

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Legal Aid Number: LACV0218/2012

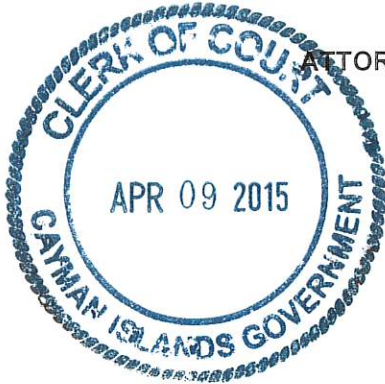
CAUSE NO: 69 OF 2015

BETWEEN:

ADOLPHUS MYRIE

Plaintiff

v.



ATTORNEY GENERAL OF THE CAYMAN ISLANDS

First Defendant

-and-

RABE WELCOME



Second Defendant

WRIT OF SUMMONS

TO: Attorney General of the Cayman Islands

AND TO: Rabe Welcome

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 28 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 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an 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 day of April 2015

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

The Defendants

1. The Second Defendant, at all material times, was employed by the Royal Cayman Islands Police Service ('RCIPS') and was a servant or agent of the Crown pursuant to section 3 of the Crown Proceedings Law (1997 Revision).
2. The First Defendant, at all material times, was liable for any torts committed by the Second Defendant pursuant to section 3 (1) of the Crown Proceedings Law (1997 Revision) and was also liable for any torts committed by the Second Defendant whilst he was performing or purporting to perform common law or statutory functions imposed on him as an officer of the Crown.
3. Proceedings against the First Defendant are commenced pursuant to section 11 (2) of the Crown Proceedings Law (1997 Revision).

The Facts

4. On the 17 June 2009, shortly after 1am, the Second Defendant, in company with two other employees of the RCIPS, was in the On the Run gas station ('Gas Station') in Red Bay.
5. The Second Defendant and his two companions were off duty and were not in police uniform.
6. The Plaintiff's partner entered the Gas Station and the Second Defendant and his companions, who were intoxicated, made various comments to the Plaintiff's partner which were disrespectful and demeaning. The Plaintiff's partner left the Gas Station after purchasing some cigarettes.
7. The Plaintiff and the Plaintiff's partner went back into the Gas Station in order to buy a cigarette lighter. The Plaintiff's partner asked the Plaintiff to accompany her because of their

disrespectful and insulting comments. Upon entering the Gas Station the Second Defendant and his companions again made disrespectful remarks towards the Plaintiff's girlfriend including a comment by the Second Defendant that, 'if I was in Honduras I could get people like her for \$1 a day.'

8. The Plaintiff and Second Defendant got into an argument, however, the Plaintiff's partner led the Plaintiff out of the Gas Station and to their car and both the Plaintiff and the Plaintiff's partner got into their car.
9. The Second Defendant, with his companions, followed the Plaintiff to his car and approached the Plaintiff's car window. The Plaintiff attempted to close the window, however, the Second Defendant held the car window down and started to taunt the Plaintiff.
10. The Second Defendant then said that he had been investigating the Plaintiff for a length of time and that he needed to search the Plaintiff's car.
11. The Plaintiff asked to see his police identification to which the Second Defendant responded that he did not need to show him any identification. When the Plaintiff asked for the Second Defendant's name the Second Defendant stated that he did not have to provide it because he was an undercover investigator.
12. The Plaintiff told the Second Defendant that he was going to call a police officer that he knew called Peter Kennett to which the Second Defendant replied 'fuck Peter Kennett, I deal with bigger men than him.' The Plaintiff tried to call Peter Kennett, however, the Second Defendant grabbed the phone out of the Plaintiff's hand and threw it on the floor breaking it.
13. The Second Defendant then opened the car door and his two companions approached the Plaintiff's car.
14. The Plaintiff retrieved a machete from the back of his car seat, got out of the car, held it in the direction of the Second Defendant and his companions and told them to back off. The Plaintiff's partner told the Plaintiff to give the machete to her. The Plaintiff handed it over and one of the Second Defendant's companions took it from her.
15. The Second Defendant put his arm around the Plaintiff and steered him towards the side of the Gas Station which was unlit. He said 'let's talk like big men'. The Second Defendant's grip tightened as he walked the Plaintiff around the side of the Gas Station and said that 'there is no light around here, what were you saying now pussy.'

16. He immediately assaulted the Plaintiff by picking him up and throwing him to the ground, slamming the Plaintiff's head into the ground and bringing his weight to bear on the Plaintiff's head and body.
17. The incident was captured on CCTV.
18. Uniformed police officers arrived at the Gas Station and were immediately directed by the Second Defendant to arrest the Plaintiff.
19. The Plaintiff explained to the uniformed officers that his wrist was broken as was clear from the bone that was stretching the skin around his wrist. Despite the Plaintiff's wrist being broken the uniformed police officers handcuffed the Plaintiff behind his back and the Plaintiff was transported directly to the police station.
20. The Plaintiff remained at the police station until the custody officer directed that the Plaintiff should be taken to George Town hospital. The Plaintiff remained in police custody at George Town hospital where he was treated for numerous lacerations, had his right wrist set in a plaster cast and x-rayed to his hand and wrist. He was then transferred back to George Town police station, held in custody and then released on police bail at or around 5am.
21. From the time of his arrest at the Gas Station to his release from police custody, the Plaintiff was unlawfully imprisoned for a period of approximately 5 hours.
22. The Plaintiff was not charged as a result of the events of the 17 June 2009.
23. By reason of the above matters the Plaintiff suffered pain and injuries and was deprived of his liberty as aforesaid and has suffered loss and damage.
24. The Second Defendant was charged with wounding the Plaintiff contrary to section 204 of the Penal Code (2007 Revision).
25. Pursuant to Order 18, Rule 7A of the Grand Court Rules, the Plaintiff relies on the fact that the Second Defendant was convicted of Wounding, contrary to section 204 of the Penal Code (2007 Revision), by the Grand Court of the Cayman Islands on 28 June 2012.
26. The Plaintiff will rely on the following facts and matters to support his claim for exemplary and/or aggravated damages:-
 - i) The Second Defendant and his companions were intoxicated;
 - ii) The Second Defendant and his companions insulted the Plaintiff's partner and made derogatory comments that were racist and insulting to women;

- iii) The Second Defendant and his companions were responsible for initiating the argument that developed between the Second Defendant and the Plaintiff;
- iv) The Second Defendant and his companions bullied and physically intimidated the Plaintiff before he was assaulted;
- v) The Second Defendant intended to physically assault the Plaintiff;
- vi) The Second Defendant broke the Plaintiff's phone;
- vii) The Second Defendant intentionally guided the Plaintiff to an area that he thought was secluded in order to assault him;
- viii) The RCIPS uniformed police officers that attended the scene completely failed in their duty to conduct a preliminary investigation before handcuffing and arresting the Plaintiff;
- ix) The RCIPS failed to identify that the Plaintiff was suffering from serious injuries, including a broken wrist, or they did identify the severity of his injuries but chose to handcuff him and deny him immediate medical assistance; and,
- x) The RCIPS failed to provide the Plaintiff with immediate medical assistance.

PARTICULARS OF INJURIES

27. The Plaintiff, who was 30 years old at the time of the assault, battery and/or false imprisonment suffered the following injuries:-

- i) Concussion and a loss of consciousness;
- ii) Change in taste and smell;
- iii) Anxiety, agitation, flashbacks and irritability;
- iv) Change in sensation to his leg;
- v) Right wrist fracture;
- vi) Headaches;
- vii) Back pain;
- viii) Lightheadedness; and,
- ix) Growth in his left eye.

28. Further details are contained within the medical expert report of Dr O'Connor dated 7 April 2014 and further medical expert reports will be provided.

PARTICULARS OF SPECIAL DAMAGE

29. Full particulars of special damages will be set out in a separate schedule of special damages.

Further, the Plaintiff claims:-

1. Damages;
2. Exemplary and/or aggravated damages;
3. Interest pursuant to section 34(1) of the Judicature Law (2007 Revision) or alternatively, pursuant to the equitable jurisdiction of the Court; and
4. Costs.

Dated this 8th day of April 2015

Stuarts Walker Hersant Humphries

STUARTS WALKER HERSANT HUMPHRIES
Attorneys-at-Law for the Plaintiff

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ATTORNEY GENERAL OF THE CAYMAN ISLANDS

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-and-

RABE WELCOME

Second 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 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 of Summons is acknowledged accordingly

(Signed) _____

Defendant / Attorney for the Defendant

NOTE 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/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a limited company "residence" means its registered or principal office.

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

STUARTS WALKER HERSANT HUMPHRIES

Attorneys-at-Law

4th Floor, Cayman Financial Centre

36A Dr. Roy's Drive

P.O. Box 2510 GT

George Town

Grand Cayman, KY1-1104

Cayman Islands

Tel: 345 949 3344

Fax: 345 949 2888

Ref: **AA/RTWA - 4293**

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.



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, PO 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 installments or otherwise.

See over for Notes of Guidance

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 28 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/her.
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 authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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.