



Plaint

SUMMARY COURT AT GEORGE TOWN

Cause No. SC

of 2023

BETWEEN:

ANDRES CASTANO SIERRA  
&  
MAYA KROL ROGOWICZ

Plaintiffs

AND:

THE DIRECTOR OF CUSTOMS & BORDER CONTROL  
THE DIRECTOR OF PUBLIC PROSECUTIONS  
&  
THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Defendants

To the Defendant

Attorney General's Chambers  
4<sup>th</sup> Floor, Government Administration Building  
133 Elgin Avenue  
George Town  
P.O. Box 136  
KY1-90000

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 495GT, George Town, Grand Cayman, the accompanying Acknowledgment 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 defence** 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 defence, the Plaintiff may apply for a **default** judgment without any further notice to you.

Issued this 9<sup>th</sup> day of January 2023

See overleaf for the particulars of the Plaintiff's claim

**PARTICULARS OF CLAIM**

(Here set out in numbered paragraphs the grounds upon which the Plaintiff claims the Defendant is indebted to him or is liable to pay damages to him)

1. On 14<sup>th</sup> February 2022 the Plaintiffs were arrested by officers of the First Defendant on suspicion of being concerned in the importation of ganja. They were taken into custody, interviewed and denied all the allegations put to them.
2. The Plaintiffs were subsequently held in custody at the Prisoner Detention Centre for a period in excess of the 48-hours allowed by statute and were only released after their attorneys intervened. The reason given for not releasing/bailing the Plaintiffs immediately upon the expiration of their custody clock, was that they did not have a bail address in the Cayman Islands.
3. Each had their passports taken from them and they were eventually bailed on condition that they would not leave the Cayman Islands as per their itinerary. Faced with this reality, and with no ties to the Islands, the Plaintiffs checked into the Holiday Inn hotel whilst the First and Second Defendants considered their case, at a cost to them of USD 1,173.37 (CI \$978.05) for 6 nights.
4. Although the Plaintiffs had paid CAD \$2,306.91 to Air BnB for 7 nights' accommodation (10<sup>th</sup> – 17<sup>th</sup> February), they were only able to enjoy 3 nights before their arrest. They were not allowed to return to the apartment by the First Defendant and therefore lost out on enjoyment of 4/7s of the amount paid, or CAD \$1,318.23 (CI \$880.63).
5. Whilst awaiting a decision from the Defendants, the Plaintiffs spent \$649.84 on food (\$54.15 per Plaintiff per day) and \$154.40 on a week's car hire from Kman Auto.
6. During this period the Plaintiffs also incurred legal fees of \$400.
7. On 23<sup>rd</sup> February 2022, officers of the First Defendant registered charges 00240 & 00241 of 2022 with the Criminal Registry. These charges accused each of the Plaintiffs of possession of trace amounts of ganja.

8. When the charges came before the Summary Court, representations were made and a decision was taken by the Second Defendant not to offer any evidence on all charges faced by the two Plaintiffs.
9. Following their release, new flights to Toronto had to be booked at a costs of CAD 805.60 (CI \$538.80) as their scheduled flight had already departed some 6 days earlier.
10. In an effort to recover their out-of-pocket expenses incurred during their time on bail, the Plaintiffs instructed their attorneys to make an application for costs. In a ruling dated 15<sup>th</sup> July 2022, the Honourable Magistrate Gunn found that:
  - a. At the time of charging there were no reasonable grounds to suspect that the Plaintiffs had committed the offence with which they were ultimately charged;
  - b. The decision taken by the Second Defendant to prosecute the Plaintiffs was entirely unreasonable;
  - c. It was entirely appropriate for the Second Defendant to pay the Plaintiff's post-charge legal costs associated with the prosecution and the application for costs, however;
  - d. Pre-charge expenses are not recoverable under section 33(5) of the *Summary Jurisdiction Act* (costs), although;
  - e. The Plaintiffs were *'free to bring civil proceedings should they wish to attempt to recover their out-of-pocket expenses by other means.'*
11. Because of the reckless and ill-judged decision of the First Defendant to arrest and detain the Plaintiffs for 9 days (3 in custody, 6 on bail) and to not seek a fast-track ruling from the Second Defendant, the Plaintiffs suffered loss.
12. Because of the decision of the Second Defendant to recommend charges in circumstances where the test for prosecution was not met (only to offer no evidence), the Plaintiffs suffered loss.

AND the Plaintiff claims:

- 1 The sum of \$3,601.72
- 2 Interest in the sum of \$77.32 calculated at the prescribed rate from 14<sup>th</sup> February 2022 to date.
- 3 Costs to be assessed

Samson Law Associates

Plaintiff's Signature

Plaintiff's address for service

Samson Law Associates  
The White House  
20 Genesis Close  
George Town  
PO Box 2425  
KY1-1105

Cause No. SC

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BETWEEN:

<p>ANDRES CASTANO SIERRA</p> <p style="text-align: center;">&amp;</p> <p>MAYA KROL ROGOWICZ</p>
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Plaintiffs

AND:

<p>THE DIRECTOR OF CUSTOMS &amp; BORDER CONTROL</p> <p>THE DIRECTOR OF PUBLIC PROSECUTIONS</p> <p style="text-align: center;">&amp;</p> <p>THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS</p>
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Defendants

ACKNOWLEDGMENT OF SERVICE

1. State Defendant's name and address –

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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 not intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

**Service of the Plain is acknowledged accordingly.**

\_\_\_\_\_

Defendant's Signature

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023

See Overleaf

**PARTICULARS OF DEFENCE**

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

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Defendant's Signature

REMINDER – This form must be taken or sent to the Court Office, PO BOX 495, Grand Cayman KY1-1106 Cayman Islands within 14 days of receipt otherwise a default Judgment may be entered against you.