

IN THE GRAND COURT OF THE CAYMAN ISLANDS

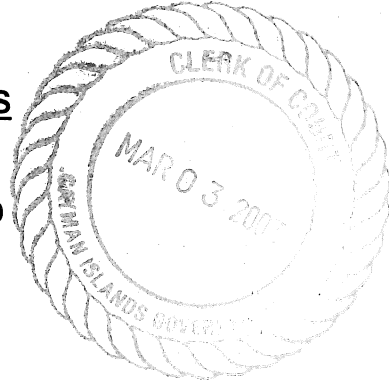
135  
CAUSE NO. OF 2003

**BETWEEN: MONICA SMITH** PLAINTIFF  
**AND: (1) CAYMAN ECONOMY CARS LIMITED**  
**(2) BRITISH CAYMANIAN INSURANCE COMPANY LIMITED** DEFENDANTS

WRIT OF SUMMONS

**TO: CAYMAN ECONOMY CARS LIMITED**  
Truman Bodden & Co.  
P.O. Box 866GT,  
Attorneys-at-Law

**AND TO: BRITISH CAYMANIAN INSURANCE COMPANY LIMITED**  
P.O. Box 74 GT,  
Grand Cayman,  
Cayman Islands.



**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claims 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 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 3<sup>rd</sup> day of March, 2003.

**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 the order of the Court.

**IMPORTANT**

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

**INDORSEMENT**

The Plaintiff's claim is for the sum of CI\$13,500.00 together with loss and damage as set out in paragraph 18 of Claim set out hereunder arising from the breach of contract of sale of a new 1999 Toyota Tercel DLX motor vehicle, ("the Vehicle") and/or pursuant to a contract of insurance with respect to the Vehicle.



**Charles Adams, Ritchie & Duckworth**  
**Attorneys-at-Law for the Plaintiff**

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

BETWEEN: MONICA SMITH

PLAINTIFF

AND: (1) CAYMAN ECONOMY CARS LIMITED

(2) BRITISH CAYMANIAN INSURANCE COMPANY LIMITED

DEFENDANTS

**ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS**

Important. Read the accompanying Delay may result in judgment being direction and notes for guidance entered against a Defendant whereby carefully before completing this form. If he may have to pay the costs of any information required is omitted or applying to set it aside. given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

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

Charles Adams, Ritchie & Duckworth  
PO Box 709 GT  
George Town, Grand Cayman  
Cayman Islands

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]

[Empty box for Defendant's Attorney indorsement]

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 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 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.            OF 2003**

**BETWEEN:    MONICA SMITH**

**PLAINTIFF**

**AND:**

**(1) CAYMAN ECONOMY CARS LIMITED**

**(2) BRITISH CAYMANIAN INSURANCE  
COMPANY LIMITED**

**DEFENDANTS**

**STATEMENT OF CLAIM**

1. The Plaintiff is a resident of the Cayman Islands and is employed as a Teacher's Aide at Triple C School.
2. The 1<sup>st</sup> Defendant is an ordinary resident company, incorporated in the Cayman Islands under the Companies Law on 16<sup>th</sup> August 1972 with registered office at P.O. Box 866 George Town, Grand Cayman. The 1<sup>st</sup> Defendant is licensed and authorized to conduct the business of, *inter alia*, motor vehicle sales and operates from its premises at 514 Walkers Rd., George Town, Grand Cayman. At all material times the 1<sup>st</sup> Defendant operated under a franchise from Toyota authorizing it to import, sell and otherwise deal with Toyota motor vehicles imported into the Cayman Islands.
3. The 2<sup>nd</sup> Defendant is an insurance company registered under the laws of the Cayman Islands and holding a Class A Insurance Licence authorising it to carry on insurance business in or from within the Cayman Islands.

### The Plaintiff's Claim Against the 1<sup>st</sup> Defendant

4. By an oral agreement made on or about the 9<sup>th</sup> September 1999 the 1<sup>st</sup> Defendant agreed to sell to the Plaintiff a new 1999 Toyota Tercel DLX motor vehicle, identification number EL5OR-AEHDS (model) and EL50-0096685 (frame number), ("the Vehicle"), for the price of CI\$13,500.00, ("the Purchase Agreement").
5. The purchase price was raised through a loan obtained by the Plaintiff from Cayman National Bank & Trust Company Ltd., ("CNB") for CI\$7,000.00 and the difference of CI\$6,500.00 was taken from the Plaintiff's savings.
6. In pursuance of the Purchase Agreement, on the 18<sup>th</sup> September, 1999 the 1<sup>st</sup> Defendant delivered the Vehicle to the Plaintiff in consideration of which the Plaintiff had paid the sum of CI\$13,500.00.
7. It was an implied condition of the Purchase Agreement that the car should be reasonably fit for the purpose for which the Plaintiff required it, namely for driving on the roads. The following were also implied conditions of the Purchase Agreement:
  - (i) that the Vehicle should be of merchantable quality;
  - (ii) that the Vehicle should be of satisfactory quality;
  - (iii) that the Plaintiff should have and enjoy quiet and uninterrupted possession of the Vehicle.
8. In breach of the Purchase Agreement, the Vehicle was not reasonably fit for the purpose for which it was required nor was it of merchantable or satisfactory quality.

### Particulars

Whilst driving the Vehicle in an easterly direction in the vicinity of Pease Bay, one of the rear tyres on the Vehicle blew out causing the Plaintiff to lose control of the Vehicle and collide into a light pole and resulting to major and extensive damage to the Vehicle. This accident occurred shortly after the Plaintiff had collected the Vehicle from the 1<sup>st</sup> Defendant's business premises and whilst on her way home to North Side.

9. Immediately after the said accident on the 18<sup>th</sup> September, 1999 the 1<sup>st</sup> Defendant acting through its agent, Vampt Motors Ltd., took possession of the Vehicle without obtaining the authorisation or consent of the Plaintiff and has kept the Vehicle in its possession since that time. The Plaintiff has not had use of or control over the Vehicle since the 18<sup>th</sup> September, 1999. Neither has the Plaintiff been refunded the purchase price of the Vehicle.
10. The 1<sup>st</sup> Defendant has, therefore, repudiated the Purchase Agreement and the Plaintiff is entitled to recover the sum of US\$13,500.00 being the purchase price of the Vehicle from the 1<sup>st</sup> Defendant. Alternatively, the Plaintiff is entitled to reject the Vehicle which she has done by letters dated the 11<sup>th</sup> July, 2001 and the 28<sup>th</sup> February, 2003 and is therefore entitled to recover the sum of US\$13,500.00 being the purchase price of the Vehicle from the 1<sup>st</sup> Defendant.
11. Notwithstanding the 1<sup>st</sup> Defendant's repudiation of the Purchase Agreement, the 1<sup>st</sup> Defendant has failed or refused to repay to the Plaintiff the sum of US\$13,500.00. Further by reason of the said breaches of condition, the Plaintiff has suffered loss and damage.

### The Plaintiff's Claim Against the 2<sup>nd</sup> Defendant

12. To facilitate the purchase of the Vehicle, on or about the 9<sup>th</sup> September 1999 and in compliance with the requirements of the Motor Vehicle Insurance (Third Party

Risks) Law (1997 Revision) the Plaintiff entered into a comprehensive contract of motor insurance with the 2<sup>nd</sup> Defendant through which the 2<sup>nd</sup> Defendant agreed to pay for loss or damage to the vehicle and to indemnify the Plaintiff against loss or liability which might be incurred with respect to bodily injury to any person caused by or arising out of the use of the Vehicle during the currency of the contract, ("the Insurance Contract") in return for the payment by the Plaintiff of CI\$1,237.50. The Plaintiff will refer to the Insurance Contract at the trial of this action for its legal terms and effect.

13. The 2<sup>nd</sup> Defendant was informed of the accident shortly thereafter following which the Plaintiff made her claim for loss of the Vehicle under the Insurance Contract.
14. The estimated cost of repairing the Vehicle was stated to be CI\$10,387.38. The salvage value of the Vehicle was stated to be CI\$3,000.00, a mere 22% of the insured sum. Substantial repairs were required to render the Vehicle roadworthy, including major body work and repairs/replacement of the Vehicle's transmission system. Notwithstanding the very low salvage value the 2<sup>nd</sup> Defendant insisted that the Vehicle would be repaired and refused to settle the Plaintiff's claim for the purchase price of the Vehicle.
15. Between the period 18<sup>th</sup> September, 1999 and sometime in April, 2001 the Plaintiff made regular inquiries with the 2<sup>nd</sup> Defendant with respect to her claim and was informed that the Vehicle remained with Vampt Motors Ltd. where repairs were being carried out.
16. In or around April, 2001, the Plaintiff visited the offices of the 2<sup>nd</sup> Defendant and informed the 2<sup>nd</sup> Defendant of her intention to pursue her claim for the purchase price of the Vehicle and/or the recovery pursuant to the Insurance Contract for the insured value of the Vehicle in view of the major damage to the Vehicle. On the 11<sup>th</sup> July, 2001 the Plaintiff's attorneys-at-law corresponded with the 1<sup>st</sup> Defendant through its agent, Vampt Motors Ltd. and with the 2<sup>nd</sup> Defendant with respect to the Plaintiff's claim advising that the Plaintiff had rejected the Vehicle

and demanding payment of the purchase price together with damages. On the 28<sup>th</sup> February, 2003 the Plaintiff's attorneys-at-law wrote to the 1<sup>st</sup> Defendant directly instead of through its agent, advising of the Plaintiff's rejection of the Vehicle and demanding payment of the purchase price together with damages.

17. Notwithstanding the Plaintiff's demand, the total sum of her claim remains outstanding.
18. By reason of the aforesaid the Plaintiff has incurred loss and expense and has suffered damage.

**PARTICULARS OF LOSS AND DAMAGE**

(i)	Travel expenses from 19 <sup>th</sup> September, 1999 to 20 <sup>th</sup> February, 2003	CI\$ 7,525.00
(ii)	Cost of loan to purchase Vehicle	CI\$ 2,182.51
(iii)	Cost of Insurance Contract	CI\$ 1,237.50
(iv)	Cost of Licensing Vehicle	CI\$ 160.00
(v)	Cost of Inspecting Vehicle	CI\$ 25.00
(vii)	Cost of Vehicle Plates	<u>CI\$ 50.00</u>
		<u>CI\$11,180.01</u>

**AND THE PLAINTIFF CLAIMS:**

1. The return of the sum of CI\$13,500.00 being the purchase price of the Vehicle paid to the 1<sup>st</sup> Defendant on or about the 9<sup>th</sup> of September 1999, together with interest from that date to the date of judgment.

2. Alternatively, the Plaintiff claims as against the 2<sup>nd</sup> Defendant, payment for the loss of the Vehicle, i.e. CI\$13,500.00, pursuant to the Insurance Contract together with interest.
3. Reimbursement of CI\$7,525.00 being travel expenses incurred for the period 19<sup>th</sup> September, 1999 to date and continuing at the rate of CI\$7.00 per day until settlement of this action.
4. Reimbursement of CI\$2,182.51 being the cost of the loan obtained from Cayman National Bank to facilitate the payment of the purchase price of the Vehicle, made by way of re-payments between the period September 1999 to November, 2002.
5. Reimbursement of CI\$1,452.50 being the cost of insurance, licensing, inspecting and registration of the Vehicle.
6. Pre-Judgment Interest on the amount of CI\$13,500.00 at the rate of 7% per annum, or at such other rate as the Court directs, from the 19<sup>th</sup> September, 1999 to the 31<sup>st</sup> March, 2000; and at the rate of 8% per annum, or at such other rate as the Court directs, from the 1<sup>st</sup> April, 2000 to the 31<sup>st</sup> May, 2001; and at the rate of 6 ¼% per annum, or at such other rate as the Court directs, from the 1<sup>st</sup> June, 2001 to the 30<sup>th</sup> November, 2001; and at the rate of 4 ½%, or at such other rate as the Court directs, from the 1<sup>st</sup> December, 2001 to the 28<sup>th</sup> February, 2003, being a sum of CI\$1,959.82.
7. Post-Judgment Interest thereafter pursuant to Section 34 of the Judicature Law (2002 Revision).
8. Costs.

**STATEMENT REGARDING INTEREST:**

- (i) The rate of Pre-Judgment Interest from the 19<sup>th</sup> September, 1999 to 31<sup>st</sup> March, 2000 is 7% per annum; and 8% from 1<sup>st</sup> June, 2000 to 31<sup>st</sup> May, 2001; and 6 ¼% from 1<sup>st</sup> June, 2001 to 30<sup>th</sup> November, 2001; and from thereon at 4 ½% per annum, or at such other rate as the Court directs.
- (ii) The date from which Pre-Judgment Interest is calculated on the sum of CI\$13,500.00 is the 19<sup>th</sup> September, 1999.
- (iii) The total amount of interest claimed to date is CI\$1,959.82.
- (iv) The per diem interest accruing hereafter is CI\$1.83.

If, within the time for returning the Acknowledgement of Service, the Defendants, or either of them pays the total amount claimed of CI\$13,500.00 plus CI\$11,160.01 as set out at paragraphs 3 through 5 above, plus CI\$1,959.82 interest (excluding legal fees and filing fees,) further proceedings will be stayed. The money must be paid to the Plaintiff.

Dated this 3<sup>rd</sup> day of March, 2003.



**CHARLES ADAMS, RITCHIE & DUCKWORTH  
ATTORNEYS-AT-LAW FOR THE PLAINTIFF**

This Statement of Claim was filed by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is P.O. Box 709G, Zephyr House, Mary Street, George Town, Grand Cayman, British West Indies.