

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁵⁵² OF 1998

BETWEEN: (1) WENDY JANE KINGSHOTT

PLAINTIFF

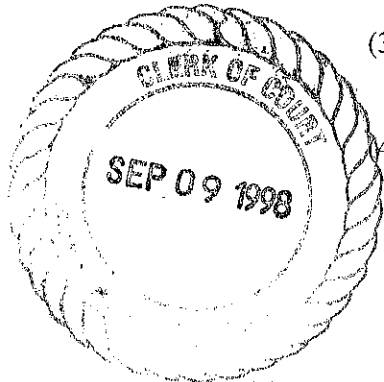
AND: (1) TREVOR DAVIES

(2) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS
(on behalf of the Government of the Cayman Islands)

(3) SPANISH DIVE & BEACH RESORT LTD OR ERNIE SMATT
(trading as Spanish Bay Reef Resort and Dive Shop)

(4) RESORT SPORTS LTD
(trading as Spanish Bay Reef Dive Shop)

DEFENDANTS



WRIT OF SUMMONS

TO: (1) TREVOR DAVIES
c/o P.O. Box 486 GT
(2) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS
(3) SPANISH DIVE & BEACH RESORT LTD AND/OR ERNIE SMATT
P.O. Box 472 GT
(4) RESORT SPORTS LTD
P.O. Box 472 GT

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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, P. O. Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service form stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated or if you return the Acknowledgment without stating therein an 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 ^{9th} 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.

INDORSEMENT

The Plaintiff's claim is for:

- (i) Damages for personal injuries, pain, suffering, loss of amenities and nervous shock caused by the negligence and/or breach of statutory duty and/or breach of contract of the Defendants arising out of an accident which occurred in the waters off Spanish Bay Reef Resort and Dive Shop in West Bay, Grand Cayman on 10th September, 1997;
- (ii) Special damages;
- (iii) Interest pursuant to s. 34(1) of the Judicature Law (1995 Revision) or as the Court sees fit;
- (iv) Costs.

In accordance with O.77 r.3, the Crown's liability is alleged to have arisen as a result of its vicarious liability for the tortious acts of Mr. Trevor Davies, an employee of the Department of the Environment, committed during the course of his employment and/or as a result of failure to adequately train and/or supervise the said employee and/or his activities and/or as a result of failure to properly equip and maintain the boat and equipment used by the said employee and/or to have in place adequate procedures for the avoidance of the said accident.

DATED this 9th day of September, 1998

W.S. Walker & Co
W. S. WALKER & COMPANY
Attorneys at Law for the Plaintiff

ISSUED by W. S. Walker & Company of P. O. Box 265, Caledonian House, George Town, Grand Cayman, Attorneys at Law for and on behalf of the Plaintiffs herein whose address for service is that of her said Attorneys at Law.

BETWEEN: (1) WENDY JANE KINGSHOTT
(Executrix of the Estate of Raymond Barry Kingshott) PLAINTIFF

AND: (1) TREVOR DAVIES
(5) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS
(on behalf of the Government of the Cayman Islands)
(6) SPANISH BAY DIVE & BEACH RESORT LTD OR ERNIE SMATT
(trading as Spanish Bay Reef Resort and Dive Shop)
(7) RESORT SPORTS LTD
(trading as Spanish Bay Reef Dive Shop) DEFENDANTS

**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 Defendants by whom or on whose behalf the service of the Writ of Summons is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (*tick where appropriate*)

yes no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceeding, 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 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 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.

W. S. Walker & Company
P.O. Box 265
Caledonian House
Mary Street
Grand Cayman

Ref: SC/as/B2-17031

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 495G, 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

Please complete overleaf

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 Court's 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 item.
8. A Defendant acting in person may obtain help in completing the form at the Court's office.