

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2020

BETWEEN:

BRITISH CAYMANIAN INSURANCE COMPANY LTD

PLAINTIFF

AND:

COOLING PROS LTD.

FIRST DEFENDANT

AND:

NATHAN SEAN TRUMBACH-HERRON

SECOND DEFENDANT



WRIT OF SUMMONS

TO: **COOLING PROS LTD.** of PO Box 1697, KY1-1504, Grand Cayman, Cayman Islands.

AND TO: **NATHAN SEAN TRUMBACH-HERRON** of 52 Scholars Drive, Grand Cayman, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of BritCay House, 236 Eastern Avenue, P.O Box 74 GT, Grand Cayman, Cayman Islands in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 6th day of November 2020.

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form

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STATEMENT OF CLAIM

1. The Plaintiff is an insurance company incorporated in, and regulated by, the laws of the Cayman Islands.

The Policy

2. By a policy of insurance numbered 092122A00001, effective from 6 December 2018 to 5 December 2019 (**the Policy**), the Plaintiff, in consideration of a premium of CI\$441.00 (inclusive of Stamp Duty) agreed to provide commercial third party motor vehicle insurance to the First Defendant in respect of a Nissan Caravan motor vehicle, registration number 172 791 (**the Vehicle**).
3. On 6 December 2018 the Plaintiff, delivered to the First Defendant a certificate of insurance in accordance with the provisions of the Vehicle Insurance (Third Party Risks) Law (as amended).
4. The Plaintiff made the contract of insurance in reliance upon a Proposal form and declaration signed and made by the First Defendant on or around 3 December 2018 (**the Proposal**).

The Proposal and Subsequent Renewals

5. The Proposal completed by the Defendant was in the Plaintiff's standard form.
6. The Proposal form contained the following endorsement and declaration warning the First Defendant thus:

IMPORTANT: You must inform British Caymanian of all facts likely to influence the acceptance and rating of your proposal. If you withhold information, any policy subsequently issued may be declared to be void...

DECLARATION

I/We wish to effect and insurance with British Caymanian Insurance Company Limited. I/We declare that the above statements and particulars are complete and correct, and no material fact has been mis-represented, mis-stated or withheld. I/We agree that this proposal shall form the basis of the contract between me/us and British Caymanian and I/We agree to accept British Caymanian's usual form of policy for insurances of this nature. If this proposal has been written by anyone else that person is my agent for that purpose and not the agent of British Caymanian...

7. In the Proposal, the First Defendant answered the following question in Section C:

"Have you or any person who, to your knowledge, will drive the vehicle(s):

- 1. been convicted of any traffic offences in the last five years, or is an such prosecution pending? " (Question 1)*

in the negative by marking an "X" in a box labelled "No".

8. Later in Section C of the Proposal, the First Defendant was asked if any drivers of the Vehicle were under the age of the 25 and if so, to provide details of the drivers. The First Defendant answered this question affirmatively and went on to identify the Second Defendant, Nathan Sean Trumbach-Herron, as a person who fell into this category.
9. The First Defendant provided the Plaintiff with a copy of the Second Defendant's driving licence issued 28 September 2018.
10. In reliance upon the information provided by the First Defendant and payment of the premium calculated on the basis of this information, a policy of third party motor insurance was effected by the Plaintiff in respect of the Vehicle for the period effective from 6 December 2018 to 5 December 2019.
11. At the time the First Defendant completed the proposal and at the inception of the Policy he was aware and/or ought to have been aware of his positive obligations of disclosure to the Plaintiff in respect of any additional facts that were material to the risk they were underwriting.

12. Section 3, clause 10 of the terms of the Policy (**Section 3**) put the First Defendant on notice that he was required to inform the Plaintiff of any changes at any time to the information provided in the Proposal. It states:

"Section 3: General Conditions Which Apply to the Whole Policy

Material Alterations

(10) *If there is any material change during the Period of Insurance to any information which you previously disclosed to us, it is a condition precedent to our liability under this Policy that:*

- (a) *you must tell us immediately; and*
- (b) *without prejudice to General Condition (4), we will be entitled to increase or reduce the Premium and/or vary the terms, conditions or exclusions of this Policy in respect of the unexpired Period of Insurance to reflect the altered risk. If you are not sure whether a change is material, you should tell us."*

13. The First Defendant did not at any time inform the Plaintiff of any material changes to the information previously provided in the Proposal or of any additional facts relevant to the risk they were underwriting.
14. Accordingly, absent any such disclosures to the Plaintiff by the Defendant, the Proposal formed the basis of the contract of insurance between the Plaintiff and the Defendant.

Conviction

On 21 September 2017, in the Summary Court at George Town, Grand Cayman the Second Defendant was convicted of failing to provide a specimen of breath, using a vehicle with expired registration and using a vehicle without a certificate of roadworthiness. He was disqualified from driving between 21 September 2017 and 20 September 2018 and was fined for those offences (**the Conviction**).

15. In accordance with Section 52 of the Evidence Law (2019 Revision) the Plaintiff intends to adduce evidence of the Conviction at the trial of this action. The issue in the proceedings to which the Conviction is relevant, is set out below.

Material Non-Disclosure/False Representation

16. In the circumstances, the First Defendant's statement and representation of fact declared and warranted to be true and contained in the answer to Question 1 on the

Proposal, was incorrect, misleading and false at the time the Policy was effected on 6 December 2018.

17. The failure of the First Defendant to disclose to the Plaintiff the fact that the Second Defendant had been convicted of traffic offences for which he was disqualified from driving and fined in the 5 year period prior to the issue of the Policy constitutes a failure by the First Defendant to disclose material facts and/or a false representation of a material fact made to the Plaintiff's underwriters.
18. The First Defendant knew or ought to have known about the Conviction and failed to disclose it to the Plaintiff's underwriters. In so doing, he failed to disclose a material fact and/or misrepresented/falsely represented a material fact to the Plaintiff's underwriters.
19. The Plaintiff's underwriters agreed to effect and write the Policy and contract of insurance in reliance upon the answers in the Proposal which were warranted as true at the date of the Proposal. In so doing, they were induced to issue and underwrite the Policy and the contract of insurance by the First Defendant's material non-disclosure and/or false representation.
20. The material non-disclosure and/or false representation and/or misrepresentation of fact by the Defendant was material in that it influenced the judgment of the Plaintiff's underwriters and/or would have influenced the judgment of any prudent insurer in fixing the premium or determining whether to take the risk.
21. The Plaintiff's underwriters would not have underwritten the Policy and renewed the contract of insurance on the terms provided if they had been aware of the Conviction.
22. The First Defendant was in breach of his duty and obligation to disclose to the Plaintiff's underwriters all material facts in that he failed to disclose the Conviction.
23. In the circumstances, the Plaintiff is entitled to, and hereby does, avoid the Policy pursuant to Section 15(3) of the Vehicle Insurance (Third Party Risks) Law (2012 Revision) on grounds that the Policy was obtained by the Defendant by the material non-disclosure of the Conviction and/or the false representation of the material fact of the Conviction.

Contract Claim

24. Further or in the alternative, the Proposal contained the following declaration by the First Defendant:-

I/We wish to effect and insurance with British Caymanian Insurance Company Limited. I/We declare that the above statements and particulars are complete and correct, and no material fact has been mis-represented, mis-stated or withheld.

I/We agree that this proposal shall form the basis of the contract between me/us and British Caymanian and I/We agree to accept British Caymanian's usual form of policy for insurances of this nature. If this proposal has been written by anyone else that person is my agent for that purpose and not the agent of British Caymanian...

25. As a result of the declaration contained within the Proposal and signed by the Defendant as set out at paragraph 24 above, the statements made within the Proposal formed the basis of the contract between the Plaintiff and the First Defendant. In the premises, when the First Defendant answered Question 1 in the Proposal as set out at paragraph 7 above, he warranted that this was true.
26. The Plaintiff avers that as the First Defendant knew or ought to have known of the Conviction, he is in breach of this warranty. Accordingly, the Plaintiff is entitled to, and hereby does, rescind the contract. In the circumstances, the Plaintiff is entitled to avoid the Policy, and hereby does so.
27. Further or in the alternative, pursuant to Section 3 of the Policy, set out at paragraph 12 above, it was a condition precedent to the liability of the Plaintiff that the Defendant must inform it of any material changes to the information previously provided which occurred during the period of insurance.
28. The Plaintiff will aver that, by failing to inform it of the Conviction at any time or at all, the First Defendant failed to fulfil this condition precedent and the Plaintiff therefore is entitled to, and hereby does, rescind the contract.
29. As a result, and in the circumstances, the Plaintiff is therefore not liable to indemnify the first Defendant for any damage or loss caused by him during the course of his operating the Vehicle under the terms of the Policy, or at all.

Road Traffic Accident

30. On 4 July 2019 the Second Defendant was involved in a Road Traffic Accident (**the Accident**) with Mr. Leslie Kenneth Smith
31. Mr. Smith has alleged that he was injured and suffered loss and damage as a result of the Accident.

No Indemnity

32. By reason of all the matters set out above, the Plaintiff seeks and is entitled to a declaration that it is not required to indemnify the First Defendant or Second Defendant in respect of any claim for damages arising out of the Accident, nor to pay any sums pursuant to the Law pursuant to the terms of the Vehicle Insurance (Third Party Risks) Law (2012 Revision).

AND THE PLAINTIFF CLAIMS

- (1) A declaration that, the Plaintiff is and/or was entitled to avoid the Policy *ab initio* on grounds of material non-disclosure of relevant fact(s) and/or false representation of material fact(s) and/or breach of warranty;
- (2) Rescission of the Policy;
- (3) A declaration that the Plaintiff is not required to indemnify the First or Second Defendant in respect of any claim for loss or damage brought by Mr. Leslie Kenneth Smith arising out of the Accident, nor to pay any sums, pursuant to the Law pursuant to the terms of the Vehicle Insurance (Third Party Risks) Law (2012 Revision).
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems just.

DATED at Grand Cayman this 6th day of November 2020

Nelsons

Nelsons

Attorneys for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Nelsons Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 30069, Grand Cayman KY1-1201 Cayman Islands.

TO: The Clerk of the Grand Court

AND TO: The First Defendant
The Second Defendant

IN THE GRAND COURT OF THE CAYMAN ISLANDS

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PLAINTIFF

AND:

COOLING PROS LTD.

FIRST DEFENDANT

AND:

NATHAN SEAN TRUMBACH-HERRON

SECOND 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 intend 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 the Defendant

Address for service:

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

Nelsons
Attorneys at Law
PO Box 30069
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1201
Attn: C Flanagan/A Carver

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

[Empty box for Defendant's Attorney indorsement]

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

Notes for Guidance

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.