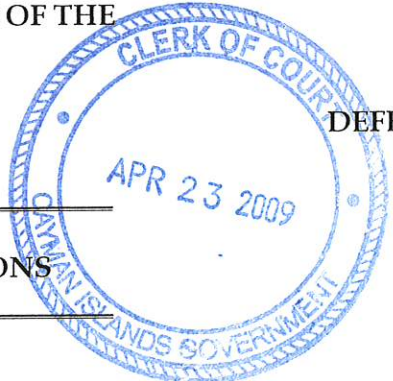


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0195 OF 2009

BETWEEN: KHEMKARAN SINGH PLAINTIFF

AND: UNIVERSITY COLLEGE OF THE CAYMAN ISLANDS DEFENDANT



WRIT OF SUMMONS

To: University College of the Cayman Islands, 168 Olympic Way, P.O. Box 702, George Town, Grand Cayman KY1-1107

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 23rd day of April, 2009

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

### **The Parties**

1. The Plaintiff was, prior to 7 November 2008, the Accountant of the Defendant College ("the College"). The Plaintiff has in excess of 22 years experience in the field of accounting.
2. The College was established by the Community College Law, Law 6 of 1987, as amended by Law 17 of 1998 and Law 17 of 2004 ("the Law").

### **The Contract**

3. The Plaintiff was first appointed as Accountant of the College in June 2000 for a two year period. He was again appointed to the position in July 2005 for a three year period ending in July 2008, and for a further three years commencing 18 July 2008 in accordance with his Employment Contract ("the Contract") dated 25 February 2008 and the College's Regulations. The scope of his duties included preparation of the Financial Statements of the College for audit by the Auditor General; managing cash flow; and being the principal contact with the Audit Office.
4. The Contract provided as follows:
  - (1) Clause 2(2) provided that the Plaintiff should carry out the duties of an Accountant at the College in accordance with the instructions of the President of the College.
  - (2) Clause (3) provided that unless the Plaintiff's employment is earlier terminated in accordance with the Agreement, the term of the Plaintiff's employment is three years starting on 18 July 2008.
  - (3) Clause 4 provided that the Plaintiff should receive from the College an annual salary of CI\$84,564.00 with a provision for yearly increments.

- (4) Clause 9 provided a provision for dismissal of the Plaintiff if he refuses, fails or for any reason is unable to carry out satisfactorily his duties under the agreement, or is guilty of any misconduct that is prejudicial to the interest of the College.
  - (5) Clause 10 provided that the College may terminate the Plaintiff's appointment by giving three months written notice if the College consider it necessary to do so in the interests of the College.
5. The Plaintiff will refer to the Contract at the trial of this action for its full terms and effect.

### **The Law**

6. Section 3 (2) of the Law provided that the government, management and control of the College is vested in the Board of Governors ("the Board").
7. Section 3 (11) of the Law provides that five members of the Board shall form a quorum at a meeting. The decisions of the Board at a meeting shall be arrived at by a majority vote; the Chairman at a meeting having a casting vote in the event of a tie but not an original vote.
8. Section 11 of the Law provides that the Board shall prepare and submit statements of accounts to the Auditor General.
9. Section 19 of the Law and the Schedule to the Law provides that there shall be an Administrative and Academic Committee of the College which shall have responsibility for consideration, approving or submitting for approval by the Board recommendations on matters including the appointment, promotion and discipline of staff.

### **The Events**

10. The President of the College between August 2006 and 5 May 2008 was Hassan Syed. The President was an ex-officio member of the Board. The Plaintiff reported to the President and was contractually obliged to take instructions from the President.

11. Beginning December 2006 the Plaintiff observed that the President was being spendthrift with the College's finances. At all material time, the Plaintiff insisted that the President provide receipts and documentation to support the expenses.
12. The Plaintiff also observed that the President had a free hand in managing the affairs of the College. The Board, which had delegated most of its responsibilities to the President, appeared to have complete confidence in the President even in the face of allegations of fraud made against the President.
13. Against this background, the Plaintiff went to great lengths to audit the expenses of the President, and, in so doing, had saved the College substantial amounts of money. As early as January 2007, the Plaintiff alerted the College's auditors from the Auditor-General's office of the unchecked spending of the President, who had unfettered authority and the complete backing of the Board.
14. The circumstances were such that the Plaintiff never had access to any member of the Board and there had never been any previous communication between Board members and the Plaintiff. At all times, the Plaintiff reported to the President alone, and the President alone had access to the Board.
15. The Plaintiff could not turn to the Board, especially after having observed how the Board treated other allegations raised by staff against the President, who was also a Board member. In the circumstances, the Plaintiff made numerous phone calls to, and wrote to, the auditors asking them to launch an investigation into the President's expenses and conduct. The auditors started investigating the President's expenditures in January 2008. In the face of these investigations, the President fled the Cayman Islands in April 2008 and resigned soon thereafter.
16. Prior to his leaving the island, in January 2008, the President represented to the Plaintiff that he had requested a six months salary advance from the Board in connection with a surgery that he had to undergo and that the Chairman of the Board ("the Chairman") had approved the same. The President produced an email correspondence from the Chairman dated 17 January 2008 as supporting documentation and instructed the Plaintiff to execute an "Advance of Salary Payment Bond" for the sum of CI\$71,472.00.

Despite his protestations that it was unusual, the Plaintiff was left with little choice in the matter and, in accordance with the instructions of the President, he executed the document. The President represented to the Plaintiff that he had obtained the Board's approval for the salary advance and a salary advance repayment agreement was later returned to the Plaintiff with the Chairman's signature. The Plaintiff alerted the College's auditors nonetheless suspecting that there may be something irregular with this transaction.

17. In May 2008, the Chairman met with the Plaintiff to ask him what he knew of the salary advance to the President. The Plaintiff turned in all relevant documentation in his possession. The matter was raised in a Finance Committee Meeting on financial irregularities at the College discovered by the auditors.
18. The Plaintiff has not been asked by the Chairman or any other Board member to narrate the circumstances that led the Plaintiff to alert the auditors. Instead of commending the Plaintiff for alerting the auditors and exposing the President's fraud, the Board has proceeded to undermine the Plaintiff as though the Board was looking to find a scapegoat to avoid their own failings.
19. At all material time, the Board had delegated too much power to the President and had utterly failed to offer any check and balance. The Board had been, at all material times, negligent in the carrying out of its duty under the Law and the Chairman was even taking Hassan Syed's counsel after his resignation. The Plaintiff will adduce evidence of the Board's negligence and failures at trial.

#### **The Duty Of Trust & Confidence**

20. It was an implied term of the Agreement that the College would not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the College and the Plaintiff.

## **Breach Of Implied Term Of Trust And Confidence**

21. It is the Plaintiff's case that since early September 2008 actions of the Board have had the effect of undermining his authority as the Accountant and making it impossible for him to discharge the duties imposed upon him by the Contract.
22. Prior to a Board meeting on 4 September 2008, Brian Chapell, the Acting President informed the Plaintiff that the Board will be deliberating on the Plaintiff's continued employment at the College. The Plaintiff was told to expect communication in that regard by the end of the month. This came as a total surprise to the Plaintiff. No due process was initiated by the Board as prescribed by the Law.
23. The Chairman then called for a meeting on 9 October 2008 attended by the Acting President and the Plaintiff. During the meeting, the Chairman thanked the Plaintiff for his support and confirmed that the Board did not have any issues with the quality of the Plaintiff's work, qualification and professionalism. According to the Chairman, the Board felt bad about the Hassan Syed saga happening under its term of office and felt that the Plaintiff should have informed the Board instead of "whistle blowing" to the Auditors. The Chairman then offered the Plaintiff the opportunity to resign. The Plaintiff responded that he had no access to the Board and that he was not intending to resign as he had done nothing wrong.
24. On 16 October 2008, the Acting President wrote an email to the Chairman narrating that he was unable to convince the Plaintiff to resign and set out his point of view that the Board could be conflicted and should not be seeking to punish the Plaintiff for all that had happened with Hassan Syed's fraud. He shared his view that the Plaintiff had been placed in an impossible position by Hassan Syed. The Board was asked to reconsider its position.
25. On 22 October 2008, without consulting the Plaintiff, the College employed an Accountant from an employment agency on a temporary basis and stationed him in the Plaintiff's office. The Plaintiff was even asked to "train" the new Accountant to "take over." This was a clear denigration of the Plaintiff's function as the Accountant and was designed to undermine the Plaintiff's position and frustrate him.

26. On 4 November 2008, the Plaintiff was handed a letter from the College dated 28 October 2008 stating that the Board was "assessing the future of his employment at the College" and that he has been placed on Administrative Leave effective immediately pending further decisions from the Board. He was requested to surrender all keys in his possession as well as his (the College's) cellular phone.

### **Repudiation**

27. The College has undermined the Plaintiff's position and has effectively prevented him from performing his obligations under the Contract. As a result of the College's conduct, particularly of the Board or its Chairman, the Plaintiff has lost confidence in the willingness of the College to permit him as the Accountant to carry out the duties of his post.
28. The matters pleaded in paragraphs 21 to 27, inclusive, constitute repudiatory breaches by the College of the Contract. The Plaintiff accepted such repudiation by a letter from his Attorneys, Mourant du Feu & Jeune, dated 6 November 2008.
29. By reason of such repudiation, the Plaintiff has suffered loss and damage.
30. Despite the Plaintiff communicating to the Board his acceptance of the College's repudiation of the Contract, the College continued to pay him monthly while parties negotiated a possible settlement. The Plaintiff made it clear that he would be willing to return to work with the College provided he was not harassed by the Board.
31. On 24 February 2009, the College purported to give notice of termination of the Plaintiff's employment stating that his employment will cease on 31 May 2009. The College purported to act pursuant to Clause 10 of the Contract.
32. The Plaintiff's case is that the Contract was repudiated by the College, and such repudiation was accepted by the Plaintiff on 6 November 2008. Hence, the College cannot, in law or in contract, purport to terminate a contract which has been previously terminated.

33. Further and in the alternative, the College and the Board, being statutory bodies, are imposed with public law duties both under the Law and in common law, and the Board acted either without sufficient constitution or power, or was biased or unreasonable in deciding on 24 February 2009 that it was necessary to terminate the Plaintiff's appointment "in the interest of the College". The Plaintiff was also never afforded an opportunity to be heard before the Board.

**Mitigation**

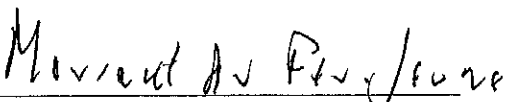
34. In mitigating his damages, the Plaintiff submitted 17 job applications but obtained only one job offer as an Accountant paying CI\$48,750.00 per annum. The Plaintiff accepted this offer of employment and commenced work on 2 April 2009.

35. The Plaintiff's loss of earnings as a result of the College's repudiation is CI\$4,247.83 monthly taking into account allowances and benefits. Calculated by reference to loss of income for 28.5 months, the Plaintiff claims damages of CI\$121,063.15.

**AND the Plaintiff claims:**

- (1) Damages for breach of contract amounting to CI\$121,063.15;
- (2) Interest; and
- (3) Costs.

DATED this 23<sup>rd</sup> day of April, 2009

  
MOURANT DU FEU & JUENE  
Attorneys-at-Law for the Plaintiff

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 authorised 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.

BETWEEN: KHEMKARAN SINGH PLAINTIFF

AND: UNIVERSITY COLLEGE OF THE CAYMAN ISLANDS 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.*

Mourant du Feu & Juene  
Attorneys-at-Law  
Third Floor, Harbour Centre  
P.O. Box 1348  
George Town,  
GRAND CAYMAN (ref: RAMMU/BUSHR)

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

**THIS WRIT OF SUMMONS** was filed by Mourant du Feu & Jeune, Attorneys-at-Law for the Plaintiff whose address for service is Second Floor, Harbour Centre, 42 North Church Street, George Town, P.O. Box 1348, Grand Cayman KY1-1108, Cayman Islands.2041842/BUSHR/MdFJ/1901150/1