

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 528 OF 19 98

BETWEEN:

GORDON HEWITT

PLAINTIFF

-and-

RESORT SPORTS LTD.

DEFENDANT

WRIT OF SUMMONS

TO: Resort Sports Ltd.  
In care of Registered Office  
Myers & Alberga  
P.O. Box 472 GT  
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 495G, George Town, Grand Cayman, 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 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 2<sup>nd</sup> day of September 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.**

## STATEMENT OF CLAIM

1. The Plaintiff is the owner of a 14 foot "Islands Boat" boat and 15 horse power Mariner outboard motor (hereinafter collectively referred to as "the boat")
2. The Defendant is a resort and water sports operator incorporated pursuant to the laws of the Cayman Islands with a registered office in care of Myers & Alberga, P.O. Box 472GT Grand Cayman, Cayman Islands.
3. In November 1997, the Plaintiff and the defendant, through its agent or employee, Chip McLeod, entered into a verbal agreement for the renting of the boat on the following express or implied terms:
  - a. The Plaintiff would return the boat to the defendant for a period of one week;
  - b. The Defendant would pay the Plaintiff the sum of \$200.00 for the one week rental;
  - c. The Defendant would return the boat following the one week rental in good repair;
  - d. The Defendant would take all reasonable steps to ensure that the boat was kept from damage.
4. The Defendant paid the Plaintiff the \$200.00 and took possession of the boat on the above terms.
5. As of the date of this Statement of Claim, the boat has not been returned to the Plaintiff notwithstanding numerous requests by the Plaintiff and his attorneys.
6. The Defendant has:
  - a. Converted the boat to its own use;
  - b. Destroyed damaged or lost the boat; or
  - c. Otherwise become unable to deliver the boat to the Plaintiff in good repair or at all.
7. The Defendant has breached the said agreement as a result of the pleaded conduct.
8. Further and in the alternative, the Defendant has unlawfully converted the boat to either by committing the boat to its own use or by destroying or damaging it such that the boat cannot be returned to the Plaintiff.
9. Further and in the alternative, the Defendant has caused loss or damage to the boat by negligently permitting the loss or destruction of it while the boat was in the

Defendant's possession, power or control. The Plaintiff pleads and relies on the doctrine of *res ipsa loquitur*.

#### PARTICULARS OF NEGLIGENCE

- a. The Defendant failed to insure that the boat was properly cared for, secured while it was in the Defendants possession, power or control.
10. The boat has a value of \$5500.00.
  11. The Plaintiff has been deprived of his personal use of the boat since November of 1997.
  12. The Plaintiff has suffered loss or damage as a result of the above pleaded conversion, breach of contract and \ or negligence.

#### PARTICULARS OF DAMAGE

- a. Damages for the loss of the boat of \$5,500.00;
- b. Damages for the loss of the use of the boat since November 1997 in the sum of \$2000.00

#### AND THE PLAINTIFF claims:

1. Damages for breach of contract, negligence and \ or conversion in the sum of \$5,500;
2. Alternatively, an order that the Defendant deliver up possession of the said boat;
3. Damages for loss of use of the boat since November of 1997 in the sum of \$2000.00;
4. Interest;
5. Costs; and
6. Such further and other relief as this Honourable Court may deem just.

Dated September 1998



**COLLINS BROADHURST & FURNISS**  
Attorneys at Law for the Plaintiff

This Writ of Summons was issued by Collins Broadhurst & Furniss whose address for service is Collins Broadhurst & Furniss, Attorney-at-Law, P.O. Box 2503, George Town, Grand Cayman, Cayman Islands, British West Indies, Attorneys for the Plaintiff.

**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 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, G.T. 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 not endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). the defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 within 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 fourteen 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.

**Notes for Guidance**

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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 528 of 1998.

Between:

GORDON HEWITT

Plaintiff

- and -

RESORT SPORTS LTD.

Defendant

ACKNOWLEDGEMENT 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.*

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)  
Yes [ ] No [ ]

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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 [ ]

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Service of the Writ is acknowledged accordingly

(signed) \_\_\_\_\_

[Attorney] for

[Defendant in Person]

Address for service:

**Notes on address for service**

Attorney: where 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 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.*

COLLINS BROADHURST & FURNISS  
Attorneys-at-Law  
40 Linwood St.  
P.O. Box 2503, G.T.  
Grand Cayman  
Cayman Islands, B.W.I.

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