

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC 154 OF 2019

BETWEEN:

DIGITAL STORY LTD. T/A COLLECTIVE

Plaintiff

AND

(1) AMY DEANNE STILL

AND

(2) WHISK LTD

Defendants



WRIT OF SUMMONS



TO:

The Defendants
224 Sunset Cove
299 West Bay Road
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 495, Grand Cayman, KY1-1106, Cayman Islands, 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 Acknowledgement within the time stated, or if you return the Acknowledgement 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 13 day of September 2019

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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a company organised and carrying on business pursuant to the laws of the Cayman Islands, registration number 302881 and in particular to carry on the trade or business as a Digital Agency (Design, Technology, Marketing). The Plaintiff's address for service is care of its attorneys, HSM Chambers, 68 Fort Street, P.O. Box 31726, George Town, Grand Cayman, KY1-1207, Cayman Islands.

2. The First Defendant is an individual who resides in the Cayman Islands with an address of 224 Sunset Cove, 299 West Bay Road, Grand Cayman, Cayman Islands; a former employee of the Plaintiff and currently employed by the Second Defendant.

3. The Second Defendant is a Cayman Islands company, registration number 352228, incorporated on 6 June 2019 of which the First Defendant is a co-founder of the said company; a member who holds 40 shares; is the Secretary and an employee. Mr. Richard Newton is a member who holds 60 shares, is the sole director and is the Chairman. The registered office of the Second Defendant is at Bodden Corporate Services, Caribbean Plaza, 878 West Bay Road, P. O. Box 10335, Grand Cayman, KY1-1003, Cayman Islands and carries on its business at the First Defendant's residence as a trade or business of marketing and media.

4. Pursuant to an agreement dated 11 December 2017, the Plaintiff agreed to employ the First Defendant as Accounts Officer (the "Employment Agreement") and the parties agreed *inter alia* to the following terms:
 - 4.1 The First Defendant agreed with the Plaintiff not to disclose to any one any information acquired in the course of her employment that is regarded as confidential by the Plaintiff.

 - 4.2 That the First Defendant will not for a period of six months after termination of her employment:
 - 4.2.1 solicit or attempt to solicit the business of any customers of the Plaintiff or

4.2.2 establish a business in Grand Cayman, Cayman Islands set up to compete against the business of the Plaintiff

and the First Defendant acknowledged and agreed that she may be restrained by injunction from doing so.

5. The Plaintiff will rely upon the true construction and effect of the aforementioned terms of the Employment Agreement at trial.
6. The First Defendant has wrongfully endeavoured directly or indirectly to induce a customer or customers of the Plaintiff with whom she had personal dealings in the course of the Plaintiff's business during her employment to cease from dealing with the Plaintiff and the First Defendant has persuaded such customer or customers to deal with the Second Defendant.
7. Furthermore, in breach of the Employment Agreement the First Defendant has:
 - 7.1 disclosed confidential information belonging to the Plaintiff;
 - 7.2 used the Plaintiff's trade secrets;
 - 7.4 established a business in Grand Cayman, Cayman Islands set up to compete against the business of the Plaintiff and
 - 7.5 unlawfully performed duties outside the scope of her employment with the Plaintiff.
8. The Second Defendant induced the breach of the Employment Agreement as set out herein.

BACKGROUND

9. The Defendant commenced employment in or about 11 December 2017 and was granted a temporary work permit. On 8 March 2018 she was granted a work permit for one year which was renewed on 8 March 2019 and expired on 8 March 2020.
10. On 6 June 2019 the First Defendant established and set up a company, Whisk Ltd, the Second Defendant, which was incorporated on 6 June 2019 and which company was to offer marketing and media services to businesses and brands situated in the Cayman Islands and abroad. Such services included marketing strategy, media planning and

buying and public relationship management connecting the clients with brands and partners abroad to bring investments to the Cayman Islands.

11. On 14 June 2019 the Defendant provided her resignation to the Plaintiff and the parties agreed that the Employment Agreement would be terminated effective 12 July 2019, notwithstanding the notice period was eight weeks pursuant to the Employment Agreement. Upon receiving the resignation, the First Defendant confirmed the following:

11.1 that she would abide by the terms and conditions of the Employment Agreement;

11.2 that the Second Company of which she had an interest and would be employed by, would not compete against the Plaintiff as focus would be on clients from the US and other countries for at least six months being the period required by the Employment Agreement and that the Second Defendant would not be conducting in any kind of form of advertisement for its services in the Cayman Islands;

11.3 existing customers of the Plaintiff would not be contacted about the First Defendant's departure and

11.4 that she would not advertise or publicly announce that she would be employed by the Second Defendant without first notifying the Plaintiff.

As a result the Plaintiff agreed to provide a letter to the relevant immigration authority on a without prejudice basis to release the First Defendant from her work permit with the Plaintiff.

12. On 18 June 2019 the Second Defendant obtained a trade and business license number 44261 to carry on the trade or business of marketing or media in the Cayman Islands.

13. On 2 July 2019 the Plaintiff received an email from its client terminating the Plaintiff's services.

14. The First Defendant's last day of employment was on 12 July 2019 and on 15 July 2019 a letter from Affinity Recruitment Ltd. on behalf of the Plaintiff (the "Release Letter") was sent to the Workforce Opportunities Residency Cayman ("WORC") cancelling the First Defendant's work permit and requesting a refund of the work permit fees seeking six months refund of the said work permit.

15. On the same day, namely, 15 July 2019, Affinity Recruitment Ltd on behalf of Second Defendant, the same company which wrote to WORC on behalf of the Plaintiff and unbeknownst to the Plaintiff, applied for an application for a three-months' Temporary Work Permit Application on an express basis for the First Defendant to be employed by the Second Defendant as the sales, marketing and public relations coordinator for the Second Defendant.
16. Shortly after the First Defendant's departure, namely, on 17 July 2019 the Plaintiff conducted an investigation of the First Defendant's conduct during her employment by accessing the laptop provided to the First Defendant by the Plaintiff during her employment and did so whilst the laptop was offline. The investigation took place between 17 and 22 July 2019 and the Plaintiff discovered the breaches of the First Defendant.

Particulars

The best particulars which the Plaintiff can give until after discovery are as follows:

- 16.1 there were private messages between the First Defendant and a representative of the Plaintiff's client soliciting the client as of at least January 2019;
- 16.2 there were messages between the First Defendant and the Plaintiff's customer that she intended to set up a new business to compete against the Plaintiff since at least January 2019 and from at least 29 April 2019 began the process of establishing a business to compete against the Plaintiff;
- 16.3 Notwithstanding obtaining legal advice on 12 June 2019 that the non-compete and non-solicitation clause set out in the Employment Agreement would be enforceable, the First Defendant deliberately and wilfully breached the Employment Agreement;
- 16.4 the Second Defendant and the Plaintiff's customer executed a contract between the Second Defendant and the Plaintiff's customer on 15 July 2019 at a time when the First Defendant was likely working without a work permit as a temporary work permit application had only been made on the same day;
- 16.5 that the First Defendant had been working on side projects before and after the Second Defendant was established and attending meetings unrelated to the

Plaintiff during her hours of employment with the Plaintiff and in contravention of her work permit and her employment;

- 16.6 evidence that the First Defendant had copied confidential files such as contracts and the Plaintiff's client files to third parties;
 - 16.7 that the First Defendant used the Plaintiff's contracts with its customers in the same format to prepare contracts for the Second Defendant; and
 - 16.7 sharing confidential customer information with third parties, the Second Defendant, and/or persons who were representatives or connected with the Second Defendant.
17. Upon discovery of the First Defendant's breaches set out herein, a letter dated 23 July 2019 from Baraud on behalf of the Plaintiff was sent to WORC requesting a cancellation of the Release Letter.
 18. Upon discovery of the Defendants' breaches set out herein, a letter before action was sent by HSM Chambers on behalf of Plaintiff to the First Defendant on 2 August 2019 ("LBA") seeking the following undertakings:
 - 18.1 that she would cease and desist from contacting the Plaintiff's customers forthwith
 - 18.2 destroy all confidential information she obtained and provide proof thereof and
 - 18.3 cease and desist from using the Plaintiff's trade secrets for the benefit of Second Defendant.
 19. In or about 6 August 2019 the Plaintiff's attorneys-at-Law, HSM Chambers, were contacted by Stenning & Co. on behalf of the First Defendant in relation to the LBA. However, the undertakings set out in the LBA have not been provided by the First Defendant.
 20. By reason of the matters aforesaid, the Plaintiff has lost the custom of its customer or customers and has suffered loss and damage, full particulars of which cannot be given until after discovery.
 21. The Plaintiff repeats the facts and matters pleaded herein.

22. The First Defendant who is also a member, officer and employee of the Second Defendant deliberately ignored the terms of the Employment Agreement of which she had obligations and acted in the furtherance of the interest of the Second Defendant.
23. As such the director of the Second Defendant knew or ought of have known that the First Defendant was in breach of the Employment Agreement and foreseen that by inducing or procuring the First Defendant to solicit the Plaintiff's customer or customers would be a breach of the Employment Agreement.
24. Further, the Second Defendant was well aware, or alternatively, it ought to have known that the information supplied to it by the First Defendant was confidential to the Plaintiff.
25. In the premises and at all material times the Second Defendant was under a duty of confidence to the Plaintiff in respect of all the confidential information of the Plaintiff supplied by the First Defendant and was not and is not entitled to use or disclose such information or any part thereof.
26. The Plaintiff therefore claims against the Second Defendant for damages for inducement of breach of the Employment Agreement.

AND THE PLAINTIFF CLAIMS:

1. The Plaintiff claims against the First Defendant:
 - (a) an injunction restraining the First Defendant whether by herself, her servants, agents or otherwise howsoever from soliciting or attempting to solicit the Plaintiff's customers for such period as this Honourable deems appropriate and
 - (b) damages for breach of the Employment Agreement;
2. The Plaintiff claims against the Second Defendant damages for inducement of breach of contract;
3. The Plaintiff claims against the Defendants:

- (a) Delivery up of all documents and materials which are in the possession, power, custody or control of either of the Defendants the use or disclosure of which would offend against the foregoing injunctions or any of them;
- (c) an injunction to restrain the Defendants and each of them by themselves, their servants or agents or otherwise howsoever from using the confidential information of the Plaintiff or any part thereof for any purpose;
- (d) pre-judgment and post-judgment interest pursuant to section 34 of the Judicature Law, for such periods and at such rates as this Court deems just;
- (e) damages
- (f) costs and
- (g) further or consequential relief.

Dated this 13th day of September 2019

HSM Chambers
HSM Chambers
Attorneys-at-Law for the Plaintiff

Acknowledgment of service of writ of summons (O.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 each Defendant or by each Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO 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 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 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.
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

CAUSE NO: GC OF 2019

B E T W E E N:

DIGITAL STORY LTD. T/A COLLECTIVE

Plaintiff

AND

(1) AMY DEANNE STILL

AND

(2) WHISK LTD

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,

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

THIS FORM MAY HAVE TO BE RETURNED.

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
[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 communication 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.

HSM Chambers 68 Fort Street PO Box 31726 George Town Grand Cayman KY1-1207 CAYMAN ISLANDS Ref: LD/421187.0001

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

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