

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CAUSE NO. 050 OF 2006

BETWEEN:

DELRoy WELLINGTON

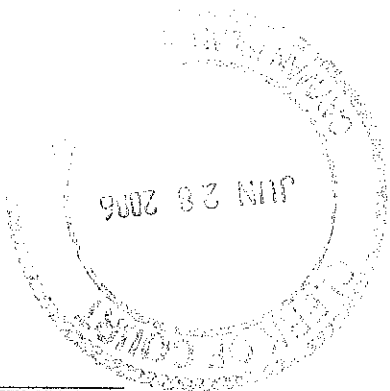
-AND-

TONY DELL
(Also Known As David Dell)

Defendant



WRIT OF SUMMONS



TO: MR. TONY DELL
GEORGE TOWN
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 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, 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 28th day of June 2006

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, owns and operates a dump truck business in Grand Cayman. The Defendant either owned or held himself out as owning a 1995 Aeromax Dump Truck registration number 97 177 (hereinafter referred to as "the Truck").
2. On or about 4th October 2005 the Plaintiff and the Defendant entered into an oral contract evidenced in writing by the Defendant's sale receipts numbered 0556 and 0557, for the purchase and sale, respectively, of the Truck.
3. The purchase price for the Truck was CI\$16,500 and the Plaintiff paid to the Defendant the sum of CI\$9,600 (made up of US\$7,000 and CI\$4,000) towards the said purchase price on 4th October 2005, took possession of the said Truck and carried out repairs to the Truck to the value of CI\$3,055 so as to put the Truck in a workable condition. On 15th November 2005 the Plaintiff paid to the Defendant the sum of CI\$1,000 towards the said purchase price for the Truck making a total of CI\$10,600 paid by the Plaintiff to the Defendant towards the purchase of the Truck.
4. Upon the said repairs being completed the Defendant requested the Plaintiff's permission to use the Truck on, inter alia, a sites managed by McAlpine (Cayman) Ltd. for Caribbean Utilities Company, and also the Caymana Bay project (hereinafter referred to as "the Sites") and it was further agreed orally between the Plaintiff and the Defendant that they would share the profits equally from the hire or use of the Truck on the

Sites. From 6th January 2006 to date of issue herein the Truck was used by the Defendant on the Sites.

5. Thereafter, the Plaintiff offered to pay the balance of the purchase price in the sum of CI\$5,900 to the Defendant so as to complete the sale of the said Truck but the Defendant, in repudiatory breach of the said oral contract(s) refused to:

- (a) accept the CI\$5,900 payment in respect of the Truck;
- (b) transfer the Truck into the Plaintiff's name;
- (c) part with possession of the Truck; instead the Defendant continues to use the Truck on the Sites;
- (d) return the Plaintiff's CI\$10,600 part purchase price to him despite demand having been made orally, and in writing on 5th March 2006 such letter being an acceptance by the Plaintiff of the Defendant's repudiation of the said contract(s);
- (e) account to the Plaintiff for his share of the profits arising from the Defendant's use of the Truck on the Sites pursuant to the contract set out in paragraph 4 above; and
- (f) pay to the Plaintiff the sum of CI\$3,055 being the cost of parts and repairs carried out by the Plaintiff his servants or agents upon the Truck.

6. In the premises, the Defendant has breached the contract for sale of the Truck in circumstances amounting to a total failure of consideration and the Plaintiff hereby seeks the return of his CI\$10,600 forthwith.

7. Further, in the premises the Defendant has breached the contract / collateral contract(s) permitting him to use the Truck on the Sites and the Plaintiff

seeks damages for this breach of contract which are estimated at C\$345 per diem from 6th January 2006 onwards. To the date of issue herein (148 days) these damages amount to C\$51,060.

8. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.

PARTICULARS

(i) C\$10,600 paid to the Defendant towards the purchase price of the Truck;

(ii) C\$3,055 being the costs of parts and repairs expended by the Plaintiff on the Truck to place it in a workable state;

(iii) Damages for breach of contract as set out at paragraph 7 above;

(iv) Damages for Loss of Use arising directly from the Defendant's breach(es) of the contract(s) (to be assessed);

(v) Damages for distress and inconvenience arising directly from the Defendant's breach(es) of the contract(s) (to be assessed).

9. Further the Plaintiff claims interest pursuant to Section 34 of The Judicature Law on all such sums found to be due to the Plaintiff from the Defendant at a rate of 3% per annum, to be calculated from the date upon which the Defendant is found to have breached the contract(s).

AND THE PLAINTIFF claims:

(I) Damages for breach of contract (paragraphs 5, 7 and 8 above);

(II) The return of the sum of C\$10,600 for total failure of consideration (paragraph 6 above)

(III) Pre and post judgment interest on the above sums or damages pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rates of Interest) Rules in such sum as is found to be due to the Plaintiff and continuing at a daily rate in such sum as assessed by the court until judgment or payment of the said sum; and

(IV) Costs.

Dated this 28th day of June 2006
Filed this 28th day of June 2006

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

TO: The Clerk of the Court

AND TO: The Defendant

This Writ of Summons was issued by Broadhurst Barristers, Attorneys-at-Law for the Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, George Town, Grand Cayman, Cayman Islands, British West Indies (ref: 2K6-62/LAF)