

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 18 / OF 2001

B E T W E E N:

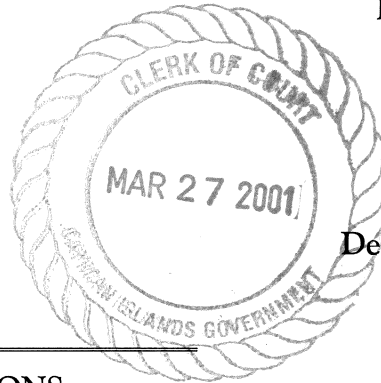
DYOLL INSURANCE COMPANY LIMITED

Plaintiff



AND

COLIN MOHAMMED



Defendant

WRIT OF SUMMONS

To: Colin Mohammed
P.O. Box 113 Savannah
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 495 GT, 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 day of March 2001

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

1. The Plaintiff is a Jamaican corporation with its principal place of business at 40-46 Knutsford Boulevard, Kingston, Jamaica, which acts through its agents, Cayman Insurance Centre Limited which is incorporated in the Cayman Islands and has its principal place of business at Cayman Business Park, Huldah Avenue, Grand Cayman. The Plaintiff is a licensed insurance company and issued a policy of motor vehicle insurance to the Defendant.
2. The Defendant is and was at all material times a major male, resident in Savannah, Grand Cayman. The Defendant was at all material times the registered owner and driver of a 1984 Nissan 300ZX motor vehicle with registration number 21298 in respect of which a policy of motor vehicle insurance was issued by the Plaintiff.
3. On 23 December 1999, the Defendant completed a proposal form for the purpose of obtaining insurance cover by the Plaintiff for the use of his aforesaid vehicle. Under Section 6(g) of the Proposal, in answer to the question: "Has he [proposer] been convicted during the past five years of any offence in connection with any vehicle?", the Defendant answered "No" and indicated as inapplicable Section 6(h) requiring details of any such offence. The Defendant further executed the Proposal under his usual signature, making the declaration and warranty that the statements contained in the Proposal were true and complete and agreeing that the Proposal and declaration would form the basis of the contract of insurance. The Plaintiff learned some nine months later that the Defendant had within the relevant time been convicted of three offences of: Using a vehicle with an expired registration; Using a vehicle without a certificate of roadworthiness; and Driving without insurance.
4. On the strength of such Proposal the Plaintiff Insurers issued a private third party motor vehicle insurance policy and certificate of insurance to the Defendant dated 23 December 1999 and expressed to expire on 22 March 2000. The Policy incorporated the answers and terms of the Proposal as material terms and

conditions of the Policy, stating that these were conditions precedent to any liability of the Plaintiff under the Policy.

5. On 10 January 2000 at approximately 10:45 p.m., the Defendant, driving his vehicle, came around a corner on Crewe Road where a certain Mr. Vince Christian was standing to the front of a stationary broken-down vehicle. The Defendant's vehicle collided with the rear of the broken-down vehicle which in turn struck Mr. Christian causing him severe injuries from which he subsequently died. It was subsequently determined that the Defendant was driving under the influence of alcohol at the time of the accident.
6. Following the accident, the Defendant was arrested and tried for the offence of "Causing death by driving a vehicle whilst intoxicated". He was convicted and sentenced by Justice Sanderson on 7 August 2000 to 15 months in prison.
7. Having learned of the fatal accident, the Plaintiff made frequent attempts through its agents to contact the Defendant, and urged him in writing to report the details of the accident as soon as possible in compliance with the terms of the insurance policy. To date, the Plaintiff has received no communication from the Defendant, in breach of condition 4 of the said Policy.
8. The Plaintiff, through its local agents, then conducted its own investigations into the potential claim, from which it learned that the Defendant had been convicted in or about July 1997 for the offences of Using a vehicle with an expired registration; Using a vehicle without a certificate of roadworthiness; and Driving without insurance, as a result of which the Defendant's driving licence had been suspended for 1 year and only reinstated on October 1999, some two months prior to the Defendant's Proposal for insurance.
9. The Plaintiff intends to rely, so far as may be necessary, upon the aforesaid convictions of the Defendant before the Summary Court of the Cayman Islands on or about 22 October 1998. The said convictions are relevant to the issue of misrepresentation and non-disclosure under the Contract of Insurance, and the

Plaintiff proposes to rely on all or any documents relevant to the conviction, under the provisions of Section 39 of the Evidence Law (1995 Revision).

10. On 29 December 2000, Claudia Welds in her capacity as Administratrix of the Estate of Vince Christian, the deceased, issued a Writ in the Grand Court of the Cayman Islands under Cause 931 of 2000, seeking damages under the Torts (Reform) Law and Estate Proceedings Law against the Defendant for negligently causing the death of the deceased. Notice was given to the Plaintiff of the proceedings by the Administratrix on 5 January 2001.
11. Under the terms of Section 15(1) and (3) of the Motor Vehicle Insurance (Third Party Risks) Law (1997 Revision), the Plaintiff remains liable as insurer for the Defendant unless the Plaintiff proceeds to obtain a Court declaration that it was entitled to avoid the Policy on the ground that it was obtained by the non-disclosure or misrepresentation of a material fact.
12. The Plaintiff is entitled to such a declaration by the Court on the following grounds:

PARTICULARS OF MISREPRESENTATION/NON-DISCLOSURE

- a. The Policy of Insurance was issued on reliance by the Plaintiff on the truth of the representations made by the Defendant in the Proposal which were warranted to be true and complete and such representations and statements were expressly incorporated into the Policy of Insurance and expressed to be conditions precedent to any liability of the Plaintiff under the Policy;
- b. The representations made by the Defendant in the Proposal were false in certain material particulars, namely, the aforementioned denial of any prior conviction during the previous five years of any offence in connection with any vehicle, and which the Defendant knew to be false;
- c. Further and/or alternatively, the Defendant failed to disclose facts material to the making of a contract of insurance in breach of his duty of utmost good faith and of the implied terms of the Contract of Insurance, by failing to disclose details of his

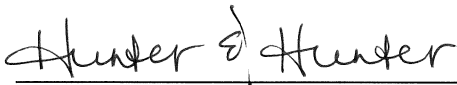
prior convictions for Using a vehicle with an expired registration, Using a vehicle without a certificate of roadworthiness, and Driving without insurance or the suspension of his driving licence which had only very recently been reinstated;

- d. Such misrepresentations and/or non-disclosures were fraudulent and material to the Contract of Insurance, being of such a nature as to influence the judgement of a prudent insurer in determining whether he would take the risk insured against, and if so, at what premium and on what conditions.

WHEREFORE THE PLAINTIFF claims against the DEFENDANT:

- a. A declaration under Section 15(3) of the Motor Vehicle Insurance (Third Party Risks) Law (1997 Revision) that the Plaintiff is and was at all material times, apart from any provision contained in the Policy, entitled to avoid the Policy on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular;
- b. An order that the Plaintiff is under no liability to indemnify the Defendant in respect of any damages or costs which may be awarded against him in the action brought against the Defendant by the Administratrix under Cause No. 931 of 2000;
- c. Costs;
- d. Such further or other relief as the Court may deem just.

Dated this 27 day of March 2001



Hunter & Hunter
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And To: Colin Mohammed
P.O. Box 113 Savannah
Grand Cayman

THIS WRIT was issued by Hunter & Hunter, Attorneys-at Law for the Plaintiff whose address for service is that of their said Attorneys, namely 75 Fort Street, The Huntlaw Building, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref JST/02744.029).

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 GT, George Town, 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 indorsed on the Writ (i.e. the words of "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 Acknowledgement of Service, that he intends to apply for stay, execution will be stayed for 14 days after his Acknowledgement, 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 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 Write 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: 181 OF 2001

B E T W E E N:

DYOLL INSURANCE COMPANY LIMITED

Plaintiff

AND

COLIN MOHAMMED

Defendant

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.

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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

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

[Defendant in person]

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 if suing in person) of his name, address and reference, if any, in the box below.

Hunter & Hunter P.O. Box 190 GT The Huntlaw Building 75 Fort Street
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Grand Cayman (Ref: JST/02944.029)

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