

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 429 OF 1998

BETWEEN:

ESSO STANDARD OIL S.A. LIMITED

Plaintiff

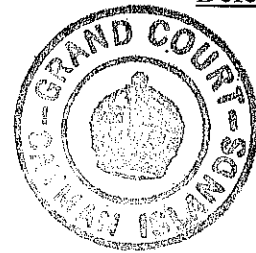
- and -



JOSE'S LIMITED
(f.k.a. Jose's Esso Limited and t/a
"Jose's Service Centre")

Defendants

WRIT OF SUMMONS



TO: Jose's Limited
P. O. Box 339, Crewe Road, George Town, Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the following pages.

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 15th day of July 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 Plaintiff, whose address for service is CIBC Financial Centre, PO Box 1234, George Town, Grand Cayman, Cayman Islands, B.W.I.

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STATEMENT OF CLAIM

1. The Plaintiff is a company incorporated under the laws of the Bahamas with its local offices at the Jackson Point Terminal, South Church Street, George Town, Grand Cayman. The Plaintiff and its predecessor companies have been engaged in the sale and distribution of petroleum products in the Cayman Islands since approximately 1915. The Plaintiff is currently licensed to operate in the Islands under the Local Companies Control Law.
2. The Defendant:
 - (a) was formerly known as Jose's Esso Limited and changed its name to Jose's Limited on 6th June 1996;
 - (b) formerly traded under the name "Jose's Esso Service Centre" and since June 1996 has traded under the name "Jose's Service Centre";
 - (c) is a Cayman Islands company with its registered office at P.O. Box 339GT, Grand Cayman, Cayman Islands;
 - (d) is the proprietor of the land described in the Cayman Islands Land Register as George Town East Registration Section, Block 20E, Parcel 293 ("the land");
 - (e) operates the well-known Esso petrol station on the land on the Crewe Road.
3. The Plaintiff and the Defendant entered into agreements in August 1998 to enable the Defendant to improve and develop the land and thereafter operate a petrol station on the land on the Crewe Road and for that station to be an Esso station for

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a period of 20 years should the Plaintiff so elect. The said agreements are as follows:

- (a) The lease dated 23rd August 1988 whereby the Defendant leased the land to the Plaintiff for the term of 10 years commencing on the 22nd August 1988 with option to renew for a further period of 10 years at the rent of US\$40,000 per annum payable yearly in advance (“the Headlease”).
 - (b) The sub-lease dated 23rd August 1988 whereby the Plaintiff sub-let the land to the Defendant for the term of 10 years from the 22nd August 1988 with option to renew for a further period of 10 years less one day at the rent of US\$12,000 per annum payable yearly in advance (“the Sub-lease”).
 - (c) The agreement dated 23rd August 1988 whereby the Plaintiff appointed the Defendant to be an Esso dealer for the sale of Esso products on the land for a period of ten years from 23rd August 1988 with such period to be automatically extended if the Defendant shall have exercised its option in the Sub-lease for the sub-leasing from the Plaintiff of the land for a further term of ten years [after the first such term] (“the Dealership Agreement”).
 - (d) The Debenture dated 23rd August 1988 whereby the Plaintiff as Lender agreed to loan to the Defendant as Borrower US\$565,000.00 to develop and improve the land repayable by monthly sums as shall amortize the principal and interest due over a period of 20 years, and the Borrower agreed to charge all its undertaking and property to secure the principal sum upon the terms covenants and conditions therein specified (“the Debenture”).
4. The Plaintiff duly registered the Headlease and paid stamp duty upon same amounting to C\$6,666.67 for the 20-year period thereof.
 5. By clause 4(f)(i) of the Headlease the Defendant had granted to the Plaintiff the option to renew the Headlease for a further term of 10 years from 22nd August 1998, such option to be exercised by the Plaintiff giving to the Defendant not less

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than 6 months notice in writing before midnight on 21st/22nd August 1998 of its [the Plaintiff's] intention to renew the Headlease for the further term.

6. The Plaintiff by Notices in writing to the Defendant dated 28th October 1997 and/or 22nd January 1998 notified the Defendant that its unilateral offer for an extension of the Headlease to midnight on 21st/22nd August 2008 was accepted and the Headlease was thereby so-extended and will now terminate automatically at midnight on 21st/22nd August 2008 by operation of clause 4(e) thereof.
7. By clause 4(g) of the Sub-lease the Plaintiff had granted to the Defendant the option to renew the Sub-lease for a further term of 10 years less one day from 22nd August 1998, such option to be exercised by the Defendant giving to the Plaintiff not less than 6 months notice in writing before midnight on 21st/22nd August 1998 of its [the Defendant's] intention to renew the Sub-lease for the further term.
8. The Defendant by Notice in writing to the Plaintiff dated 18th February 1998 notified the Plaintiff that its unilateral offer for an extension of the Sub-lease to midnight on 20th/21st August 2008 was accepted and the Sub-lease was thereby so-extended and will now terminate automatically at midnight on the 20th/21st August 2008 by operation of clause 4(f) thereof.
9. The Defendant has indicated by its attorneys, Giglioli & Co., in writing to the Plaintiff's attorneys that it intends to unlawfully breach the aforesaid agreements in August 1998:
 - (a) By letter of 18th February 1998 the Defendant by its attorneys repudiated the agreements and alleged they were unlawful, invalid and of no effect, expired in August 1998 and that the Defendant would have no further relationship with the Plaintiff after August 1998.
 - (b) The Plaintiff replied to the Defendant by letter of 9th March 1998 affirming the agreements despite the aforesaid repudiation thereof.

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- (c) By letter of 2nd April 1998 the Defendant's attorneys again stated that the Defendant regards the Headlease and Sub-lease as at an end with effect as of August of this year [1998].
 - (d) By letter of 7th May 1998 the Defendant by its attorneys again stated that it "would not be an Esso dealer as of August of this year" [1998].
10. The Plaintiff has not communicated acceptance of any of the aforesaid repudiatory [anticipatory] breaches to the Defendant and has by letters to the Defendant's attorneys dated 15th May, 25th June, 3rd July and 12th July 1998 affirmed the agreements and sought from the Defendant undertakings not to breach the agreements as threatened but to honour them until their expiration in August 2008. The Defendant has not given the undertakings sought or any undertaking and unless restrained by the Court threatens and intends to continue repudiating the Headlease and the Sub-lease and/or otherwise breach same in August 1998.
- 11.1 Further by clause 3(c) of the Sub-lease the Plaintiff agreed to allow the Defendant the use of "the Equipment" set out in the Schedule thereto including amongst other items the petrol pumps ["the dispensers"] at the station.
- 11.2 By clause B10 of the Dealership Agreement the Defendant agreed to permit the Plaintiff at all times to enter upon the premises for the purposes of . . . the installation, repair, maintenance, replacement and removal of the Equipment.
- 11.3 (a) By letter of 18th July 1997 the Defendant indicated that it wanted the dispensers at the station replaced.
- (b) By letter of 11th August 1997 the Plaintiff informed the Defendant that new dispensers had been ordered to replace the dispensers at the Defendant's station. The Plaintiff sought the Defendant's agreement:- (i) to the dispensers being replaced along with whatever other works are necessary to comply with current environmental regulations, (ii) not to interfere or obstruct the works, (iii) not to claim any lost profits said to flow from the replacement and associated works.

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- (c) By letter of 4th September 1997 the Plaintiff informed the Defendant that the new dispensers would be on the Island on or about 30th September 1997 and again asked for the Defendant's permission for the dispensers to be replaced and for Esso personnel to attend to take measurements in order to better plan the replacement works.
- (d) By letter of 1st October 1997 the Defendant was informed that the dispensers arrived on the Island on 30th September 1997 and permission for personnel to attend to measure for and to plan the replacement works was again sought.
- (e) By letter of 15th October 1997 the Defendant's permission to install the new dispensers was sought "by return".
- (f) By letter of 20th October 1997 the Defendant granted permission but limited only to Esso personnel attending to take measurements to plan the replacement works.
- (g) By letter of 22nd October 1997 the Plaintiff asked the Defendant to state by 24th October 1998 whether or not the Defendant would agree installation of the new dispensers.
- (h) By letter of 18th March 1998 the Plaintiff informed the Defendant's attorneys that its agents had attended at the station to install the new dispensers and the Defendant had refused to allow installation to commence.
- (i) By letter of 9th April 1998 the Defendant replied that it required a detailed study of the works to be carried out with an estimate of the disruption to the business during installation and until such study was received and reviewed in detail no renovations were to be permitted by the Defendant.
- (j) The said study was undertaken by the Plaintiff and the results provided to the Defendant by letter of 27th April 1998.

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- (k) The Defendant replied by letter of 7th May 1998 that it had failed to make itself "clear" when requesting the detailed study for detailed review in its letter of 9th April 1998: that those statements meant that the Defendant would not permit new dispensers to be installed.
- (l) By letters of 15th May, 25th June, 3rd July and 12th July 1998 the Plaintiff has sought confirmation that the Defendant was determined to refuse the Plaintiff agents access to the land for the purposes of replacing the loaned dispensers with new dispensers.

11.4 The Defendant in the premises has, in breach of clause 10 of the Dealership Agreement, obstructed the installation of new dispensers to replace the current dispensers and unless restrained by the Court threatens to continue to so breach the Dealership Agreement and obstruct the replacement of the dispensers.

And the Plaintiff claims:-

- (1) A declaration that the Headlease has been validly renewed by the Plaintiff and expires at midnight on the 21st/22nd August 2008.
- (2) A declaration that the Sub-lease and the Dealership Agreement have been validly renewed by the Defendant and expire at midnight on the 20th/21st August 2008.
- (3) An injunction restraining the Defendant whether by itself or by instructing or encouraging any other howsoever from breaching the Headlease, the Sub-lease or the Dealership Agreement or repudiating them by denying their validity, legality or enforceability in any way whatsoever.
- (4) An injunction restraining the Defendant whether by itself or by encouraging any other howsoever from preventing, obstructing or interfering in any way whatsoever with the installation of new dispensers and associated plant, machinery and materials by the Plaintiff or its agents on the land.

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- (5) Further or other consequential relief as the Court may determine.
- (6) Costs

Ian Boxall etc.

Ian Boxall & Co.
Attorneys for the Plaintiff

Dated this 15th day of July 1998.

This Statement of Claim is filed by Ian Boxall & Co., Attorneys for the Plaintiff, whose address for service is 3rd Floor, CIBC Financial Centre, P.O. Box 1234, George Town, Grand Cayman, Cayman Islands, B.W.I.