

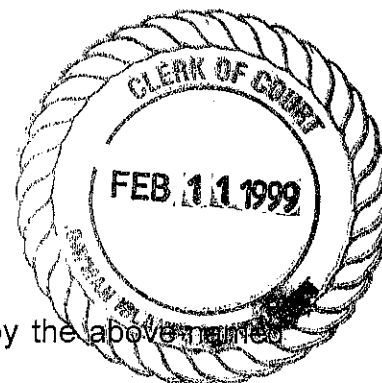
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 95 OF 1999

BETWEEN: CLIFTON ("PAPIE") CONOLLY PLAINTIFF
AND: DONALD THOMPSON DEFENDANT

WRIT OF SUMMONS

TO: DONALD THOMPSON
P.O. BOX 2281
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 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 Acknowledgement 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 11th day of February 1999.

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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

The Plaintiff's claim is against the Defendant for damages for misrepresentation and/or breach of contract and/or negligence.

PARTICULARS

1. The Plaintiff is a Caymanian building contractor and businessman and resides in George Town, Grand Cayman.

2. The Defendant is a Caymanian who owns and collects classic cars and also carries on a landscaping business known as Precision Landscaping. He resides in Savannah, Bodden Town, Grand Cayman.

3. In or about January 1996, the Plaintiff who was acquainted with the Defendant and knew that the Defendant purchased classic motor cars, expressed to the Defendant an interest in purchasing a 1962 Thunderbird Roadster. The Defendant represented to the Plaintiff that he could purchase such a vehicle for the Plaintiff in Florida, U.S.A., and import it to the Cayman Islands.

4. Relying on the Defendant's said representation, by an oral agreement made between the Plaintiff and the Defendant on or about 29th January, 1996, ("the

agreement”) the Plaintiff engaged the Defendant as an agent to purchase a 1962 Thunderbird Roadster for the Plaintiff.

5. Pursuant to the agreement, on or about the 29th January, 1996, the Plaintiff duly paid to the Defendant the sum of US\$16,000.00, by way of a deposit, to enable the Defendant to purchase for the Plaintiff a 1962 Thunderbird Roadster. The Defendant provided the Plaintiff with a receipt dated 29th January, 1996 acknowledging the said payment. The Defendant will refer to the said receipt at the trial of this action for its precise terms and legal effect.
6. It was an express or implied term of the agreement that the Defendant should as and when requested by the Plaintiff so to do, render the Plaintiff a full and accurate account as to the use by him of the said sum of US\$16,000.00.
7. Further, it was an implied term of the agreement, implied in order to give business efficacy to the same and/or by virtue of the relationship between the parties, that the Defendant would comply with the Plaintiff's instructions; further or in the alternative that he would use all reasonable endeavours and/or all due care and skill in so doing; further or in the alternative, that the vehicle should be reasonably fit for the purpose for which the Plaintiff required it, namely for his personal use and that the vehicle should be of merchantable

quality; further or in the alternative the Defendant owed to the Plaintiff a duty of care to the same effect.

8. Negligently and/or in breach of the agreement the Defendant did not comply with the Plaintiff's instructions. Further or in the alternative, the Defendant negligently and/or in breach of the agreement failed to use all reasonable skill and diligence in purchasing for the Plaintiff a 1962 Thunderbird Roadster in good condition; further/or in the alternative, the Defendant negligently and/or in breach of the agreement failed to provide the Plaintiff with a 1962 Thunderbird Roadster which was reasonably fit for the purpose intended or of merchantable quality.

Particulars

The 1962 Thunderbird Roadster purchased by the Defendant was not of merchantable quality and not reasonably fit for the purpose intended in that, *inter alia*,

- (1) the front end, i.e. steering controls, was defective
- (2) the wipers and indicators were inoperable
- (3) the carburettor required rebuilding
- (4) the exhaust manifold leaked
- (5) the paint finish was of poor quality and the vehicle required to be repainted.

9. The 1962 Thunderbird Roadster purchased by the Defendant for the Plaintiff was essentially a write-off in that the costs of remedying the said defects exceeded its value. In the premises, the Plaintiff was entitled to reject it and did so verbally and is, therefore, entitled to recover from the Defendant the said US\$16,000.00 referred to in paragraph 5 hereof.

10. Alternatively, the Defendant has repudiated the agreement and the Plaintiff has by verbally rejecting the vehicle presented to him, accepted that repudiation. In the premises, the Plaintiff is entitled to recover the said sum of US\$16,000.00 as damages for repudiation of the contract.

11. Further and in the alternative, there has been a total failure of consideration and the Plaintiff is entitled to the return of the said US\$16,000.00.

12. Despite demands in writing from the Plaintiff on 3rd October, 1996 and 23rd February, 1998, the Defendant has failed to deliver to the Plaintiff a 1962 Thunderbird Roadster of merchantable quality which is fit for the purpose intended, or to return to the Plaintiff the said sum of US\$16,000.00, or to account for the use of the said US\$16,000.00.

13. The Plaintiff also claims interest on the sum due pursuant to the Judicature Law,(1995 Revision) the particulars of which are set out below:

Particulars of Interest

<u>Date</u>	<u>Debt Outstanding for at least 30 days</u>	<u>Days Debt Due</u>	<u>Interest Due at Unit Date</u>
29/2/96 - 31/1/98	16,000.00	731 days 7.38% p.a.	@ 2,366.64
1/2/98 - 29/1/99	16,000.00	360 days 7.18% p.a.	@ 1,143.45

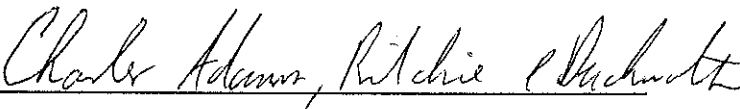
14. By reason of the aforesaid, the Plaintiff has suffered loss and damage.

AND THE PLAINTIFF CLAIMS:

- (I) Damages for breach of contract and/or misrepresentation.
- (II) The return of the said sum of US\$16,000.00.
- (III) An accounting by the Defendant with respect to the sum of the said US\$16,000.00.
- (IV) Pre-Judgment interest at the rate of 7 3/8% per annum up to the 31st January, 1998; thereafter at the rate of 7 1/8% per annum or at such other rate as may be determined from time to time under the provisions of Section 34 Judicature Law (1995 Revision).
- (V) The amount of interest accruing each day thereafter is US\$3.15.

- (VI) Post-Judgment interest at the rate of 7 1/8% per annum or at such other rate as may be determined from time to time.
- (VII) Further and/or other relief.
- (VIII) Costs.

If, within the time for returning the Acknowledgement of Service, the Defendant pays the total amount claimed of US\$16,000.00 (together with interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.



CHARLES ADAMS, RITCHIE AND DUCKWORTH
Attorneys -at- Law for the Plaintiff

THIS WRIT and STATEMENT OF CLAIM was issued by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is P.O. Box 709, Zephyr House, Mary Street, George Town, Grand Cayman, British West Indies.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 95 OF 1999

BETWEEN: CLIFTON ("PAPIE") CONOLLY PLAINTIFF

AND: DONALD THOMPSON DEFENDANT

ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

Important. Read the accompanying direction 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 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

Address for Service:

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 Plaintiff's attorney (or by Plaintiff is suing in person) of his name, address and reference, if any, in the box below.

Charles Adams, Ritchie &
Duckworth
PO Box 709
Mary Street, Zephyr House
George Town,

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

Filed by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is that of its said Attorneys-at-Law, P.O. Box 709, Zephyr House, Mary Street, George Town, Grand Cayman, B.W.I.

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 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 serve 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.