

Writ of Summons (O.86)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. ⁵⁸⁰ OF 2005

BETWEEN: PETER CAMPBELL

PLAINTIFF

AND: PORT AUTHORITY OF THE CAYMAN ISLANDS

DEFENDANT

SPECIALLY ENDORSED WRIT OF SUMMONS

TO: THE DEFENDANT: PORT AUTHORITY OF THE CAYMAN ISLANDS c/o Ritch & Connolly, PO Box 1994, Queensgate House 113 South Church Street, Grand Cayman, 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 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 19 day of December 2005

NOTE - This Writ may not be served later than 4 calendar 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 by himself and on behalf of Le Fragrance de le Monde for whom he had a trade and business license applied by letter dated 19 February 2005 to the then Chairman of Port Authority at the Port Authority for the allocation of leasehold space at The Royal Watler Terminal (the "Terminal") which is under development. The Plaintiff by a further letter by himself and on behalf of E.F.F.Y International Inc ("E.F.F.Y") for whom he would be acting applied for a leasehold space at the Terminal.
2. By a letter (undated) the Ministry of Tourism, Environment, Development and Commerce ("the Ministry") wrote a letter to the Plaintiff and E.F.F.Y and copied it to the Cayman Islands Port Authority stating, in short, that the Plaintiff had been granted a space which was identified as unit 6 (the "space") and which space amounted to 768 sq. ft.. The space was clearly identified as it was delineated on a site plan headed "Royal Watler Terminal – Retail Building" which accompanied the aforementioned undated letter from the Ministry. The space was situated on Registration Section George Town Block OPY Parcel 25.
3. At all times thereafter the Plaintiff considered that it had a binding agreement or contract to enter a formal contract with the Defendant for a three year lease. The Plaintiff relied on the communications between it and the Defendant as being consistent with a binding contract and that any lease entered into for retail space at the Terminal would be with him personally in his own capacity or on behalf of one or both of the entities referred to above as the entities are entities in which he has an interest or with whom he would be acting.
4. By a letter dated 7 September 2005 the Defendant wrote to the Plaintiff and E.F.F.Y and notified them, in short, that the letter referred to at 2 above was sent to the Plaintiff and E.F.F.Y without the approval of the Port Authority. Further, it states, that the terms were subject to agreement.
5. Notwithstanding that at all times the Port Authority was aware of the undated letter from the Ministry, the Plaintiff will rely on the letter for its exact wording and states that he clearly recognised and understood from the first paragraph of the undated letter from the Ministry that an agreement had been entered into subject to the completion of a formal document and that he therefore had a binding agreement to enter a formal lease agreement.
6. At all material times the Plaintiff has been ready willing and able to perform his own obligations under the said agreement and continues to be so ready and willing to offer to perform the agreement.
7. The defendant is refusing to provide the Plaintiff with the space and thus complete the formal lease agreement for the retail space in accordance with the agreement, and despite subsequent requests made by the plaintiff's Attorney on

his behalf, continues to fail and refuse to complete. The Defendant has offered space at the Royal Watler Terminal – Retail Building to other potential lessees.

8. The Defendant has wrongfully repudiated the said agreement and still wrongly refuses to perform its part of the said agreement. Alternatively, in breach of the agreement with the Plaintiff the Defendant has informed the Plaintiff, in short, that it is establishing criteria for awarding the retail units, which includes the space offered to the Plaintiff, for which the Plaintiff can also apply.
9. On or about 17 November 2005 Bodden & Bodden, Attorneys-At-Law, in order to protect the interest of the Plaintiff made an application to the Registrar of Lands to lodge a caution in the proprietorship section of the Land Register. The Registrar of Lands has not to date lodged a caution under section 128 of the Registered Land Law (1995 Revision) on the grounds that the Plaintiff had an interest as a contractual lessee in accordance with the agreements.
10. By reason of the said wrongful repudiation and refusal on the part of the Defendant or alternatively the conduct of the Defendant to make the plaintiff re-apply for space at the Terminal, the Plaintiff has suffered damage.

AND THE PLAINTIFF claims:

- (1) Specific performance of the said agreement;
- (2) Damages for breach of contract in lieu of or in addition to specific performance;
- (3) Such further or other relief as is just;
- (4) Further, pursuant to The Judicature Law (1995 Revision), the Plaintiff is entitled to and claims interest on such sums as are found to be due at such rate and for such period as the Court shall think fit;
- (5) Costs.



WOODWARD TERRY & COMPANY

THIS WRIT was issued by Clyde H. Allen whose address for service is Woodward Terry & Company, Attorneys-At-Law PO Box 822 GT, Jack & Jill Building, Fort Street, Grand Cayman, Cayman Islands, BWI.

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CAUSE NO. ⁵⁸⁰ OF 2005

BETWEEN: PETER CAMPBELL
PLAINTIFF

AND: PORT AUTHORITY OF THE CAYMAN ISLANDS
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 a 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: (please see overleaf)

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.

C. H. Allen
Woodward Terry & Company
Attorneys-At-Law
PO Box 822 GT
Jack & Jill Building
Fort Street
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.