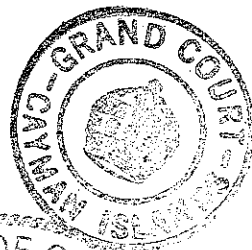


**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

0577  
CAUSE No. OF 2007

BETWEEN:

**CRACKED CONCH LIMITED**



Plaintiff

AND:

- 1. DIVETECH (CAYMAN) LIMITED**
- 2. NANCY EASTERBROOK**
- 3. JAY EASTERBROOK**



Defendants

TO:

DIVETECH (CAYMAN) LIMITED  
NANCY EASTERBROOK  
JAY EASTERBROOK

PO Box 31435  
22 NW Point Road  
Grand Cayman KY1-1206

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, PO Box 495 GT, 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 this 29<sup>th</sup> day of November, 2007.

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

### Background

1. The Plaintiff was at all material times in exclusive possession of a property (the “**Property**”) located at 857 Northwest Point, West Bay, Grand Cayman, identified in the Cayman Islands Land Register as Block 1C Parcel 173.
2. The Property is located on the waterfront, and has extensive decking that allows access to the Caribbean Sea.
3. The First Defendant:
  - a. is a local company duly incorporated in the Cayman Islands;
  - b. is wholly owned by the Second and Third Defendants;
  - c. is managed by the Second and Third Defendants;
  - d. has the Second and Third Defendants as its directors.
4. The First, Second and Third Defendants are in the business of (*inter alia*) running a SCUBA dive shop, and arranging SCUBA dive tours.

### The Tenancy

5. The First Defendant, alternatively, the Second and Third Defendants in their personal capacities, were at all material times the tenant, alternatively the tenants, of part of the Property (the “**Dive Shop**”) pursuant to an oral agreement (the “**Tenancy Agreement**”) made between the Plaintiff and the First Defendant acting by its directors the Second and Third Defendants, alternatively between the Plaintiff and the Second and Third Defendants in their personal capacities.
6. The Dive Shop:
  - a. is located on the lower level of a building on the Property that houses the Cracked Conch restaurant;
  - b. had access to extensive decking on the property, in particular, decking that gave it access to the Caribbean Sea (through what is now known as the Macabuca Bar – which sits on the decking);
  - c. was inclusive of a shop front window, which opened to an external shaded area for the Defendants’ clients to drop tanks and equipment.

7. The following were express, alternatively, implied terms of the Tenancy Agreement:
- a. The tenancy was for an initial period and then from month to month;
  - b. The rent was US\$3,658.54 per month, payable in arrears;
  - c. The tenant(s) were responsible for maintaining in good repair and tenantable repair:
    - i. the interior and to the exterior area of the Dive Shop;
    - ii. the wash tanks and shaded area immediately outside the Dive Shop's counter.
  - d. The tenancy was terminable on reasonable notice by either party to the other;
  - e. On termination of the tenancy the tenant(s) would yield up the Dive Shop and all appurtenances thereto and all the landlord's fixtures and fittings therein in good and tenantable repair.
  - f. The tenant(s) would exercise all reasonable care in removing their fittings from the Dive Shop and Property;
  - g. The tenant(s) would not cause or permit damage to the Dive Shop;
  - h. The tenant(s) would not cause or permit the Property to be damaged;
  - i. The Second and Third Defendant would take all reasonable steps to ensure that the First Defendant and its servants or agents complied with the terms of the tenancy agreement.

### **The Tenancy**

8. Over the course of the tenancy, the Defendants made with the Plaintiff's knowledge and consent a series of alterations to the Dive Shop and the Property, including (*inter alia*):
- a. affixing an addition to the roofing of the shaded area – such roofing being annexed to part of the Property occupied by the Cracked Conch restaurant;
  - b. affixing to the Property external showers and wash tanks;
  - c. affixing to the Property for the benefit of the Property doors and shutters;
  - d. affixing to the Property lockers for the storage of compressed air tanks;

- e. affixing to the Property counters to serve the Dive Shop;
- f. affixing to the Property of drying racks to serve Dive Shop customers;
- g. affixing a ladder to decking area of the Property.

9. The alternations to the Property were made:

- a. for a substantial or indefinite period;
- b. with the intention that they should become part of the realty of the Property and/or the Dive Shop.

10. The tenancy was determined by the Plaintiff with effect from 31 August 2007.

### **Intentional Trespass and Damage to the Property**

11. On 30 August 2007, the Second Defendant and Third Defendant attended the Property at approximately 4.30am in the morning.

12. The Second Defendant and Third Defendant jointly and severally and/or further as servants or agents of the First Defendant together with others unknown, whilst at the Property (*inter alia*) performed or caused others to:

- a. Demolish the roofing and lattice of the Dive Shop area, including by using sledgehammers;
- b. Damage the premises of the Cracked Conch restaurant by smashing support beams out of place in removing the roof;
- c. Damage the affixed electrical signs and dismount them;
- d. Saw the base off ladders giving access to the sea;
- e. Remove installed counters, leaving bolt holes in the fabric of the Dive Shop;
- f. Remove tank lockers that had been installed, leaving bolt holes in the Dive Shop area;
- g. Saw off the edges of drying racks making them unusable;
- h. Attempt to remove doors and shutters from the Dive Shop, damaging the same;
- i. Remove hinges attached to the Property, leaving bolt holes and steel bolts embedded in concrete
- j. Remove the top-most part of hinges and bolts from the Property, leaving bolts embedded in the concrete walls of the Property;
- k. Saw off rinse tank valves.

**(“the Demolition”)**

13. In the course of the Demolition, Bernhard Praehauser and Samuel Cabaylo, servants or agents of the Plaintiff, demanded that the First to Third Defendants cease the demolition, but notwithstanding the said demands, the First and Second Defendants and the First Defendants servants or agents refused so to do.
14. On 31 August 2007, Craig Peck (a manager of the Property employed by the Plaintiff) asked the Third Defendant if he regretted damaging the Dive Shop and the Property, to which question the Third Defendant replied saying that "it made him feel good" to have damaged the Property and that he "hated Bill Maines" (an owner of the Property).
15. In the premises, the acts of Demolition referred to in paragraph 12 hereof individually and severally constituted breaches of the express, alternatively implied terms of the tenancy referred to in paragraph 7 (c) and 7 (f) to (i) hereof.
16. Further, and in the alternative, the acts of Demolition referred to in paragraph 12 hereof were tortious acts committed intentionally and maliciously.
17. On or about 31 August 2007, the Defendants yielded up possession of the Dive Shop to the Plaintiff.
18. In breach of the express, alternatively implied term of the tenancy referred to in paragraph 7(e) hereof, Defendants and all of them failed to yield up the demised premises in good and tenantable repair.
19. In consequence of the breaches of the tenancy referred to in paragraphs 15 and 18 hereof and/or in consequence of the acts referred to in paragraph 16 hereof, the Plaintiff has suffered loss, damage and expense.

#### PARTICULARS OF LOSS AND DAMAGE

- (1) The cost of remedial repairs to the Property and Dive Shop, being C\$13,684.76
  - (2) Loss of rental income for the period 1<sup>st</sup> – 14<sup>th</sup> September 2007, being C\$1,850.00
20. The Plaintiff is entitled to and claim interest on any sums that may be awarded to them pursuant to Section 34 of the *Judicature Law (2007 Revision)* at such rates and for such periods as to the Court may seem just.

AND THE PLAINTIFF CLAIMS against the First Defendant and/or against the Second and Third Defendants: -

- (1) Pursuant to paragraph 19 hereof, CI\$15,534.76;
- (2) Interest pursuant to Section 34 of the Judicature Law (2007 revision); and
- (3) Costs, on an indemnity basis.

This Statement of Claim was issued by Bodden & Bodden, Attorneys for the Plaintiffs, whose address for service is:  
PO Box 10335GT, Grand Pavilion Commercial Centre, 802 West Bay Road, Grand Cayman KY1-1003, Cayman  
Islands (Reference: *[1065-0001WH/QTC]*).

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

CAUSE No. <sup>0577</sup> OF 2007

BETWEEN:

**CRACKED CONCH LIMITED**

Plaintiff

AND:

- 1. DIVETECH (CAYMAN) LIMITED**
- 2. NANCY EASTERBROOK**
- 3. JAY EASTERBROOK**

Defendants

**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.

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

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box).

**yes**

**no**

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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 appropriate box).

**yes**

**no**

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Service of the Writ is acknowledged accordingly.

\_\_\_\_\_  
Defendant/Attorneys for Defendant  
Address for Service

**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 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.

BODDEN & BODDEN  
Attorneys-at-Law  
PO Box 10335  
Grand Pavilion  
802 West Bay Road  
Grand Cayman  
T: 345 943-0202  
Ref: WJH/QTC 1065-0001

Indorsement by Defendant's Attorney (or by defendant if acting 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.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495GT, 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 (ie., 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 installments 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 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 of 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 his 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.