

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 320 OF 2007  
L/A NO. 13/05

BETWEEN

MIGUEL ANGEL GOMEZ MARTINEZ

PLAINTIFF

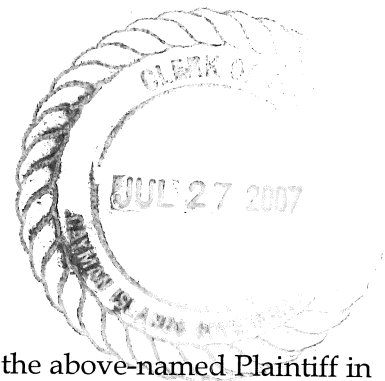
AND

THE PROPRIETORS, STRATA PLAN NO. 46

DEFENDANT

WRIT OF SUMMONS

To: The Proprietors Strata Plan No. 46  
P.O. Box 30871  
Grand Cayman KY1-1204  
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 Fourteen days [14] 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 27<sup>th</sup> day of July, 2007

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

### *Dramatis Personae*

1. The Plaintiff is a Caymanian citizen whose profession is that of a general maintenance man.
2. The Defendant is The Proprietors, Strata Plan No. 46 (the "Corporation"), a body corporate incorporated under the Strata Titles Registration Law (2005 Revision).

### **Relationship between the Parties**

3. On 9 August 2002 the Defendant employed the Plaintiff to carry out general maintenance tasks at Plantation Village with responsibility for maintaining and repairing the Defendant's property and equipment.
4. Pursuant to section 3 subsection (2) (c) of the Health Insurance Law (2003 Revision) ("the Law") the Defendant was under a statutory duty to provide health insurance coverage for all of its employees, including the Plaintiff.
5. At the time of hiring and during the employment relationship it was represented to the Plaintiff by the Defendant that health insurance coverage was provided to all employees and they would be responsible for paying a portion of the premium in accordance with the Law. In purported performance, the Defendant made regular deductions from the Plaintiff's salary for the said purpose.
6. On 7 May 2004 the Plaintiff suffered a heart attack ("the first heart attack") and required urgent overseas medical attention. Arrangements were made for the Plaintiff to be airlifted to Houston, Texas when it was discovered that the Plaintiff was not covered under any health insurance plan.

7. Upon discovering that the Plaintiff had no health insurance coverage, which should have been provided by the Defendant, attempts were made to secure sufficient funds from the Defendant for the Plaintiff to travel to Cuba as this was cheaper than travelling to Houston. The Plaintiff remained at the George Town Hospital for 19 days before travelling to The Institute of Cardiology and Cardiovascular Surgery in Havana, Cuba for treatment on 26 May 2004.
8. The Defendant paid CI\$15,000 towards the cost of the Plaintiff's medical expenses.
9. At the Institute of Cardiology and Cardiovascular Surgery in Havana, it was discovered that the Plaintiff's heart disease was caused by the narrowing of the coronary arteries. Between the dates of 26 May to 4 June 2004 the Plaintiff underwent surgery for a coronary angioplasty transluminal percutaneous (ACTP) of two vessels, implanting two diluted stent (Cypher).
10. The Plaintiff remained at the Institute until released on 4 June 2004 with instructions to return for a second cardiac catheterization in six months. He was also advised not to carry out any moderate or severe physical efforts. The Plaintiff returned to the George Town Hospital on 1 July 2004 to continue treatment and cardiac rehabilitation.
11. On 4 August 2004 the Plaintiff returned to the George Town Hospital for chest pains radiating to the left shoulder and shortness. He was admitted for treatment and further tests while complaining of unstable angina. Soon after, the Plaintiff suffered a second heart attack.
12. The Plaintiff has yet to clear a clogged artery due to the Plaintiff's weak heart and the risk of heart failure during surgery.

### **Breach of contract, statutory duty and duty of care**

13. In failing to provide the necessary health insurance coverage for the Plaintiff, the Defendant had acted in breach of the contract of employment as it was an implied term of the contract that such insurance coverage would be provided as required by the Law.
14. In failing to provide the necessary health insurance coverage for the Plaintiff, the Defendant acted negligently in carrying out their duties as employers as required by the Law.
15. In attempting to comply with its statutory duty, the Defendant on 1 June 2004 contracted with Generali Worldwide to provide basic health insurance cover all its employees. However, the Plaintiff was not covered under this policy due to his known health risk having suffered a heart attack on 7 May 2004.
16. Upon suffering his second heart attack on 6 August 2004, The Plaintiff was still without insurance coverage but received assistance from the Cayman Islands National Insurance Company (CINICO) to travel to Cuba for treatment.
17. The cost of treatment for the second heart attack was CI\$16,000.00. To fund the treatment, the Plaintiff had to take out a loan for CI\$16,000.00 using his house as collateral.
18. Subsequent to these events, the Plaintiff was no longer qualified for insurance coverage in the Cayman Islands and is considered an uninsurable person under the Law.
19. The lack of medical insurance cover at the time of employment and the future/current ineligibility of the Plaintiff to obtain insurance coverage was

caused solely by the negligence of the Defendant in the management and performance of his duties and responsibilities as the employer of the Plaintiff.

### **PARTICULARS OF NEGLIGENCE**

- (a) Failing to provide insurance cover as required by the Health Insurance Law (2003 Revision).
  - (b) Failing to make adequate provisions for suitable medical coverage in the absence of health insurance coverage mandated by law.
20. On 10 July 2006 the Plaintiff was informed by the Defendant that he was no longer employed by the Defendant as he was being made redundant.
21. As a result of the Defendant's breach of statutory duty and/or negligence and/or breach of implied term of the employment contract, the Plaintiff suffered losses.

### **PARTICULARS OF LOSSES**

- (a) Subsequent to the heart attacks, the Plaintiff is an uninsurable person not capable of securing insurance coverage in the Cayman Islands, which is a prerequisite for employment in the Cayman Islands. As a result, the Plaintiff is unable to secure formal employment and has been since 10 July 2006, unemployed.
- (b) Whilst working for the Defendant, the Plaintiff used to earn between CI\$1,600 and CI\$2000 a month. On average this works out to be CI\$21,600 per annum. The Plaintiff is currently only able to secure informal odd-jobs to sustain himself, primarily by travelling to and from Cuba transporting goods and personal effects for a fee. The Plaintiff makes on

average US\$450 per month by doing the odd-jobs above. His loss is CI\$16,200 per annum.

22. The Plaintiff has also suffered special damages as follows:

#### **PARTICULARS OF SPECIAL DAMAGES**

- (a) Whilst the expenses relating to the Plaintiff's first heart attack in May 2004 was paid by the Defendant, subsequent medical expenses were not paid by the Defendant or any insurance company but by the Plaintiff.
  - (b) The medical costs of the Plaintiff's treatment in Cuba for his second heart attack in August 2004 and consequential treatments were CI\$16,000.
  - (c) In August of 2006, while on vacation in Miami, the Plaintiff experienced pains in his chest. He was admitted into hospital for a week for fear of another heart attack. The expenses at the Jackson Memorial Hospital cost CI\$23,674.00 and the payments are still outstanding to the hospital.
  - (d) The Plaintiff owes CINICO CI\$7,148.18 for medical costs paid to the Cayman Islands Medical Services Authority.
  - (e) The Plaintiff's loss of earnings from 10 July 2006 to 10 July 2007 is CI\$16,200.
23. The Plaintiff's loss of earnings and/or loss of earning capacity and loss of medical coverage are continuing.
24. The Plaintiff has also suffered a loss of enjoyment of medical insurance coverage.

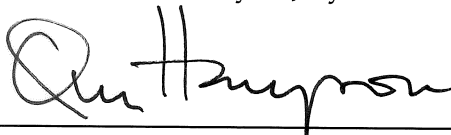
**AND THE PLAINTIFF CLAIMS:**

- (a) Special Damages of CI\$63,022.18;
- (b) General Damages;
- (c) Pre-Judgment and post-judgment interest in accordance with Section 34 of the Judicature Law (1995 Revision);
- (d) Further and/or other relief;
- (e) Costs.

**STATEMENT REGARDING INTEREST**

The Plaintiff claims interest from September 2004 at the rate of 7.25% per annum or as may be varied from time to time by the Grand Court Rules

DATED this 27<sup>th</sup> day of July, 2007



---

**QUIN & HAMPSON**  
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And to: The Proprietors, Strata Plan No. 46  
P.O. Box 30871 SMB  
Grand Cayman KY1-1204  
Cayman Islands

**THIS WRIT** was issued by Messrs. Quin & Hampson, Attorneys-at-Law for the Plaintiff whose address for service and correspondence is P.O. Box 1348, Third Floor, Harbour Centre, George Town, Grand Cayman, B.W.I. (Ref: MR/3307-0000)

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 installments 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 authroised 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 320 OF 2007  
L/A NO. 13/05

BETWEEN

MIGUEL ANGEL COMEZ MARTINEZ

PLAINTIFF

AND

THE PROPRIETORS, STRATA PLAN NO. 46

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.*

Messrs. Quin & Hampson  
Attorneys-at-Law  
Third Floor, Harbour Centre  
P.O. Box 1348  
George Town,  
GRAND CAYMAN (Ref: MR/3307-0000)

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