

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

Cause No. **49** of 2020

BETWEEN:



MICHELE SCHILLING

PLAINTIFF

AND

NCI SERVICES LTD

DEFENDANT

WRIT OF SUMMONS



TO: **NCI SERVICES LTD**
Artco Centre, Suite #10
George Town
P.O. Box 109
Grand Cayman
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 495, 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 **6** day of **March** 2020

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, is, and was at all material times, an individual who is legally and ordinarily a resident of the Cayman Islands. The Plaintiff's address for service is care of her attorneys, McGrath Tonner, 5th Floor, Genesis Building, Genesis Close, PO Box 446, Grand Cayman, KY1-1106.
2. The Defendant, NCI Services Ltd is a Cayman Islands company having its registered office at Artco Centre Suite #10, PO Box 109, Grand Cayman.
3. The Defendant is a logistics company which offers services from express local courier to international import and export of air and ocean freight shipments. On its website the Defendant boasts "*...our professionally trained and experienced couriers and management team have enabled us to provide the highest quality and unparalleled levels of local courier and mailing service.*" They offer "*...customs brokerage...relocation and white glove delivery*".
4. The Plaintiff was made aware of the Defendant by her friend who had previously procured the Defendant's courier services. In October 2018 the Plaintiff's agent Tricia Morrison contacted the Defendant's Senior Logistics Coordinator Ryan Alipato by telephone to request the Defendant's services for delivery of items of furniture. Ms. Morrison explained that the Plaintiff required full white glove delivery service. Ms. Morrison had contracted with Mr. Alipato on previous occasions in which a similarly high level of service was requested and provided. It was orally agreed that the Defendant would provide a full service delivery to include everything from collection of crates containing the items of furniture from containers at the port in Grand Cayman, overseeing the customs inspection process, paying Duty, delivery of the items to the Plaintiff's home, unpacking and uncrating, removal of debris and setting up of the furniture.
5. During this discussion Ms. Morrison also requested details of the Defendant's freight forwarder in the US in order to facilitate shipping arrangements. Mr. Alipato advised that the Defendant uses a company by the name of Amcar Laprecht Inc. ("Amcar").
6. On 11 October 2018 Mr. Alipato sent an email to Ms. Morrison thanking her for choosing the Defendant and attaching information about the Defendant's air and ocean freight services. The attached information listed the shipping services rates for air freight and ocean freight for shipments under 10 cubic feet in size and shipments in excess of 10 cubic feet in size. The prices listed for ocean freight were in respect of freight, port fees, insurance, admin fee, customs brokerage, warehouse handling and duty.

7. In and around 6 November 2018 the Plaintiff purchased items of furniture from various companies in the USA. Amongst the many items of furniture were a Dakota Jackson Gui extending dining table with a polished Macassar Ebony finish ("Table") and 2 nightstands with high-gloss lacquer and smoked recessed glass top ("Nightstands").
8. On 11 October 2018 Ms. Morrison contacted Mr. Alipato to confirm arrangements for delivery of the items of furniture.
9. The following were express terms of the oral contract between the Plaintiff and the Defendant:
 - a. The Defendant would provide full white glove delivery service;
 - b. The Defendant would sub-contract delivery of the furniture from Miami to Grand Cayman to their freight forwarder Amcar;
 - c. The Defendant would deliver the furniture to the Plaintiff's home;
 - d. The Plaintiff would be provided full coverage insurance in respect of delivery of all of the items of furniture.
10. Ms. Morrison arranged for the furniture to be transported from the vendors premises in the USA to the Defendant's freight forwarder Amcar in Miami, by a company named Tramo at Home. The Table and Nightstands were packaged and crated by Tramo at Home prior to transportation to Miami by truck where they were received by Amcar.
11. The Defendant made all of the necessary arrangements with their freight forwarder Amcar to load the crates into containers to ship to Grand Cayman. Ms. Morrison contacted Amcar to notify them when the furniture was on its way to Miami.
12. All of the items of furniture purchased were packed into two containers: one 40 foot container and one 20 foot container. On 17 December 2018 the Defendant sent the Plaintiff an invoice by email, for payment for delivery of the 20 foot container. The invoice in the sum of CI\$39,044.55 invoice number 107002, included all fees in respect of handling, loading and trucking the crates in Miami by Amcar, bill of lading, ocean freight, shipper's export declaration, Cayman port charges, customs inspection, customs clearance, unloading, trucking and delivery by the Defendant, duty and full coverage insurance.
13. On 18 December 2018 the Plaintiff paid invoice number 107002 in full.

14. On 17 December 2018 the Defendant forwarded a second invoice to the Plaintiff in respect of the 40 foot container, invoice number 107007. This invoice in the sum of C\$46,406.25 included all of the fees in respect of the same services as set out above in respect of invoice 107002 which included full coverage insurance. The Plaintiff subsequently paid invoice number 107007 in full.
15. It was arranged that the Defendant would unload all of the crates from the 2 containers and transport them by truck to the Kimpton Residences at Seafire, where the Plaintiff resides. Due to the number of crates, delivery was expected to take a number of trips over the course of 2 days.
16. On 20 December 2018 crates were unloaded from the trucks and taken into the multi-resident parking garage of the Kimpton Residences by the Defendant's servants/agents. During the course of the day the Defendant's servants/agents carried the items of furniture from the parking garage up to the Plaintiff's home. On the afternoon of 20 December 2018 Ms. Morrison was in the Plaintiff's home when the Defendant's servant/agent came in and asked her to go down to the parking garage to inspect the Table.
17. Upon arrival at the parking garage Ms. Morrison met with several of the Defendant's servants/agents who were in attendance. Ms. Morrison observed that the Table had already been removed from the crate and all packaging had already been removed by the Defendant's servants/agents. The protective packaging had been removed by the Defendant without the prior knowledge or consent of the Plaintiff or her servants or agents.
18. Ms. Morrison inspected the Table and confirmed it to be in perfect condition.
19. Ms. Morrison advised the Defendant's servants/agents several times that the Table was valuable and had a very fragile high lacquer finish and so care would need to be taken.
20. The Defendant's servant/agent stated that they could not deliver the Table to the Plaintiff's home and would instead leave it in the parking garage. He did not know whether they would be able to return the next day to remove the Table from the garage or when they would return. He gave the reason that he did not believe they could bring it up through the garage into the elevator and through the corridor. Ms. Morrison expressed concerns about leaving the expensive fragile item of furniture, which had already been completely unpackaged, in the parking garage which is used by multiple residents.
21. The Defendant's servant/agent mentioned an option to return the Table to the delivery truck. Ms. Morrison expressed concerns that there would be a chance of damage to the Table in

loading the unpackaged item back onto the truck and in any event she had checked all of the necessary measurements prior to delivery and confirmed that it would fit into the elevator and through the doorway into the Plaintiff's home.

22. In order to ensure the Table could be carried to the Plaintiff's home the Defendant's servant/agent carried a piece of cardboard that had been removed from the tabletop and was exactly the same size as the Table top, through the garage, into and out of the elevator to the Plaintiff's corridor. The purpose of the trial delivery with the cardboard was to ensure that the Table would fit through the spaces and to practice the direction of how to maneuver the Table through the spaces. After this trial delivery with the cardboard piece, the Defendant's servant/agent made the decision to carry the Table to the Plaintiff's home. Ms. Morrison left the garage and returned to the Plaintiff's home.
23. Another servant/agent of the Plaintiff's, Mr. Yianni Georgakopoulos was present at the time of delivery of the furniture and observed the Defendant's servants/agents carry the Table into the elevator. As they did so he observed them hit the corner of the Table against the doors and walls of the elevator several times causing damage to the corners of the Table, the edges of the tabletop and causing the Macassar Ebony veneer to crack. Mr. Georgakopoulos observed that there was no protective covering on any part of the table.
24. A short time later upon hearing noise outside of the Plaintiff's home, Ms. Morrison exited the Plaintiff's home into the corridor and observed the Defendant's servants/agents carrying the table out of the elevator. It was observed by Ms. Morrison that the Defendant's servants/agents had not used any protective corner pads, door protectors, shrink wrap, blankets or any protective covering at all. Furthermore, they had not utilized any carrying straps, four-wheel dollies nor any other tools to facilitate lifting and carrying.
25. Ms. Morrison observed several of the Defendant's servants/agents carry the table from the elevator into the Plaintiff's home and upon entering the Plaintiff's home, the Defendant's servants/agents caused the corners of the table to come into contact with the entrance door causing further damage to the corners of the table and also to the Plaintiff's door. The damage to the Plaintiff's door has since been repaired by Phoenix Construction.
26. Once inside the Plaintiff's home the Defendant's servants/agents set the table down on the edge of the base causing further cracks to the veneer on one of the table legs.
27. Both Ms. Morrison and Mr. Georgakopoulos observed that there was no supervisor from the Defendant in attendance at the delivery and the Defendant's servants/agents who were

present did not employ the use of any protective equipment or carrying tools or carry the Table with the care expected during a professional delivery service.

28. Ms. Morrison contacted Mr. Alipato by telephone immediately and left a voicemail message to report the damaged Table to the Defendant. She further emailed Mr. Alipato explaining the Table was badly damaged and sent a message via Whatsapp messenger to Mr. Alipato and to the Defendant's Managing Director Shyam Ebanks to report the damage. Mr. Alipato was out of the jurisdiction at this time, but Mr. Ebanks responded, "*I'm very sorry that it happened, please send me pictures so I can file the claim*". Ms. Morrison forwarded photographs to Mr. Ebanks showing the damage to the Table.
29. On the evening of 20 December 2018 Ms. Morrison stayed at the Plaintiff's home to remove all of the other items of furniture from their packaging and inspect them. The Defendant's servants/agents had removed these items from the crate in the parking garage and carried them to the Plaintiff's home whilst still covered with paper pads. Whilst removing the paper covering from 2 of the Nightstands Ms. Morrison noticed that the lacquer finish was damaged in several places.
30. On 21 December 2018 at around 9 o'clock in the morning Mr. Ebanks attended the Plaintiff's home to inspect the damaged furniture.
31. After the Christmas period, in January 2019 Ms. Morrison contacted the manufacturers of the Table, Dakota Jackson to confirm whether the substantial damage to the Table was possible to repair. She was advised that the Table's polished Macassar Ebony veneer top consists of seven coats of high polish lacquer. Each coat was applied, allowed to dry and then buffed and this process was repeated several times to achieve the gloss finish. Due to the level of damage the veneer could not be repaired. All of the lacquer would have to be stripped from the Table completely and the process started anew to restore the Table to the condition it was in prior to delivery. Ms. Morrison was advised that this would be difficult and not cost effective since the value of the Table is due to the high lacquer finish.
32. Ms. Morrison contacted the Defendant and was advised that the matter was being referred to the insurer to deal with. Mr. Alipato sent an email to the Plaintiff in reference to the insurance claims, advising "*The claims were submitted and received on January 2*". Subsequent to this the insurer sent an inspector to the Plaintiff's home to investigate the matter.
33. On 12 September 2019 the Defendant's Director of Operations, Mrs. Tamara Hanson-Ebanks sent an email to the Plaintiff explaining "*We have been fighting with the insurance for months*

on this claim. As you saw we were working on it, and that they even sent an inspector to your location to do an assessment. At the end of it all, after they have completed their due diligence, they have denied the claim. Reason for this is that we removed proper packaging before we delivered it, and why we had to remove it was due to it not being able to properly fit in your building with the proper packaging..."

34. The Defendant's servants/agents removed all of the packaging from the Table to get it into the parking garage without the knowledge or approval of the Plaintiff nor any of her servants or agents.
35. Neither the Defendant nor the Defendant's servants or agents advised the Plaintiff or any of the Plaintiff's servants or agents that carrying the Table from the parking garage to the Plaintiff's home after it had been unpackaged would render the policy of insurance which had been paid for by the Plaintiff invalid.
36. During the period of time from 20 December 2018 until the date of issue of these proceedings the Plaintiff has been left with the damaged furniture in her home. The Plaintiff had purchased the Table, which is designed to exude elegance due to its polished Macassar Ebony veneer top, to suit the style of her luxury condominium at the Kimpton's Residences at Seafire. The Plaintiff has been unable to enjoy the Table as the damage is very noticeable and obvious to her and to anyone visiting her home.
37. The aforesaid damage was caused by reason of the negligence and breach of contract of the Defendant, its servants or agents.

Particulars of negligence

38. The Defendant was negligent in that its servants and/or agents:
 - a) Removed all of the protective packaging from the Table before completing delivery to the Plaintiff's home;
 - b) Removed all of the protective packaging from the Table without the Plaintiff's prior knowledge or approval;
 - c) Removed all of the protective packaging from the Table without ensuring that delivery of the Table to the Plaintiff's home could be completed the same day or at all;

- d) Failed to inform the Plaintiff that removal of the protective packaging from the Table prior to completion of delivery to the Plaintiff's home would invalidate the full coverage insurance policy paid for by the Plaintiff;
- e) Breached the terms and conditions of the policy of insurance causing the policy to be invalidated; or alternatively, misinformed the insurer in respect of the facts and circumstances surrounding the delivery of the Table causing the policy of insurance to be invalidated;
- f) Sold the Plaintiff full coverage insurance without informing her that the insurance did not cover damage to the Table during delivery due to negligence;
- g) Failed to adequately protect the Table by placing protective covering at the corners or on any part of the Table;
- h) Failed and omitted to use any tools or equipment to facilitate carrying the Table from the parking garage to the Plaintiff's home;
- i) Failed to exercise reasonable care and skill when carrying the Table through the building;
- j) Caused the Table to come into contact with the walls and doors of the elevator several times and with sufficient force to cause damage to the Table;
- k) Caused the Table to come into contact with the walls of the corridor and door of the Plaintiff's home and with sufficient force to cause further damage to the Table and damage to the Plaintiff's home;
- l) Failed to take heed of the warnings given by the Plaintiff's servants and/or agents in respect of how fragile the Table was due to its high lacquer veneer;
- m) Failed to prevent damage to the Table;
- n) Failed to exercise reasonable care and skill when setting the Table down on the floor of the Plaintiff's home causing further damage to the Table;
- o) Failed to exercise reasonable care and skill when transporting and carrying the 2 Nightstands;
- p) Failed to adequately protect the 2 Nightstands to prevent them being damaged;
- q) Caused damage to the 2 Nightstands;

- r) Allowed, caused and permitted the Plaintiff to suffer loss and damage;
- s) Res ipsa loquitur.

Particulars of breach of contract

- 39. The Plaintiff repeats the above particulars of negligence as particulars of breach of contract.
- 40. In proof of the foregoing matters alleged the Plaintiff will further rely upon such facts as may be known to the Defendant but not to the Plaintiff, and as may appear from the evidence of the Defendant and its witnesses at the trial of this action.
- 41. As a result of the Defendants' negligence and breach of contract, damage was caused to the items of furniture which is irreparable.
- 42. By reason of the aforesaid wrongful acts and omissions the Plaintiff has sustained loss and damage.

Particulars

- 43. Damages which include:

Dining table purchase price	-	US\$22,517
Ortega delivery service to TRAMO	-	US\$1,400
Freight (Pro-rated)	-	CI\$753.31
Insurance (Pro-rated)	-	CI\$480.61
Duty @ 22%	-	CI\$4,432.60
2 Nightstands purchase price	-	US\$2,600
Freight (Pro-rated)	-	CI\$54.18
Insurance (Pro-rated)	-	CI\$54.65
Duty @ 22%	-	CI\$504.42

44. The Plaintiff had purchased the Table from the vendor's showroom at a discounted price. To replace the Table the Plaintiff would have had to place an order with the manufacturer at a higher price plus incur the associated higher duty charges. The Plaintiff has instead purchased a replacement table which is similar to but not identical to the damaged Table.

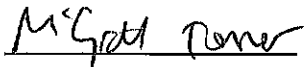
45. The damaged Nightstands were irreparable and so the Plaintiff purchased 2 nightstands to replace the damaged Nightstands. The replacements are exactly the same as the damaged Nightstands and the purchase price remained the same.

Interest

46. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (as Revised) on the damages found due in accordance with the rate prescribed by the Judgment Debts (Rates of interest) Rules (as amended) and for such period as the Court shall think fit.

AND THE PLAINTIFF claims:

1. Damages;
2. Interest in accordance with the Judicature Law (as Revised);
3. Costs;
4. Such further and other relief as this Honourable Court deems appropriate.



McGrath Tonner
Attorneys for the Plaintiff

**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 if acting in person.

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

2. A Defendant who states in his Acknowledgment 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 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 the 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

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.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO: OF 2020

BETWEEN:

MICHELE SCHILLING

PLAINTIFF

AND

NCI SERVICES LTD

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).....

Attorney for

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

McGrath Tonner
Attorneys at Law
5th Floor Genesis Building
Genesis Close
PO Box 446
George Town
Grand Cayman

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