA Board of Directors and is responsible for the provision of health services for the Cayman Islands ...

3. *PRINCIPAL ACCOUNTABILITIES*

... 11. *Improve the financial viability effectiveness of the Health Services Authority by maximising revenue and controlling costs. Strengthen the financial management systems and control functions utilising recommendations in audit and consultant reports."*

11. The Defendant's Employment Rules, Disciplinary and Grievance Procedures provided that:

"THE DISCIPLINARY PROCEDURES

The purpose of the rules policies and procedures is not to find a means to discipline people, or for the Authority to impose its will on staff but to organize the relationships between staff and the Authority, staff and other staff, staff and patients and staff and visitors in a way that allows for an effective and efficient service to be delivered. The Health Services Authority has established disciplinary procedures to deal with circumstances where employees fail to perform their duties satisfactorily or where they are in breach of acceptable standards of conduct whilst in the course of their duties.

Disciplinary matters fall into two major categories, which call for differing actions by the Authority, these are:

1. GROSS MISCONDUCT

Gross misconduct can be defined as conduct or performance that cannot be tolerated in any circumstances, in any reasonable organization or society. The examples identified above A-H (although not limited to these examples) may be categorized as Gross Misconduct and may therefore render the employee liable to summary dismissal (dismissal without notice and immediate loss of payment in lieu of notice).

2. GENERAL UNSATISFACTORY CONDUCT

This category covers all other aspects of an employees conduct whilst at work, including unsatisfactory or negligent job performance, poor personal standards, time keeping and attendance etc. It is conduct that may be rectified and as such dealt with through a progressive procedure. The rules covered by this procedure are identified above 1-10 (not exhaustive).

Where an employee's conduct or job performance warrants some disciplinary action being taken by the Authority, it is intended that such action be seen as remedial, rather than punitive. The employee will therefore on each occasion be given the opportunity to put their explanation of events and the reasons for any breach of acceptable standards of conduct or job performance...

The Authority regards dismissal as an extremely serious matter and as such, any investigation and subsequent hearing that could result in an employee being dismissed, whether Gross Misconduct or Final Stage will be conducted by a Disciplinary Team consisting of three Senior Managers. The report of the Disciplinary Team will be given to the CEO who will determine whether the employee should be dismissed. The letter of dismissal will contain the information identified above.

In any case, where an alleged incidence of Gross Misconduct occurs that in the view of the Chief Executive Officer warrants the employee being removed from work immediately pending further investigation, the Chief Executive Officer may suspend the employee from work on half-pay. The employee shall make him/herself available for any disciplinary hearing as required and will be given the opportunity to present be heard (sic) prior to any disciplinary decision being taken..

DEALING WITH UNSATISFACTORY PERFORMANCE

The matter of job performance and its continuous improvement will normally be dealt with under the Performance Management Scheme operated by the Cayman Islands Health Services Authority. The procedure that forms part of this document is not intended to supplant that system but to be implemented when that system has failed to deliver needed improvement in an employee's performance of their job.

The procedure will be implemented as part of the disciplinary process in as much as it is intended to bring about improvement but at the same time, to record what future action will be taken in the event that job performance does not improve...

The first stage is for the Supervisor or Manager to meet with the employee and determine that Capability and not some other matter or circumstance is the issue to be dealt with. The Supervisor should also inform the employee that this meeting is the equivalent of a verbal warning and that in the absence of improvement further action may be taken ...

The second stage is a further meeting arranged with the staff member who may at this stage be represented or accompanied by a representative if they wish. The Supervisor or Manager will be accompanied by the appropriate Senior Manager.

- *it should be a formal meeting and include the presence of a HR representative. This meeting should clearly identify the performance problems individually and describe the agreed actions for curing the shortfall in performance.*
- *it should also identify that this is a matter that unless resolved will lead to the termination of the employee's contract for failing to meet the conditions of that contract (it is an implicit condition of any contract of employment that satisfactory performance of the job shall be expected in delivering the contract terms).*
- *the period of review and sustained measurement of improved performance should be identified in a written agreement, as should the measures etc as described in the 1st stage. A copy of this agreement should go on to the individual's record.*
- *performance should be monitored and reviewed regularly, with the employee and they should be kept informed of their progress or lack of it, throughout the review period.*

These matters should be recorded in writing and the employee informed that this is the equivalent of a written warning whereby, if there is no improvement, termination of their contract could be the result. If at the conclusion of this second stage should there have been no or inadequate improvement, then the matter should proceed to the next stage.

The third and final stage – termination must include a face to face interview and will involve a Senior Manager. The employee will be allowed to be accompanied/represented and to present any case in mitigation and/or exculpation.

- *if the employee's contract is to be terminated this will be explained to them and they will in normal circumstances be given the appropriate notice.*

- they will also be advised of their right of appeal against the decision to terminate their employment.
- all matters discussed at the termination will be recorded and confirmed in writing to the employee, within 3 working days of the termination of employment.

In the event of Termination at this stage, with the exception of the Disciplinary Team hearing, the Senior Manager should refer the matter to the CEO as in the dismissal stage of the disciplinary procedure. "

12. By his letter dated 23rd March 2006 the Minister of Health and Human Services, Anthony S. Eden ("the Minister") indicated to the Defendant's Chairman of the Board of Directors, Pastor Alden Ebanks ("the Chairman"), that

"In order to move the organisation forward there must be a clear distinction between the role of the Board and that of the management of the organisation. While the Board is held accountable to me for the success of this organisation I, as the Minister assigned the responsibility of Health, is (sic) ultimately accountable to the government and the people of the Cayman Islands.

Effective April 1, 2006 I hereby direct the Board to transfer all responsibilities for the operation of the Health Services Authority to Mr. Craig Brown who has been appointed as Chief Executive Officer. A Performance Agreement for the Chief Executive Officer should be finalized with the Board no later than April 30th, 2006.

With input from the Chief Executive Officer, the Board is also directed to;

- *adopt a governance model.*
- *establish a budget for Board expenses.*
- *facilitate any necessary training for directors to understand and perform their roles and responsibilities as outlined in the Health Services Authority Law. "*

13. The Health Services Authority Strategic Plan 2005-2010, which is dated 16th February 2005 provided, inter alia that:

Action Plan Strategy Number 1. Plan Number 1.

Strategy: We will fully Develop, Implement and Sustain an Organisational Structure that identifies roles, responsibilities and accountability for the Board, management and staff.

14. By his letter dated 8th September 2006 the Chairman of the Defendant wrote to the Plaintiff in terms that

"You may take this letter as formal notice to you that the Board of Directors of the Health Services Authority considers that you have not been performing your duties as Chief Executive Officer in a satisfactory manner and, in some instances, you have so conducted yourself as to be, in the opinion of the Board, guilty of misconduct.

In addition, while you have the experience and capability to oversee the day-to-day operations of the Health Services Authority, we are of the opinion that, to date, your style of management has not been in the best interests of the Board, the management team, employees, general patient care or the public we serve."

15. The letter went on to list instances of the Plaintiff's alleged unsatisfactory performance or alleged misconduct as including, inter alia,

15.1 transferring the then Doctor in Charge of the Accident and Emergency Division, Dr. Fiona Richardson, from the Accident and Emergency Department to the General Clinic Department.

15.2 dismissing the Chief Operations Officer, Cathy Gomez in circumstances that were "not handled well". In particular "Ms Gomez, as you knew, was a long term employee. Her case required sensitivity and finesse. In addition to your apparent disregard for the cautionary recommendations offered to you by the Honourable Minister of Health, various Board members, the Board Chairman and the HAS's Legal Advisor, you also ignored detailed written advice provided to you in May 2006 by the Authority's Human Resources Advisor."

15.3 allegedly failing to use the appropriate diplomatic skills when dealing with Ms Gomez, Sheridan Brooks the attorney then representing Ms Gomez, and Marjorie Boddan and Edward Boddan.

16. The letter dated 8th September 2006 from the Chairman to the Plaintiff went on to state that the Plaintiff appeared impervious to advice, preferring to rely at all times upon his own judgment and that the general public and the Defendant's staff needed to see a rapid and dramatic improvement in the Plaintiff's leadership skills.

17. The letter dated 8th September 2006 further stated that:

"Your contract of employment with the Authority entitles the Board to dismiss you for misconduct or poor performance, as well as upon other grounds. Your conduct over the past several weeks has not inspired the Board's confidence. We are, however, prepared to give you an opportunity to change that impression."

18. The letter dated 8th September 2006 concluded in terms that:

18.1 the Plaintiff's management style had to change and that the Plaintiff had to develop a "fresh, constructive and less confrontational management style".

- 18.2 that the Plaintiff was required to demonstrate a "changed attitude" within 30 days and his conduct would be monitored over the next 6 months.
- 18.3 the Plaintiff had to, within 24 hours, provide a written apology to the Minister and within 7 days provide written apologies to Marjorie Borden and Edward Borden and Sheridan Brooks and "*these apologies need not – and indeed should not – refer to the merits of your discussions with these individuals. We merely wish to see that each of them has received an apology for your personal conduct, which is the primary subject of their complaints.*"
- 18.4 the Plaintiff was not, during the following 6 months, to make any public statements to the press or general pronouncements to the Defendant's employees without prior Board approval.
19. The Plaintiff denies that he was guilty of any unsatisfactory performance or misconduct during his tenure as the Chief Executive Officer of the Defendant and in particular, the Plaintiff denies any misconduct concerning the matters alleged in the Chairman's letter of 8th September 2006.
20. In particular, at the trial of this action the Plaintiff will show that:
- 20.1 The transfer of Dr. Richardson was an urgent operational necessity and its timing and execution were carried out in accordance with advice and input from the Defendant's Medical Director and the Defendant's Human Resources Department.
- 20.2.1 It is the Plaintiff's understanding that the position of Ms Gomez was described as redundant as long ago as May 2003 and at the meeting of the Defendant's Board of Directors held on 18th April 2006 the Plaintiff indicated to the Board of Directors that his final recommendation for a new organisational structure would be made once he had obtained input from senior management.
- 20.2.2 The Plaintiff's draft organisational chart was then presented to the Board of Directors at its 28th April 2006 meeting after the Plaintiff had reviewed the report prepared by Mercer Human Resources Consulting dated 17th October 2005, the submissions from the Senior Management team and the recommendations of the Section Supervisors Group. The Board of Directors endorsed the organisational structure so provided, which such structure indicated that Ms Gomez would be made redundant.
- 20.2.3 The Defendant's Human Resources Department reported in May 2006 that Ms Gomez was performing below standard, was close to retirement age and did not show sufficient potential to contribute to the future of the Defendant and in July 2006 the Ministry of Health and Human

Services confirmed that the Minister had no objection to the Plaintiff implementing his proposed organisational structure.

20.2.4 Ms Gomez was informed of the options available to her, including retirement on financially attractive terms. However, Ms Gomez refused to accept the situation and refused to indicate the terms upon which she wished her Contract of Employment to conclude on.

20.2.5 Eventually, when Ms Gomez continued to refuse to accept that she no longer had a position at the Defendant and that her services were no longer required, additional benefits were offered to her but Ms Gomez refused to accept these terms and refused to accept that she no was longer employed by the Defendant. In the circumstances and after discussing the situation with the Chairman and with the Defendant's legal advisor, Douglas Schofield, on 11th August 2006 Ms Gomez was asked to vacate her office that day and to leave the premises pending a conclusion of the negotiations concerning her severance package.

20.3 Whether the Plaintiff failed to use diplomatic skills in his dealings with Marjorie Bodden, Edward Bodden and Sheridan Brooks needs to be considered in light of the fact that:

20.3.1 on 4th August 2006 Marjorie Bodden and Edward Bodden visited the Plaintiff and enquired why the Defendant was seeking tenders for the delivery of air ambulance services when they had provided the service for 28 years. When the Plaintiff explained that the Defendant needed to move away from a brokerage arrangement to a single source of delivery of air ambulance services Edward Bodden became confrontational and abusive.

20.3.2 Sheridan Brooks attended the Plaintiff's office at the Cayman Islands Hospital uninvited and unannounced and claimed that the Cayman Islands Hospital was a public building and that she had a right to be in the Plaintiff's office. When asked to leave the office Sheridan Brooks refused and became antagonistic.

21. The Plaintiff was given no prior notice of the alleged poor performance or alleged misconduct referred to in the 8th September 2006 letter. In the circumstances, the Plaintiff was not given the opportunity to put forward his explanation of events in accordance with the Defendant's Disciplinary and Grievance Procedures and furthermore, the Defendant accordingly acted in breach of natural justice.

22. In any event, the Plaintiff was not dismissed by the letter from the Chairman dated 8th September 2006, as a consequence of his alleged unsatisfactory performance or alleged misconduct.

23. By his memorandum dated 19th September 2006 the Chairman wrote to Heather Wisdom, the secretary of the Plaintiff and requested the tape recording of the Senior Management meeting held on 18th September 2006 and "*copies of all such*

tape recordings and minutes of Senior Management meetings and also Section Supervisor meetings held since the 1st July 2006. Please deliver these immediately to the Board Office".

24. Ms Wisdom replied to the Chairman on 19th September 2006 in terms that the Plaintiff had directed her to inform the Chairman that such requests should be directed to the Plaintiff.
25. By his memorandum dated 19th September 2006 the Chairman wrote to the Plaintiff in terms that:

"It would be appreciated if you could kindly forward to me the tape recording of the Senior Management meeting held yesterday, Monday September 18th, 2006. I am also hereby requesting copies of all such tape recordings and minutes of Senior Management meetings and also Section Supervisor meetings held since 1st July 2006. Your immediate attention to this request is appreciated."
26. By a further memorandum dated 19th September 2006 the Chairman wrote to the Plaintiff in terms that:

"It would be appreciated if you could immediately forward to the Board Secretary a copy of the tape recording you made of our meeting held this morning, September 19th, 2006."
27. By a further memorandum dated 20th September 2006 the Chairman wrote to the Plaintiff in terms that:

"As per my memorandum delivered to you yesterday requesting the immediate delivery to the Board office of all tape recordings of Senior Management meetings and Minutes of meetings held since July 1st, 2006 I am once again requesting that this information be immediately supplied to the Board office."
28. The Plaintiff avers that these requests from the Chairman were unreasonable, since no reason or reasons were provided by the Chairman for the request and even after the dismissal no reason was ever provided for the instruction and no good reason exists now.
29. The extent of the material requested was onerous and in the absence of any stated reason, its breadth suggested that the purpose of the request was to enquire as to how the Plaintiff was conducting his meetings with Senior Management and with Section Supervisors, which in the absence of a specific complaint about a specific meeting was unjustifiable interference with the authority delegated to the Plaintiff to manage the Defendant.
30. Then, during an exchange of correspondence between the Defendant and the attorneys acting for the Plaintiff, it was stated that the Plaintiff did not accept the correctness of the allegations contained in the 8th September 2006 letter.

31. However, by a further memorandum dated 26th September 2006 the Chairman wrote to the Plaintiff in terms that:

"I refer to the following correspondence requesting minutes and tape recordings of Senior Management and Section Supervisor meetings as well as the tape recording of a meeting held between us ... despite the above request you have not produced any of the documents or tape recordings. I am hereby requiring that you deliver to me at the Board Meeting tomorrow afternoon Wednesday September 27th 2006 all documents and tape recordings requested in the aforementioned memos."

32. The Plaintiff was not aware of any resolution of the Board of Directors directing the Chairman to make the requests he made and so at the Board Meeting that took place on 27th September 2006 the Plaintiff told the Board that he would hand over any material if directed to do so by the Board or if directed to do so by the Chairman after the Chairman had been authorized by the Board to make such a request.

33. At the 27th September 2006 meeting the Plaintiff notified the Board that he was not aware of any motion or resolution by the Board authorizing the Chairman to make such requests and in the circumstances, the Plaintiff was of the opinion that to provide confidential information to a third party, unless directed to do so by the Board, would breach his obligations of confidentiality to the Defendant.

34. Then, after the Board Meeting that took place on 27th September 2006 and without any further meetings or opportunities to present any case in mitigation or exculpation the Chairman wrote to the Plaintiff dismissing him.

35. The letter of dismissal dated 2nd October 2006 was in terms that:

"The Board has carefully considered your conduct over the past few months, and has agreed that the relationship of trust and confidence necessary for the continuation of an employment relationship between itself, as employer, and yourself, as employee, has irretrievably broken down

... you have repeatedly refused to comply with the Board's reasonable and legal written instructions for copies of the tape recordings of meetings of the senior management, made on the Board's behalf by the Chair in writing on 19th, 20th and 26th September 2006. You have also, it appears, encouraged or directed your secretary to refuse the Board's reasonable and legal instructions to produce that material to them. The Board regards this refusal as gross misconduct, amounting as it does to the conversion of property belonging to the Health Services Authority and insubordination, in accordance with the terms of the Disciplinary Procedure. Accordingly, the Board has resolved that you should be dismissed, with immediate effect, pursuant to Section 52(1) of the Labour Law (2001 Revision) and Clause 16 of your contract of employment.

It is regrettable that, for the reasons outlined in the Board's letter to you of 8th September 2006 and because of your failure to deal with the Board frankly and

openly with regard to the production of the tape recordings and minutes, you have conducted yourself in a manner which clearly demonstrates that your employment by the Health Services Authority cannot reasonably be expected to continue

On receipt of this letter you will be permitted 20 minutes to read it and to clear your office of your personal effects but you must not take any property belonging to the Health Services Authority away from the premises. This included (sic), without limit, any papers, computer files, emails, tape recordings, keys, passwords, office equipment or computers belonging to the Health Services Authority...

Notwithstanding Part VII of the Labour Law (2001 Revision), your salary will be paid in full for the month of October 2006, together with any sums outstanding in relation to accrued holiday pay. The Board will continue to provide health insurance benefits for yourself and your dependents for 6 weeks from the delivery to you of this letter, in order to allow you sufficient time to settle your affairs."

36. As has been stated above at paragraphs 28-33 the Plaintiff denies that he refused or failed to comply with any reasonable and legal written instructions from the Board and the Plaintiff is not aware of any written instructions received from the Board in connection with the matter.
37. All the Plaintiff received was requests in memorandum from the Chairman but without the Chairman having the authority to make such requests.
38. In any event, the Plaintiff did not categorically refuse to provide the tapes but indicated to the Board on 27th September 2006 that he would hand over to the Board what he had when the Board requested it.
39. If it is alleged by the Defendant that the Plaintiff was guilty of gross misconduct by his failure to hand over the material requested by the Chairman in his memorandum of 19th September 2006, 20th September 2006 and 26th September 2006, the Plaintiff will say that any failure, such as there was, needs to be viewed in light of the unreasonableness of the request and the significance of the consequences of any such alleged failure. No significant consequences would have flowed or have flowed from any alleged failure to produce and this should have been taken into account when the Board decided what disciplinary action it should have taken against the Plaintiff, if any.
40. The Plaintiff was not in fundamental breach of his Contract of Employment and therefore his dismissal with immediate effect and no notice pay was a wrongful dismissal.
41. As a result the Plaintiff has suffered loss and damage and the Plaintiff is taking reasonable steps to mitigate his loss and will give credit for earnings received during the remainder of this fixed term contract.

42. Further, pursuant to Section 34 of the Judicature Law (2004 Revision) the Plaintiff is entitled to and hereby claims interest on the sum found to be due to him for such period and at such rate as the Court shall think fit.

AND THE PLAINTIFF CLAIMS:-

1. Damages for breach of contract.
2. Interest referred to in paragraph 28 thereon to be assessed pursuant to section 34 of the Judicature Law (2004 Revision).
3. Costs.

Dated the 19th day of December 2006


RITCH & CONOLLY
Attorneys at Law for the Plaintiff

TO: The Clerk of the Court

AND TO: The Defendant, Box 915, Grand Cayman KY1-1102,
Cayman Islands.

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 KY1-1106.

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 endorsed 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

CAUSE NO. ⁸⁴⁹ OF 2006

BETWEEN:

CRAIG BROWN

PLAINTIFF

AND:

THE HEALTH SERVICES AUTHORITY

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).....

Attorney for

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.

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

**Ritch & Conolly
PO Box 1994
4th Floor, Queensgate House
133 South Church Street
George Town
Grand Cayman
RHJ/10430/Craig Brown**

Endorsement 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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