



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO: _____ OF 2022

BETWEEN:

- (1) PURE AIR LTD**
- (2) PM INDUSTRIAL GAS LTD**
- (3) CONOR PACIFIC CANADA INC**

PLAINTIFFS

AND:

- (1) ROBERTO SILVA**
- (2) CAMP SILVA HOLDINGS LIMITED**

DEFENDANTS

WRIT OF SUMMONS

TO: Roberto Silva
622 South Church Street
Grand Cayman
Cayman Islands

Camp Silva Holdings Limited
Walkers Corporate Limited
190 Elgin Avenue
George Town
Grand Cayman KY1-9008
Cayman Islands

This Writ of Summons and Statement of Claim was issued by KSG, attorneys for the Plaintiffs, whose address for service is 4th Floor Harbour Centre, 42 North Church Street, PO Box 2255, Grand Cayman KY1-1107, Cayman Islands [JK/2650]

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next pages.

Within 14 days (or, if leave is required to effect service out of the jurisdiction, such other period as is specified in the attached Acknowledgement of Service of Writ of Summons) 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 495G, George Town, Grand Cayman, 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 11th day of May, 2022.

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.

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DEFENDANTS

STATEMENT OF CLAIM

The Parties

1. The First Plaintiff, Pure Air Ltd (**PAL**), previously known as PM Industrial Gas Ltd, is an ordinary resident company incorporated under the laws of the Cayman Islands having its registered office at Foreshore Corporate Services Limited, Queensgate House, 113 South Church Street, PO Box 1994, Grand Cayman KY1-1104, Cayman Islands.
2. The Second Plaintiff, PM Industrial Gas Ltd (**PMIG**), previously known as Pure Air Ltd, is an ordinary resident company incorporated under the laws of the Cayman Islands having its registered office at Foreshore Corporate Services Limited, Queensgate

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House, 113 South Church Street, PO Box 1994, Grand Cayman KY1-1104, Cayman Islands. PMIG is a wholly owned subsidiary of PAL.

3. The Third Plaintiff, Conor Pacific Canada Inc (**Conor**), is a corporation incorporated under the laws of Canada having its offices at 912 – 189 Keefer St. Vancouver, British Columbia, Canada V6A 0C8. Conor is the controlling shareholder of PAL.
4. The First Defendant, Roberto Silva (**Silva**), is an individual with a residence in the Cayman Islands and a residence in Kentucky, United States of America.
5. The Second Defendant, Camp Silva Holdings Limited (**CSHL**), an exempted company incorporated under the laws of the Cayman Islands on 6 December 2019 having its registered office at Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands. Silva is the sole shareholder and director of CSHL.
6. As a result of Silva's position and control over CSHL, his knowledge of the facts and matters pleaded below is to be attributed to CSHL.

Factual Background

The Settlement Agreement

7. Silva was the Managing Director of PAL and PMIG from 2003, reporting to their respective boards of directors who were resident in Canada (and appointed by Conor) until late 2018. Silva became a shareholder of PAL in 2005. From 2010 onward, Richie Ebanks (**Ebanks**) was plant manager and the controller of PAL and PMIG, reporting to Silva.
8. In October 2018, PAL's board of directors dismissed Silva from his position as Managing Director and pursued various legal claims against Silva (the **Litigation**). Thereafter, Ebanks was appointed as General Manager and Controller of PAL and PMIG.
9. On or around 5 December 2019, the Plaintiffs and Silva, with others, entered into a written agreement to settle the Litigation (the **Settlement Agreement**). The settlement included Silva relinquishing his shareholdings in PAL.

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10. Under clause 15.1 of the Settlement Agreement, Silva undertook to the Plaintiffs that he shall not, directly or indirectly, at any time within 5 years of 5 August 2020:
 - 10.1. be involved in any capacity (including, but not limited to, as agent, consultant, director, employee, owner, partner, shareholder, or lender) with any business concern which has or intends to have an interest in the supply of packaged gas or the provision of any other services related to the delivery of gasses to medical facilities in the Cayman Islands consistent with the past business practices of the Plaintiffs; and
 - 10.2. interfere with or intervene in any way with the business of the Plaintiffs, including in respect of any and all licence applications which the Plaintiffs may make.
11. All conditions necessary to complete the Settlement Agreement have been satisfied. The Plaintiffs have performed, and continue to perform, as the case may be, all of their obligations under the Settlement Agreement.

Interference in LCCL Application

12. Since Conor acquired PAL,, PAL has held two licences issued under section 11 of the Local Companies (Control) Act, each for a period of 10-12 years. (a **LCCL**). Since a LCCL is issued for a specific period of time, PAL was going to be required to apply to the Trade and Business Licensing Board (the **Board**) for a grant of a new LCCL in 2020. During the negotiation of the Settlement Agreement, Silva threatened to interfere in that application and expressed the desire to buy PAL, which led to the Plaintiffs insisting on the provision in the Settlement Agreement described at paragraph 10.2 above.
13. In or around January 2020, PAL advertised for a Caymanian purchaser/investor of PAL as required. When no response to the advertisements was received, PAL applied to the Board for a renewal of its LCCL. While the application was pending, in or around February 2021 the Board informed the Plaintiffs that Silva had made written and oral representations to the Board objecting to the grant of a LCCL to PAL and expressing

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his desire to buy PAL or force Conor to sell to Silva. The Board informed the Plaintiffs that Silva objected to the grant of the LCCL on the basis that Silva had Caymanian status unlike any of Conor or its owners.

14. As a direct result of Silva's intervention and breach of the Settlement Agreement, the Board only granted PAL a LCCL for a term of 3 years. In addition, PAL and Conor were required to engage and instruct attorneys to represent it at the Board to address Silva's objections and PAL and Conor will be required to incur substantial expense to further extend the LCCL.

Interest in Packaged Gas Business and Interference in Plaintiffs' Business

15. PMIG and the Cayman Islands Health Services Authority (the **HSA**) are parties to a Product Supply and Cylinder Rental Agreement dated 7 November 2003 (the **Supply Agreement**). Under clause 1 of the Supply Agreement, PMIG is contracted to provide all gasses required by the HSA including gaseous oxygen. The Supply Agreement continues in full force and effect and has not been terminated.
16. In or around January 2022, the HSA announced publicly that it had acquired and installed an on-site oxygen generator to supply oxygen to the HSA (the **Plant**). The acquisition of the Plant for these purposes constitutes a breach of clause 1 of the Supply Agreement. The acquisition of the Plant was done without any notice to the Plaintiffs.
17. CSHL purchased the Plant and sold it to the HSA. Further, CSHL has contracted to become the local representative of the manufacturer of the Plant.
18. After installing the Plant, CSHL induced the HSA to enter into an operating and maintenance contract with Ebanks with respect to the Plant. In that connection with that arrangement, Silva and CSHL induced Ebanks to breach his employment contract with PAL by causing Ebanks to resign from PAL with two weeks' notice instead of the 90 days' notice required under Ebanks's employment agreement with PAL.
19. HSA's acquisition, installation, and operation of the Plant has resulted in HSA purchasing less liquid oxygen from PMIG under the Supply Agreement.

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20. In addition to Silva's dealings with the HSA, Silva has been engaged in the provision of other services related to the delivery of gasses, has provided other services to medical facilities, and has interfered with and intervened in the supply of hard goods in direct competition with PAL.

Breaches of the Settlement Agreement

21. As set out in paragraph 9 above, the Settlement Agreement constituted a binding contract between the Plaintiffs and Silva.
22. As set out in paragraph 13 above, Silva intervened in PAL's application for a LCCL in a manner adverse to the Plaintiffs' business in Grand Cayman. Silva's actions constitute a breach of clause 15.1(b) of the Settlement Agreement. As a result of Silva's breach, the Plaintiffs have suffered loss and irreparable harm.
23. Further, the Plaintiffs are entitled to equitable relief to compel Silva to comply with his obligations under clause 15.1(b) of the Settlement Agreement.
24. As set out in paragraphs 17 and 20 above, CSHL has an interest in the supply of packaged gas and/or the provision of other services related to the delivery of gasses to medical facilities in the Cayman Islands. Silva is involved in CSHL as, at least, a shareholder and director. Given CSHL's business interests, Silva's involvement with CSHL constitutes a breach of clause 15.1(a) of the Settlement Agreement. As a result of Silva's breach, the Plaintiffs have suffered loss and irreparable harm.
25. As set out in paragraphs 15 to 20 above, Silva has interfered and intervened in, and caused CSHL to interfere and intervene in, the business of PAL and PMIG. Silva's actions constitute a breach of clause 15.1(a) of the Settlement Agreement. As a result of Silva's breach, the PAL and PMIG have suffered loss and irreparable harm.
26. Further, the Plaintiffs are entitled to equitable relief to compel Silva to comply with his obligations under clause 15.1(a) of the Settlement Agreement.

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Intentional Interference with Contractual Relations

27. CSHL is liable to PMIG in damages and/or restitution for intentional interference with the contractual relations between PMIG and the HSA:
- 27.1. Silva at all relevant times had knowledge of the Supply Agreement. In the circumstances, Silva's knowledge is attributable to CSHL.
- 27.2. By entering into an agreement with HSA to sell HSA the Plant, and inducing HSA to enter into an operating and maintenance contract with Ebanks in respect of the Plant, CSHL induced the HSA to breach the Supply Agreement.
- 27.3. By reason of the matters pleaded above, it is to be inferred that CSHL intended to cause the HSA to breach the Supply Agreement.
- 27.4. As a result of CSHL's actions, PMIG has suffered loss.

AND THE PLAINTIFFS CLAIM AS AGAINST THE DEFENDANTS:

- (1) Specific performance of the Settlement Agreement;
- (2) Restitution in the amount of any profits earned by Silva or CSHL on its sale of the Plant to the HSA and the operating and maintenance agreement with Ebanks;
- (3) Damages, including exemplary damages, to be assessed;
- (4) Interest on any damages award pursuant to section 34(1) of the Judicature Act (2021 Revision) or on such other basis as the Court may direct;
- (5) Costs; and
- (6) Such further or other relief as counsel may advise or the Court thinks appropriate.

DATED this 11th day of May, 2022.

KSG

KSG
Attorneys for the Plaintiffs

This Writ of Summons and Statement of Claim was issued by KSG, attorneys for the Plaintiffs, whose address for service is 4th Floor Harbour Centre, 42 North Church Street, PO Box 2255, Grand Cayman KY1-1107, Cayman Islands [JK/2650]

**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 Acknowledgement 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 3), 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 Acknowledgement 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.

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AND:

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**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 or otherwise participate in 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 plaintiffs' Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

KSG Attorneys at Law 4th Floor Harbour Centre 42 North Church Street PO Box 2255 Grand Cayman KY1-1107 Cayman Islands
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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.

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