

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 451 OF 2002

BETWEEN:

ESSO STANDARD OIL SA LIMITED

Plaintiff

AND:

COAD LIMITED

Defendant

WRIT OF SUMMONS

TO: COAD LIMITED, Bodden Corporate Services, Grand Pavillion, West bay Road.

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, PO Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 28th day of June, 2002.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

Esso v COAD

STATEMENT OF CLAIM

1. By a lease made 6th December 2001 (“the Third Lease”), the Plaintiff demised to the Defendant the property (a petrol station) known as parcel 250 of block 14C of the George Town Registration Section of Grand Cayman (“the station”) for a term of 1 year and 3 months from 1st September 2001. Under the said lease the Defendant agreed to pay to the Plaintiff the following:
 - (a) An annual rent of CI\$74,400.00 payable by equal monthly installments of CI\$6,200.00 in advance on or about the 1st day of each month.
 - (b) Monthly Advertising Fees and Service Fees (“Fees”) to be calculated as per the Convenience Store Agreement at Appendix A to the Lease.
 - (c) A minimum monthly payment on the 25th of each month commencing 25th January 2002 of CI\$15,000 towards a total continuing debt consisting of
 - (1) CI\$167,193.82 owed by the Defendant to the Plaintiff as at 6th December 2001 and
 - (2) the continuing obligations under (a) and (b) above.
2. The Defendant paid the first minimum monthly payment of CI\$15,000 on 25th January 2002.
3. Clause 9.1 of the lease dated 17th August 1999 (“the First Lease”) as incorporated into the Third Lease contained a proviso for re-entry in the events (among others) that any amount owed to the Plaintiff under the Third Lease was not paid within 7 days after delivery of notice in writing requiring payment or if the Defendant was in breach of any other agreement it has with the Plaintiff. The Plaintiff further relies upon its right of forfeiture set out in section 55 of the Registered Land Law (1995 Revision).

Esso v COAD

4. On 1st March 2002 the Plaintiff's attorneys served on the Defendant a written demand that the minimum payment of CI\$15,000 due on 25th February 2002, that was not paid that day or at all, be paid within 7 days. The Defendant failed to pay any sum to the Plaintiff.
5. The Defendant further failed to pay the minimum payments of CI\$15,000 due on 25th March, April and May 2002 save for a payment of CI\$4,433.12 (being April's Fees) in May 2002.
6. Further the Defendant from the date of the Third Lease (6th December 2001) made no payments of rent or Fees as they fell due save for the said payment of the April 2002 Fees in May 2002 set out in paragraph 5 above.
7. The Plaintiff accordingly on 14th June 2002 served on the Defendant Notice under section 56 of the Registered Land Law (1995 Revision) requiring the Defendant to pay the total of the minimum monthly payments then in arrears of CI\$55,577.88.
8. The Defendant has failed to comply with the said Notice.
9. The Defendant has since service of the said Notice tendered to the Plaintiff two payments of CI\$6,200.00 which the Plaintiff accepted to be held (and the said CI\$12,400.00 is held) by its attorneys on account of *mesne* profits.
10. Arrears/debts due to the Plaintiff from the Defendant under or evidenced by the Third Lease at the date hereof are as follows:

(a) <u>Arrears of Rent</u> : 7 months' from December 2001 to June 2002 inclusive	CI\$ 43,400.00
(b) <u>Arrears of Fees</u> : for months of December 2001, January, February, March, May 2002	CI\$ 24,030.02
(c) <u>Old Debt</u> : CI\$167,193.82 as set out in clause 3.1 of the Third Lease less CI\$15,000 paid in January 2002	<u>CI\$ 152,193.82</u>
Total	<u>CI\$ 219,623.84</u>

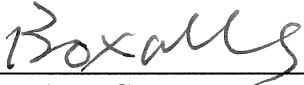
Esso v COAD

11. In the premises the Plaintiff is entitled to forfeit and hereby forfeits the said Third Lease.
12. The fair letting value of the station is CI\$6,200 per month (CI\$203.84 per day).
13. Further the Plaintiff is entitled to and claims interest on the said sums, totalling to CI\$219,623.84, under section 34 of the Judicature Law (1995 Revision) at the rate of 4.5% per annum from the date hereof and continuing at the daily rate of CI\$ 27.08 until judgment herein or sooner payment.

AND THE PLAINTIFF CLAIMS:

- (1) Possession;
- (2) CI\$219,623.84;
- (3) Mesne profits at the rate of CI\$6,200.00 per month from the date of service of the writ herein until possession is delivered up;
- (4) Interest as aforesaid;
- (5) Such further or other relief as is just;
- (6) Costs and the fees paid to issue this writ of CI\$1,648.12

Dated this 28th day of June 2002



BOXALLS
Attorneys-at-Law for the Plaintiff

This Writ and Statement of Claim was issued by Boxalls whose address for service is: PO Box 1234 GT, 3rd Floor, Queensgate House, South Church Street, Grand Cayman, British West Indies (Reference: 0573-0021 JCC).

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2002

BETWEEN:

ESSO STANDARD OIL SA LIMITED

Plaintiff

AND:

COAD LIMITED

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.

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

COAD Limited

2. State whether the Defendant intends to contest or otherwise participate in 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 of Summons is acknowledged accordingly.

Attorney for the Defendant

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 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.

Boxalls Attorneys-at-Law PO Box 1234GT George Town Grand Cayman, Cayman Islands British West Indies (Reference:)
--

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

--

**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 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 of 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 his 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.