

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 327 OF 2013

BETWEEN:

ISLAND ELEMENTS C.I LIMITED

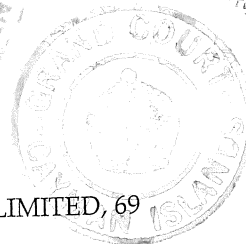
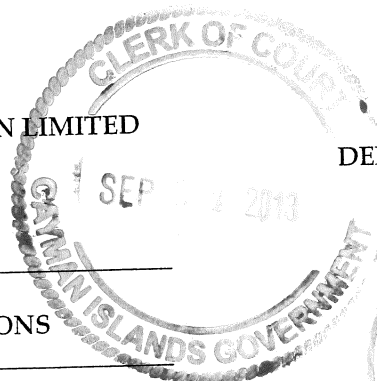
PLAINTIFF

AND:

FEDERAL EXPRESS CAYMAN LIMITED

DEFENDANT

WRIT OF SUMMONS



TO: FEDERAL EXPRESS CAYMAN LIMITED of CALEDONIAN TRUST (CAYMAN) LIMITED, 69 Dr. Roys Dr, Po Box 1043, George Town, Grand Cayman, KY1-1102.

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of Maples Corporate Services Limited, Po Box 309, George Town, Grand Cayman, KY1-1104 in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, 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 any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 24th day of September 2013.

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form.

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CAUSE NO: OF 2013

BETWEEN:

ISLAND ELEMENTS C.I LIMITED

PLAINTIFF

AND:

FEDERAL EXPRESS CAYMAN LIMITED

DEFENDANT

STATEMENT OF CLAIM

Preliminary

1. At all times material to this action:

- (a) the Plaintiff is and was a company incorporated in and regulated by the laws of the Cayman Islands, *inter alia*, in the business of buying and selling gold, and trading as Cash Wiz Cayman from its premises at 144 North Church Street, Grand Cayman and/or 218 Bodden Town Rd, Grand Cayman;
- (b) the Defendant is and was a company incorporated in and regulated by the laws of the Cayman Islands, *inter alia*, specialising in the shipment and safe delivery of packages both domestically and overseas;
- (c) the Defendant employed one Evon Robinson, as a courier, to collect and safely deliver shipping packages; and
- (d) the said Evon Robinson acted under the Defendant's direction and control and in purported performance of his duties.

Background

2. In the course of its business the Plaintiff regularly purchased gold items from members of the public. These gold items were collected and shipped to selected metal refineries in the United States of America ("the Refineries").
3. The Refineries processed the metal and paid the Plaintiff the prevailing market rate for the gold based on the weight of gold they were able to recover from the items shipped to them.

The Carriage

4. By agreements contained or evidenced in Air Waybills dated between 21 November 2011 and 24 April 2012, as particularized below, made between the Plaintiff and the Defendant, the Defendant agreed for reward to carry and safely deliver the Plaintiff's gold items ('the Consignments') by air from the Plaintiff's trading premises to the selected Refineries.
5. At all material times the gold items in each Consignment were packed in standard shipping containers provided by the Defendant and sealed securely. Before each of the Consignments was provided to the Defendant the contents were weighed and a record kept of the weight. The weight was measured in Troy Ounces.
6. In respect of each Consignment, the Defendant was provided with a declaration and description of the value of the gold items consigned. This was recorded on the said Air Way Bills and/or alternatively Commercial Invoices and/or further or alternatively by packing lists which were provided to the Defendant.
7. At all material times between 21 November 2011 and 24 April 2012 the Defendant instructed its servant or agent, Evon Robinson, to collect the Consignments from the Plaintiff. The said Evon Robinson acting under the Defendant's direction and control and in the purported performance of his duties was entrusted with the custody and safe keeping of the Consignments for delivery at the Refineries.
8. On each occasion between 21 November 2011 and 24 April 2012 that the said Evon Robinson was entrusted with the Consignments in the purported exercise of employment duties he opened the Consignments and stole gold items therefrom, the property of the Plaintiff.

The Theft

9. The Defendant is liable for the thefts of the gold items from each of the Consignments by its employee, Evon Robinson, whilst acting in the course of his employment.
10. As a result of the thefts the Plaintiff has suffered significant loss and damage.
11. Had it not been for the thefts the Plaintiff would have been paid the prevailing market rate for the gold items consigned to the Refineries. The Plaintiff's loss is particularized below.
12. In addition, as a consequence of the aforesaid thefts, the Plaintiff has suffered loss and damage in that it borrowed and consequently paid interest on a sum equivalent to the loss, particularised below, at a contractual rate of 20 per cent per annum. Full particulars and quantification will be provided at trial.
13. The Plaintiff pleads and relies on s.34 of the Judicature Law (2007 Revision) and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules 1995 as varied by the Judgment Debts (Rates of

Interest) Rules 2006 and 2008, promulgated by the Rules Committee pursuant to the s.34 of the said Law, and claims interest on his general and special damages and costs.

Particulars of the Consignments

Air Way Bill Number	Date Consignment was provided to the Defendant	Weight of gold items at the time the Consignment was provided to Defendant	Weight of gold items received by the Refinery	Variance.	Loss at prevailing gold market rate CI\$
8763 7078 5937	21 November 2011	33.155	33.050	0.105	178.04
8763 7078 6175	21 December 2011	42.6765	38.7765	3.900	5,850.00
8763 7078 6197	10 January 2012	15.2305	13.8500	1.381	2,246.90
8747 1996 0160	24 January 2012	17.5075	17.4500	0.058	95.69
8747 1996 0012	7 February 2012	34.3900	29.0400	5.350	8,025.00
8747 1996 0148	14 February 2012	24.5925	22.2000	2.393	4,093.57
8747 1996 0137	21 February 2012	16.2075	14.25	1.958	3,375.00
8747 1996 0034	28 February 2012	20.9425	18.3500	2.593	4,617.24
8747 1996 0067	13 March 2012	19.2625	16.2000	3.0630	5,199.21
8747 1996 0078	20 March 2012	17.9625	14.95	3.013	4,953.45
7982 3314 2586	30 March 2012	674.1	548.3	6.290	10,498.01
7982 9930 2304	24 April 2012	765.5		10.350	17,315.55
	Total				66,447.67

The Montreal Convention

14. Further or in the alternative, the Plaintiff avers that the said carriage of each of the Consignments by air was 'international carriage' within the meaning of the Carriage by Air Act 1961 and to which the Montreal Convention 1999 was and is applicable.
15. By reason of Article 18 of the Montreal Convention 1999, the Defendant is liable to the Plaintiff for the above loss and damage.

AND THE PLAINTIFF CLAIMS

- (1) Damages and/or Compensation;
- (2) Special Damages;
- (3) Pre and post-judgment interested calculated pursuant to the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules, as amended from time to time;
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems just.

DATED at Grand Cayman this 24th day of September 2013

Nelson & Co

Nelson & Co.
Attorneys for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

TO: The Clerk of the Grand Court

AND TO: Federal Express Cayman Limited

BETWEEN:

ISLAND ELEMENTS C.I LIMITED

PLAINTIFF

AND:

FEDERAL EXPRESS CAYMAN LIMITED

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 intend 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

Signed

Attorney for the Defendant

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 communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

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

Nelson & Company
Attorneys at Law
PO Box 2075
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1105
Attn: R Nelson/C Flanagan Ref 4006-01

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

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 495, George Town, 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

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.