

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION



CAUSE NO. 240 OF 2016

BETWEEN : GRAHAM FRASER RITCHIE, Q.C.

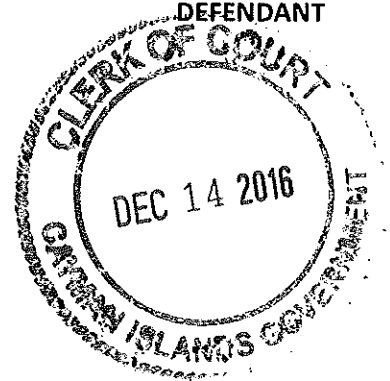
PLAINTIFF

AND: AUTOHAUS LTD.

DEFENDANT



WRIT OF SUMMONS



TO: AUTOHAUS LTD.
Foreshore Corporate Services Ltd.
P.O. Box 1994,
Queensgate Building, 4th Floor
113 South Church Street
Grand Cayman, KY1-1104
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, P.O. Box 495G, 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 14th day of December, 2016.

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 Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff, Graham Fraser Ritchie, Q.C., is a retired Attorney-at-Law whose place of residence is Apartment 82, Orchid Village, South Sound, Grand Cayman, Cayman Islands.
2. The Defendant, Autohaus Ltd., is a company incorporated under the laws of the Cayman Islands as a resident company carrying on the business of auto dealing and repair at 181 Dorcy Drive, George Town, Grand Cayman, Cayman Islands with registered office at Foreshore Corporate Services Ltd., P.O. Box 1994, Queensgate Building, 4th Floor, 113 South Church Street, Grand Cayman, KY1-1104, Cayman Islands.
3. Mr. Christian van der Bol ("Mr. van der Bol") is the major shareholder and Chief Executive Officer of the Defendant.
4. The Plaintiff was, up until the "Concluded Sale" as defined in paragraph 17 below, and is now currently the registered owner of a 2005 Porsche Boxster S, Registration Number 112 933 (the "Vehicle").
5. In or about January 2014 the Plaintiff entered into an agreement with the Defendant whereby the Defendant would act as the Plaintiff's agent for the purpose of marketing and selling the Vehicle on the Plaintiff's behalf (the "Agency Agreement").
6. In consideration of the Defendant acting as the Plaintiff's agent, the Defendant was to receive a flat fee of CI\$1,000.00 payable from the proceeds of sale of the Vehicle.
7. In order to facilitate a speedy sale of the Vehicle the Plaintiff delivered into the Defendant's custody in or about January 2014 the Certificate of Vehicle Ownership Registration (the "Log Book") for the Vehicle with the Changes to the Register Section thereof duly signed by the Plaintiff on the 21st January 2014. This would enable the Defendant to sell the Vehicle as the Plaintiff's agent notwithstanding that the Plaintiff was off the Island or otherwise unavailable.
8. The Agency Agreement contained the following terms (whether expressed or implied):
 - (i) The Defendant would carry out the Plaintiff's lawful instructions in the marketing and sale of the Vehicle;
 - (ii) The Defendant would use reasonable care, diligence and skill in the exercise of its duties under the Agency Agreement;
 - (iii) The Defendant would act for the exclusive benefit of the Plaintiff and would not put itself in a position where its own personal interests or the interests of others would conflict with its duties to the Plaintiff under the Agency Agreement;

- (iv) The Defendant would bring to the Plaintiff's attention all matters concerning the subject matter of the Agency Agreement, including, *inter alia*, the existence of any potential or actual sale of the Vehicle;
 - (v) The Defendant would account to the Plaintiff for the proceeds of any sale of the Vehicle which it received;
 - (vi) The Defendant would not enter into any agreement with a buyer to terminate or cancel any existing sale of the Vehicle without the express permission or consent of the Plaintiff.
9. Further and/or in the alternative to paragraph 8 above, the Defendant, as agent, owed to the Plaintiff, as principal, fiduciary duties mirroring the terms set out at sub-paragraphs 8(i) to (vi) above.
 10. Further and/or in the alternative to paragraphs 8 and 9 above, the Defendant owed to the Plaintiff a duty of care in law to use all reasonable diligence and skill in performing its duties as the Plaintiff's agent.
 11. As far as the Plaintiff was aware, the Defendant had failed to find a buyer for the Vehicle since the inception of the Agency Agreement. Accordingly, in September 2016, the Plaintiff terminated the Agency Agreement and placed the Vehicle in the hands of Tony's Toys to sell on his behalf.
 12. On the 8th September 2016, the Plaintiff took delivery of the Vehicle from the Defendant and at the same time collected from Mr. van der Bol the Log Book.
 13. Later on the 8th September 2016, the Plaintiff discovered upon reading the Log Book that he was no longer the registered owner of the Vehicle. The registered owner of the Vehicle with effect from the 23 December 2014 was someone named "Richard Jeremy Addlestone" ("Addlestone").
 14. The Plaintiff immediately brought the information regarding the change of ownership of the Vehicle to the attention of Mr. van der Bol. Mr. van der Bol informed the Plaintiff that he knew no one by the name of Addlestone, nor did he have any idea how a change of owner registration of the Vehicle could have occurred.
 15. During the course of the conversation with Mr. van der Bol, the Plaintiff suggested that perhaps the transfer was made in anticipation of a sale that did not go through. Mr. van der Bol, however, assured the Plaintiff that this would not have occurred as this was not the way the Defendant conducted its business.
 16. Mr. van der Bol further assured the Plaintiff that the Defendant would never allow a transfer of ownership of any vehicle unless there was a deal binding on both parties, (i.e., the seller and the buyer) and the purchase money was in the bank. Mr. van der Bol suggested to the Plaintiff that the information on the Log Book was probably an error on the part of the Vehicle and Drivers'

Licensing Department ("Licensing") and that the Plaintiff should take the matter up with Licensing.

17. The Plaintiff attended at the offices of Licensing on the 9th September 2016 and, based on the records of Licensing discovered (for the first time) that the Defendant, as agent of the Plaintiff, had indeed sold the Vehicle to Addlestone for CI\$22,000.00 in December 2014 (the "Concluded Sale").
18. The following documents obtained from the records of Licensing conclusively establish the existence of the Concluded Sale:-
 - (i) A notarized letter from Addlestone dated 22nd December 2014 confirming his purchase of the Vehicle for CI\$22,000.00.
 - (ii) A temporary cover note for the Vehicle dated 22nd December 2014 which Addlestone had obtained as the owner of the Vehicle, through the Insurance Company of the West Indies (Cayman) Limited.
 - (iii) The Plaintiff's Log Book for the Vehicle (which he had signed on the 21 January 2014 as explained in paragraph 7 above) duly completed by or on behalf of Addlestone evincing the transfer of ownership of the Vehicle from the Plaintiff to Addlestone.
19. Following the filing of the documents referred to in paragraph 18 above, on the 23rd December 2014 Licensing issued a Certificate of Vehicle Ownership Registration confirming Addlestone as the registered owner of the Vehicle.
20. As a result of subsequent correspondence between the Plaintiff's attorney-at-law and Mr. van der Bol on behalf of the Defendant, the following facts came to light:
 - (i) There had been a sale of the Vehicle to Addlestone in December 2014.
 - (ii) The Defendant had received the purchase price of CI\$22,000.00 for the Vehicle from Addlestone by no later than 22nd December 2014.
 - (iii) The Defendant had subsequently delivered the Plaintiff's Log Book to Addlestone to facilitate the transfer of ownership of the Vehicle from the Plaintiff to Addlestone.
 - (iv) In or about the 14th January 2015, some few weeks after the Concluded Sale, Addlestone approached Mr. van der Bol and persuaded the Defendant to agree to terminate or otherwise cancel the Concluded Sale.

- (v) The purchase price which the Defendant received on behalf of the Plaintiff was then returned to Addlestone.
21. The Plaintiff was not made aware by the Defendant or by Mr. van der Bol on its behalf, that the Vehicle had been sold. Neither did the Defendant seek to obtain the Plaintiff's permission or consent to terminate or otherwise cancel the Concluded Sale.
 22. The Defendant did not have the Plaintiff's authorisation to terminate or otherwise cancel the Concluded Sale.
 23. Had the Defendant requested the Plaintiff's permission or consent to terminate or otherwise cancel the Concluded Sale, it would have been refused, particularly given that it had taken the Defendant almost 1 year to find a buyer for the Vehicle. In any event, the transaction was an arm's length *bona fide* transaction which had been completed weeks earlier.
 24. In the premises, the Defendant is in breach of the terms of the Agency Agreement; and/or in breach of its fiduciary duties to the Plaintiff; and/or in breach of its duty of care to the Plaintiff.

PARTICULARS

- (i) The Defendant failed to inform the Plaintiff that a Concluded Sale of the Vehicle had taken place in December 2014.
- (ii) The Defendant failed to account to the Plaintiff for the CI\$22,000.00 which it received from Addlestone on the Plaintiff's behalf representing the purchase price for the Vehicle.
- (iii) The Defendant failed to act exclusively for the benefit of the Plaintiff and instead put itself in a position where its own interests and/or the interests of others, in particular, the interests of Addlestone, conflicted with or were preferred over the interests of the Plaintiff.
- (iv) At the behest of Addlestone, the Defendant without authority and in particular, without the Plaintiff's knowledge or expressed permission or consent, agreed to terminate or otherwise cancel the Concluded Sale in January 2015.
- (v) The Defendant, without authority and in particular, without the Plaintiff's knowledge or express permission or consent, returned the purchase price of CI\$22,000.00 to Addlestone in January 2015.
- (vi) In the result, the Defendant failed to use reasonable care, diligence and skill in the exercise of its duties as the Plaintiff's agent.

25. By reason of the Defendant's said breach of the Agency Agreement and/or breach of its fiduciary duties and/or breach of its duty of care the Plaintiff has suffered and will continue to suffer loss and damage as follows:

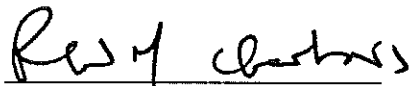
PARTICULARS

- (i). Subsequent to the termination or cancellation of the Concluded Sale in January 2015, the Defendant failed to find another buyer for the Vehicle. From time to time the Defendant, through Mr. van der Bol, recommended to the Plaintiff that various repairs should be carried out on the Vehicle to enhance the prospects of sale. The total cost of repairs to the Vehicle subsequent to the termination or cancellation of the Concluded Sale in January 2015 and paid to the Defendant is CI\$21,557.12. Appended to this Statement of Claim as Schedule 'A' is a list of all the relevant invoices presented by the Defendant to the Plaintiff for payment and which have been paid. This expenditure would not have been incurred by the Plaintiff had the Concluded Sale been allowed to stand. The Plaintiff, therefore, claims reimbursement of this expenditure from the Defendant.
- (ii). In addition, Tony's Toys have recently carried out further repairs on the Vehicle, full details of which have been provided to the Defendant, at a cost of CI\$3,325.00. Furthermore, to have any realistic prospect of selling the Vehicle, a new convertible roof will have to be purchased and fitted. The estimated cost of purchasing and installing a new roof is CI\$6,074.43. This expenditure would not have been necessary if the Concluded Sale had been allowed to stand. The Plaintiff therefore, claims the cost of the actual and estimated repairs to the Vehicle in the sum of CI\$9,399.43.
- (iii). Furthermore, the Plaintiff has incurred and will continue to incur costs and expenses for the licensing, inspection and insurance of the Vehicle as follows:
- | | |
|--|---|
| (a) Licensing and inspection of the Vehicle for the period
December 2014 to date | CI\$ 570.00 |
| (b) Cost of insurance coverage for the Vehicle through
24 th April 2017 (credit will be given for any rebate
following the sale of the Vehicle) | <u>2,484.37</u>
<u>CI\$3,054.37.</u> |
- This expenditure would not have been incurred if the Defendant had not agreed to terminate or otherwise cancel the Concluded Sale. Accordingly, the Plaintiff claims against the Defendant the sum of CI\$3,054.37.
- (iv). The Plaintiff claims the sum of CI\$100.00 representing the fee paid to Licensing for the documents referred to in paragraph 18 above.
- (v). The Plaintiff further claims damages for the inevitable diminution in value of the Vehicle given the passage of time since the Concluded Sale was terminated or otherwise cancelled.

26. **AND THE PLAINTIFF CLAIMS: -**

1. The sum of CI\$21,557.12 pursuant to paragraph 25 (i) of the Statement of Claim.
2. The sum of CI\$9,399.43 pursuant to paragraph 25 (ii) of the Statement of Claim.
3. The sum of CI\$3,054.37 pursuant to paragraphs 25 (iii) of the Statement of Claim.
4. The sum of CI\$100.00 pursuant to paragraph 25 (iv) of the Statement of Claim.
5. Damages pursuant to paragraph 25 (v) of the Statement of Claim.
6. An order or direction requiring the Defendant to account to the Plaintiff for all funds it received on the Plaintiff's behalf as agent.
7. Further and/or other relief.
8. Interest at the rate of 2 3/8% pursuant to The Judgment Debts (Rates of Interest) Rules 2012 on the sums claimed in paragraph 25(1) through (iii) of the Statement of Claim from the 22nd day of December 2014 to date in the sum of CI\$1,599.00 and continuing at the rate of CI\$2.21 per day.
9. Interest at the rate of 2 3/8% pursuant to the Judgment Debts (Rates of Interest) Rules 2012 from the 22nd day of December 2014 on the claim set out in paragraph 25(v) of the Statement of Claim.
10. Costs.

Dated this ^{14th} day of December, 2016



RWM Chambers
Attorney-at-Law for the Plaintiff

SCHEDULE "A"

LIST OF RELEVANT INVOICES PAID BY THE PLAINTIFF AFTER THE CONCLUDED SALE

<u>INVOICE NO.</u>	<u>DATE</u>	<u>AMOUNT</u>
150782	4 June 2015	CI\$ 2,229.61
150852	18 June 2015	307.42
150851	18 June 2015	1,163.98
150993	24 July 2015	2,996.17
151090	13 August 2015	4,975.17
151091	13 August 2015	470.00
151215	4 September 2015	472.68
151334	25 September 2015	2,351.70
160408	24 March 2016	6,265.39
160981	8 September 2016	<u>325.00</u>
TOTAL		<u>CI\$21,557.12</u>

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BETWEEN : GRAHAM FRASER RITCHIE, Q.C.

PLAINTIFF

AND: AUTOHAUS LTD.

DEFENDANT

ACKNOWLEDGMENT OF SERVICE

OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him/her this form IMMEDIATELY.

Important. Read the accompanying direction 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 Plaintiffs (tick box).

Yes No

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

Address for Service:

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/her name, address and reference, if any, in the box below.

Rosie Whittaker-Myles 3 rd Floor Amerigo House Elizabethan Square George Town.
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Indorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.

A large, empty rectangular box with a thin black border, intended for the indorsement by the defendant's attorney or the defendant.

Filed by RWM Chambers, Attorney-at-Law for and on behalf of the Plaintiff herein whose address for service is that of his Attorney-at-Law, P.O. Box 2542, 3rd Floor Amerigo House, Elizabethan Square, George Town, Grand Cayman, KY1-1104, Cayman Islands.

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 acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment 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 a 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 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.