

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: <sup>20046</sup> OF 2008

BETWEEN: **ROBERT JAMIESON**

PLAINTIFF

AND: **IRG REAL ESTATE LTD.**

FIRST DEFENDANT

AND: **INTERNATIONAL RELOCATION GROUP LTD.**

SECOND DEFENDANT

AND: **JEREMY HURST**

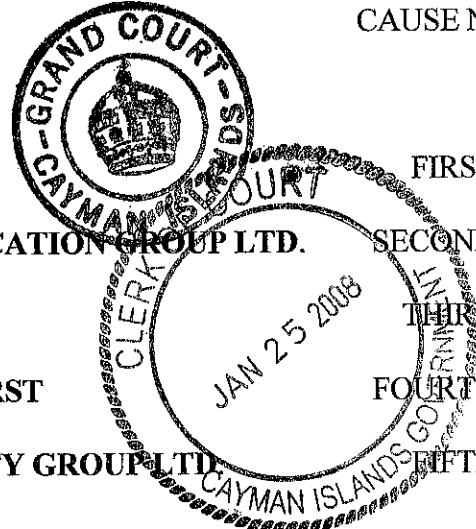
THIRD DEFENDANT

AND: **SHERIDAN BROOKS-HURST**

FOURTH DEFENDANT

AND: **INTERNATIONAL REALTY GROUP LTD.**

FIFTH DEFENDANT



**WRIT OF SUMMONS**

**TO: IRG Real Estate Ltd.**

Registered Office: One Artillery Court, 161 A Shedden Road, P.O. Box 1355, Grand Cayman KY1-1108

**International Relocation Group Ltd.:**

Registered Office: One Artillery Court, 161 A Shedden Road, P.O. Box 1355, Grand Cayman KY1-1108

**Jeremy Hurst:** C/O International Realty Group Ltd., Artillery Court, Shedden Road, Grand Cayman

**Sheridan Brooks-Hurst:** C/O Brooks and Brooks, Attorneys, Artillery Court, Shedden Road, Grand Cayman

**International Realty Group Ltd.:**

Registered Office: Two Artillery Court, 161 A Shedden Road, P.O. Box 2390, Grand Cayman KY1-1108

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claim set out hereafter.

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 25<sup>TH</sup> day of January 2008

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 is a real estate agent by profession who has resided in the Cayman Islands since 1994. At all material times the Plaintiff was employed by the First and/or the Second Defendants.
2. The First Defendant is a Cayman Islands company, which trades and/or has traded as a real estate business and has its registered office at One Artillery Court, Shedden Road, Grand Cayman. At all material times the Third and Fourth Defendants were the Directors and Shareholders of the First Defendant.
3. The Second Defendant is a Cayman Islands company, which trades and/or has traded as a real estate business and has its registered office at One Artillery Court, Shedden Road, Grand Cayman. At all material times the Third and Fourth Defendants were the Directors and Shareholders of the Second Defendant.
4. The Third Defendant is a real estate agent and a shareholder in a number of real estate businesses including the First, Second, and Fifth Defendants. All the said Defendant companies have names which allow them all to be generally referred to as IRG. At all material times the Third Defendant was a Director and Shareholder of the First and Second Defendants and is, in addition, the sole Director and Shareholder of the Fifth Defendant. The Third Defendant was, at times material to these proceedings, a board member of the Cayman Islands Real Estate Broker's Association ("CIREBA").
5. The Fourth Defendant is an Attorney at Law and principal owner of the legal firm Brooks and Brooks, which has its place of business at Artillery Court, Shedden Road, Grand Cayman. At all material times the Fourth Defendant was a Director and Shareholder of the First and Second Defendants. The Third and Fourth Defendants are husband and wife but are separated. The Fourth Defendant alleges in correspondence that the Plaintiff was employed by the Second Defendant.
6. The Fifth Defendant is a Cayman Islands company, which trades as a real estate business and has its registered office at Two Artillery Court, Shedden Road, Grand Cayman. The Fourth Defendant alleges in correspondence that the Third Defendant illegally transferred the assets of the First and Second Defendants to the Fifth Defendant.
7. On or around the 26<sup>th</sup> January 1998 the Plaintiff was employed as a real estate agent by the First and/or the Second Defendant. It was an express and/or an implied term of the Plaintiff's contract of employment that he would be remunerated by commissions earned in the listing, marketing, and selling of real estate.
8. At some time, which the Plaintiff cannot exactly recall, the Plaintiff was given a document by the Third Defendant entitled "CONTRACT OF EMPLOYMENT" ("the Contract"). The Contract was stated to be between the Plaintiff as the employee of one part and the First Defendant as the employer of the other part. The Contract specifically stated that the "Employer will employ the Employee on the following terms and

conditions set out below in compliance with s.6 of the Labour Law.” Schedule A of the contract set out how commissions payable to the Plaintiff were to be calculated. The Plaintiff worked diligently and successfully for the First and/or Second Defendants building a portfolio of business to such an extent that there were discussions between the Third Defendant and the Plaintiff about the Plaintiff becoming a partner and/or shareholder in the business and/ or businesses. The Plaintiff worked with the Third Defendant in the First and/or Second Defendant businesses from 1998 until 2002 and received numerous commissions from either the First and/or Second Defendant throughout his employment in accordance with the contract.

9. On or around the 23<sup>rd</sup> January 2002, Reasons for Judgement (“the Judgement”) were handed down in a Grand Court case in which the Second Defendant had been sued and was a defendant (Cause 222 of 2001 Nike Real Estate Ltd. –v- Luc De Bruyne (1), Claudine De Cuyper (2) and the Second Defendant (3)) (“Cause 222”). On the 28<sup>th</sup> January 2002, and seemingly as a direct result of the Judgement, the Third Defendant dismissed the Plaintiff from his employment with the First and/or Second Defendants without notice or pay in lieu of notice, severance pay, accrued holiday pay, or receiving any other payments to which the Plaintiff was entitled by virtue of the Labour law and/or the Contract.
10. On the 26<sup>th</sup> April 2002 the Plaintiff filed a Complaint with the Cayman Islands Labour Board, in which he which claimed payment from the First Defendant for his statutory entitlements which include, but which are not necessarily limited to, compensation for unfair dismissal, severance pay, notice pay, and holiday pay. The First Defendant (purportedly as a subsidiary of the Second Defendant) filed a defence to the Complaint on the 20<sup>th</sup> June 2002. The determination of the Plaintiff’s claim under the Labour Law (2001 Revision), (“The Law”), is still pending but a hearing date is expected shortly.
11. Subsequent to the Plaintiff’s dismissal, the First Defendant and/or the Second Defendant completed real estate transactions on behalf of clients which had been negotiated by the Plaintiff during his employment with the First and/or Second defendants. As a result of the completion of these transactions, the First and/or Second Defendants have received real estate commissions to which the Plaintiff is entitled to part thereof. The Plaintiff claims that as a result of his express and/or implied contract he is entitled to be paid the portion of such real estate commissions received by the Defendants, which had been earned by the Plaintiff under the terms of his express and/or implied contract of employment with the First and/or the Second Defendants, and which is due and payable to him. Despite numerous requests by the Plaintiff for the payment of the said commissions, the First and/or Second Defendants and their Directors (the Third and the Fourth Defendants) have refused to pay the Plaintiff the sums due to him. The commissions due to the Plaintiff are particularised below and total C\$74,886.67.

Particulars of commissions payable to the Plaintiff:

(a) Meridian Manor: Closing Date 1 <sup>st</sup> February 2002 .....	CI\$9,625.00
(b) Elgin Avenue: Closing Date 5 <sup>th</sup> February 2002 .....	CI\$15,625.00
(c) Lot 84 South Reach: Closing Date 14 <sup>th</sup> February 2002 (Estimated).....	CI\$1,443.75
(d) Lot 81 South reach: Closing Date unknown (Estimated) .....	CI\$1,531.25
(e) Walkers Road Esso Site: Closing Date 30 <sup>th</sup> November 2002 .....	CI\$35,000.00
(f) Mirco: (Cellular World): Closing Date 1 <sup>st</sup> March 2002 .....	CI\$916.67
(g) Mirco: (Cyberbiz): Closing Date 1 <sup>st</sup> March 2002 .....	CI\$916.67
(h) Mirco: (Reflections): Closing Date 1 <sup>st</sup> March 2002.....	CI\$6,682.50
(i) Banco Portugal: Closing Date 1 <sup>st</sup> March 2002.....	<u>CI\$3,145.83</u>
<b>TOTAL:</b>	<b>CI\$74,886.67</b>

12. Further and/or in the alternative the Plaintiff requests a full accounting of all commissions due to him.

13. The First and/or Second Defendant and/or the Third Defendant have not denied that commissions have been received by them and/or any of them on behalf to the Plaintiff, but have refused to pay over the same. In a letter dated the 17<sup>th</sup> March 2002, the Third Defendant with the ostensible authority of the First, Second, and Fourth Defendant wrote to the Plaintiff's attorneys confirming that, "*All commissions rightfully earned by Mr. Jamieson have been placed in our client trust account and are fully and accurately accounted for*". Despite this the Third Defendant claims that he and/or the First, Second, and Fourth Defendants were entitled to retain the Plaintiff's earned commissions as a result of The Judgement in Cause 222. The Plaintiff avers that by retaining his earnings the Defendants are in breach of contract and otherwise are acting unlawfully. The plaintiff was not a party to Cause 222 and the First and/or the Second and/or the Third and/or the Fourth Defendants have unlawfully retained the Plaintiff's commissions, which are due to him both as a result of contract and statute. There is no contractual provision, written or oral, which allows any of the Defendants to retain the Plaintiff's commissions, and there have never been any proceedings commenced by the Defendants or judgement obtained by them against the Plaintiff which would give them the right to do so.

14. The Plaintiff further avers that the retention of his commission by the defendants is not only a breach of contract but is also both a breach of statutory duty by virtue of Section 29 of the Labour Law (2001 Revision) ("The Law") and a crime by virtue of Section S.31 (1) of The Law.

Particulars of breach of statutory duty

(a): Section 29 of The Law mandates that an employer shall not make any deductions from the wages payable to an employee under any contract of employment except in

accordance with the exceptions set out in Section 29(3), none of which apply to the Plaintiff's case. The Plaintiff states that his commissions come within the definition of wages under the Labour Law.

Particulars of criminal offence

(b): Section 31(1)(c) of The Law states that any employer who makes any deduction from the wages of any employee or gives any remuneration for employment contrary to Sections 28, 29, or 30 of The Law is guilty of an offence. The Plaintiff has reported the actions of the First and/or Second Defendants and their Directors (the Third and Fourth Defendants) to the Commercial Crime Department of the Royal Cayman Islands Police Force.

15. By virtue of Section 31(2) of The Law, the Plaintiff is entitled to recover in the Grand Court (the "Appropriate Court" as the Plaintiff's claim exceeds the maximum limit for Summary Court claims) the sums unlawfully deducted by the First and/or Second Defendants together with statutory interest at the rate of ten percent (10%) per annum.

Particulars of statutory interest claimed at the rate of 10% pursuant to s. 31(2)

1 <sup>st</sup> Mar. 2002 to 30 <sup>th</sup> Nov. 2002 on commission claims excluding 11(e).....	CIS\$3,005.15
1 <sup>st</sup> Dec. 2002 to 30 <sup>th</sup> Nov. 2003 on all commission claims @ 10%.....	CIS\$7,488.66
1 <sup>st</sup> Dec. 2003 to 30 <sup>th</sup> Nov. 2004 on all commission claims @ 10%.....	CIS\$7,488.66
1 <sup>st</sup> Dec. 2004 to 30 <sup>th</sup> Nov. 2005 on all commission claims @ 10%.....	CIS\$7,488.66
1 <sup>st</sup> Dec. 2005 to 30 <sup>th</sup> Nov. 2006 on all commission claims @ 10%.....	CIS\$7,488.66
1 <sup>st</sup> Dec. 2006 to 30 <sup>th</sup> Nov. 2007 on all commission claims @ 10%.....	CIS\$7,488.66
1 <sup>st</sup> Dec. 2007 to 24 <sup>th</sup> Jan. 2008 on all commission claims @ 10%.....	CIS\$1,046.36
<b>TOTAL:</b>	<b>CIS\$41,494.81</b>

16. On the 20<sup>th</sup> May 2002 the Third Defendant again admitted in a letter to the Plaintiff's attorney at law that he and/or the First Defendant and/or the Second Defendant and/or the Fourth Defendant had held commissions for the Plaintiff in a trust account. In the same letter, the Third Defendant further admitted on behalf of himself and/or the First, Second, and Fourth Defendants that he and/or they had used the commissions formerly held in the trust account toward payment of The Judgement against the Second Defendant in Cause 222.
17. The Plaintiff states that the Third Defendant and/or the First, Second, and Fourth Defendants had absolutely no right or authority to use the money due and payable to the Plaintiff in this way, or at all, and that such action amounts to an unlawful retention and/or fraudulent conversion of monies due to the Plaintiff by either the First Defendant and/or the Second Defendant as employers of the Plaintiff, by the Second Defendant as a Defendant in Cause 222, and/or by the Third and/or the Fourth Defendants as the Directors of the First and Second Defendants.

18. Alternatively the Plaintiff's claim is for the sum of CI\$74,886.67 as money had and received by the Defendants to the use of the Plaintiff.

Particulars

The plaintiff repeats paragraphs 7-13 herein.

19. After the Plaintiff's dismissal from the First and/or Second Defendants' employment, the Plaintiff sought alternative employment and on the 18<sup>th</sup> March 2002 the Plaintiff was granted a six-month work permit to work for a real estate business owned by a company known as JMB Ltd.
20. On the 4<sup>th</sup> March 2002 The Second Defendant filed an appeal against the Judgement in Cause 222 after having received advice from senior counsel that it had a good and arguable appeal. On the 28<sup>th</sup> May 2002 the Third Defendant and the First Defendant and/or the Second Defendant and/or the Fourth Defendant conspired to prejudice the Plaintiff's right to work in the Cayman Islands by writing to the Immigration Board in terms detrimental to the Plaintiff with the intent of economically injuring the Plaintiff. In such letter the said Defendants deliberately and/or maliciously conspired to misrepresent the facts by failing to mention either that the Second Defendant had been advised by counsel to appeal the Judgement in Cause 222 or that they had in fact appealed the Judgement. The Defendants further conspired to injure the Plaintiff by deliberately and/or dishonestly misrepresenting the facts by failing to admit that they had retained the Plaintiff's commissions.
21. On the 11<sup>th</sup> November 2002 the Third Defendant and the First Defendant and/or the Second Defendant and/or the Fourth Defendant further conspired to prejudice the Plaintiff's right to work in the Cayman islands by writing to the Immigration Board to complain about the Plaintiff's character with the deliberate and express intention of injuring the Plaintiff economically, and/or to gain advantage to themselves by attempting to ensure that the Plaintiff was in a disadvantaged position to challenge the unlawful retention of commissions by the First, Second, Third, and Fourth Defendants. In the said letter of the 11<sup>th</sup> November 2002, the First, Second, Third, and Fourth Defendants maliciously, deliberately and/or recklessly conspired to misrepresent the facts to the Immigration Board by (inter alia) failing to mention that The Second Defendant had received advice from eminent Counsel in London that the Judge in Cause 222 had fallen into error in many areas of fact and law and that an appeal had been filed. The Defendants also conspired to deliberately misrepresent the facts by failing to mention that at that time they were writing the letter, the Second Defendant had, despite receiving advice that they had a strong appeal, had settled Cause 222 and had illegally retained the Plaintiff's commissions to offset the Second Defendant's judgment debt. As a result of the said conspiracy and the said misrepresentations the Immigration Board, on the 18<sup>th</sup> November 2002, refused to grant the Plaintiff a work permit to work for JMB Ltd.

22. The Defendants further misrepresented the facts to the to the Immigration Board in the letter of the 11<sup>th</sup> November 2002 by setting out other false and / or reckless information pertaining to the Plaintiff with the deliberate attempt of prejudicing the Plaintiff and economically injuring him. As a direct result of the First, Second, Third, and Fourth Defendants' conspiracy and misrepresentations to the Immigration Board, the Immigration Board refused to grant the Plaintiff a work permit to work for JMB Ltd. and the Plaintiff suffered thereafter a total loss of opportunity to earn commissions, and other loss and damage to be assessed. In particular the Plaintiff was unable to work from the 18<sup>th</sup> November 2002 until the successful determination of his appeal to the Immigration Appeals Tribunal on the 14<sup>th</sup> August 2003.

Particulars of loss

The plaintiff claims loss of salary and loss of ability to earn potential commissions for the period of 38 weeks from the 18<sup>th</sup> November 2002 until the 14<sup>th</sup> August 2003 at the rate of CI\$1,875 per week (being the Plaintiff's average rate of earnings in his final year of employment with the First and/or the Second Defendant), for a total amount of CI\$71,250.00

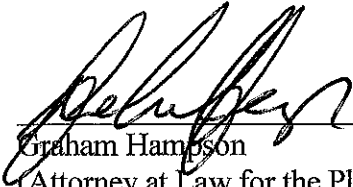
23. By letter dated the 28<sup>th</sup> December 2007, the Fourth Defendant advised the Plaintiff that the Third Defendant had taken the assets of the First and Second Defendants and transferred them to the Fifth Defendant. Having knowingly participated in a fraudulent and dishonest design against the Plaintiff, the Defendants became the constructive trustees for the Plaintiff of all monies received by any of them purporting to relate to the aforesaid transactions including but not limited to all moneys received by them on behalf of the Plaintiff. In the premises the Defendants and each of them are liable to account to the Plaintiff for all such moneys and/or the Plaintiff is entitled to trace all such moneys into the hands of the Defendants or elsewhere.

24. **AND THE PLAINTIFF** claims:

1. The sum of CI\$74,886.67 being commissions wrongfully retained and/or deducted.
2. Further and/or in the alternative an account of the commissions, which the Plaintiff has earned and thereafter judgment for that sum.
3. Interest at the statutory rate prescribed by the Labour Law on the wrongfully retained and/or deducted commissions from the 1<sup>st</sup> March 2002 to the date of filing the writ in the sum of CI\$41,494.81 and thereafter at the rate of 10% per annum.
4. Alternatively statutory interest at the rate of 10% on such commission as is found to be due and payable to the Plaintiff.
5. Damages for conspiracy to injure the Plaintiff.
6. General damages.
7. Interest on the General damages and/or on any award made at such rates and for such periods as the court thinks fit pursuant to the Judicature Law (2004 Revision).
8. All necessary consequential orders, accounts and enquiries.

9. Further and / or other relief
10. Costs.

DATED this 25<sup>th</sup> day of January 2008

  
\_\_\_\_\_  
Graham Hampson  
(Attorney at Law for the Plaintiff)

TO: The Clerk of Court  
AND TO: The Defendants

THIS WRIT is issued and filed by Graham Hampson Attorney at Law for the Plaintiff whose address for service is 2, Lakeshore Villas, West Bay, P.O. Box 31347 SMB, Grand Cayman KY1-1206.

**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 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.

Graham Hampson, Attorney at Law  
2, Lakeshore Villas, West Bay,  
P.O. Box 31347 SMB,  
Grand Cayman KY1-1206.

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]