

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 20446 OF
2013

BETWEEN

Andrae Ebanks

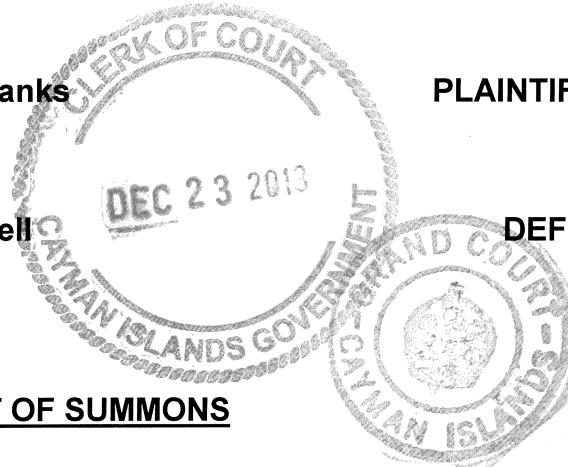
PLAINTIFF

AND

Emily Powell

DEFENDANT

WRIT OF SUMMONS



TO:

Emily Powell

DEFENDANT

Crewe Road, George Town, Grand Cayman
(business location being at office of IMP Agency Ltd.)

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, 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 2013.

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.

This Writ of Summons was filed by H. Phillip Ebanks, Attorney at Law, for the Plaintiff, whose address for service is 62 Hospital Road Plaza, George Town, PO Box 30422, Grand Cayman, KY1-1202.

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.

H. Phillip Ebanks Attorney-at-Law 62 Hospital Plaza, George Town, PO Box 30422, 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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**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 defense 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 defense 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.

5. In or about September 2004 with the advent of Hurricane Ivan the buyer was affected financially as he was unable to work the boat which had sustained extensive damage. The buyer paid the following sums for repairs:

- (i) CI\$15,000 for repair to hull.
- (ii) CI\$58,000 to purchase an engine.
- (iii) CI\$30,000 to install the engine.

5 (i),(ii) and (iii) above coming to: CI\$103,000

6. By virtue of and having an honest belief that good title had passed to the Plaintiff the Plaintiff took the above steps to improve the value of the boat.
7. On the 29th day of April 2009 the Plaintiff still being in possession of the Boat and in the process of repairing the Boat, entered into a written private sale agreement (“Written Agreement”) with the Defendant whereby the Defendant agreed to transfer the Boat to the Plaintiff.
8. The Written Agreement acknowledged that the Plaintiff had at the date thereof paid a total of CI\$33,000 and provided that the monthly payments for the balance were to be reduced to CI\$500.00 per month (new payments) until completion of payments. The Plaintiff remained in possession of the Boat.
9. Subsequent to the Written Agreement, the Plaintiff was unable to make further payments and informed the Defendant that he sought time to do so.

10. On or about the 28th of September, 2009 the Defendant without warning to the Plaintiff and without his permission or consent took possession of the Boat and removed it from the place of mooring.
11. At the time of taking possession of the Boat, the Defendant also took possession of the following instruments belonging to the Plaintiff which was on the boat:
 - a. navigational and depth finders worth CI\$7,000 ("Instruments"); and
 - b. fishing gear worth CI\$3,000.
12. The Plaintiffs' returned the fishing gear to the Defendant but refused to return the Instruments.
13. Following the removal of the Boat by the Defendant, the Plaintiff wrote to the Defendant by way of his Attorney offering to pay off the arrears on the boat to date and asking for possession. The Defendants have not responded. The Plaintiff also made an unconditional demand for the return of the boat.
14. Notwithstanding the fact that the Plaintiff was supposed to pay the balance of the purchase price by monthly payments neither in the Written Agreement nor at the time the boat was delivered to the Plaintiff did the Defendant reserve the right to disposal.
15. Time was not made of the essence in the agreement.
16. By virtue of the said letter the Defendants were made aware that the boat was to be used commercially to generate an income.

17. To date the Defendant has failed and/or refused to return to boat to the Plaintiff.

18. By reason of the matters aforesaid the Plaintiff has been deprived of his boat and has been put to expense and inconvenience and has suffered loss and damage.

AND THE PLAINTIFF CLAIMS

1. General Damages for wrongful seizure and/or conversion.
2. Payment of an appropriate sum of money in lieu of the return of the property together with consequential damages;
3. The value of materials and labour expended on the boat (CI\$103,000).
4. The value of the Equipment seized by the Defendant (CI\$7,000)
5. Amounts paid to the Defendant by way of deposits and other payments (CI\$33,000)
6. Interest at a rate that this Honourable Court may deem just.

Dated: 23 December 2013



H. Phillip Ebanks, Attorney for the Plaintiff

This Statement of Claim together with Writ of Summons was filed by H. Phillip Ebanks, Attorney at Law, for the Plaintiff, whose address for service is 62 Hospital Road Plaza, George Town, PO Box 30422, Grand Cayman, KY1-1202.