

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. 99 OF 2018

BETWEEN:

CAYMAN ENTERPRISE CITY LTD

Plaintiff

AND:

GARY MARES

Defendant



AMENDED WRIT OF SUMMONS



To the Defendant:

**Mr. Gary Mares
c/o Marriott Hotel
West Bay Road
Seven Mile Beach
Grand Cayman**

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 495 Grand Cayman KY1-1106, Cayman Islands, 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 16²⁵th day of August~~May~~ 2018

NOTE – This Writ may not be served later than 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.

PARTICULARS OF CLAIM

1. The Plaintiff is and was at all material times a company registered in the Cayman Islands.
2. The Defendant is an individual.

The Licence

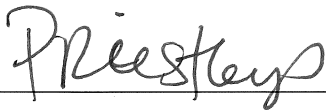
3. By an agreement (the "**Licence**") in writing executed on 31 March 2016 between the Plaintiff (the "**Licensor**") and the Defendant (the "**Licensee**") for a license to occupy the Plaintiff's office facilities at the CEC Gateway Location. The Licensee agreed to pay the sum of US\$49,250.00 per annum as a license fee (the "**Licence Fee**"), along with charges for any additional fees in respect of the use of additional facilities, equipment and services (the "**Outgoings Service Fee**").
4. The Licence contained the following express terms:
 - 4.1 The license period was for 2 years commencing on 1 May 2016 (the "**Commencement Date**");
 - 4.2 The Fee was payable in accordance with the Licence's payment terms whether or not occupation at the Premises had been taken up by the Licensee on the Commencement Date;
 - 4.3 The Fee was payable in quarterly instalments with the first such payment due on or before the Commencement Date;
 - 4.4 At clause 2.3 of Schedule 1 to the Licence, the Licensee shall be liable to the Plaintiff in respect of late payments (*inter alia* for the Fee and the Service Fee) for interest at the rate of 5% above the applicable LIBOR rate provided to the Plaintiff by Cayman National Bank;

- 4.5 At clause 3.1 of Schedule 1 to the Licence, the Plaintiff reserved the right to charge the Licensee the Service Fee;
- 4.6 At clause 3.10.1 of Schedule 1 to the Licence, the Licensee agreed to indemnify the Plaintiff against all losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability arising in any way from any breach of the Licensee's covenants contained in the Licence.
5. The Plaintiff agreed to discount the equivalent of the first month's rent to the Defendant, resulting in a deduction of US\$4,104.17. Thereafter the Plaintiff made one quarterly payment of US\$~~16,416.66~~–12,312.50 after which no further payments were made. In breach of the Licence the Licensee failed to pay the fees by the due date or at all.
6. Multiple demands were made by the Plaintiff to the Licensee for the payment of the fees due. A letter before action was sent on 18 May 2017 following which the ~~First~~ Defendant met with counsel for the Plaintiff on 26 May 2018. The ~~First~~ Defendant indicated that he would satisfy the full debt, at that time due, upon receipt of funds due to be received by the ~~First~~ Defendant within the next two weeks. No payment was ever made by the ~~First~~ Defendant ~~or the Second~~ Defendant to the Plaintiff.
7. The Licensee therefore owes the Plaintiff the sum of US\$~~77,979.17~~–82,083.33.
8. Further, the Plaintiff claims contractual interest on the sum unpaid at the rate of 5% above the applicable LIBOR rate provided to the Licensor by Cayman National Bank from time to time from the due date to the date of issue of this claim until judgment or earlier payment.

9. Further, the Plaintiff claims under the Licence the Plaintiff's costs (including but not limited to legal costs) arising from the Licensee's failure to pay the sum set out in paragraph 8 above.

AND the Plaintiff Claims:

1. The sum of US\$~~77,979.1782,083.33~~.
2. Contractual interest as set out in paragraph 78 above.
3. Costs under the Licence.
4. Costs.



PRIESTLEYS

Attorneys for the Plaintiff

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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 Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (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.

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 fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

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CIVIL DIVISION

CAUSE NO. 99 OF 2018

BETWEEN:

CAYMAN ENTERPRISE CITY LTD

Plaintiff

AND:

GARY MARES

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 is acknowledged accordingly

(Signed) _____

Address for service:

Please see overleaf.....

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 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.

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

PRIESTLEYS
ATTORNEYS-AT-LAW
SECOND FLOOR, CARIBBEAN PLAZA
878 WEST BAY ROAD
PO BOX 30310
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, KY1-1202

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