

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 877 OF 2002

BETWEEN:

MITCHELL VANCE HURLSTON

Plaintiff

- and -

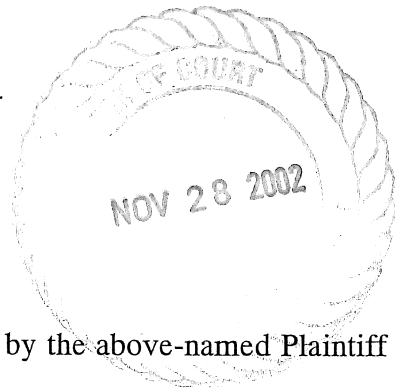
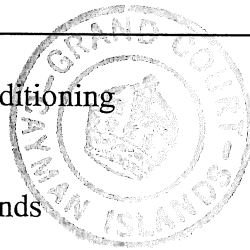
LEROY EBANKS

(trading as **WHEELS COOLING AND AIR CONDITIONING**)

Defendant

WRIT OF SUMMONS

TO: Wheels Cooling and Air Conditioning
P.O. Box 873
Elgin Avenue
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 fourteen (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 495GT, Grand Cayman, Cayman Islands, 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 28 day of November, 2002

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 issued unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Services are given with the accompanying form.

STATEMENT OF CLAIM

1. At all material times the Plaintiff was the owner of a recently purchased Silver 1995 Honda Integra automobile, Chassis NO. DB6-1023211, (the "Plaintiff's car") which he purchased on or about April 17, 2002.
2. At all material times the Defendant was a car garage proprietor carrying on business as a restorer of malfunctioning air conditionings to their proper working order among other activities at premises situated at P.O. Box 873, Grand Cayman, Cayman Islands.
3. On or about July 19, 2002 it was agreed between First Choice Ltd., on behalf of the Plaintiff and the Defendant that for a fee of CI\$550.00 the Plaintiff would deliver his car to the Defendant, at premises situated at P.O. Box 873, Grand Cayman, Cayman Islands in order that the Plaintiff's car's malfunctioning air-conditioning might be fixed by the Defendant and thereafter the Plaintiff's car would be returned to the Plaintiff.
4. At all material times the Plaintiff was entitled to immediate possession of his car.
5. The express and or implied terms of the agreement were that:
 - (a) The Defendant would keep the Plaintiff's car reasonably safe on the premises for the entire period that the Integra was on the premises and in the care and control of the Defendant.
 - (b) The Defendant would fix the Plaintiff's car's air-conditioning, in a timely manner or, that is to say, remove and reinstall the air compressor, among any other necessary repairs ancillary to the air-conditioning, so that the air conditioning would be returned to working order.
6. Pursuant to the said agreement, on or about July 19, 2002 the Plaintiff delivered his car to the Defendant for the said purposes and on such terms as aforesaid. In the premises as and from the July 19, 2002 the Defendant became a bailee for reward of the Plaintiff's car.
7. In breach of the agreement and/or his duty as a bailee for reward of the Plaintiff's car, the Defendant failed to take reasonable care of the same but rather whilst in the Defendant's possession the Plaintiff's car was effectively destroyed by fire, whereby the Plaintiff has lost the same and has suffered loss and damage. The Plaintiff relies upon the fact of the fire and damage to his car whilst the same was

in the Defendant's possession as a bailee for reward to establish the Defendant's liability and in any event says res ipsa loquitur.

8. The Plaintiff was forced to pay CI\$1692.60 on renting a replacement car as a result of no longer having his car.

PARTICULARS OF LOSS

- i. The value of the Plaintiff's car was CI\$6000.00
 - ii. Cost of the temporary renting of another car CI\$1692.60
- 9 In addition, the Plaintiff claims pre-judgment and post judgment interest as prescribed by the Judicature Law (1995 Revision) and the Judgment Debts (Rates Rules of Interest) Rules. The total interest as if November 14, 2002 amounts to CI\$75.05 increasing at a per diem rate of CI\$.95.

And the Plaintiff Claims,

1. Damages in the amount of CI\$6000.00 for loss and damage to the car;
2. Damages in the amount of CI\$1692.00 for having to rent another car;
3. In addition, the Plaintiff claims pre-judgment and post-judgment interest as prescribed by the Judicature Law (1995 Revision) and the Judgment Debts (Rates Rules of Interest) Rules. The prescribed rate of interest pursuant to the Judicature Law from August 30, 2002 to the present is 4.5%. The total amount of interest claimed pursuant to the Judicature Law as of November 25, 2002 is CI\$100.00 increasing at a pre diem rate of CI\$0.95.
4. Costs.

Dated the 25th day of November, 2002


BROADHURST DaCOSTA
Attorney-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim is filed by Broadhurst DaCosta, Attorneys-at-Law for the Plaintiff whose address for service is 40 Linwood Street, P.O. Box 2503 GT, Grand Cayman, Cayman Islands.

INDORSEMENT

The amount claimed in respect of the debt is CI\$7692.60 as principle and CI\$100.00 as interest as of November 25, 2002 for a total amount of CI\$7792.60. The amount of the fixed costs is CI\$250.00 and the costs of issuing the Writ of Summons is CI\$150.00. If within the time for returning the Acknowledgement of Service, the Defendant pays the Plaintiff or its Attorneys-at-Law the total amount claimed in principal and interest, the fixed costs and the costs of issuing the Writ of Summons, further proceedings will be stayed. The money must be paid to the Plaintiff or to its Attorneys-at-Law.

STATEMENT REGARDING INTEREST

1. The date from which the interest accrued was August 30, 2002.
2. The prescribed rate of interest pursuant to the Judicature Law (1995) Revision and the Judgment Debts (Rules of Interest) Rules from August 30, 2002 to November 1, 2002 was 4.5%. There were a total of 88 calendar days in this period. The total amount of interest claimed in this period is CI\$100.00 increasing at a pre diem rate of CI\$0.95.

**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, PO Box 495, 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 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 not 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 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 judgement 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 fourteen (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 installments 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 fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

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BETWEEN:

MITCHELL VANCE HURLSTON

Plaintiff

- and -

LEROY EBANKS
(trading as WHEELS COOLING AND AIR CONDITIONING)

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.

 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:

Please see over leaf...

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 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.

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

**BROADHURST DaCOSTA
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503 GT
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, BWI**

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