

IN THE GRAND COURT OF THE CAYMAN ISLANDS

115
CAUSE NO. OF 2005

BETWEEN:

GARY TWEED

Plaintiff

-AND-

DWIGHT BODDEN

Defendant

WRIT OF SUMMONS

To: Dwight Bodden
P.O. Box 58 EE
John McLean Dr.
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 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, PO Box 495 GT, 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 day of March, 2005

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. In or about February 2002, the Plaintiff and the Defendant entered into an oral agreement (hereinafter the "Agreement") the express terms of which were as follows:
 - 1.1 The Plaintiff would pay the Defendant US\$ 10,000 to conduct repairs to a white 26' boat with twin outboard engines, commonly known as a "Jamaican Canoe", (hereinafter the "Boat") owned by the Defendant;
 - 1.2 The Defendant would repay the Plaintiff the US\$ 10,000 through regular monthly payments;
 - 1.3 In the event of a default of the Defendant in repaying the US\$ 10,000 then the Plaintiff would be entitled at his option to the immediate repayment of the full amount outstanding, or possession and title of the boat, or the proceeds of the sale of the Boat.
2. In breach of the Agreement the Defendant failed to make any payments to the Plaintiff.
3. On March 18th 2004, the Plaintiff and Defendant met to discuss the Defendant's breach of the Agreement and the Plaintiff agreed to allow the Defendant a further opportunity to commence the monthly payments. A written document was then prepared confirming the terms of the Agreement.
4. The Defendant then over the following months made a total of 6 payments to the Plaintiff totaling US\$ 1,850.00.
5. Despite the demands of the Plaintiff the Defendant has not made any further payments since the 21st of June 2004 and accordingly the Defendant is in breach of the Agreement.
6. In the circumstances, pursuant to the Agreement, the Plaintiff seeks an order requiring the Defendant to forthwith provide possession of the Boat to the Plaintiff and to take all necessary steps to provide the Plaintiff with title to the Boat.
7. Alternatively, the Plaintiff seeks judgment against the Defendant in the amount of US\$ 8,150.00 along with pre and post interest pursuant to the Judicature Law.
8. In the further alternative, the Plaintiff seeks an order requiring the immediate sale of the boat with the proceeds of the sale to be paid to the Plaintiff.

AND THE PLAINTIFF CLAIMS

- (1) An Order of the Court requiring the Defendant to deliver possession of the Boat to the Plaintiff and to take all necessary steps to transfer title to the Boat to the Plaintiff;
- (2) Alternatively, damages in the amount of US\$ 8,150;
- (3) Pre and post judgment interest on the above damages;
- (4) Alternatively, an Order of the Court requiring the sale of the Boat and the proceeds thereof to be paid to the Plaintiff
- (5) Costs

Dated this 15 day of March 2005

BROADHURST BARRISTERS
Broadhurst Barristers
Attorneys-at-Law for the Plaintiff

STATEMENT REGARDING INTEREST

Pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rates of Interest) Rules

1. The date from which the interest became payable was July 1, 2004.
2. The prescribed rate of interest pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rates of Interest) Rules is 3%. There were 257 calendar days until the 15th of March 2005. This amounts to a total interest for this period of CI\$ 177.33.
3. The amount of interest accruing each day following the issue of the Plaintiff is increasing at the rate of CI\$ 0.69 per diem.

**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 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 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:

GARY TWEED

Plaintiff

- and -

DWIGHT BODDEN

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

 - State whether the Defendant intends to contest the proceedings (*tick appropriate box*)
Yes [] No []

 - 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 []
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Service of the Writ is acknowledged accordingly

(Signed) _____
[Attorney] for
[Defendant in Person]
Address for service:

Please see overleaf...