

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 267 OF 1997

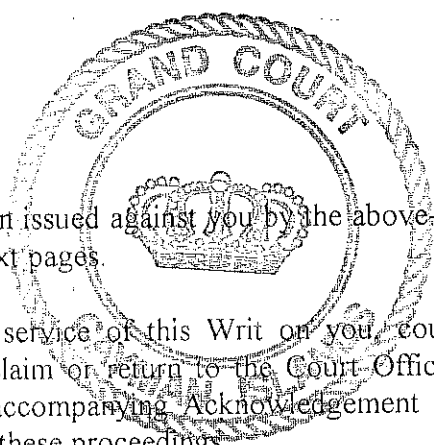
BETWEEN: THOMPSON SHIPPING CO., LTD. Plaintiff

AND: THE PORT AUTHORITY OF THE CAYMAN ISLANDS Defendant

WRIT OF SUMMONS

TO: THE PORT AUTHORITY OF THE CAYMAN ISLANDS
P.O.Box 1358 GT
Harbour Drive
George Town
Grand Cayman, BWI

JUN - 9 1997



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claims set out on the next pages.

Within fourteen (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 495, George Town, Grand Cayman, 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 judgement may be entered against you forthwith without further notice.

Issued this 9th day of June, 1997.

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

1 The plaintiff is a Caymanian-controlled shipping company formed under the laws
of the Cayman Islands.

2 The defendant is a body corporate established under the provisions of sec. 3 of The
Port Authority Law (1995 Revision) which may be sued in its corporate name. It
has the general management and control of all ports in the Cayman Islands,
including the port of George Town.

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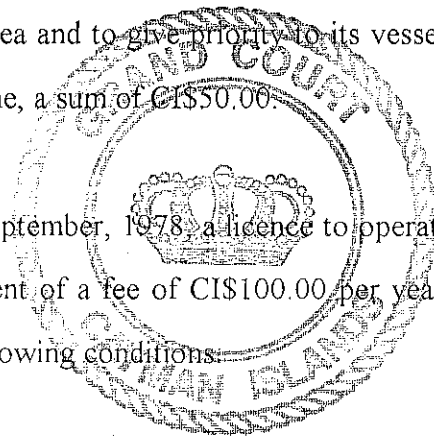
3 The defendant is the proprietor of the lands which together constitute the area of
the port of George Town ("the port area").

4 The plaintiff provides twice-weekly services to and from Miami, Florida and
weekly services to and from Tampa, Florida and Little Cayman and Cayman Brac
in and out of the port of George Town, using three ships and one barge.

5. The plaintiff carries in excess of 80% of the cargo which is unloaded and loaded in
the port of George Town. The remainder is mostly carried by Kirk Line, a foreign-
owned shipping line and a division of Seaboard Marine. Containers carried on the
Kirk Line ships are rolled thereon and thereof and, accordingly, it does not
normally require crane services.

6. Other ships requiring crane services call at the port of George Town on a very
occasional basis.

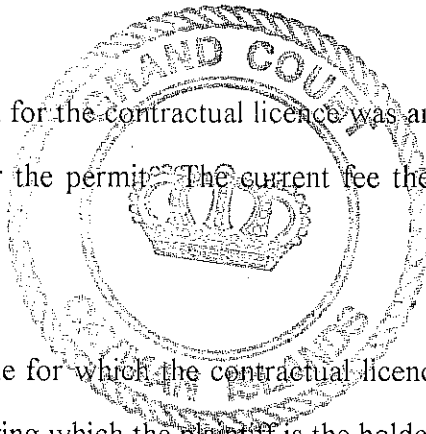
7. The plaintiff began its shipping service to and from the port of George Town in 1977 with a weekly sailing to and from the Miami area, using one container vessel.
8. The plaintiff, at that time, retained the services of Moxam Industries, which owned construction cranes, to unload and load its ship.
9. It became obvious to the plaintiff, some ten months later, that it needed its own crane. It accordingly applied to the defendant, on 21st September, 1978, for a licence to operate the said crane on the port area and to give priority to its vessel. The plaintiff paid the defendant, at the same time, a sum of C\$50.00.
10. The defendant granted the plaintiff, on 22nd September, 1978, a licence to operate a crane on the port area, subject to the payment of a fee of C\$100.00 per year. That grant was subject, *inter alia*, upon the following conditions:
 - (a) The defendant reserved for itself the right to review the terms of the licence annually and to renew it, vary its terms or revoke it "in accordance with Regulation 120(1)" of The Port Regulations (now sec. 130(1) of The Port Regulations (1995 Revision)).
 - (b) The plaintiff would be permitted to load and unload its vessel on a first priority basis and the defendant waived the requirements of sec. 42 and 49(1) of The Port Regulations (now sec. 40 and 47(1) of The Port Regulations (1995 Revision)).



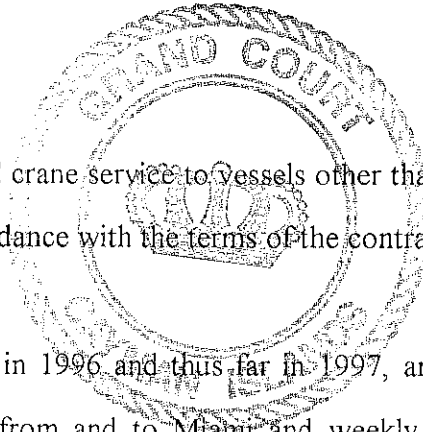
The plaintiff will refer to the said grant, at the trial of the action, for its full terms and legal effect.

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11. The plaintiff and the defendant discussed the plaintiff's rates for the use of its above crane to load and unload ships operated by other shipowners at that time and a tariff was finally agreed upon.
 12. The plaintiff avers that the licence referred to in paragraph 10 hereof was not granted "under" The Port Regulations and was not and is not subject to sec. 120(1) thereof (now sec. 130(1) of The Port Regulations (1995 Revision)).
 13. A permit to conduct the business of "Mobile Crane Operation" from 26th September, 1978 until 31st December, 1978 was issued by the defendant to the plaintiff on 27th September, 1978 under the provisions of sec. 114(4) of The Port Regulations (which has become, after two amendments, sec. 123(5)(f) of The Port Regulations (1995 Revision)).
 14. The plaintiff is obligated, under the terms of the licence referred to in paragraph 10 hereof, to provide crane services to other ships, provided that such services do not conflict with the loading or unloading of its own ships .
 15. The plaintiff requested the defendant's permission, on 8th May, 1980, to bring a second crane on the port area.

16. The Principal Secretary, Communications, Works and Local Administration, granted the plaintiff permission, on 12th May, 1980, to bring in a second crane.
17. The plaintiff has paid the fees set by sec. 114(4) of The Port Regulations and by sec. 123(5) of The Port Regulations (1995 Revision) for a permit similar to that referred to in paragraph 13 hereof ("the permit") each year since 1978 after receiving a yearly invoice therefor from the defendant. The plaintiff holds such a permit for the year 1997 and it relates to the operations of its two cranes.
18. The plaintiff avers that the defendant granted it, in 1978, a contractual licence to keep and operate, on the port area, a crane for the loading and unloading of vessels ("the contractual licence") and that, in 1980, the contractual licence was amended to allow the plaintiff to keep and operate two cranes on the port area. The plaintiff also avers that:
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- (a) The consideration for the contractual licence was and is the payment of the prescribed fee for the permit. The current fee therefor is CI\$500.00 per year.
 - (b) The period of time for which the contractual licence was granted was the period of time during which the plaintiff is the holder of the permit.
 - (c) The defendant may review the terms of the contractual licence annually.

- (d) The contractual licence was not granted "under" The Port Regulations and, consequently, the renewal thereof was and is not discretionary, its terms cannot be unilaterally varied by the defendant and it cannot be revoked under the provisions of sec. 130(1) of The Port Regulations (1995 Revision).
- (e) The plaintiff is obligated to provide crane service to vessels of other shipowners, provided such service does not conflict with the unloading and loading of its own ships.
19. The plaintiff has always provided crane service to vessels other than its own on the port area when required in accordance with the terms of the contractual licence.
20. The plaintiff operated, in 1995, in 1996 and thus far in 1997, and still operates, twice-weekly shipping services from and to Miami and weekly services to and from Tampa and Little Cayman and Cayman Brac in and out of the port of George Town, as set out above. It uses its two cranes to load and unload its ships. Its first vessel of the week normally arrives from Miami in the port of George Town early in the morning on Mondays. Approximately 100 crane lifts are needed to unload it and approximately 120 lifts are required to load it. The unloading and loading thereof usually takes 9 working hours, i.e. all of Monday and a very few hours on Tuesday morning, for an average, for the plaintiff's two cranes, of 24½



lifts per hour. The plaintiff's said vessel is usually loaded and ready to leave the port of George Town, bound for Miami, at mid-morning on Tuesdays.

21. The turnaround time for the plaintiff's vessels is crucial to its operations. Any late departure from the port of George Town disturbs the relevant ship's schedule for the entire week.

22. The plaintiff's second ship of the week usually arrives from Tampa in the port of George Town on Tuesday mornings. The plaintiff begins unloading it at mid-morning on Tuesdays and it is unloaded in a few hours.

23. The unloading and loading of the Tampa ship usually takes 100 crane lifts, i.e. 50 to unload it and 50 to load it. The lift rate per hour is the same as that for the Miami ship.

24. The plaintiff normally loads its barge bound for Little Cayman and Cayman Brac on Tuesday afternoons. That barge usually leaves the port of George Town at the end of the day on Tuesdays and arrives in Little Cayman at sunrise on Wednesdays and in Cayman Brac around noon that day. The plaintiff's barge service to Little Cayman and Cayman Brac is the only surface transportation service to the Sister Islands and is vital to those Islands, their inhabitants and their economy.

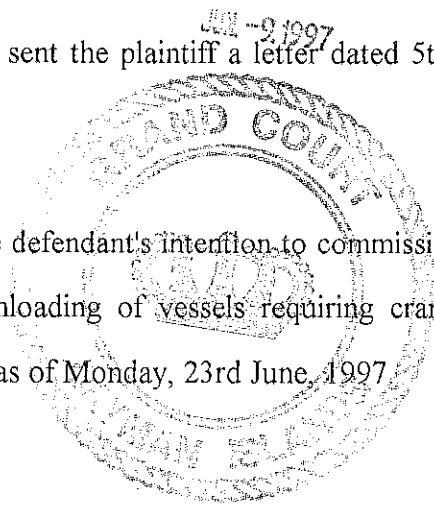
25. The plaintiff's vessel bound for Tampa is usually loaded on Wednesdays, when it departs.

26. The plaintiff has substantial experience in late unloading and loading. Public holidays fall on Mondays a number of times during the year and, in addition, inclement weather sometimes prevents vessels from arriving and/or docking on time in the port of George Town. The plaintiff, on those occasions, requires its employees to work longer hours and the defendant must then keep a number of its employees working longer as well. The plaintiff must pay overtime rates to its employees and reimburse the defendant for its own additional costs in such cases.
27. When the unloading and loading of its ships is delayed by no more than 24 hours, the plaintiff still manages to unload and load its first vessel of the week arriving from, and bound for, Miami by the end of the day on Tuesdays and to perform its other operations relating to the ship arriving from, and bound for, Tampa and to the barge which sails to the Sister Islands by the end of the day on Wednesdays. The additional costs to the plaintiff, in such cases, are considerable.
28. The plaintiff's managing director heard from a well-placed civil servant, during the course of a social conversation towards the end of August 1995, that the defendant intended to operate its own crane in the port of George Town and that it was taking measures to that effect. He met with the Director of Ports, on 30th January, 1996, in order to enquire as to the truth of that allegation.
29. The plaintiff received a letter from the Director of Ports that very day, in which he confirmed that the defendant had decided to operate its own crane in the port area.

That letter contains, *inter alia*, the following statement:

"The Authority resolved that the Authority's crane would be the only working crane on the dock, but in the event of a disruption of service due to crane failure the Director would have discretionary authority to allow other operators on the property."

30. The plaintiff authorised the loading of its Little Cayman and Cayman Brac cargo by the defendant's crane as a test in mid-1996, at the defendant's express request.
31. The Governor in Council made, on 4th March, 1997, The Port (Grand Cayman Crane Services) Regulations, 1997 which were published with the Cayman Gazette no. 7 of 1st April, 1997. The Port (Amendment) Regulations, 1997 were made and published at the same times and were corrected in the Cayman Gazette no. 10 of 12th May, 1997.
32. The Director of Ports sent the plaintiff a letter dated 5th May, 1997 in which he advised:
 - (a) That it was the defendant's intention to commission its crane for use in the loading and unloading of vessels requiring crane service in the port of George Town as of Monday, 23rd June, 1997.



- (b) That the plaintiff was required to remove its two cranes from the dock "no later than Sunday, 22nd June 1997" "unless otherwise agreed between your Company and the Authority".

That letter contained no reference at all to the permit.

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33. The plaintiff avers that the defendant is in breach of the contractual licence in requiring the plaintiff to remove its two cranes from the port area on or before 22nd June, 1997.
34. The defendant's new crane, during the test referred to in paragraph 30 hereof, achieved an average of 6 lifts per hour under perfect conditions.
35. The defendant's new crane cannot possibly perform more than 13 lifts per hour under normal conditions. It would therefore take the defendant approximately twice as long to unload and load the plaintiff's ships as it takes now, using the plaintiff's two cranes.
36. It would be possible for the defendant to unload and load the plaintiff's vessels with its crane and to keep the plaintiff's ships and barge operating reasonably on schedule. That would require the plaintiff, however, to pay additional amounts of approximately CI\$44,000 per year to its employees and of CI\$170,000 per year to the defendant for overtime rates.

37. The defendant could not possibly unload and load the plaintiff's ships and barge within a sufficient time to allow them to keep to their schedules when public holidays fall on Mondays or when the weather is inclement at the beginning of the week.
38. The plaintiff could keep one of its present cranes and an operator on stand-by in order to unload and load its ships when the defendant's new crane is not operational, which is bound to happen at least a few times each year. The cost to the plaintiff of keeping one of its cranes and an operator available, although idle most of the time, would be approximately CI\$87,000 per year.
39. The additional costs to the plaintiff which would result from the defendant's breach of the contractual licence if it is permitted to compel the plaintiff to remove its two cranes from the port area and, thus, to use the defendant's crane for the loading and unloading of its vessels would amount to approximately CI\$513,000 per year.
40. Loading and unloading charges are normally calculated in Twenty-foot Equivalent Units ("TEUs"), one of which equals one twenty-foot length container. Some containers measure twenty feet and others, forty feet. The number of lifts is relevant to the time which it takes to unload or load a vessel. The number of TEUs is relevant to the cost of such unloading or loading.
41. The plaintiff unloads and loads approximately 28,600 TEUs per year from and onto its ships at the port of George Town at the present time.

42. The plaintiff's profits do not allow it to absorb such additional costs. They would have to be passed on to the plaintiff's customers and, as a result, it would cease to offer competitive rates. The plaintiff would likely, after some time, be driven out of business. Its service would likely be replaced by that of Kirk Line or that of those of one or several new entrants in the market or by a combination of both.
43. The plaintiff does not have the financial means at its disposal to purchase the defendant's crane, the price of which was approximately C\$2,200,000.
44. The plaintiff will suffer irreparable damage without an order of permanent injunction to prevent the defendant from compelling the plaintiff to remove its two cranes from the port area while the contractual licence is in force.

1997-9-9

AND THE PLAINTIFF CLAIMS FROM THE DEFENDANT:

- (a) A DECLARATION that the defendant has granted the plaintiff a contractual licence ("the contractual licence") to keep and operate two cranes on the port area of the port of George Town as described in sec. 5(a) of The Port Authority Law, (1995 Revision) and in par. (1) and (2) of the schedule thereto ("the port area").
- (b) A DECLARATION that the contractual licence will be in force and will bind the defendant so long as the plaintiff is the holder of a permit issued under the provisions of sec. 123(5) of The Port Regulations (1995 Revision).

- (c) AN ORDER of permanent injunction preventing and restraining the defendant by itself, its servants, agents or officers from compelling the plaintiff to remove its two cranes from the port area so long as the contractual licence is in force and binds the defendant.

- (d) FURTHER and/or other relief.

- (e) ITS COSTS of this action.

Dated this ^{9th} day of June, 1997



Karin M. Thompson
Attorney-at-law for the plaintiff

JUL - 5 1997

To: The Clerk of the Court

And to: The defendant



THIS WRIT OF SUMMONS was issued by Karin M. Thompson, the attorney-at-law for the plaintiff, whose address for service is The Thompson Shipping Building, P.O. Box 188, George Town, Grand Cayman, Cayman Islands, B.W.I.

**DIRECTIONS FOR ACKNOWLEDGEMENT 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 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 Acknowledgement 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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No. 367 OF 1997

BETWEEN: THOMPSON SHIPPING CO. LTD. - Plaintiff
AND: THE PORT AUTHORITY OF - Defendant
THE CAYMAN ISLANDS

**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 liquidated demand, **AND** he does not intend to contest the proceedings, state if the Defendant intend to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

yes

Service of the Writ is acknowledged accordingly

For:

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.

Karin M. for Thompson of Cayman Shipping Centre Building (Second Floor), P.O. Box 1708 George Town, Grand Cayman, Attorney-at-Law instructed by the Plaintiff herein whose address for service is that of its said attorney.

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