

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 703 OF 1996

BETWEEN: CAYMAN WATER COMPANY LIMITED

PLAINTIFF

AND: CAYMAN HOTEL & GOLF INC.

FIRST DEFENDANT

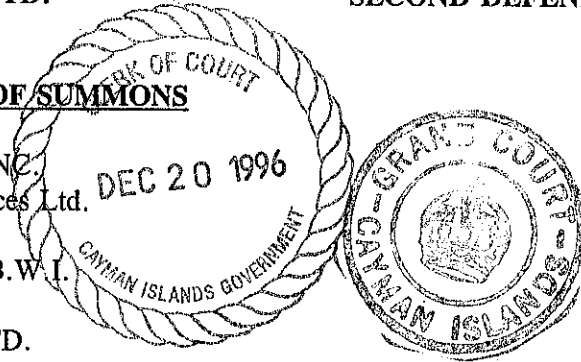
AND: ELLESMERE BRITANNIA LTD.

SECOND DEFENDANT

WRIT OF SUMMONS

TO: CAYMAN HOTEL & GOLF INC.  
C/O Foreshore Corporate Services Ltd.  
P.O. Box 1994  
George Town, Grand Cayman B.W.I.

AND TO: ELLESMERE BRITANNIA LTD.  
C/O Foreshore Corporate Services Ltd.  
P.O. Box 1994  
George Town, Grand Cayman B.W.I.



THIS WRIT OF SUMMONS has been issued against you by the abovenamed 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 495, George Town, Grand Cayman B.W.I., 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 20<sup>th</sup> day of December, 1996.

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 on the 31st day of August, 1973, and is a concessionaire by virtue of an exclusive licence ("the Licence") dated 11th July, 1990, granted to it by the Governor under the powers conferred by section 3 of the Water (Production & Supply) Law 1979 ("the Law") as amended granting it the exclusive right within the Licence Area (as defined in the Licence) to:-

- (a) process water for sale from seawater; and
- (b) distribute and sell water by means of pipes

The Plaintiff will refer to the Licence at the trial of this action for its full terms and legal effect.

2. The First Defendant is a company incorporated under the laws of Alberta, Canada and registered as a foreign company pursuant to the Companies Law of the Cayman Islands with its address for service in the Cayman Islands at Foreshore Corporate Services Ltd., P.O. Box 1994, George Town, Grand Cayman B.W.I. This Defendant is the registered proprietor of lands within the Licence Area registered at West Bay Beach South Block 12D Parcel 41 on which (*inter alia*) a plant for the production and supply of potable water is situated ("the Plant").

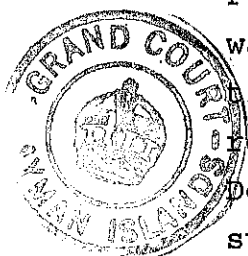
3. The Second Defendant is a company incorporated under the Companies Law of the Cayman Islands, formerly known as Ellesmere (Cayman) Limited, having its registered office at Foreshore Corporate Services Ltd., P.O. Box 1994, George Town, Grand Cayman B.W.I.

4. In breach of the provisions of the Law, the First Defendant at the Plant produces potable water and supplies it by means of pipes, not only to the hotel (the Hyatt Regency) and golf

course and beach club owned by it, but also to all the Britannia condominiums and subdivisions ("the Britannia Development") developed by the Second Defendant and sold to individual purchasers who continue to receive, and pay to the Second Defendant for, such water.

5. After taking legal advice, the Water Authority - Cayman wrote to the Defendants on 21st July, 1995, demanding that they stop operating in contravention of the Law, but the Defendants have failed to comply with that demand and continue to produce and supply potable water in flagrant breach of the Law.

6. On 23rd April, 1996, Myers & Alberga, the Plaintiff's attorneys-at-law, wrote the Defendants again demanding that they desist from supplying water to the Britannia Development. Myers & Alberga further demanded that the Defendants enter into *bona fide* negotiations with a view to compensating the Plaintiff for loss of profits during the period in which it was the exclusive franchisee under the Licence. At the same time, Myers & Alberga wrote to all the Strata Corporations and registered proprietors of lands within the Britannia Development indicating the Plaintiff's exclusive right to supply water and that it was ready and willing to supply the condominiums and the individual properties if they would make application for such supply.

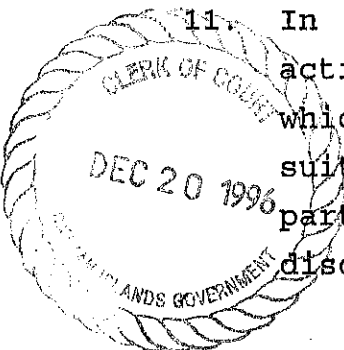
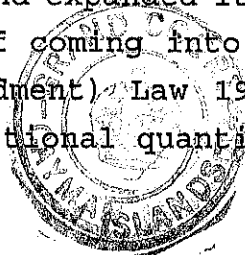


On 31st May, 1996, before any response had been received to Myers & Alberga's letter of 23rd April, 1996, to the Defendants, the Second Defendant wrote to "All Condominiums and Home Owners and Strata Plan Corporations Nos. 79 and 147" making unsupported allegations about the Plaintiff's supply of water and advising that its attorneys-at-law were investigating the matter and assuring them of "an uninterrupted supply of clean quality water, whatever the source."

8. On 10th June, 1996, Messrs. Ritch & Connolly, acting on behalf of the Defendants, denied any liability and refused to comply with the Plaintiff's demand.



9. In addition to the breaches of the Law referred to in preceding paragraphs, the First Defendant by producing water with the intention of supplying it for reward and by actually supplying the water produced by them for reward is guilty of a criminal offence under section 13 of the Law. The Second Defendant by supplying water produced by the First Defendant for reward is also guilty of a criminal offence under Section 13 of the Law.
10. In addition, the First Defendant has despite objections from the Plaintiff to the Water Authority - Cayman replaced parts of the Plant and expanded it beyond its capacity and condition on the date of coming into force of the Water (Production & Supply) (Amendment) Law 1991 with a view to producing and supplying additional quantities of potable water by means of pipes.
11. In the premises, the Plaintiff has suffered damage by the actions and conduct of the Defendants or one or other of them which constitutes a breach of statutory duty actionable at the suit of the Plaintiff. The Plaintiff is unable to give particulars of the amount of loss and damage until after discovery.
12. Further, and/or in the alternative, the Plaintiff has suffered loss or damage by reason of the knowing and intentional interference by unlawful means by the Defendants or one or other of them with the performance of the Licence. The Plaintiff is unable to give particulars of the amount of loss and damage until after discovery.
13. The Defendants have received payment for the water which they have wrongfully and illegally supplied, and hold all profits arising therefrom on a constructive trust for the Plaintiff.
14. In the premises, the Plaintiff claims against the Defendants or one or other of them:-

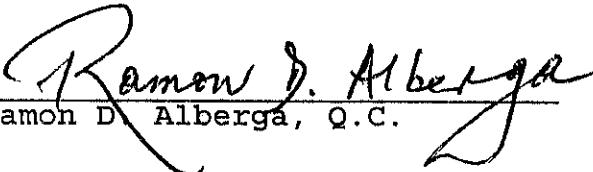


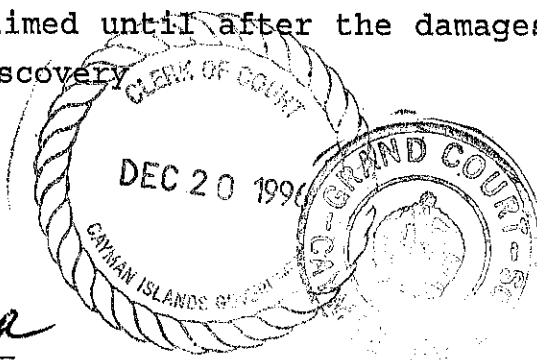


- (a) an account of all sales of water made by the First Defendant to the Second Defendant or any third party or by the Second Defendant to any third party between 11th July, 1990 (the date of the Licence), and the date of judgment in this action, and payment to the Plaintiff of all profits found due on the taking of such an account.
- (b) loss and damage arising from the Defendants' breach of statutory duty and/or interference by unlawful means with the Plaintiff's performance of the Licence between 11th July, 1990, and the date of judgment in this action.
- (c) an injunction restraining the First Defendant from producing potable water with the intention of supplying it for reward and from supplying it for reward to the Second Defendant or any third party within the Licence Area.
- (d) an injunction restraining the Second Defendant from supplying potable water for reward to anyone within the Licence Area.
- (e) interest on any sum to which the Plaintiff may be entitled under paragraphs (a) and (b) at the rate of 8%% per annum until 31st January, 1996, and 7%% per annum thereafter.

The Plaintiff is unable to give any further particulars of the interest claimed until after the damages become ascertainable at discovery.

SETTLED.

  
Ramon D. Alberga, Q.C.





DATED the 20th day of December, 1996.

MYERS & ALBERGA

Per: B/oa  
Bryan L. Ashenheim



THIS WRIT was issued by Myers & Alberga, Attorneys-at-Law for and on behalf of the Plaintiff whose address for services is One Regis Place, Fort and Mary Streets, P.O. Box 472, George Town, Grand Cayman B.W.I.



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>703</sup> OF 1996

BETWEEN: CAYMAN WATER COMPANY LIMITED  
AND: CAYMAN HOTEL & GOLF INC.  
AND: ELLESMERE BRITANNIA LTD.

PLAINTIFF  
FIRST DEFENDANT  
SECOND 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  
ONE REGIS PLACE  
P.O. BOX 472  
GEORGE TOWN  
GRAND CAYMAN B.W.I.

*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.

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.