

BETWEEN:

CLIFFORD MOITEN

Plaintiff

AND

(1) MARCUS EBANKS

(2) OFFICEWORX LTD



Defendants

WRIT OF SUMMONS



TO: (I) **Marcus Ebanks**
7 Shore-Link Terrace
The Shores
West Bay
Grand Cayman, Cayman Islands

(ii) **Officeworx Ltd**
294 North Sound Road
Unit 130 Mirco Centre
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 Courts Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgement of Service 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 29th day of August 2014

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.

It is intended that applications will be made to the Grand Court for leave to serve those Defendants who are out of the jurisdiction.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The First Defendant is the managing director and shareholder of the Second Defendant.
2. The Second Defendant is a company which was incorporated in the Cayman Islands on 12 October 1999 under registration number 9328 and at all material times was carrying on a business of wholesale and retail sales of stationery and office supplies from business premises in the Mirco Centre in Industrial Park, George Town, Grand Cayman.
3. The Plaintiff was socially acquainted with the First Defendant. The Plaintiff informally advised the First Defendant as to the general operations of the Second Defendant's business including concerning recruitment and business strategy.
4. In or about June 2011, the First Defendant approached the Plaintiff with a proposal for the Plaintiff to invest in the Second Defendant's business as a form of Joint Venture Project. The First Defendant represented that:
 - (i) The Second Defendant had excellent prospects of future commercial success in expanding its stationery and office supplies business in Grand Cayman;

- (ii) The Second Defendant was at an advanced stage of negotiations with Office Depot (USA) and would enter into a franchise agreement for the Cayman Islands with the latter company imminently;
 - (iii) If the First Plaintiff invested CI\$56,000 in the Second Defendant, the First Defendant would cause the Second Defendant to issue shares in the said company to the Plaintiff upon the conclusion of the allegedly imminently pending franchise agreement between the Second Defendant and Office Depot (USA);
5. In reliance on the said representations as set out above ("**The Representations**") and induced thereby, the Plaintiff entered into an oral agreement with the First Defendant in or about September 2011, by which it was agreed that the Plaintiff would raise the capital required by the First Defendant supposedly for the purpose of acquiring the Office Depot (USA) franchise ("**The Franchise**") and invest in the Second Defendant accordingly. In consideration for such investment the First Defendant would cause the Second Defendant to allot shares to the First Defendant once the Franchise had been obtained. ("**The Oral Agreement**").
 6. It was an express term of the Oral Agreement that if for any reason the Franchise was not acquired, the monies advanced by Plaintiff to the Second Defendant would be treated as loan payable by the Second Defendant with compound interest at the rate of 8% per annum.
 7. In reliance on the Representations and induced thereby, the Plaintiff acted to his detriment in obtaining a personal loan in the sum of CI\$56,000 from the Bank of Butterfield in order to raise funds to invest in or alternatively lend to the Second Defendant.
 8. In reliance on the Representations and pursuant to the Oral Agreement, on or about 25 January 2012 the Plaintiff paid the first sum of CI\$36,000 to First Defendant acting on behalf of the Second Defendant by a Bank of Butterfield draft number 0747139 ("**The January Payment**"). The Drafts were in the name of "Documents in Motion".
 9. In reliance on the Representations and pursuant to the Oral Agreement, on or about 8 February 2012 the Plaintiff paid the second sum of CI\$20,000 to the First Defendant acting on behalf of the Second Defendant by Bank of Butterfield draft number 0748553 ("**The February Payment**").
 10. The consideration for the January Payment and the February Payment has wholly failed in that:

- (i) No franchise agreement has been entered into between the Second Defendant and the Office Depot (USA).
 - (ii) No shares in the Second Defendant were ever issued to the Plaintiff.
11. Furthermore, the Representations were false in that
 - (i) The Second Defendant's business was in financial difficulties and struggling to compete in the Cayman market place for stationery and office supplies;
 - (ii) The Second Defendant has on a date unknown in late 2013 ceased to trade from its previous business premises in the Mirco Centre;
 - (iii) The Second Defendant was not in an advanced state of negotiations with Office Depot (USA) for the Franchise;
 - (iv) The Second Defendant had no agreement in principle with Office Depot USA to obtain the Franchise;
 - (v) The Second Defendant had no reasonable expectation of obtaining the Franchise.
12. The First Defendant made the Representations fraudulently, alternatively negligently or recklessly, either knowing them to be false or alternatively careless or reckless as to whether such representations were true or not.
13. By a demand in writing dated 29 October 2012, the Plaintiff demanded the repayment of the CI\$56,000 advanced to the Second Defendant.
14. The Defendants did not respond to such demand or other telephone calls or email communications from the Plaintiff.
15. A letter before action dated 20 February 2013 was sent from the law firm Stuarts Walker Hersant on behalf of the Plaintiff to the First and Second Defendants attaching a draft writ.
16. In order to prevent the issuing of proceedings at that time, the First Defendant entered into a promissory note dated 22 March 2013 which is appended to this Statement of Claim ("**The Promissory Note**").
17. By clause 1 of the Promissory Note, the First Defendant acknowledged that the sum of CI\$60,294.49 ("**The Debt**") (comprising CI\$56,000 in capital and CI\$4,394.49 of interest) was due and owing to the Plaintiff by the Second Defendant.
18. By clause 2 of the Promissory Note the First Defendant agreed to assume the Debt and accruing interest as a personal liability and unconditionally promised to pay

without set off or deduction to the Plaintiff the following amounts inclusive of 8% interest on the reducing balance on the dates specified below:

Payment Number	Amount	Date for Payment
1.	CI\$10,000.00	On or before 22 nd March 2013
2.	CI\$8,000.00	On or before 15 th June 2013
3.	CI\$8,000.00	On or before 15 th September 2013
4.	CI\$8,000.00	On or before 15 th December 2013
5.	CI\$8,000.00	On or before 15 th March 2014
6.	CI\$8,000.00	On or before 15 th June 2014
7.	CI\$8,000.00	On or before 15 th September 2014
8.	CI\$6,393,21	On or before 15 th December 2014

19. Clause 3 of the Promissory Note stated that if the First Defendant should fail to make any payment under the Promissory Note (for which he had assumed personally liability) as it fell due, then the entire remaining debt was to become immediately payment, and that the Plaintiff would take legal action against the First Defendant and alternatively the Second Defendant to secure the repayment of the remaining debt and interest thereon.
20. The First Defendant made the first payment instalment due under the Promissory Note of CI\$10,000.00 on the due date of 22 March 2013.
21. The First Defendant made the second payment instalment due under the Promissory Note of CI\$8,000 late, on 7 July 2013.
22. The First Defendant made a partial payment of the third payment instalment due under the Promissory Note of CI\$3,500.00 on the 25 September 2013.
23. The First Defendant failed to make any further payment due on or before 15 September 2013 or any other payment due under the Promissory Note whatsoever.
24. The First Defendant remains personally liable to pay the sum of CI\$39,855.47 of the Debt remaining due under the Promissory Note, together with further accrued interest thereon which from 15 September 2013 to 27 August 2014 amounts to the sum of CI\$50,323.63. Interest continues to accrue on the Debt at the rate of CI\$8.74 per day.
25. By reasons of the many facts and matters set out above, the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS

- (i) Unpaid balance of January Payment in the sum of CI\$30,000.00.
 - (ii) February Payment in the sum of CI\$ 20,000.00.
 - (iii) Accrued Interest on the unpaid amount (whether under Promissory note or otherwise).
 - (iv) Interest continuing to accrue in the amount of CI\$8.74 per day.
26. The Plaintiff further claims Interest pursuant to Section 34 of the Judicature Law (2007 Revision) alternatively pursuant to the equitable jurisdiction of the Court at such rate and for such period as the Court deems appropriate;

AND THE PLAINTIFF CLAIMS AGAINST THE FIRST DEFENDANT

27. Repayment of the sum of CI\$50,323.63 representing capital and interest due and owing to the Plaintiff as set out in the Promissory Note.
28. The sum of CI\$10,468.07 representing interest of 8% per annum accrued on the debt under the Promissory Note from March 2013 to August 2014.
29. Further interest accruing at the rate of CI\$8.74 per day.
30. Further or alternatively, damages for misrepresentation.
31. Interest pursuant to Section 34 of the Judicature Law (2007 Revision) alternatively pursuant to the equitable jurisdiction of the Court at such rate and for such period as the Court deems appropriate;
32. Such further and other relief as the Court deems just;
33. Costs.

AND THE PLAINTIFF CLAIMS AGAINST THE SECOND DEFENDANT

34. Repayment of the sum of CI\$50,323.63 representing capital and interest due and owing to the Plaintiff as set out in the Promissory Note in the event the First Defendant fails to settle the outstanding amount due.

35. The sum of CI\$10,468.07 representing interest of 8% per annum accrued on the debt under the Promissory Note from March 2013 to August 2014.
36. Further interest accruing at the rate of CI\$8.74 per day on the sums due and payable to the Plaintiff.
37. Further or in the further alternative, damages for repudiatory breach of contract;
38. Interest pursuant to Section 34 of the Judicature Law (2007 Revision) alternatively pursuant to the equitable jurisdiction of the Court at such rate and for such period as the Court deems appropriate;
39. Such further and other relief as the Court deems just;
40. Costs.

Dated this 29th Day of August 2014



Sinclairs
Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court

AND TO: The Defendants

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO:

OF 2014

BETWEEN:

CLIFFORD MOITEN

Plaintiff

AND

(1) OFFICEWORX LTD

(2) MARCUS EBANKS

Defendants

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 of Summons is acknowledged accordingly

(Signed) _____
Attorney for

NOTE 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.

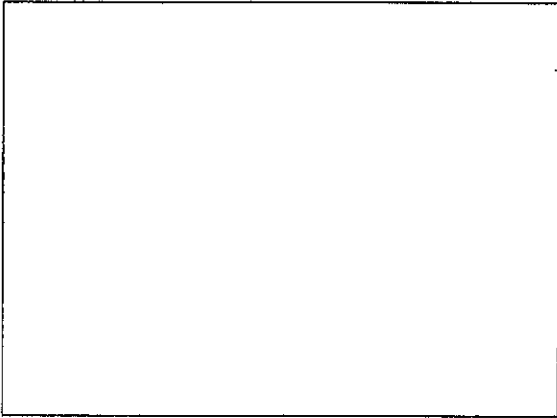
Defendant in person: where the Defendant is acting in person, he/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In 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/her name, address and reference, if any, in the box below.

Sarah Dobbyn/Tara Thompson
Sinclairs,
PO Box 498
Third Floor, Genesis Building
Genesis Close
George Town
Grand Cayman, KY1-1106
Cayman Islands

Tel: 345 743 2626
Ref: SD/TT

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

A large, empty rectangular box with a thin black border, intended for the defendant's attorney or the defendant to provide their name, address, and reference.

DIRECTIONS FOR ACKNOWLEDGEMENT 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, PO Box 495, 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 of Guidance

Notes for Guidance:

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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/her.
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 authorized 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.