

Writ of Summons (O.6, r.1)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 0499/2009.

BETWEEN:

SANDY ELIZABETH SEYMOUR

The Widower and Administratrix of the estate of O'Neil Purcell Pusey deceased

PLAINTIFF

and

KPMG

KIRK SEA TOURS LTD
(the Owners of SUN RAYS)

1st DEFENDANT

2nd DEFENDANT

CARLOS GARVIN (CPT)

3rd DEFENDANT



SPECIALLY ENDORSED WRIT OF SUMMONS

TO: THE DEFENDANTS: 1st Defendant - KPMG – PO Box 493 GT, Century Yard Court, Grand Cayman, Cayman Islands.

2nd Defendant - KIRK SEA TOURS LTD. – Cayman Management Services Ltd. P.O. Box 1569 GT, Ground Floor, Harbour Centre, Grand Cayman, Cayman Islands.

3rd Defendant - CARLOS GARVIN, 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 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 12th day of October 2009.

NOTE - This Writ may not be served later than 4 calendar 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

1. The Claimant whose name has been changed by Deed Poll to Sandy Seymour as of 19 November 2008 is the widower and the Administratrix of the estate of O'Neil Purcell Pusey having been granted Letters of Administration out of the Probate Registry of the Grand Court of the Cayman Islands on 4 April 2007 in the name of Sandy Elizabeth Seymour-Pusey. She brings this action for the benefit of herself as a dependant of the deceased and for the benefit of the estate of the deceased.
2. The First Defendant operated an accountancy firm and was the employer of O'Neil Pusey.
3. The Second Defendant was at the material time the owner and/or operator of the boat, Sun Rays, which boat was operated by the Third Defendant. The Third Defendant was at the material time a servant or agent of the Second Defendant.

THE FACTS

4. By a contract of employment dated 16 May 2002, O'Neil Pusey was employed as a Junior IT Technician with the firm of KPMG. The Contract of employment was signed on 16 May 2002 by Stacey Goubault in the Human Resources Department and accepted by O'Neil Pusey on the same date. As at the date of the accident O'Neil Pusey was working at KPMG situated at Century Yard Building.
5. On 13 October 2006 the deceased was a passenger on a boat, namely Sun Rays owned by Kirk Sea Tours Ltd. on a trip to Sting Ray City.
6. The boat was captained by Carlos Gavin. Carlos Gavin and Dayton Ebanks were negligent in that they failed to give a safety briefing or any safety briefing before the boat Sun Rays departed for the trip to Sting Ray City carrying staff from KPMG.
7. O'Neil Pusey at the time of the return leg of this trip was caused by others to fall over board whilst the boat was moving and was struck on his head by the underside of the boat.
8. The trip to Sting Ray City was a private charter by KPMG intended to be a party for newly joined employees and existing members of staff. It was their annual "meet & greet party". It was known that alcohol would be consumed. KPMG supplied a bar and bar staff.
9. Equally the operators of the vessel were aware that alcohol was to be served on board as the arrangements to have a bar on board was known to them.

10. Mr. Pusey could not swim and this was known to other KPMG employees. The boat captain, Carlos Garvin also realised he could not swim as he noticed that he did not let go of the boat's ladder all the time he was in the water at Sting Ray City.
11. O'Neil Pusey and others approached Hudson Lopez because in the three years attending the KPMG "meet & greet parties" he had not been in the sea at Sting Ray City.
12. Hudson Lopez was approached by Dominic Whittaker who said that he had heard that he had not been in the water and "we are thinking of throwing you in". Everton Bell, Dominic Whittaker, David Watt and O'Neil Pusey with the assistance of others grabbed him and tried to throw him in. He was carried to the stern and thrown in. When he surfaced he was underneath the boat between its two hulls.
13. Gordon Raja Mohan saw David Watt, O'Neil Pusey and Everton Bell taking Hudson Lopez to the stern of the boat and also saw a staff member of KPMG removing the safety rope at the stern gate. Julie Adam also saw O'Neil Pusey lift Hudson Lopez from his stool and with one or two others throw Hudson Lopez into the water.
14. Lucy Martyr saw O'Neil Pusey grab hold of Hudson Lopez and with the help of David Watt and Dominic Whittaker throw him in. She says she warned O'Neil Pusey it was too dangerous and held on to him. Lucy Martyr saw Mr. Pusey fall into the water.
15. After Hudson Lopez was thrown into the water there was some further rowdy behaviour or at the very least some pushing and shoving as Alphonse Akarrow says that after Hudson Lopez was in the water he was standing near where he had gone in and "within seconds" of arriving there he found himself falling into the water and does not know how it happened.
16. Alphonse Akarrow states that whilst in the water and under the boat the propellers increased their speed as if they were about to take off.
17. Carlos Garvin failed to see or hear what had taken place. He told the mate that it was time to pull up the anchors. He pulled up the starboard anchor and then the stern one ensuring that its rope was in the safety clip. He then went forward and pulled the port anchor. At that stage he says his mate, Dayton Ebanks, told him there were people in the water. He went back and saw 3 people in the water. As the boat was drifting backwards he went and lowered the port anchor. It is alleged that Carlos Garvin had engaged the propellers whilst there were still passengers in the water and being thrown into the water. Kirk Sea Tours Ltd and or its servants or agents failed to properly supervise the passengers on the boat.
18. The numbers invited on this trip was variously described as between 130 and 150. It was more than could be carried on one boat and another had to be obtained before the group set off. There was some reluctance for people to leave the Sun Rays but Carlos Gavin says that 40 went on the Peacemaker which would mean that there

would have been 90 to 110 people on the Sun Rays. By the time of the incident, the numbers on the Sun Rays could have increased as there was no food on the Peacemaker and Sean O'Neill says although he had gone on the Peacemaker he got onto Sun Rays as he thought it would be more fun as it had food and music on it. It is alleged that no proper check was carried out as to the number of people that were being carried on the boat.

19. Kirk Sea Tours Ltd and or it servants or agents failed to prevent people going back into the water and/or permitted the anchors to be raised and the boat maneuvered when people were in the water or there was a significant risk of them going in.
20. KPMG and/or it servant's or agents were negligent in that:
 - a. There was a failure to properly supervise its staff leading to overcrowding on the boat on the return trip from Sting Ray City.
 - b. Failing to keep any or any proper lookout.
 - c. Failing to apply sufficient or any control over the behaviour of the passengers leading to the passengers throwing fellow passengers overboard whilst the boat was no longer under anchors and was about to depart or had departed and/or either way was under power.
 - d. That it failed to ensure that its staff did not tamper with or here remove the safety rope at the back of the boat so that they could throw other staff members overboard and or the removal of which caused Mr. Pusey and other staff members to fall into the water.
 - e. That its servant and/or agents failed to manage the quantity of alcohol supplied and or drank by it staff members.
 - f. Failed to take any or any adequate care for the Claimant's safety.
 - g. Knowing that O'Neil Pusey could not swim failed to ensure that he wore a life jacket.
 - h. The Claimant will further rely upon the happening of the said accident as evidence in itself of the negligence of the Defendant.
21. Kirk Sea Tours and or its servants or agents were negligent in that:
 - a. Failed to keep any or any proper lookout.
 - b. Failed to control the boat adequately or at all whilst passengers were still in the water.
 - c. There was a failure to properly supervise the distribution of the passengers on the two boats leading to overcrowding on the Sun Rays on the return trip.

- d. There was a failure to check that all passengers had exited the water and were safely on board the boat before lifting the anchors and/or switching on the engine of the boat.
- e. There was insufficient or no control or warning or any warning given concerning the safety and thus behaviour of the passengers prior to the passengers throwing fellow passengers overboard whilst the boat was under power.
- f. That it and/or its servants or agents failed to ensure that the passengers were warned not to remove the safety rope and did not removed the safety rope at the back of the boat the removal of which led to Mr. Pusey and other staff members falling into the water.
- g. That its servants or agents failed to manage the passengers and the quantity of alcohol supplied to the passengers or that was being drunk.
- h. Failing to take any or any adequate care for the safety of O'Neil Pusey' or any of the passengers.
- i. Failed to notify the passengers of the dangers of boat and in particular when they have been drinking.
- j. Failed to take precaution to ensure that at all times all of the passengers were safely on board the boat and aware of all of the dangers of using such a boat.
- k. Permitting the rope at the back of the boat to be removed and thus steering the boat whilst it was dangerous to do so and thus in a reckless manner.
- l. Not ensuring that its servant or agents at all times had full control of the boat and the manner in which it was being used.
- m. Failing to ensure that no passengers were in the water or to detect in time or at all that a passenger or passengers were in the water.
- n. Failing whilst passengers were either still in the water or returned to the water to stop and or slow down, or so to manage or control the boat so as to avoid the accident.
- o. Failing to warn all the passengers that the boat was due to leave and that no one was to return to the water.
- p. The Claimant will further rely upon the happening of the said accident as evidence in itself of the negligence of the Defendant.

- 22. As a result of Mr. Pusey falling into the water and the said collision of Mr. Pusey's head with the underside of the boat the deceased was knocked unconscious. O'Neil Pusey was removed from the water by his colleagues and taken to shore by a motor boat.
- 23. The emergency services were alerted shortly after 5.30pm that there had been an incident in which a male had "jumped in the water and was knocked unconscious

and that he was being brought to Safe Haven and CPR was being performed on him.”

24. When he arrived back on land he was taken to the hospital where he was pronounced dead sometime before 7.24pm. An autopsy conducted by Dr Heidingsfelder took place on the 17 October 2006. He concluded that death was caused by drowning. Dr Heidingsfelder also made a finding of evidence of a subarachnoid haemorrhage to the right side of the head. This was clearly caused by a blow to the left side of the head.

LIABILITY FOR THE ACCIDENT

25. The said incident was caused by the negligence of the Defendants.

LOSSES ARISING OUT OF THE DEFENDANTS' NEGLIGENCE

26. By reason of above matters, the deceased was killed and his widower, the Claimant has suffered bereavement and the dependant and estate of the deceased have suffered loss and damage.

(1) The deceased was born on 2 February 1980 and was aged 26 at the date of his death.

(2) The name of the person for whose benefit this action is brought:

- a. Claimant, Sandy E. Seymour, the deceased's wife, who was born on the 9 January 1984.

(3) The nature of the claim in respect of which damages are sought:

At the time of his death the deceased was a healthy and happy and was 26 years old. He was an astute and enterprising young man. Apart from his work at KPMG where his gross salary at that time was US\$60,000.00, he was also a talented musician and he played music in a band. The deceased shared all the family finances.

27. Further, the Claimant claims damages for bereavement.

28. Further, on behalf of the estate of the deceased, the Plaintiff claims funeral expenses:

- | | |
|---|-------------|
| (1) Funeral expenses – Churchill’s Funeral home package | \$10,000. |
| (2) Cayman Islands Government burial plot | \$1,000.00 |
| (3) Headstone - | \$12,000.00 |
| (4) Catering for funeral, food, funeral programs, floral arrangements over 4-5 nights | \$10,000.00 |
| (5) Candlelight service expenses | \$1,000.00. |

29. I believe that the facts stated in this Statement of Claim are true.

AND the Claimant claims:

- (1) Damages for herself as the dependant of the deceased.
- (2) Damages for bereavement on behalf of the estate of the deceased.
- (3) Further, pursuant to The Judicature Law (1995 Revision), the Defendant is entitled to and claims interest on such sums as are found to be due at such rate and for such period as the Court shall think fit.
- (4) Costs



Clyde H. Allen, Chambers

THIS WRIT was issued by Clyde H. Allen, Chambers on behalf of the Plaintiff whose address for service is P.O. Box 31076 SMB, 2nd Floor, Suite 9, Jack & Jill Building, 19 Fort Street, KYI-1205, George Town, Grand Cayman, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLAND
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. OF 2009

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SANDY ELIZABETH SEYMOUR

The Widower and Administratrix of the estate of O'Neil Purcell Pusey deceased

PLAINTIFF

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KPMG

1st DEFENDANT

KIRK SEA TOURS LTD

(the Owners of SUN RAYS)

2nd DEFENDANT

CARLOS GARVIN (CPT)

3rd 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 a 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

Address for service: (please see overleaf)

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.

Clyde Allen
Clyde H. Allen, Chambers,
Attorneys-At-Law
PO Box 31076SMB
Jack & Jill Bldg, KY1-1205
Grand Cayman
Cayman Islands

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

[Empty box for defendant's attorney indorsement]