

IN THE GRAND COURT OF THE CAYMAN ISLANDS

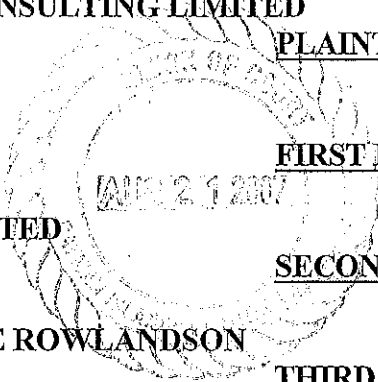
364  
CAUSE NO: OF 2007

**BETWEEN:** JEC PROPERTY CONSULTING LIMITED  
PLAINTIFF

**AND:** SIMON AMESBURY  
FIRST DEFENDANT

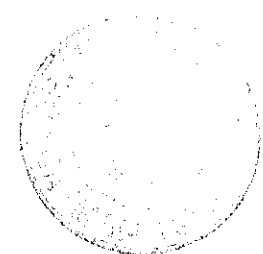
**AND:** AQS CAYMAN LIMITED  
SECOND DEFENDANT

**AND:** GLADYS MARY LEE ROWLANDSON  
THIRD DEFENDANT



**WRIT OF SUMMONS**

TO: The Defendants  
George Town  
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 495GT, 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 17th day of August 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.

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## STATEMENT OF CLAIM

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1. The Plaintiff is, and was at all material times since 1984, a company in good standing incorporated and registered under the Companies Law of the Cayman Islands and conducts the businesses of *inter alia* property management, project management, construction cost management, quantity surveying, valuations, development and insurance appraisals and loss adjusting.
2. The First Defendant is, and was at all material times, a natural person who was employed by the Plaintiff under an agreement dated 22 December 2004 and remained so employed until at least 28 February 2007 on which date he unilaterally and wrongfully terminated his employment with the Plaintiff.
3. The Second Defendant is, and was at all material times since 3 April 2007, a company incorporated and registered under the Companies Law of the Cayman Islands and conducts or proposes to conduct the businesses of *inter alia* project management, construction cost management, quantity surveying, valuations, development & insurance appraisals and loss adjusting.
4. The First Defendant is, since at least 3 April 2007, a 40% shareholder and is an employee of the Second Defendant (alternatively self-employed).
5. The Third Defendant is, and was at all material times, a natural person who is also a 60% shareholder of the Second Defendant. The Third Defendant's qualifications or expertise in *inter alia* project management, construction cost management, quantity surveying, valuations, development & insurance appraisals and loss adjusting is not presently known.

### FIRST DEFENDANT

6. By an agreement made on 22 December 2004 between the Plaintiff and the First Defendant (the "Agreement") the First Defendant was employed by the Plaintiff for an initial period of

one year to perform duties as a Chartered Quantity Surveyor including, but not limited to, property management, quantity surveying, insurance and mortgage valuations and loss adjusting. The Plaintiff will refer at the trial hereof to this Agreement for its full terms and effect.

7. The Agreement was expressed to be for a term of one year commencing upon approval of a work permit pursuant to the Immigration Law (which was granted for a period of two years from 7 March 2005 until 7 March 2007) and therefore ending in its ordinary course on 7 March 2006. The Labour Law (2001 Revision) s. 9 relevantly provides:-

“Where the contract of employment is for a fixed term it shall terminate automatically and without further notice on the expiration of that term unless previously extended by prior agreement, or unless the terms of the contract specify otherwise.”

8. The Plaintiff says that the Agreement contained a representation to the effect that it was the Plaintiff’s openly communicated intention to employ the First Defendant for a longer period than one year whereby the Plaintiff stated in the Agreement at p. 2 thereof as follows:-

“It is [the Plaintiff’s] intention to employ staff for a minimum of 5 years. Your initial contract is for one year subject to your work permit being approved, however we hope you will in (sic) integrate well, form a good client base and remain with us for a number of years.”

9. The Plaintiff procured the extension of the First Defendant’s work permit up to and including 7 March 2007 and paid for that extension in or about March 2006. Further, the Plaintiff says that the First Defendant continued his employment with the Plaintiff after 7 March 2006 and by doing so the First Defendant agreed by his conduct to be employed thereafter on the same terms as contained in the Agreement, which facts the First Defendant is estopped from denying.
10. The Plaintiff also says that by negotiations held on or about 30 March 2006 the Plaintiff and the First Defendant mutually agreed that the First Defendant would continue in the employ of the Plaintiff beyond 30 March 2006 upon substantially the same terms as contained in the

Agreement, which the First Defendant is estopped from denying. Accordingly the Plaintiff contends that the Agreement was extended up to and including at least 7 March 2007.

11. Clause 12 of the Agreement stipulates that:-

“At the expiration of this contract, it is agreed that [the First Defendant] will not seek employment with any other Surveying/Valuation organisation in the Cayman Islands or carry out similar work in competition with [the Plaintiff] as a self employed person for a period of one year.”

The Plaintiff contends that this Clause 12 of the Agreement is a continuing term which survives the termination of the Agreement howsoever occurring.

12. On or about 28 February 2007 the Plaintiff by its directors Messrs Mike Thomas and Dave Greener met with the First Defendant to discuss, in good faith, the First Defendant's continued employment by the Plaintiff beyond 7 March 2007. The discussions did not lead to fresh agreement between the Plaintiff and the First Defendant. The First Defendant then (wrongfully, says the Plaintiff) gave notice of his intention to immediately terminate his employment with the Plaintiff, citing “stress” as his only reason for so doing and thereafter left and never returned to the Plaintiff's employ.

13. Prior to, alternatively since, terminating his employment with the Plaintiff as aforesaid the First Defendant, in breach of his duties (express and implied) to the Plaintiff, and in breach of the Agreement generally and specifically Clause 12 thereof;

(a) caused, permitted or procured the Second Defendant to be incorporated as a vehicle for the purpose of the First Defendant to be employed (alternatively self-employed) as *inter alia* a quantity surveyor in the Cayman Islands in competition with the Plaintiff;

(b) caused, permitted or procured the Second Defendant to make an application to the Trade and Business Licensing Board for a licence for AQS Limited under the Trade & Business Licensing Law as a vehicle for the purpose of the First Defendant being employed by the Second Defendant (alternatively self-

employed) as *inter alia* a quantity surveyor in the Cayman Islands in competition with the Plaintiff;

- (c) caused, permitted or procured the Second Defendant to make an application for a work permit for the First Defendant as an employee of the Second Defendant for the purpose of the First Defendant being employed by the Second Defendant (alternatively, self-employed) as *inter alia* a quantity surveyor in the Cayman Islands in competition with the Plaintiff;
  - (d) approached clients of JEC in an attempt, in at least one case successfully, to procure them to use the Second Defendant, and through it the First Defendant as the Second Defendant's employee (alternatively self-employed), for the provision of *inter alia* quantity surveying services (to wit, Kozaily Designs, a client of the Plaintiff to whom the First Defendant was introduced by the Plaintiff, was the successful tender on the Bodden Town Response Centre and the Quantity Surveyor appointed by them in their tender documents submitted on or about 18 May 2007 is specifically named therein as Simon Amesbury (the First Defendant) of AQS Cayman Ltd (the Second Defendant)); and
  - (e) removed and retained (alternatively, used) proprietary confidential information of and belonging to the Plaintiff relating to the Plaintiff's business, clients and processes (to wit, by covert means in February 2007 the First Defendant removed large amounts of proprietary confidential information the property of the Plaintiff from the Plaintiff's office computer server).
14. By letter dated 4 June 2007 the First Defendant was requested *inter alia* to;
- (a) observe Clause 12 of the Agreement for the period provided thereby;
  - (b) immediately undertake in writing that he would not solicit the Plaintiff's clients until after the expiration of the period provided in the said Clause 12;
  - (c) cause or procure the Second Defendant to withdraw its application for a Trade & Business Licence; and

- (d) deliver up all confidential information belonging to the Plaintiff that remained in the First Defendant's possession or control.
15. To date, and in continuing breach of his duties (express and implied) to the Plaintiff, and the Agreement generally and specifically Clause 12 thereof the First Defendant has neglected, failed or refused to take any or any adequate action to provide undertakings or comfort to the Plaintiff as requested above.
16. As a result of the said breaches of the Agreement the Plaintiff has and will, if the First Defendant is not otherwise restrained, suffer injury, loss and damage and would be entitled to damages for, but not limited to, not less than the profit component of the fee income charged by the First Defendant for the period 1 March 2007 until 28 February 2008:
17. The Plaintiff is also entitled to exemplary damages because the First Defendant acted in a malicious, wanton or grossly reckless way in causing the said injury, loss and damage to the Plaintiff.

PARTICULARS OF CONDUCT BY FIRST DEFENDANT

PURSUANT TO GCR O. 18 r. 8(3)

- (a) The Plaintiff repeats and relies upon paragraphs 12 to 15 inclusive hereof.
18. By reason of the said breaches by the First Defendant the Plaintiff has suffered and, unless the First Defendant is restrained, will continue to suffer injury, loss and damage. Particulars of the nature and extent of the Plaintiff's injury, loss and damage will be provided after Discovery in this Cause.

SECOND DEFENDANT

19. The Plaintiff repeats and relies upon paragraphs 1 to 18 inclusive.
20. The Second Defendant is a vehicle "fronting" for the First Defendant as a means by which the First Defendant is employed by the Second Defendant (alternatively self-employed) as *inter alia* a quantity surveyor in the Cayman Islands in competition with the Plaintiff.

21. By employing the First Defendant (alternatively, permitting the First Defendant to be self-employed) as aforesaid knowingly and without due regard for the Plaintiff's business or contractual rights vis-à-vis the First Defendant, the Second Defendant has interfered with the Plaintiff's business and also with the Plaintiff's continuing contractual rights relating to the First Defendant.
22. By reason of the said tortious acts by the Second Defendant the Plaintiff has suffered injury, loss and damage at the hands of the Second Defendant, particulars of the nature and extent of the Plaintiff's loss and damage will be provided after Discovery in this Cause.

### THIRD DEFENDANT

23. The Plaintiff repeats and relies upon paragraphs 1 to 22 inclusive.
24. The Third Defendant is "fronting" for the First Defendant by holding 60% of the shares of the Second Defendant as a means by which the First Defendant is employed by the Second Defendant (alternatively, self-employed) as *inter alia* a quantity surveyor in the Cayman Islands in competition with the Plaintiff.
25. By reason of the said tortious acts by the Third Defendant the Plaintiff has suffered injury, loss and damage at the hands of the Second Defendant, particulars of the nature and extent of the Plaintiff's loss and damage will be provided after Discovery in this Cause.

### ALL DEFENDANTS

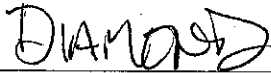
26. In so doing, the Defendants and each of them, have knowingly or recklessly conspired to harm the legitimate economic and business interest of the Plaintiff, to procure a breach of the Agreement by the First Defendant, and to defeat the specific provisions of the Local Companies Control Law and the intent of the policy of that Law.

## PARTICULARS

- (a) By procuring the incorporation of the Second Defendant, taking shares in same and permitting its use as a vehicle by which the First Defendant was employed by the Second Defendant (alternatively, self-employed) the First and Third Defendants knowingly conspired to damage the Plaintiff's legitimate economic and business interests or did so recklessly not caring whether they would harm the Plaintiff.
  - (b) The First Defendant by failing, refusing or neglecting to cease or desist being employed by the Second Defendant (alternatively self-employed) as *inter alia* a quantity surveyor in the Cayman Islands in competition with the Plaintiff knowingly and intentionally damaged the Plaintiff's legitimate economic and business interests or did so recklessly not caring whether he would harm the Plaintiff.
  - (c) The Second Defendant by failing, refusing or neglecting to cease or desist employing the First Defendant (alternatively self-employed) as *inter alia* a quantity surveyor in the Cayman Islands in competition with the Plaintiff knowingly and intentionally damaged the Plaintiff's legitimate economic and business interests or did so recklessly not caring whether it would harm the Plaintiff.
  - (d) The Third Defendant by failing, refusing or neglecting to procure that the First Defendant no longer be employed by the Second Defendant (alternatively self-employed) as *inter alia* a quantity surveyor in the Cayman Islands in competition with the Plaintiff knowingly and intentionally damaged the Plaintiff's legitimate economic and business interests or did so recklessly not caring whether she would harm the Plaintiff.
27. By reason of the said tortious acts by the Third Defendant and each of the Defendants as parties to the conspiracy aforesaid, the Plaintiff has suffered injury, loss and damage at the hands of the Defendants.

**AND THE PLAINTIFF** claims:-

- (1) Damages to be assessed;
- (2) Exemplary Damages as pleaded in para. 17 hereof;
- (3) Interest pursuant to the Judicature Law (2004 Revision) s.34 on such sums and at such rate as the Court shall think fit; and
- (4) The costs of and incidental to these proceedings.



DIAMOND LAW ASSOCIATES  
Attorneys for the Plaintiff

THIS WRIT was issued by DIAMOND LAW ASSOCIATES, Attorneys for the Plaintiff, whose address for service is 4<sup>th</sup> Floor Cardinal Plaza, Cardinall Avenue, George Town, Cayman Islands KY1-1112 (Ref:SJW/1254).

**Acknowledgement of service of writ of summons (0.12, r.3)**

**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 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

364  
CAUSE NO: OF 2007

BETWEEN: JEC PROPERTY CONSULTING LIMITED  
PLAINTIFF

AND: SIMON AMESBURY  
FIRST DEFENDANT

AND: AQS CAYMAN LIMITED  
SECOND DEFENDANT

AND: GLADYS MARY LEE ROWLANDSON  
THIRD 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.

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

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

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  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
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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.

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

DIAMOND LAW ASSOCIATES  
4<sup>th</sup> Floor  
Cardinal Plaza  
Cardinall Avenue  
PO Box 2887  
George Town  
Cayman Islands  
Ref: SJW/1254

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

[Empty box for defendant's attorney indorsement]