

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 164 OF 1998

BETWEEN:

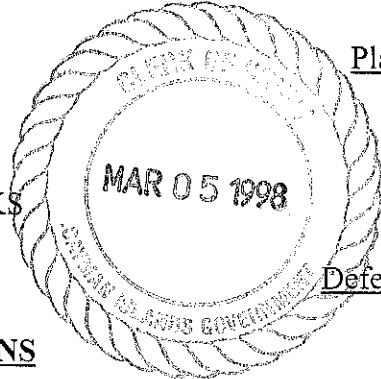
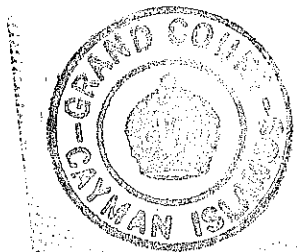
JAMES AUSTIN PIERCY

Plaintiff

- and -

STERLING EBANKS

Defendant



WRIT OF SUMMONS

TO: STERLING EBANKS

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 service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495GT, 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 of Service 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 4th day of March 1998.

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.

THIS WRIT was issued by Ian Boxall & Co., Attorneys at Law for the Plaintiffs, whose address for service is CIBC Financial Centre, PO Box 1234, George Town, Grand Cayman, Cayman Islands, B.W.I.

STATEMENT OF CLAIM

1. The Plaintiff is the owner of a business venture trading as Neptune's Realm Divers of P.O. Box 210, George Town, Grand Cayman ("Neptune's Realm"), carrying on the business of a watersports operator at North Church Street, George Town, Grand Cayman.
2. The Defendant is the owner of a boat known as "Miss H.D." ("the Boat") which he previously rented to the Plaintiff by *inter alia* an agreement in writing dated 13 May 1994 ("the Rental Agreement"). Neptune's Realm commenced trading in about June 1994, whereupon the Boat was engaged under the Rental Agreement in the course of Neptune's Realm's business.
3. The Plaintiff applied for and obtained work permits to employ Keith Keller and Lisa Keller (now known as Lisa McLean) who both commenced work for Neptune's Realm on May 9, 1994. At the commencement of their above employment, Lisa Keller and Keith Keller were married to each other. Lisa Keller was employed in the position of Book-keeper/Diver and Keith Keller was employed as Manager/Diver of Neptune's Realm. At all material times during his above employment, Keith Keller was responsible for managing the day-to-day business of Neptune's Realm.
4. Lisa Keller left the Plaintiff's employ in November 1995 and Keith Keller was dismissed on May 9, 1996 by reason, wholly or in part, of certain irregularities which the Plaintiff discovered in the accounting of Neptune's Realm's financial affairs during their period of employment.
5. In about April 1994 Keith Keller, in his capacity as manager of Neptune's Realm, purchased, for and on behalf of Neptune's Realm, a new Mercury outboard motor, model number 1-225422PD, serial number 0G001423 ("the Outboard Motor"). The Outboard Motor was purchased from Scott's Industries Ltd for the full sale price of C\$8,000.00 with funds provided by Neptune's Realm. Neptune's Realm paid the sale price for the Outboard Motor. The Outboard Motor was subsequently attached to the Boat for use as its principal means of locomotion.
6. It is an implied term of the Rental Agreement that Neptune's Realm would at all times retain legal and beneficial ownership of the Outboard Motor, which said ownership would not pass to the Defendant upon termination of the Rental Agreement or at any other time.
7. Neptune's Realm remains the legal and beneficial owner of the Outboard Motor.

8. On or about 29 June 1996 the Defendant wrongfully took and carried away the Outboard Motor without the Plaintiff's knowledge or consent. The Defendant has subsequently retained possession of the Outboard Motor to this date without the Plaintiff's consent and despite the Plaintiff's demands that it be returned to him.

Particulars of Special Damage

Value of the Outboard Motor CI\$8,000.00

AND THE PLAINTIFF CLAIMS damages for conversion:

- (1) Special damages in the amount of CI\$8,000.00.
- (2) General damages.
- (3) Pre-judgment interest at the rate of 7 3/8% per annum.
- (4) Post-judgment interest at the rate of 7 3/8% per annum or at such other rate or rates as may be fixed, from time to time, by law.
- (5) Payment by the Defendant of the Plaintiff's costs of the action.
- (6) Such further and/or other relief as may be just.

DATED this 17th day of March, 1998

Ian Boxall & Co.
IAN BOXALL & CO.
Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by Ian Boxall & Co., P.O. Box 1234, George Town, Grand Cayman, Attorneys-at-Law for the Plaintiff whose address for service is that of its said Attorneys-at-Law.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 164 OF 1998

BETWEEN:

JAMES AUSTIN PIERCY

Plaintiff

- and -

STERLING EBANKS

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 Delay may result in judgment being entered against notes for guidance carefully before completing this a Defendant whereby he may have to pay the costs form. If any information required is omitted or given of applying to set it aside. wrongly, THIS FORM MAY HAVE TO BE RETURNED.

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

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

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 Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Ian Boxall & Co. (Ref: JC) P. O. Box 1234 George Town Grand Cayman Tel: 949 9876 Fax: 949 9877

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

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Notes for Guidance
FIRST DEFENDANT

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 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.

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 sent by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495G, 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 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 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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 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 instalments or otherwise.

See over for notes for guidance.

Notes for Guidance
SECOND, THIRD AND FOURTH DEFENDANTS

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 28 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.