

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 382 OF 2012



Doey Collins Kelly

1st Plaintiff

Frank Sirlon Ebanks

2nd Plaintiff

Dave Ernest Lindo Kelly

3rd Plaintiff

Noel Bryan Ebanks

4th Plaintiff

Darney Duhaney Kelly

5th Plaintiff

AND:

Dragon Bay Limited
formally known as
Fujigmo Limited

1st Defendant

And

The Port Authority

2nd Defendant

And

The Attorney- General

3rd Defendant



AMMENDED WRIT OF SUMMONS

TO: Dragon Bay Limited formly known as
Fujigmo Limited
c/o Michael Ryan
North Sound Club
665 Safe Haven Drive
PO Box 32319
Grand Cayman KY1-1209

The Port Authority
45A Harbour Drive
Georgetown
PO Box 1358
Grand Cayman KY1-1108

AND

The Attorney General
PO Box 104
4th Floor
Government Administration Building
Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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 Acknowledge of Service stating therein whether you intend to contest these proceedings.

If you fail to supply 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 day of 2012.

NOTE – This Writ may be served later 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.

ENDORSEMENT

The 1st Plaintiff Doey Collins Kelly boat operator of 221 Powell Smith Drive, West Bay, Grand Cayman

AND

The 2nd Plaintiff Frank Sirlon Ebanks boat operator of 25 Topsails Street, West Bay, Grand Cayman

AND

The 3rd Plaintiff Dave Ernest Lindo Kelly boat operator of 221 Powell Smith Drive, West Bay, Grand Cayman

AND

The 4th Plaintiff Noel Bryan Ebanks boat operator of 416 Birch Tree Hill, West Bay, Grand Cayman

AND


The 5th Plaintiff Darney Duhaney Kelly boat operator of 13 Firewood Close, West Bay, Grand Cayman

jointly and severally claim:

1. A declaration that they are each entitled to a right of way from Turnberry Drive to Safehaven (known as Safehaven Docks) for themselves, their servants, agents and licensees on foot or by motor vehicles and other conveyances at all times and for the purposes of their boat operations;
2. A declaration that they are each entitled to a right of passage from the open sea to the docking facilities on the said property for their boats at all times for the purposes of their boating business;
3. A declaration that they and each of them are entitled to use the said rights as legal rights under and by virtue of Section 2 of the Prescription Law;
4. A declaration that the First Defendant is a constructive trustee having the duty to protect and preserve the Plaintiff's rights of way and access to the said location and docking facilities;
5. A declaration that the Plaintiffs and each of them are entitled by virtue of a proprietary estoppel to the said access and rights to the use of the said facilities;
6. An injunction to prevent the First Defendant by itself, its servants or agents or otherwise howsoever from preventing or hindering the Plaintiffs from having access to or use of the said location and/or docking facilities;
7. An injunction restricting the First or Second Defendant from authorizing, directing or causing their servants or agents or anyone from proceeding with construction or other works which will deprive the clients of their right of access and use of the said location and docking facilities;
8. Damages.

9. Costs

Dated the 8 day of Oct. 2012

Signed: 

Hanson P Ebanks
Attorney-at-Law for the Plaintiffs

DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS

1. The accompanying form of Acknowledgement of Service should be completed by an Attorney on behalf of the Defendant or by Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO 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 not endorsed 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 Acknowledgement, 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 overleaf for notes for guidance

Please complete overleaf

Notes of 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 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 form 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 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. The Defendant acting in person may obtain help in completing the form at the Court Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2012

BETWEEN:	Doey Collins Kelly	1st Plaintiff
	Frank Sirlon Ebanks	2nd Plaintiff
	Dave Ernest Lindo Kelly	3rd Plaintiff
	Noel Bryan Ebanks	4th Plaintiff
	Darney Duhaney Kelly	5th Plaintiff
 AND:	 <u>Dragon Bay Limited</u>	
	formally known as	
	Fujigmo Limited	1st Defendant
	And	
	The Port Authority	2nd Defendant
	And	
	The Attorney- General	3rd Defendant

ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS

1. State the full name of the Defendant's by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings.

_____ Yes

_____ No

3. If the claim against the Defendant is for a debt or liquidation 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.

_____ 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.

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

Hanson P. Ebanks Attorney-at-Law A4 Queen's Court, West Bay Road Grand Cayman, KY1-1202, 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.

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