

IN THE GRAND COURT OF THE CAYMAN ISLANDS

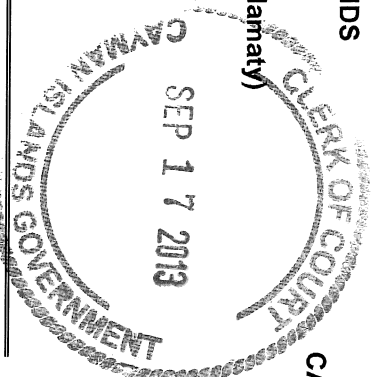
CAUSE NO: <sup>317</sup> OF 2013

BETWEEN: ROBERT HAMATY (aka Robbie Hamaty)

PLAINTIFF

AND: KIRK HENDRIKS

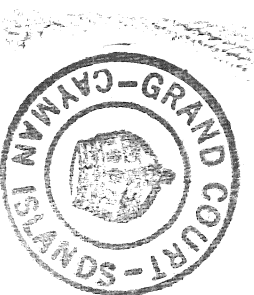
DEFENDANT



WRIT OF SUMMONS

TO:

Kirk Hendriks  
Royal Waterl Cruise Terminal  
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, PO 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 <sup>17<sup>th</sup></sup> day of September 2013

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

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2013

**BETWEEN: ROBERT HAMATY (aka Robbie Hamaty)**

**PLAINTIFF**

**AND: KIRK HENDRIKS**

**DEFENDANT**

1. The Plaintiff is a businessman involved in a variety of commercial enterprises.
2. The Defendant is a businessman involved in a variety of commercial enterprises including one known as “Kirk Sea Tours” which provided tours and access to attractions for persons in the Cayman Islands including visitors to the Islands.
3. In or about the year 2002, the Plaintiff and the Defendant (“the parties”) agreed to go into business together in the provision of a service transporting tourists visiting the Cayman Islands and for purposes ancillary to same (“the business”).
4. The business was to be operated through a new company formed for the purposes namely “Tortuga Tours Ltd. (“the Company”).
5. Both the Plaintiff and the Defendant were to be and were shareholders and Directors of the Company and agreed to contribute different resources to the business and to have different roles in its operation.
6. Among the roles to be performed by the Defendant was the day-to-day running of the business which the parties agreed would be entrusted to the Defendant.
7. The day to day running of the business included, inter alia, promoting the business, promoting sales, collecting money which belonged to the business, paying routine bills and other administrative and management functions.

8. In the carrying out of these functions, the Defendant owed a fiduciary duty to the Company and to the Plaintiff.
9. It was the duty of the Defendant to see to the proper running of the Business and to duly and faithfully account for all money collected by him on behalf of the Company.
10. The parties decided to acquire a license to carry out the business as well as a number of buses formerly owned by a Mr. Hunter.
11. The parties and the Company approached FirstCaribbean International Bank ("FCIB") to secure financing for the purchase of the buses and to provide working capital for the Company.
12. FCIB agreed to lend the Company the sum of US\$400,000.00 for these purposes on a variety of conditions, including a requirement that the Plaintiff and the Defendant guarantee repayment of the loan.
13. All necessary documentation was prepared and signed, the funds were disbursed by FCIB and the buses were duly purchased. The Company commenced the business.
14. After the business had been in operation for some time, the Plaintiff observed that the financial results of the business were significantly worse than had been anticipated and the parties had a number of discussions about the state of the company's affairs.
15. During the course of those discussions and the review of the state of the company's affairs the Defendant admitted that in the running of the business, he had co-mingled funds belonging to the Company with funds belonging to other businesses in which he was involved and that he was not able to properly or faithfully account for the money collected on behalf of the Company.

16. The Defendant acknowledged that he was in breach of his fiduciary duty to the Company and the Plaintiff and that as a consequence of his inability to account for money collected on behalf of the Company, the Plaintiff was exposed under his guarantee to FCIB.
17. The Plaintiff spoke with the Defendant's accountant to try to get an understanding of the state of affairs but it became clear that the finances could not be un-raveled, in part because no proper records had been kept by the Defendant and also much of the dealings of the business were in cash.
18. The Plaintiff threatened to report the matter to the Police.
19. The Defendant proposed that the Company should cease doing business, that he would take over whatever assets or business remained intact and incorporate same into his other businesses and that he would, inter alia, assume responsibility for the debt to FCIB.
20. The Plaintiff agreed to this.
21. The agreement between the parties was incorporated into a written agreement dated the 26<sup>th</sup> day of January 2006 ("the 2006 Agreement"). At the trial of this action, the Plaintiff will refer to the said 2006 Agreement for its full terms and effect.
22. As set out in Paragraph 1.2 of the 2006 Agreement, the Defendant agreed to take over the indebtedness of the Company to FCIB and to start making the monthly payments to retire the indebtedness from his own resources.
23. As set out in Paragraphs 1.3 and 1.4 of the 2006 Agreement, the Defendant promised to indemnify the Plaintiff against any liability to FCIB and to transfer to the Plaintiff title to a boat the Defendant claimed to own namely the "MV Sun Seeker" to be held in escrow but with the power sell same in the event that the Defendant did not keep up his payments to FCIB

24. Contrary to the representations and assurances given to the Plaintiff by the Defendant, the MV Sun Seeker was in fact the subject of a prior charge given by the Defendant to Cayman National Bank who disposed of it to satisfy a debt owed by the Defendant to that bank.
25. The Defendant started making payments to FCIB but in breach of the 2006 Agreement failed to continue to do so after February 2008 when he made the last payment.
26. As a consequence of the default of the Defendant, FCIB called upon the Plaintiff pursuant to the personal Guarantee he had signed. As at 7<sup>th</sup> October 2009, the balance owed to FCIB was US\$260,673.31.
27. On the 2<sup>nd</sup> November 2009, as a result of demand made by FCIB, the Plaintiff paid FCIB the sum of US\$27,070.45 and has since been making payments towards the sum of US\$260,673.31 because of his continuing legal obligation to FCIB.
28. As of the 30<sup>th</sup> August, 2013 the Plaintiff has paid FCIB a total of US\$131,039.28.
29. As of the 30<sup>th</sup> day of August 2013, the principal balance owed to FCIB is US\$130,379.27.
30. Interest and charges continue to accrue on the debt. As of the 30<sup>th</sup> day of August the amount owed to FCIB for interest is US\$ 65, 876.03.

#### AND THE PLAINTIFF CLAIMS

- A) An order that the Defendant indemnify the Plaintiff in respect of any liability to FirstCaribbean International Bank in respect of any and all sums paid, to be paid or obliged to be paid by the Plaintiff to FCIB in respect of the guarantee given to FCIB by the Plaintiff and in particular the sums of US\$130,379.27 and US\$65,876.03 and any interest, fees or other charges accruing to FCIB.

- B) An order that the Defendant do forthwith pay all sums due to FirstCaribbean International Bank
- C) An order that the Defendant do forthwith pay to the Plaintiff of the sum of US\$131,039.28 already paid by the Plaintiff to FirstCaribbean International Bank
- D) Further and other relief
- E) Costs

HSM CHAMBERS

PER:



DEREK JONES

This WRIT OF SUMMONS was filed by HSM Chambers, Attorneys-at-Law for the Plaintiff whose address for service is Suite 3 Buckingham Square, 720 West Bay Road, PO Box 31726, Grand Cayman, KY1-1207, Cayman Islands (ref: 417902.0001)

**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: OF 2013

BETWEEN: ROBERT HAMATY (aka Robbie Hamaty)

PLAINTIFF

AND: KIRK HENDRIKS

DEFENDANT

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**ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS**

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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 is acknowledged accordingly

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(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  
Attorneys-at-Law  
Suite 3 Buckingham Square  
720 West Bay Road  
PO Box 31726  
George Town  
Grand Cayman KY1-1207  
CAYMAN ISLANDS  
Ref: [417902.001]

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