

IN THE GRAND COURT OF THE CAYMAN ISLANDS

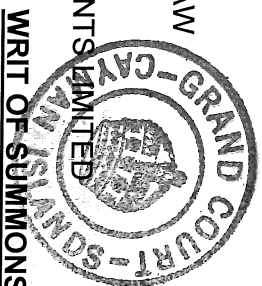
CAUSE NO. 300 OF 2006

BETWEEN: JONATHAN CULSHAW

PLAINTIFF

AND: MASLEY INVESTMENTS LIMITED

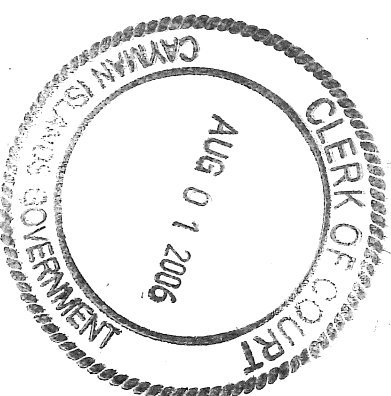
DEFENDANT



WRIT OF SUMMONS

TO:

Masley Investments Limited  
c/o CIBC Bank & Trust Company (Cayman) Limited  
PO Box 694GT  
1 Dr Roy's Drive  
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 hereafter.

Within 14 days after service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Courts Office, P. O. Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service form 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 1st day of August 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 entered into a lease agreement dated 10 March 2005 with the Defendant (the "**Lease Agreement**") pursuant to which the Defendant agreed to lease condominium # 26, Crescent Point Resort, Grand Cayman, being legal title section: WBBS Block: 13B Parcel: 7H25 (the "**Property**") to the Plaintiff for a period of one year.
2. Prior to the Lease Agreement the Plaintiff had leased the Property for a period of two years from the Defendant for an amount of US\$4,700.00 per month.
3. Pursuant to the Lease Agreement, the Plaintiff paid to the Defendant rent in the amount of US\$6,250.00 per month. In addition, the Defendant held US\$6,250.00 of the Plaintiff's money as a security deposit for the performance by the Plaintiff of the terms and conditions of the Lease Agreement.
4. Clause 3(b) of the Lease Agreement states that 30 days after termination of the Lease Agreement the Plaintiff should receive "the full amount of the security deposit, ....., without interest, less repairs for the damages caused by the tenant (normal wear and tear accepted), unpaid obligations owed by the tenant, or cleaning in the event that the Property is not left in the condition called for by the Lease Agreement."
5. On or about 1 February 2006, the Plaintiff gave the Defendant notice of intention not to renew the lease for a further period, which notice was provided more than one month prior to termination of the Lease Agreement on 9 March 2006. On termination of the Lease Agreement, the Plaintiff removed all possessions from the Property and paid for the Property to be cleaned as required pursuant to the Lease Agreement.
6. On vacating the Property on 28 February the Plaintiff also turned off the air-conditioning and the dehumidifier in the Property so that the Defendant would not incur any additional charges. The Plaintiff left the Property in a good state of repair and in a clean condition, taking into account the following factors:
  - (i) the Plaintiff (and family) had occupied the Property for a period of three years;

(ii) the Property was water damaged in September 2003 by Hurricane Ivan and remained without air-conditioning for 2 months;

(iii) furniture in the Property was damaged by Hurricane Ivan, including a blind which was not replaced by the Defendant; and

(iv) following the aftermath of Hurricane Ivan, the Defendant's employees or agents moved furniture back into two of the Property's bedrooms and placed such furniture against the walls causing black marks.

7. The Director of the Defendant, Dieter J Scherfenberg ("Dieter") who represented the Defendant in all dealings with the Plaintiff in respect of this matter returned to the Cayman Islands on 9 March 2006 and emailed the Plaintiff on 10 March 2006 alleging that the Property was not in an acceptable condition as to cleanliness and further stating that a blind needed replacing. Dieter informed the Plaintiff that he would be paying for the Property to be cleaned and for a maintenance man to replace the damaged blind. Dieter also stated that some of the Defendant's knives were missing.

8. By email dated 10 March 2006, the Plaintiff responded stating that the blind had been damaged in Hurricane Ivan and despite having requested a replacement, one had not been provided by the Defendant. The Plaintiff further stated that the knives were not complete when the Plaintiff moved into the Property and that the Plaintiff would not have any problem in paying some contribution for reasonable cleaning costs to the extent that the Defendant did not feel that the Plaintiff's cleaner had done a thorough enough job.

9. Dieter responded by email dated 11 March 2006 stating that "I will try to get Emma to take care of the necessary as it will be a lot cheaper than Ropers. All of it should not be more than a couple of hundred dollars." The Plaintiff responded that he had checked his knife set and that the Plaintiff had mistakenly taken one of the Defendant's knives and that he would drop it off. Dieter responded on 13 March that "one knife would not make a difference so please keep it".

10. The next email that the Plaintiff received from the Defendant was on 18 March 2006 ("the Email") claiming for the first time that, contrary to what had previously

been advised, the Property was in a condition beyond normal wear and tear. In the Email the Defendant alleged that in one of the spare bedrooms with the single beds the cream walls were marked with black scratches which the Defendant could not remove with a wet cloth or other means and alleged that this had been because the Plaintiff had put furniture against the walls. The Defendant also claimed that the master bedroom mattress and one of the single bedroom mattresses had been stained and needed to be replaced and further noted that a paint crew had been retained to paint the Property new.

11. The Plaintiff denies that the Property was left other than in a clean state, reasonable wear and tear accepted, after three years of occupancy. In those years the Plaintiff had been very reasonable in accepting the Defendant's lack of performance of its covenants including failure to fix the plumbing in the bathroom which led to incurred additional water expenses, failure to replace the damaged blind and delay in repairing damages to the Property following Hurricane Ivan which meant that much of the Plaintiff's property and the condition of the Property generally suffered from damp and humidity. Further, it was the Defendant's own employees or agents who had moved the furniture in the spare bedrooms back into those rooms and placed them against the wall following Hurricane Ivan.

12. The Plaintiff received the following notice and statement of claim from the Defendant on 23 March 2006 claiming that the Property was left in an unacceptable condition beyond normal wear and tear. The Defendant's itemised expenses were as follows:

(v) Dry cleaning	C1\$44.25;
(vi) Master bedroom mattress	C1\$650.00;
(vii) Painting	C1\$3,300.00;
(viii) Cleaning	C1\$82.50;
(ix) Re-upholstering	C1\$930;

**Total:** C1\$5026.75

**Converting to:** US\$6,130.00

The Defendant attached a refund cheque of US\$119,82 in purported discharge of the Plaintiff's security deposit.

13. If, which is not admitted, the Defendant incurred the sums set out above, it is denied that such expenses are the responsibility of the Plaintiff. The Defendant caused or contributed to the alleged damage and/or any such damage falls within normal wear and tear.

14. In breach of clause 3(b) of the Lease Agreement, the Defendant has failed to return the full amount of the Plaintiff's security deposit.

**PARTICULARS OF CLAIM**

15. As a consequence of the said breach pleaded at paragraph 14 the Plaintiff has suffered loss and damage. In particular the Plaintiff has suffered loss of the C1\$5,026.75 being the balance of the Plaintiff's security deposit.

**AND THE PLAINTIFF CLAIMS:**

(a) The sum of C1\$5,026.75;

(b) Damages;

(c) Interest pursuant to Section 34 of the Judicature Law (2004 Revision), on such sums and/or damages as it may be awarded at such rate and for such period as the Court may think fit;

(d) Costs;

(e) Further or other relief.

DATED this 1st day of August 2006.



**Jonathan Culshaw**  
**Plaintiff**

This Writ and Statement of Claim is filed by the Plaintiff c/o Walkers, Attorneys-at-Law, P.O. Box 265 GT, Walker House, Mary Street, George Town, Grand Cayman,

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0350  
350 OF 2006

BETWEEN: JONATHAN CULSHAW

PLAINTIFFS

AND: MASLEY INVESTMENTS LIMITED

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 Delay may result in judgment being entered directions and notes for guidance carefully against a Defendant whereby he may have to before completing this form. If any information pay the costs of applying to set it aside. required is omitted or 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

[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.*

Jonathan Culshaw  
c/o Walkers  
Attorneys-at-Law  
P.O. Box 265 GT  
Walker House, 87 Mary Street  
George Town, Grand Cayman

*Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.*

**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.
2. After completion it must be delivered or sent by post to the Courts Office, P.O. Box 495G, George Town, Grand Cayman.
3. 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).
4. 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.
5. 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.
6. If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.
7. 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***

***Please complete overleaf***

## 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 Court's 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 Court's office.