

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC 97 of 2017

BETWEEN:

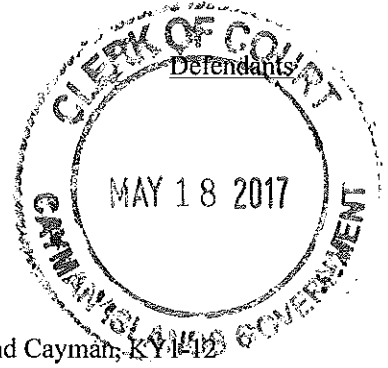
LAURENCE DAWKES

Plaintiffs

and

WAYNE BODDEN

Defendants



PLAINT



the Defendant Wayne Bodden of 220 Andrew Drive, Snug Harbor, Grand Cayman, KY1-12

This Plaintiff 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 service of this Plaintiff 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 form stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the Acknowledgment of Service form.

If you fail to satisfy the claim or fail to return the Acknowledgment of Service form containing full particulars of your defence, the Plaintiff may apply for a **default judgment** without any further notice to you.

Issued this 18 day of MAY 2017

**See overleaf for particulars of the Plaintiff's claim**

This Plaintiff was issued by Laurence Dawkes of PO Box 30613, Seven Mile Beach, Grand Cayman, KY1-1203, Cayman Islands

## PARTICULARS OF CLAIM

1. The Plaintiff was the purchaser in a bi-lateral agreement (the "Agreement") agreed on Monday 3 October 2016 (the "Agreement Date"). The Agreement was for the delivery of one fully operational and fully restored 2003 Jeep Sahara, 4.0l, finished to the purchasers specification, including five (four, plus spare) new 33" tyres, four 15" black aluminium rims, fender flares, body lift kit, new A/C unit, new Pioneer CD Radio system, two new front seats, original rear bench seat, new safari frameless top, interior and exterior rust-proofing, and full exterior body re-spray. Total consideration was agreed as CI\$11,300, with a CI\$5,000 deposit payable upfront, CI\$1,800 due on re-spray, and the balance of CI\$4,500 due on delivery. The date for delivery set on the Agreement Date was Monday 17 October 2016 (the "Initial Delivery Date").
2. The Plaintiff paid a total of CI\$9,500 cash in a number of instalments, supplied new parts, totalling CI\$460 to the Defendant, suffered rental car costs of CI\$1,327, and settled outstanding contractor debts of CI\$510 on behalf of the Defendant, outlined below.
3. The Plaintiff paid a deposit of CI\$5,000 on Tuesday 4 October 2016 by means of Bank Draft, a further CI\$1,000 on Monday 10 October 2016 in cash, being an initial deposit for the body re-spray, and CI\$800 on Thursday 13 October 2016 in cash, being the final down payment on the exterior body re-spray.
4. The Defendant did not deliver the vehicle on the Initial Delivery Date, stating that unexpected factors had delayed delivery. The Defendant did not give a firm revised date for delivery.
5. On Wednesday 9 November, the Plaintiff received a call from the Defendant stating that he needed an additional cash injection of CI\$2,500 in order to pay his sub-contractors, transport the vehicle back to his premises and pay for remaining parts to complete the vehicle. Despite not being stipulated in the Agreement, the Plaintiff agreed to make this additional payment on the proviso that the Plaintiff was able to inspect the vehicle in its current condition. The Defendant denied the inspection on the basis of a desire to protect his sub-contractor contacts, and stated that the Plaintiff could inspect the vehicle when it was returned to his premises on a daily basis if required. The Defendant then cautioned the Plaintiff that he would deliver the vehicle in its current, non-operational state if the requested monies were not provided.
6. At the request of the Defendant, the Plaintiff paid the Defendant further amounts of CI\$1,000 on Thursday 10 November 2016 in cash and CI\$1,500 on Saturday 12 November 2016 in cash, and the Defendant promised to deliver the completed and fully restored vehicle at close of business on Monday 14 November 2016.
7. The Plaintiff visited the Defendant's premises on Monday 14 November 2016 to check the status of the vehicle. The Defendant stated that the vehicle would not be ready as agreed and cautioned the Plaintiff to stay away from his premises until he called with a revised timeframe for the delivery of the finished vehicle. The Defendant also repeated his warning that he would leave the vehicle in its current non-operational state in the street for the Plaintiff to collect.


8. The Defendant later confirmed that the vehicle would be finished and available for collection at close of business on Wednesday 16 November. This deadline was subsequently pushed back until Monday 21 November. The Defendant agreed to reimburse the cost of a hire car from this date, as a result of the delay.
9. The Defendant continued to delay delivery of the vehicle, and on Friday 25 November explained to the Plaintiff that he required a further CI\$750 for one tin of Herculiner paint (interior rust-proof liner), one new Alternator, one new Starter Motor, and one new Shift Cable.
10. The Plaintiff gave the Defendant CI\$200 cash in order to purchase the paint and agreed to purchase the remaining required parts on behalf of the Defendant. The cost of these parts came to a total of CI\$460.
11. The Defendant provided a revised deadline of Monday 28 November 2016, which was subsequently extended to Thursday 1 December 2016. The Defendant agreed to reimburse the Plaintiff for hire car costs up to and including this date, totalling CI\$450.
12. On Tuesday 29 November, the Plaintiff called for an update on the status of the vehicle. The Defendant requested an additional cash payment of CI\$250 to be paid in order to purchase more parts. The Plaintiff refused to pay any further funds, at which point, the Defendant cautioned the Plaintiff not to contact him again, stating that he, himself would find the required funds, and contact the Plaintiff on Thursday 1 December 2016 with a status update.
13. On Thursday 29 November 2016, the Defendant contacted the Plaintiff, stating that the vehicle needed a new Air Conditioning Fan and a valve for the fuel tank; however the vehicle would be finished and ready for collection on Monday 5 December 2016.
14. The Plaintiff contacted the Defendant on Monday 5 December 2016 for a status update on the vehicle. The Defendant stated that the parts had not yet arrived, and pushed the expected delivery date back to Wednesday 7 December 2016. The Plaintiff requested to see the vehicle in its current state, however the Defendant denied this, and cautioned the Plaintiff that he could see the vehicle once completed.
15. The Plaintiff met the Defendant on Wednesday 7 December 2016, accompanied by an independent observer, Mr Tom Mylott, to collect the completed vehicle. The Defendant advised the Plaintiff that the vehicle was still not complete, due to parts not arriving. The Plaintiff requested for the Defendant to provide a realistic deadline for the completion of the vehicle. The Defendant cautioned the Plaintiff to stay away from his premises, made threats of physical violence, stated that he would push the uncompleted vehicle into the road, and declined to provide a completion date. The Defendant also cautioned Mr Mylott not to get involved, and requested both Mr Mylott and the Plaintiff to exit his premises.
16. In response, the Plaintiff had no choice but to tell the Defendant that he would be bringing a claim against him if this was not resolved.

17. The Plaintiff and Defendant managed to reach an amicable agreement of a revised timeline. Mr Mylott suggested delivery in 7 days, being Wednesday 14 December 2016. The Defendant stated he would have the vehicle ready by Saturday 10 December 2016.
18. As of Tuesday 20 December, the completed and fully restored vehicle has still not been delivered by the Defendant. Police officers, PC Maragh and PC Phillips of the Royal Cayman Islands Police Service were called out to 220 Andrew Drive on Tuesday 20 December to mediate a resolve between the Defendant and Plaintiff, and to keep the civil peace. On conclusion of mediation, the parties agreed a revised deadline of the vehicle to be delivered on 28 December 2016.
19. On Wednesday 28 December, the Plaintiff called the Defendant for delivery of the completed vehicle as agreed. The Defendant stated that the vehicle was still not complete, and required further work on the electronics and brakes. The Defendant outsourced the works to Cayman Auto, located on North Church Street.
20. On Tuesday 7 February, the unfinished vehicle was delivered to the Plaintiff. On collection, it was noted that the shifter was faulty, the air-conditioning was not working, only 2 of the wheels that the Plaintiff had paid for were on the vehicle (3 were outstanding), the fender flares were sub-standard and cracked and the indicator wiring was faulty. Furthermore, the vehicle had passed inspection on the proviso that the Defendant would replace the gas tank shield – this was not done prior to delivery to the Defendant, and still remains outstanding.
21. The Plaintiff suffered rental car costs of CI\$1,327, in the interim period as a consequence of not having use of the fully restored and operational vehicle that was promised to him on the Initial Delivery Date. It was agreed that these costs would be offset against the consideration of the vehicle. As of 7 February, the Plaintiff has paid the Defendant CI\$9,500 in cash, CI\$460 in parts and CI\$ 1,327 in rental costs, bringing total consideration paid to CI\$ 11,287 for the agreed vehicle. It was agreed that no further payments were required.
22. On 28 February, the Defendant installed 2 more wheels onto the vehicle, leaving the one spare wheel outstanding.
23. On Tuesday 7 March, the Plaintiff delivered the vehicle to the Defendant's property, after experiencing significant issues with the shifter. The Defendant agreed to remedy this. It became apparent that this was beyond the Defendants experience, and suggested the Plaintiff take the vehicle back until he could organise for the vehicle to be booked into his sub-contractor at Cayman Auto. The Plaintiff delivered the vehicle on Monday 13 March to the Defendant's premises.
24. On Wednesday 15 March, the Defendant informed the Plaintiff that Cayman Auto had fixed the issues on the vehicle, and that it would be ready for collection on Thursday 16 March.
25. As of 13 April, the vehicle had not been delivered to the Plaintiff, as the Defendant claimed he did not have sufficient funds (approximately CI\$ 610) to pay his sub-contractors, in order to release the vehicle. The Defendant asked the Plaintiff to lend him money to pay for the vehicles release. The Plaintiff refused to pay these costs.

26. The Plaintiff asked for status update on 13 April, which was met with several threats of physical violence upon the Plaintiff. The Defendant also stated that he would not fix the remaining issues on the vehicle, and that he could not pay for the release of the vehicle from Cayman Auto. A criminal complaint was filed with PC Barnett of RCIPS in relation to the threats and intimidation.
27. On Tuesday 18 April, the Plaintiff paid the Defendants sub-contractors directly, despite this being the Defendants debt, and regained possession of the vehicle. On release of the vehicle, the Defendant fitted the spare wheel and tyre onto the vehicle.
28. As at the date of this claim, the following items of work are still outstanding:
- Gas tank shield requires replacing, as highlighted by the DMV inspection unit
  - New seats which were promised have not been installed
  - Fender flares require replacing as the current parts are substandard and damaged
  - The interior bed lining paint is already peeling, and requires replacing
29. Given concerns over the Defendants' intentions as regards completion of the vehicle to the specifications defined in the Agreement, the Plaintiff considers that this only course of recovery is to now issue this claim against the Defendant.

AND the Plaintiff claims:

1. Repayment of the cash sums paid in settlement of the Defendants debt, being CI\$510;
2. Damages in respect of amounts due to make right the vehicle to the specifications set out in the Agreement, by a reputable, independent mechanic. The Plaintiff estimates these to total CI\$4,000 as follows:
  - Gas tank tray – CI\$450 parts and labour
  - New seats – CI\$800 parts and labour
  - Fender flares – CI\$350 parts and labour
  - Full rebuild of the transmission – CI\$2,000 parts and labour
  - The interior bed lining – CI\$400 parts and labour
3. Interest on such sums and at such rate and for such period as the Court thinks just; and
4. Costs.



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Plaintiff's signature

Plaintiff's address for service

PO Box 30613, Seven Mile Beach, Grand Cayman, KY1-1203, Cayman Islands

No. 2

**Acknowledgment of Service**

IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC \_\_\_\_\_ of 20\_\_

Between:

Plaintiff

AND:

Defendant

ACKNOWLEDGMENT OF SERVICE

1 State Defendant's name and address -

2 State whether the Defendant intends to contest the action.

Yes

No

3 If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4 If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

**Service of the Plaint is acknowledged accordingly.**

\_\_\_\_\_  
Defendant's Signature

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**See Overleaf**