

IN THE SUMMARY COURT AT GEORGE TOWN



CAUSE NO. SC 146 OF 2019

BETWEEN: ORLANDO DESDUNES

PLAINTIFF

AND: HAROLD SPENCE

DEFENDANT

PLAINT

To the Defendant

[Lincoln Dr. Industrial
Park, George Town]



THIS PLAINT 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 **Plaint** on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495, George Town, Grand Cayman KY1-1106, Cayman Islands, the accompanying Acknowledgement 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 defense** in the space provided in the Acknowledgement of Service form.

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

Issued day 3 of July 2019.

See overleaf for particulars of the Plaintiff's claim

PARTICULARS OF CLAIM

I Orlando Desdunes am the Plaintiff in this matter and make this Plaint against the Defendant Harold Spence, in the interest of recovering money and value for personal possession as well as fees incurred in relation to the application of this Plaint. Let the above named Plaintiff be represented in Plaint as "I"; whereas the above named Defendant is represented as "the Defendant".

Events as best recorded leading up to this Plaint are as follows:

01. On the 03rd day of May, 2019 I expressed interest in purchasing from the Defendant a used motor vehicle as advertised for sale and arranged viewing in the industrial park vicinity, George Town. On viewing the vehicle it was observed that a number of mechanical and body related parts have deteriorated, majority of which was unmentioned by the Defendant prior. Nonetheless, the issues observed with the vehicle were deemed repairable/replaceable at the expense of the defendant as a condition to the sale of same. This included:
 - Repair of replacement of inner trims, fittings, a center console along with door covers and damaged accessories.
 - Repair or replace external trims, broken lights, dents and scratches of the exterior.
 - Check and rectify as needed any suspension issues

02. On Monday May 6th at approximately 11am I called the Defendant to inform that as agreed, a deposit of KYD \$1000 was possible as consideration towards my interest to purchase and his efforts to start the restoration process, despite the agreed repairs being his responsibility. An additional KYD \$2000 were to follow within that week to complete what we agreed would be the initial deposit amount (KYD \$3000). At the time I was located in East End and promised to submit the \$1000 at around 6pm after work that day. Not wanting to wait the Defendant made his way to East End and requested that I submit KYD \$2000 as oppose to KYD \$1000 which I obliged and paid him in cash KY\$2000, See payment receipt Exhibit 01 of Appendix.

03. The Defendant and I spoke again on Saturday 11th of May and arranged that at approximately 01:00pm, he would collect in Savannah from me a Three month old NAPA Legend car battery I purchased for another vehicle but was not using at the time. This battery was also a form of consideration towards the restoration of the vehicle. I took a photo of said battery prior to submitting it to the Defendant and can be seen along with market value at Exhibits 02 and 03 of Appendix.

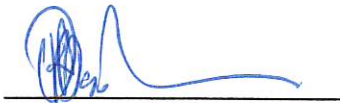
04. The defendant and I did not speak again up until the 13th of May a week later, as I became curious about any developments on the arrangement and also still had KY\$1000 to submit. On calling the defendant he confirmed that no work commenced on the vehicle and that its gas pump failed preventing them from moving it. He said he already ordered a replacement pump costing \$950.00 and it would arrive in the country on Friday the 14th or latest Monday the 17th. The cost of said pump provided that he did order one, would be his responsibility. I have since researched the cost of the pump and found them ranging from USD \$20.00- \$172. At this point I became concerned and decided to hold off on making any further payments until the issue of the pump got rectified, as this was not something expected and had no financial bearing on my end of the agreement.
05. On 27th of May not having heard from the Defendant and observed the vehicle still being on the road side with for sale on it, I wrote and hand delivered a letter to what appeared to be his place of business expressing that I have lost interest in the vehicle and faith in him where his efforts are concerned. Copy of said letter can be seen at Exhibit 04 of the Appendix. I got a phone call the same day from the defendant saying the letter was not necessary and I could have just told him I no longer wanted the vehicle. During this conversation I inquired about my car battery and deposit. The Defendant said he has the battery in another vehicle however; he would retrieve it and arrange collection by the end of that day. He also said that he went ahead and paid his painter and auto body man to do repairs on the vehicle, a vehicle I observed still parked on the road side with nothing done to it.
06. It became apparent that the Defendant not only had no intention of making good on our arrangement despite any unforeseen setbacks if any, but also started to make up stories along the lines of why the vehicle is not being worked on and to justify that the money I gave him, was already spent on a car part and on workers before they've actually done any work.
07. To make matters worse, I did not receive a call from the defendant about collection of my battery; I went to his place of business and found no one present. I called the Defendant and observed that the phone rang once subsequent to the call being disconnected. I have run out of patience and wish not to be lied to or given the run around any further. I ask that the court make an order to have the Defendant execute as follows:
- (a) The sum of KYD \$2000.00 cash be refunded in settlement of that which was given to him as a Cash Deposit, as per Exhibit 04 of Appendix.
 - (b) The sum of KYD \$317.14 cash be awarded in reimbursement for a NAPA Legend car battery as indicated in Exhibits 02 and 03 of Appendix.
 - (c) The sum of costs incurred as per filing and administrative fees having to do with the application and submission of this affidavit and its supporting documents. Receipt be made available at appointed time.
08. That I make this affidavit conscientiously believing in the truth of the same.

AND THE PLAINTIFF CLAIMS:

- (1) The Sum of KYD \$ 2,317.14.
- (2) Interest in the sum \$0.00.
- (3) Fixed cost of \$ _____, as incurred.

Dated the 03 day of June 2019

shy OD



Plaintiff's Signature

*68 Sarnel Dr. Tropical Gardens. George Town
#928 2837*

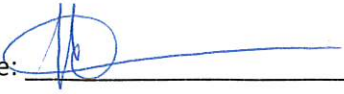
APPENDIX

Exhibit 01

PAYMENT ORDER

This serves to confirm receipt of 2000 as deposit towards the fixing as agreed of unit as mentioned on invoice OD09052019









Paid: May 09th 2019

Received by NAME: Harold Spence, Signature: 

MAPA
THE LEGEND

PROPOSITION 65 WARNING: Battery, posts, terminals and related accessories contain lead and lead compounds, chemicals known to the State of California to cause cancer and reproductive harm. Batteries also contain other chemicals known to the State of California to cause cancer. **WASH HANDS AFTER HANDLING.**

▲ DANGER/POISON

 SHIELD EYES. EXPLOSIVE GASES CAN CAUSE BLINDNESS OR INJURY.	 NO SPARKS, FLAMES OR SMOCKING. Sulfuric acid can cause blindness or severe burns.	 NO HEAD ALL. READ ALL INSTRUCTIONS.	 FLUSH EYES IMMEDIATELY WITH WATER. GET MEDICAL HELP FAST.
 KEEP OUT OF REACH OF CHILDREN.	 DO NOT OPEN BATTERY.	 DO NOT OPEN BATTERY.	 DO NOT OPEN BATTERY.

WARNING - RISK OF FIRE, EXPLOSION OR BURNS. DO NOT DISASSEMBLE OR INCINERATE. NOT RECOMMENDED FOR INVERTED USE. FOLLOW PROPER CHARGING INSTRUCTIONS.

- JA
- FE
- MA
- AP
- MY
- JU
- JY
- AU
- SE
- OC
- NO
- DE

MADE IN USA
 WITH US AND
 IMPORTED MATERIALS

4-1952

Exhibit 03.

* * Q U O T E * *

Kirk Motors LTD
33 Hurst Road Savannah
Unit B5 and B6
CAYMAN ISLANDS, KY KY1-1001

ACCT # 0
SR # 0
SOLD TO Cash Sale
DATE 06/04/2019
TIME 12:55
STORE #
EMP #
700004570 50 Jermaine

PART NUMBER	LN	DESCRIPTION	QUANTITY	LIST	PRICE	TOTAL
75100EX	BAX	NAPA BATTERY	1.00	373.11	317.1400	317.14

TOTAL -----> 317.14

*** Plus Applicable Taxes. ***
*** Prices Subject to Change Without Notice. ***

* * THIS IS NOT AN INVOICE * *

NOTICE OF DEFAULT AND SETTLEMENT

Exhibit 04

Fr: Orlando To: Harold

Date: 27th of May, 2019.

Re: Arrangement to purchase used vehicle

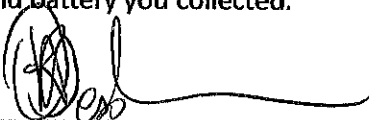
It has become apparent that you've not only disregarded making any forms of communication, but have also not made any attempts to start the repairs on the vehicle as I am still seeing it by the road way. I am under the impression you were only eager to receive the deposit and is now prepared to supply me with excuses as to why there are no developments on the repair arrangement.

On the 03rd of May we inspected the interior and exterior condition of the vehicle and agreed that a list of issues found with it are to be addressed and corrected by you. In light of this restoration I was to provide you with KYD \$3000.00 of the total sum agreed on being KYD \$6500.00. On the 09th of May I gave you KYD\$2000.00 towards starting the restoration of the vehicle as you assured me had no engine or transmission issues. On the 11th of May I also gave you a 3 month old NAPA Legend car battery to put in the vehicle as you said it didn't have any.

On the 14th of May I called to follow up on the restoration progress we agreed on and to inform you I have the balance of the deposit KYD \$1000, at which point you said you tried to start the vehicle and realized it developed a gas pump problem and therefore could not be moved. You said you already ordered a replacement pump costing over USD \$950 and it will arrive on Friday the 17th of May or latest Monday the 20th. I told you to confirm with me when this arrives and to start any other fixing which doesn't require moving the vehicle. It is now May 27th I have not received a call and the vehicle is still by the road side. The pump you said cost USD \$950, actually costs between USD \$45 and \$60 which includes not just the pump but a full assembly kit for the vehicle.

Let me now be clear on my position. This appears to be a situation in which you needed funds to conduct your own affairs and will now make up stories about what you've spent on and why the vehicle is not being work on. As such, I assure you I will not be calling to ask for updates. I will not be visiting your establishment to check on any developments, and I will not wait until you feel it is time to give me another story about something that will further prolong the vehicle being ready. I am simply no longer interested in doing business with you and have made alternate arrangements to acquire a vehicle.

I believe that should I ask to be reimbursed my KYD\$2000.00 as well as a battery; you would not have these available to give to me. As such, I am prepared to wait until June 1st, 2019 to receive reimbursement in full. I ask that you acknowledge the particulars of this notice by way of a phone call or even a text message stating compliance or disagreement. Should you choose not to acknowledge then I also understand that and will arrange accordingly. My number in case you misplaced it is 325-2178. I've also attached a copy of the payment order and battery you collected.



IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO. SC ____ OF 2019

BETWEEN:

Orlando Desdunes

PLAINTIFF

AND:

OP
Ronald Spence
Harold

DEFENDANT

ACKNOWLEDGEMENT 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 Plaintiff is acknowledged accordingly.

Defendant's Signature

DATED this day of 2019

See Overleaf

PARTICULARS OF DEFENCE

(Here set out in numbered paragraphs the grounds upon which the defendant says that he/she is not liable to the Plaintiff, or is not liable for the full amount claimed)

Defendant's Signature

REMINDER – This form must be taken or send to the Court Office, P.O. Box 495 George Town, Grand Cayman KY1-1106 within 14 days of receipt