

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GO223 OF 2010

BETWEEN:

DILBERT McLAUGHLIN



AND:

(1ST) COMMISSIONER OF THE ROYAL CAYMAN ISLANDS POLICE SERVICE

(2ND) IAN ANTHONY YOUNG

DEFENDANTS

AMENDED WRIT OF SUMMONS
Amended pursuant to GCR
Order 20, Rule 1



TO: Mr David Baines
c/o RCIPS
PO Box 909
Grand Cayman
Cayman Islands
KY1-1103

Mr ~~Ian~~ Anthony Young
c/o RCIPS
PO Box 909
Grand Cayman
Cayman Islands
KY1-1103

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 28th Day of May 2010~~

Re-Issued this 30th Day of August 2010

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.

PARTICULARS OF CLAIM

1. The First Defendant is the Commissioner of the Royal Cayman Islands Police Service. The Second Defendant is and was at all material times a police constable under the direction and control of the First Defendant.
2. In these particulars, the Claimant avers, by reason of the matters set out herein, that:
 - i. The Plaintiff was wrongfully and unlawfully struck by the Second Defendant;
 - ii. The Plaintiff was wrongfully arrested and unlawfully detained by the Second Defendant;
 - iii. The Second Defendant consistently sought to use and did so use language indicative of a racial prejudice;
 - iv. The Second Defendant continually made threats against the life of the Plaintiff and in doing so, caused the Plaintiff to apprehend immediate harm;
 - v. That said conduct was motivated by the racial bias of the Second Defendant; and
 - vi. That at all material times, the Second Defendant was acting in purported performance of his duties.

3. On or about 19 June 2004, the Plaintiff was asleep on the front porch of his home, located at 2357 Seaview Road, East End when he was awoken by the Second Defendant, who was accompanied by a fellow police constable, Mr Matthew Rice (hereinafter collectively referred to as **"the Constables"**).
4. The Second Defendant proceeded to question the Plaintiff with respect to an altercation that had occurred between the Plaintiff and his wife some hours earlier. Throughout the interaction between the parties, the Second Defendant continually referred to the Plaintiff using language which demonstrated racial prejudice and generally conducted himself in a hostile and aggressive manner.
5. During the course of this questioning, the Second Defendant, suddenly and without warning, wrongfully struck the Plaintiff across the left lower ribcage with an extendible baton. While doing so, the Second Defendant referred to the Plaintiff as a "black fucker" and threatened to "finish him off".
6. Mr Rice, on the verbal instruction of the Second Defendant, then restrained the Plaintiff by forcefully grabbing his lower right forearm and placing his right wrist in handcuffs. While being so restrained, the Second Defendant again wrongfully struck the Plaintiff over his left eye with his closed right fist.
7. The Plaintiff escaped the custody of the Constables and attended the Georgetown Public Hospital (**"the Hospital"**) where he sought medical attention. Before the completion of his consultation with the Hospital's medical staff regarding his injuries and treatment thereof, the Second Defendant, without reasonable grounds or enquiry, wrongfully arrested the Plaintiff, during which the Second Defendant again persisted in the use of both racially charged epithets and of threats to the life of the Plaintiff.
8. Thereafter the Plaintiff was taken to Georgetown Police Station where he was unlawfully detained for a period of 2 days by the Second Defendant until he was released therefrom. During the course of his unlawful detention by the Second Defendant, the Plaintiff was not provided with any medical care or attention, despite persistent complaints of severe pain.
9. At all material times, the Second Defendant, in acting in the matter as stated above, was acting in purported performance of his police function.
10. By reasons of the matters mentioned aforesaid the Plaintiff, who was born on 10 April 1972, suffered pain and injury, was deprived of his liberty and has suffered loss and damage.

PARTICULARS OF INJURY

- (i) Pain and shock;
- (ii) Swollen radial aspect lower forearm;
- (iii) Transverse linear bruise along the left anterior lower ribcage below the left breast; and
- (iv) A fractured left 7th rib.

After his release from the unlawful detention by the Second Defendant, the Plaintiff attended the Chrissie Tomlinson Memorial Hospital, George Town, Grand Cayman in order to treat his injuries. Upon undergoing a chest x-ray, it was discovered that the Plaintiff was suffering from a fractured left 7th rib. He was prescribed bed rest, pain relievers and anti-inflammatory medication and was thereafter discharged. The injuries suffered by the Plaintiff healed after a period of approximately 7 weeks, during which time he was confined to bed and unable to pursue his usual daily activities. He was further prevented from returning to work for a period of 8 months as a result of the injuries.

The Plaintiff continues to suffer limitations in the carrying out of his day to day activities as a result of the pain he continues to experience. He is unable to undertake any strenuous physical exertion and occasionally endures periods of shortness of breath and lethargy. The area of the fracture is tender to touch and the Plaintiff is constantly aware of the injury.

The Claimant will further rely upon the medical report of Dr S. A. Tomlinson, MB BS FRCS LRCP.

PARTICULARS OF SPECIAL DAMAGE

The Particulars of Special Damage will be contained with the Schedule of Loss and Damage which the Plaintiff undertakes to serve as soon as practicably possible.

11. The Plaintiff will rely on the following facts and matters to support his claim for aggravated and/or exemplary damages.

PARTICULARS

- (i) The Second Defendant's consistent use of racially deprecatory terms in reference to the Plaintiff;

- (ii) The persistent and repeated threats made by the Second Defendant on the life of the Plaintiff;
- (iii) The prevention of the Plaintiff from receiving proper medical attention at the Hospital by the Second Defendant;
- (iv) The failure to provide the Plaintiff with the necessary medical care during the course of his unlawful detention; and
- (v) The inordinate and wholly unreasonable length of the Plaintiff's unlawful detention.

The Plaintiff avers that the conduct by the Second Defendant was oppressive, arbitrary and unlawful in all the circumstances.

12. Further, pursuant to Section 34(1) of the Judicature Law, the Plaintiff is entitled to and claims to recover interest on the amount found to be due to him at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF claims:

- 1. Damages
- 2. Interest thereon pursuant to Section 34(1) of the Judicature Law.

Dated 2nd June 2010



STUARTS WALKER HERSANT

Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court

AND TO: The First and Second Defendants, c/o Royal Cayman Islands Police Service, PO Box 2499 GT, Grand Cayman, Cayman Islands

BETWEEN:

DILBERT McLAUGHLIN

PLAINTIFF

AND:

(1ST) COMMISSIONER OF THE ROYAL CAYMAN ISLANDS POLICE SERVICE

(2ND) **IAN ANTHONY** YOUNG

DEFENDANTS

**ACKNOWLEDGMENT OF SERVICE
OF **AMENDED** 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.

Anthony Akiwumi/Christopher Levers STUARTS WALKER HERSANT Attorneys-at-Law 4 th Floor, Cayman Financial Centre 36A Dr. Roy's Drive P.O. Box 2510 GT George Town Grand Cayman, KY1-1104 Cayman Islands Tel: 345 949 3344 Fax: 345 949 2888 Ref: AA/CL/4726

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.

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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.