

60180

CAUSE NO: of 2008

IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN: MARTYN C.W. BOULD PLAINTIFF



- (1) BCQS LIMITED FIRST DEFENDANT
- (2) RICHARD JONES SECOND DEFENDANT
- (3) LIAM DAY THIRD DEFENDANT
- (4) NEIL PURTON FOURTH DEFENDANT
- (5) SANJAY AMIN FIFTH DEFENDANT
- (6) JAMES SLATTERY SIXTH DEFENDANT

WRIT OF SUMMONS

TO: BCQS LIMITED of George Town, Grand Cayman.

AND TO: RICHARD JONES, LIAM DAY, NEIL PURTON, all of George Town, Grand Cayman

AND TO: SANJAY AMIN of Hythe House, Welches, Christchurch, Barbados

AND TO: JAMES SLATTERY of The Saltmills, P.O. Box 158, Providenciales, Turks & Caicos Islands

NOTE: It is intended that an application will be made to the Grand Court for leave to serve the Fifth and Sixth Defendants out of the jurisdiction, of Hythe House, Welches, Christchurch, Barbados and The Saltmills, P.O. Box 158, Providenciales, Turks & Caicos Islands, respectively.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim indorsed herein 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, 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 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 7th day of April, 2008.

NOTE – This Writ 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 8.

STATEMENT OF CLAIM

1. The Plaintiff is a shareholder of the First Defendant holding 39% of the issued capital of the First Defendant. The Plaintiff was from the formation of the First Defendant until 18th December 2002 an employee and chairman of the First Defendant. The Plaintiff was also a director of the First Defendant from its formation in 1995 until he was removed by the Defendants in early 2003.
2. The First Defendant is a company registered as an ordinary company under the provisions of the Cayman Islands Companies Law (2007 Revision). It carries on business as project managers, chartered quantity surveyors, valuers, appraisers and construction and development consultants. The registered office of the First Defendant is K Corporate Services Ltd., 4F Genesis Building, Jennet Street, PO Box 1371, Grand Cayman KY1-1108.
3. The Second, Third, Fourth, Fifth and Sixth Defendant at all material times since November 2002 have been directors of the First Defendant.
4. The Plaintiff's claims against the First Defendant and the remaining Defendants set out in paragraphs 5 to 16 below are made by him in a personal capacity against the First Defendant and in a derivative capacity against the Second to Sixth Defendants.
5. Regulation 67 of the Articles of Association of the First Defendant provide that "the remuneration to be paid to the Directors shall from time to time be determined by the Company in general meeting by special resolution".
6. Regulation 105 of the Articles of Association of the First Defendant provide that "if a dividend is declared [by the First Defendant] every share shall confer upon the holder as at the record date the right to participate in the dividend and the dividend shall be declared and paid according to the amounts paid up on the shares at the record date".

7. Each of the Second to Sixth Defendants was at all material times subject to a fiduciary duty as director to safeguard the funds of the First Defendant and not to allow those funds to be used for improper purposes or in a manner not permitted by the First Defendant's Articles of Association.
8. The First Defendant agreed at its Board Meeting on 14th and 15th November 2002 to distribute to the Plaintiff US\$49,200.00 on account of profit share and additional salary. It was also agreed at the same meeting that the Second, Third, Fourth, Fifth and Sixth Defendants would receive those amounts set forth against their names in schedule A to the minutes of the said meeting (which minutes and schedules shall be referred to at the trial hereof for their full meaning and effect). Whilst the said distributions have been made to the other shareholders, the distribution to the First Defendant has been withheld (the withheld distribution to the Plaintiff is the subject of other proceedings and is not claimed for in this action).
9. Since November 2002 the Plaintiff has not been given notice of or noted in respect of any general meetings of the First Defendant held for the purpose of passing a special resolution required under Regulation 67 of the Articles of Association of the First Defendant.
10. Since November 2002 the Second to Sixth Defendants have caused the First Defendant to make payments to them in respect of remuneration which has not been approved in accordance with Regulation 67 and/or dividends which were not paid in accordance with Regulation 105.
11. The Plaintiff is unable to provide particulars of the sums paid to the Second to Sixth Defendants as aforesaid until full discovery herein because the payments are not identified clearly in the First Defendant's annual accounts and because the First Defendant has refused to disclose to the Plaintiff the amount of such

payments. However the Plaintiff estimates that since 2002 the Second to Sixth Defendants have received in excess of US\$6.5m.

12. All such payments as were made by the First Defendant to each of the Second to Sixth Defendants were in contravention of the Articles of Association and/or unauthorized and/or ultra vires and known by each of the Defendants to be so unauthorized or ultra vires.
13. Further in permitting or causing each such aforesaid payment to be made the Second to Sixth Defendants acted in breach of trust and/or in breach of their aforementioned fiduciary duty.
14. Unless otherwise restrained by this Honourable Court the First Defendant will continue to make payments in contravention of the Articles of Association to the Second to Sixth Defendants.
15. In the premises each of the Second to Sixth Defendants is liable to account to the First Defendant for such the sums as they received and for such sums as each of them in breach of trust permitted to be so paid out. Alternatively each of them is liable to compensate the First Defendant for allowing such payments to be made in breach of their fiduciary duties.
16. Further the Second to Sixth Defendants and each of them are liable to pay interest to the First Defendant in respect of all such sums as may be found to be due from them for such period and at such rate and compounded in such manner as the Court may find to be just pursuant to the inherent jurisdiction of the Court and/or to Section 34 of the Judicature Law (2004 Revision) and sections 4 and/or 5 of the Judgment Debts (Rates of Interest) Rules 1995 (as amended from time to time).

AND THE PLAINTIFF CLAIMS:-

1. An injunction against the First Defendant to restrain further payments in contravention of its Articles of Association.
2. Against the Second to Sixth Defendants:-
 - i) Restitution of all such sums as may be found to be due to them under paragraph 12 above;
 - ii) All necessary accounts or inquiries;
 - iii) Interest pursuant to the inherent jurisdiction of the Court and/or section 34 of the Judicature Law (2004 Revision) and sections 4 and/or 5 of the Judgment Debts (Rates of Interest) Rules 1995 (as amended from time to time) on the said sums from the date the payments were made by the First Defendant.
3. Costs pursuant to the Judicature Law (2004 Revision) and to the Cayman Islands Grand Court Rules 1995.
4. Such further relief as this court thinks just.

DATED this 7th day of April 2008

GIGLIOLI & COMPANY
Attorneys-at-Law to the Plaintiff

To: The Clerk of the Court
And to: BCQS LIMITED of George Town, Grand Cayman
And to: RICHARD JONES, LIAM DAY, NEIL PURTON all of George Town, Grand Cayman
And to: SANJAY AMIN, of ~~Hythe~~ House, Welches, Christchurch, Barbados
And to JAMES SLATTERY of The Saltmills, P.O. Box 158, Providenciales, Turks & Caicos Islands

THIS WRIT AND STATEMENT OF CLAIM was filed by Giglioli & Company whose address for service is 4F Kirk House, Panton Place, George Town, Grand Cayman, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: of 2008

BETWEEN: MARTYN C.W. BOULD

PLAINTIFF

-and-

(1) BCQS LIMITED
 (2) RICHARD JONES
 (3) LIAM DAY
 (4) NEIL PURTON
 (5) SANJAY AMIN
 (6) JAMES SLATTERY

FIRST DEFENDANT
 SECOND DEFENDANT
 THIRD DEFENDANT
 FOURTH DEFENDANT
 FIFTH DEFENDANT
 SIXTH 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

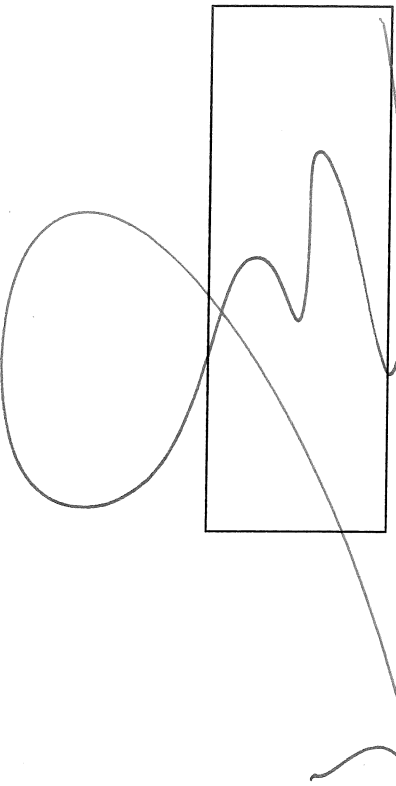
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

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.

Giglioli & Company – Plaintiff's Attorney 4F Kirk House Panton Place George Town P. O. Box 2505 Grand Cayman KY1-1104 Cayman Islands	Martyn C. W. Bould - Plaintiff P. O. Box 1489 514 Yacht Drive West Bay Grand Cayman Cayman Islands Represented by Giglioli & Company
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Endorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.



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 GT, 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 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.