

IN THE GRAND COURT OF THE CAYMAN ISLANDS

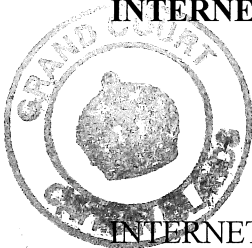
126  
CAUSE NO. OF 2005

BETWEEN: BRITCAY HOUSE LIMITED

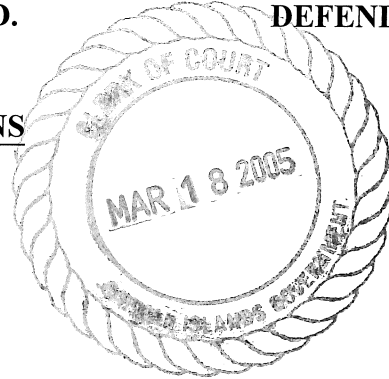
PLAINTIFF

AND: INTERNET FINANCIAL SERVICES LTD.

DEFENDANT



WRIT OF SUMMONS



TO: INTERNET FINANCIAL SERVICES LTD.  
C/o Walkers SPV Limited  
P.O. Box 908 GT  
Walker House  
Mary Street  
George Town  
Grand Cayman, Cayman Islands, B.W.I.

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 495G, 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 17<sup>th</sup> 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 issue unless renewed by order of the Court.

**IMPORTANT**

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

STATEMENT OF CLAIM

1. The Plaintiff is a company incorporated under the Companies Law of the Cayman Islands having its registered office in c/o Montpelier Properties (Cayman) Ltd., P.O. Box 2136 GT, Elizabethan Square, Shedden Road, George Town, Grand Cayman, Cayman Islands, B.W.I. and carries on the business of holding and leasing property, specifically BritCay House, Eastern Avenue, Grand Cayman now registered at Registration Section George Town Central Block 13D Parcel 393.
2. The Defendant is a company incorporated under the Companies Law of the Cayman Islands having its registered office in c/o Walkers SPV Limited, P.O. Box 908 GT, Walker House, Mary Street, George Town, Grand Cayman, Cayman Islands, B.W.I.
3. By an agreement in writing expressed to take effect on 1<sup>st</sup> July 2004 signed by the Plaintiff and the Defendant (“the Lease”) the Plaintiff leased and the Defendant took a lease of premises containing 5,800 square feet on the third floor of BritCay House (“the Premises”) on, *inter alia*, the following terms:-
  - (1) the term was to be ten years from 1<sup>st</sup> July 2004;
  - (2) the rent was to be CI\$20.00 per square foot for the first year, CI\$22.14 per square foot for the second year and for the final eight years at an annual escalation to equal the Cayman Islands Consumer Price Index or an annual increase of 3%, whichever would be less;
  - (3) the rent was payable monthly on the first day of each month;
  - (4) the service charge, deemed by the Lease to be additional rent, payable by the Defendant was to be US\$6.00 per square foot per annum payable monthly at the same time as the rent;
  - (5) the Defendant would pay to the Plaintiff interest on any unpaid amounts under the Lease at the rate of 2% per annum above the prime rate for lending quoted by the

Landlord's bankers from time to time compounded at the end of each calendar month;

The Plaintiff will refer at the Trial to the Lease for its precise term and legal effect.

4. By a further agreement ("the Loan Agreement") arrived at orally and partially reduced to writing the Plaintiff agreed to fit out the Premises at the Defendant's expense and at its direction with the cost being repaid to the Plaintiff with interest over the term of the Lease. The cost of these fit-ups was stated in the Lease to be CI\$440,798.00 and was repayable with 7% per annum interest by monthly payments of CI\$5,100.12. These particulars are set out in the Schedule to the Lease under the heading "Fit-up Charge". By an addendum to the Lease ("the Addendum") the principal amount was amended to CI\$500,492.58 and the monthly payments to CI\$5,777.69. The Plaintiff will refer at the trial to the Lease Schedule and the Addendum for their precise terms and legal effect.
5. By a further agreement dated 27<sup>th</sup> August 2004 ("the Hire Purchase Agreement") signed by the Plaintiff and the Defendant, the Plaintiff leased and the Defendant took the furniture listed in Appendix A to it for a period of five years at a rent of CI\$5,071.83 per month payable in advance on the first day of each month. The Plaintiff granted the Defendant an option to purchase the furniture at the end of the Lease provided that no event of default had occurred and was continuing. The Hire-Purchase Agreement also required the Defendant to insure the furniture for its full replacement value by an insurance policy naming the Plaintiff as loss-payee. The Plaintiff will refer at the Trial to the Hire Purchase Agreement for its precise terms and legal effect.
6. The Lease (including the Addendum), the Loan Agreement and the Hire-Purchase Agreement together comprise a "package arrangement" between the Plaintiff and the Defendant and together govern the entire transaction between them.
7. Pursuant to the Lease and the Loan Agreement the Defendant went into possession of the Premises on 1<sup>st</sup> July 2004 and paid:-

- (1) for the month of July 2004 the rent under the Lease and the first instalment of principal and interest under the Loan Agreement except for the additional amount of CI\$677.57 payable in accordance with the Addendum for that month;
- (2) the security deposit under the Lease of CI\$9,908.31;

The Defendant made no payment thereafter under any of the three Agreements.

8. On 11<sup>th</sup> September 2004, Hurricane Ivan struck the Cayman Islands and devastated BritCay House, making it uninhabitable.
9. By letter dated 27<sup>th</sup> October 2004, the Plaintiff wrote to all its tenants, including the Defendant stating to the Defendant, that:-
  - (1) it was proceeding to restore BritCay House to its pre-hurricane condition (not including fit-ups which were the Defendant's responsibility) as quickly as possible and that the restoration was expected to be completed by 31<sup>st</sup> December 2004;
  - (2) in the meantime, the rent would be abated to zero in accordance with the Lease; and
  - (3) payments under the Loan Agreement would continue to be payable but that the Plaintiff would accept early repayment in the circumstances and refinance new fit-ups to the Premises if the Defendant wished.

Specific mention was not made of the Hire-Purchase Agreement, payments under which would clearly continue.

10. By letter dated 23<sup>rd</sup> November 2004 from Diamond Law Associates, the then attorneys for the Defendant, the Defendant made certain misconceived and unsupported allegations and contended that the Lease was effectively terminated by frustration and that the Defendant gave notice of that termination.

11. By letter dated 3<sup>rd</sup> December 2004 the Plaintiff refuted the Defendant's misconceived allegations but accepted the Defendant's repudiation of the Lease and regarded it as at an end. The Plaintiff gave notice of its intention to issue suit for damages for breach of the Lease and Hire-Purchase Agreement and the sums owing under the Loan Agreement.
12. The Defendant refused and continues to refuse to honour its obligations to the Plaintiff and has made no further payments to the Plaintiff under any of the three Agreements.
13. In the premises the Plaintiff claims against the Defendant:-

- (1) under the Lease, the sum of CI\$7,292.45, being:

Rent to 10 <sup>th</sup> September 2004	13,871.62
Service charge to 10 <sup>th</sup> September 2004	3,329.14
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	17,200.76
Less security deposit applied 3 <sup>rd</sup> December 2004	(9,908.31)
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	<b>CI\$ 7,292.45</b>
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Plus:

- (a) damages for any period after the Premises are available for rent during which the Plaintiff is unable to find a tenant; and
- (b) interest at 2% over the Prime Rate for lending quoted by the Plaintiff's bankers from time to time on CI\$12,286.33 (being the August rent and service charge) from 1<sup>st</sup> August 2004 to 3<sup>rd</sup> December 2004 and on CI\$4,914.43 (being the September rent and service charge apportioned to 10<sup>th</sup> September 2004) from 1<sup>st</sup> September 2004 to 3<sup>rd</sup> December 2004;
- (c) continuing interest on CI\$17,200.76 at the same rate from 4<sup>th</sup> December 2004 to the date of payment; and
- (d) electricity charges to 11<sup>th</sup> September 2004;

- (2) under the Loan Agreement the sum of CI\$522,893.49 plus interest arrived at as follows:-

Fit-ups	500,492.58
Less paid as part of July 2004 payment	(3,681.65)
	<hr/>
	496,810.93
Interest 1 <sup>st</sup> August 2004 – 31 <sup>st</sup> December 2004 @ 7% per annum	17,388.38
	<hr/>
	514,199.31
Plus interest from 1 <sup>st</sup> January 2005 to 31 <sup>st</sup> March 2005	8,694.18 (and continuing)
	<hr/>
	<b>CI\$ 522,893.49</b>
	<hr/> <hr/>


- (3) under the Hire-Purchase Agreement damages in the sum of CI\$266,612.58 plus interest arrived at as follows:

Value of furniture destroyed	256,153.00
Interest 1 <sup>st</sup> September 2004 – 31 <sup>st</sup> December 2004 @ 7% per annum	5,976.90
	<hr/>
	262,129.90
Plus interest from 1 <sup>st</sup> January 2005 to 31 <sup>st</sup> March 2005	4,482.68 (and continuing)
	<hr/>
	<b>CI\$ 266,612.58</b>
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The Plaintiff's total claim against the Defendant is therefore **CI\$796,798.52** plus continuing interest.

Dated the 17<sup>th</sup> day of March 2005

SETTLED: RAMON D. ALBERGA, Q.C.

  
MYERS & ALBERGA  
Attorneys-at-Law for the Plaintiff.

THIS WRIT OF SUMMONS was issued by Myers & Alberga of P.O. Box 472, George Town, Grand Cayman, Cayman Islands, British West Indies, attorneys-at-law for the Plaintiff, whose address for service is that of its said attorneys-at-law.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>126</sup> OF 2005

BETWEEN: BRITCAY HOUSE LIMITED

PLAINTIFF

AND: INTERNET FINANCIAL SERVICES LTD.

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 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 complete overleaf*

**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.*

Myers & Alberga  
Harbour Place, 2<sup>nd</sup> Floor,  
103 South Church Street  
George Town, Grand Cayman  
Ref: Bryan Ashenheim

*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]

**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*

## 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.