

IN THE SUMMARY COURT OF THE CAYMAN ISLANDS



CAUSE NO. SC 11 OF 2019

BETWEEN:



CAYMAN LEASING LTD

AND:

JAN 18 2019

317550

DONALD FRANCIS



PLAINTIFF

DEFENDANT

PLAINT

TO THE DEFENDANT:

DONALD FRANCIS of 50 Sextant Drive, North Side, PO Box 654 BT, Grand Cayman, Cayman Islands

THIS PLAINT has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within fourteen (14) days after the service of this Complaint on you, counting the day of service, you must either satisfy the claim, or return to the Court Office, P.O. Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest this action. If you intend to defend this action, in whole or in part, you must set out full particulars of your defence in the space provided in the Acknowledgement of Service form.

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

Issued this 18th day of January, 2019.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

PARTICULARS OF CLAIM

The Parties

1. The Plaintiff is a limited company incorporated pursuant to the laws of the Cayman Islands whose physical address is 70 Hospital Road, George Town, Grand Cayman, Cayman Islands, PO Box 1968, KY1-1104.
2. The Defendant is an individual residing at 50 Sextant Drive, North Side, PO Box 654 BT, Grand Cayman, Cayman Islands.

The Lease

3. On 18 June 2018, the Plaintiff agreed to lease to the Defendant a 2013 Ford Edge SEL vehicle (VIN# 2FMDK3JC2DBE27654) ("The Vehicle")
4. The express terms of the contract were evidenced in writing in the form of a lease agreement dated 18 June 2018 which was executed by the Defendant, who also signed each page ("The Lease").
5. Schedule B to the Lease provided for an account set-up fee and for the monthly payments to be made as set out in a table. The term length was agreed to be 12 months, with a monthly rate (inclusive of insurance) of CI\$1,718.00 ("The Payment Plan").
6. The Defendant expressly acknowledged by his signature at Schedule A of the Lease that he had received the Vehicle in good order. It was also understood pursuant to clause 40 of Schedule C that the Vehicle was being provided to the Defendant by the Plaintiff on an "as is, seen and tested" basis and that the Plaintiff would not be liable for future repairs.
7. The Lease also contained clauses at Schedule C setting out the respective rights and obligations of the Parties in respect of breach and termination of the Lease, including, (but not limited to) those set out at clauses 22, 43 and 45.
8. The Defendant was obliged to pay for repairs falling outside reasonable wear and tear pursuant to Schedule D, and clauses 23 (i), 34 and 44 of Schedule C of the Lease. In particular, Schedule D of the Lease specifically listed tyres that are unable to pass legal vehicle inspection requirements as being an unreasonable and unacceptable wear and tear item.

Breach of the Lease

9. The Defendant initially complied with the Payment Plan, however his last payment was on 10 August 2018 at which point his account was only CI\$32.00 overdue.
10. The Defendant did not make the payment due for September 2018 of CI\$1,718.00 as required by the Payment Plan, nor did he pay the CI\$32.00 overdue sum. On 15 September 2018, a late payment fee of \$40.00 was incurred and applied to the Defendant's account in accordance with clause 13 of Schedule C of the Lease.
11. At the beginning of October 2018, the Defendant failed to make the payment due for that month of CI\$1,718.00, nor did he pay the overdue sums and fees incurred as aforesaid.
12. In mid October 2018, the Defendant returned the Vehicle to the Plaintiff's business premises with an empty petrol tank and in a state of disrepair of a nature not consistent with reasonable wear and tear, making no payment as required to make good for fuel and the repairs as required pursuant to the Lease.

Termination of the Lease

13. The Lease was terminated by the Plaintiff for breach of its terms by the Defendant. The termination was communicated by correspondence to the Defendant dated 26 November 2018, in accordance with Clause 58 of Schedule C of the Lease. The Plaintiff sought to recover its losses incurred by the Defendant's breach up to and including 31 October 2018.
14. In addition to the outstanding lease payments owed for September 2018 and October 2018, the Plaintiff incurred expenses refueling the Vehicle and putting the Vehicle in good order. The correspondence dated 26 November 2018 also included a demand for the outstanding payments and other expenses incurred, including the legal costs the Plaintiff had incurred and was entitled to recover pursuant to clause 23 (j) of Schedule C of the Lease ("The Demand").
15. To date, the Defendant has failed to pay the sum as set out in the Demand, or any sum.
16. Accordingly, The Plaintiff claims damages for breach of contract by the Defendant.

PARTICULARS

17. The Plaintiff claims

- i) The overdue sum as at 10 August 2018 for rental payments, insurance and account set-up fees in the sum of CI\$32.00;
- ii) Unpaid rental and insurance for the months of September 2018 and October 2018 in the sum of C\$1,718.00 per month, being CI\$3,436.00 as per Schedule B of the Lease;
- iii) A late payment fee incurred on 15 September 2018 prior to termination in the sum of CI\$40.00 pursuant to clause 13 of Schedule C of the Lease;
- iv) Fuel in the sum of CI\$54.67;
- v) The cost of repairs in the sum of CI\$3,389.70 as set out in the invoice #236329 from Vampt Motors; and
- vi) Legal Costs and collection fees incurred to date pursuant to clause 23 (j) of Schedule C of the Lease, and the process server fees for this Plaint, in the sum of CI\$2,003.00.

The Plaintiff therefore claims Judgment in the principal sum of CI\$8,955.37.

18 The Plaintiff further relies upon s.34 of the Judicature Law (2013 Revision) ("The Law") and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules 1995 as varied by the Judgment Debts (Rates of Interest) Rules ("The Rules"), promulgated by the Rules Committee pursuant to the s.34 of the said Law, and claims interest pursuant to the Law and the Rules on the debt owing and costs as follows:

- (i) Pre-judgment (simple) interest on the debt from 31 October 2018 to the date of trial at the prescribed rate of $2\frac{3}{8}\%$ per annum (CI\$0.58 per diem);
- (ii) Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the prescribed rate of $2\frac{3}{8}\%$ per annum or such other rate then prevailing in accordance with s.34 of the Law and the Rules; and

- (iii) Interest on all fixed or assessed costs and orders running from the date of service of the judgment, order or certificate of taxation respectively and at the prescribed rate of 2³/₈% per annum or such other rate prevailing in accordance with s.34 of the Law and the Rules.

THE PLAINTIFF THEREFORE CLAIMS AGAINST THE DEFENDANT:

- i) Judgment in the sum of CI\$8,955.37;
- ii) Interest in accordance with Section 34 of the Judicature Law (2007 Revision), as pleaded in Paragraph 18 above;
- iii) Fixed costs of CI\$150.00 pursuant to Rule 11 of the Summary Court Rules, 2004;
- iv) The filing fee of CI\$25.00 pursuant to Rule 11 of the Summary Court Rules, 2004; and
- v) Such further and applicable other relief as this Honourable Court deems necessary.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of CI\$9,176.50 (being the principle of CI\$8,955.37, plus the fixed costs and filing fee of CI\$175.00 and interest to the date of filing of CI\$46.13) further proceedings will be stayed. The money must be paid to the Plaintiff or their Attorney.



Nelson & Company
Attorneys for the Plaintiff

Plaintiff's address for service:

31 The Strand, 46 Canal Point Drive, P Box 2075, Grand Cayman KY1-1105, Cayman Islands.

This Plaintiff was filed by Nelson & Company whose address for service is 31 The Strand, 46 Canal Point Drive, P.O. Box 2075, Grand Cayman, Cayman Islands.

IN THE SUMMARY COURT OF THE CAYMAN ISLANDS

CAUSE NO. SC OF 2019

BETWEEN:

CAYMAN LEASING LTD

PLAINTIFF

AND:

DONALD FRANCIS

DEFENDANT

ACKNOWLEDGEMENT OF SERVICE

1. State Defendant's name and Address:

2. State whether the Defendant intends to contest the action (tick box)

YES

NO

3. If you do not intend to contest the action, do you want time in which to pay the claim?
(tick box)

YES

NO

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

Service of the Plaintiff is acknowledged accordingly.

Defendant's Signature

Dated this _____ day of _____, 2018

PARTICULARS OF DEFENCE

Here set out in numbered paragraphs the grounds upon which the Defendant says that he is not liable to the Plaintiff or is not liable for the full amount claimed.

Defendant's Signature

REMINDER - This form must be delivered or sent to the Courts Office, P.O. Box 495GT, George Town, Grand Cayman, within fourteen (14) days of receipt, otherwise a default judgment may be entered against you.