

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO: <sup>60188</sup> OF 2015

BETWEEN:

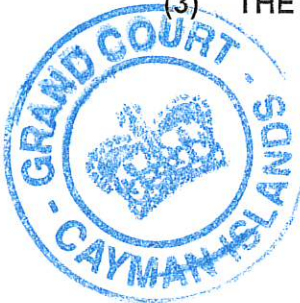
WILLIAM McKEEVA BUSH OBE

Plaintiff

AND:

- (1) DAVID BAINES OBE, COMMISSIONER OF POLICE
- (2) DUNCAN TAYLOR CBE
- (3) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Defendants



WRIT OF SUMMONS



TO: Commissioner of Police, David Baines OBE  
AND TO: Duncan Taylor CBE  
AND TO: The Attorney General of the Cayman Islands

ADDRESS: c/o Portfolio of Legal Affairs  
PO Box 104, 4<sup>th</sup> Floor, Government Administration Building  
Grand Cayman KY1-1900  
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 495G, 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 return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with an action and judgment may be entered against you forthwith without further notice.

Issued: 21 October 2015

**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.

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## STATEMENT OF CLAIM

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1. The First Defendant is the Commissioner of the Royal Cayman Islands Police Service (**RCIPS**). The Second Defendant was at all material times Governor to the Cayman Islands. The Third Defendant is the Attorney General of the Cayman Islands, against whom civil proceedings against the Crown require to be instituted.
2. From 6 November 2009 to 18 December 2013, the Plaintiff was the Premier of the Cayman Islands. He is currently Leader of the Opposition and a Member of the Legislative Assembly (**MLA**). On 4 June 2013, the Plaintiff was indicted on six counts of Misconduct in a Public Office, contrary to the common law and five counts of Breach of Trust by a MLA, contrary to section 13 of the Anti-Corruption Law 2008.
3. The charges on the indictment related to the personal use by the Plaintiff of his Cayman Islands' Government (**CIG**) credit card. The Crown's case was that between July 2009 and April 2010, the Plaintiff unlawfully used his CIG credit card in casinos in Florida, Las Vegas, and the Bahamas to withdraw cash totalling approximately US\$49,000 over the period. During the trial, the prosecution alleged that the Plaintiff had acted knowingly in breach of his duty and dishonestly and was thus guilty of a charge of Misconduct in a Public Office.
4. The Plaintiff was arrested on 11 December 2012 and his home and office were subjected to a search under a warrant. Following his arrest, he was interviewed on a number of occasions by RCIPS officers, Detective Constables Peter Dean and William Ramsay, during which interviews the Plaintiff stated that he was the victim of a witch hunt. On 19 March 2013, the Plaintiff was charged by the RCIPS with eleven offences; four charges of theft, two of Misconduct in a Public Office and four of Breach of Trust of a MLA. The theft charges were dropped shortly before the service of the indictment on 4 June 2013 without any explanation.
5. The essential ingredients of the charge of Misconduct in a Public Office in relation to financial misconduct are that a defendant must be proven to (1) be a public officer and

acting as such; (2) have acted knowingly in breach of a legal duty; and (3) the breach of duty must be dishonest and sufficiently serious to amount to an abuse of the public's trust in the office held after the prosecution had presented its case.

6. The Plaintiff's trial commenced on 9 September 2014 in the Grand Court of the Cayman Islands (Criminal Division). On 9 October 2014, the Plaintiff was acquitted by the jury by a unanimous verdict on all counts. The said prosecution was thereby determined in the Plaintiff's favour.
7. Cogent evidence of the following facts and matters was given at the Plaintiff's trial, and it is averred:
  - a. it was the role of the Chief Financial Officers in the Ministry of Tourism and the Premier's Office, Wendy Manzanares and Josephine Sambula, to advise the Plaintiff as to the proper use of the said CIG card and to make sure that he operated it within the rules;
  - b. they had expressly permitted and facilitated the Plaintiff's said use of the card, by setting up a system for the reconciliation and prompt repayment by him of any sums incurred for personal use because they had believed that it was consistent with policy, provided the monies thus withdrawn were paid back, and had expressly or impliedly advised the Plaintiff accordingly;
  - c. further, the Chief Officer, the most senior civil servant in the Plaintiff's Ministry, the Ministry of Finance, Tourism and Development and the Office of the Premier, Carson Ebanks, had specifically approved the use of the said card to withdraw cash for personal purposes provided that it was repaid;
  - d. on occasion, the system did not operate as efficiently as it should have done with the net result that a balance built up of payments that the Plaintiff was due to pay but that the Plaintiff was unaware of this and any failures in the system were not the fault of the Plaintiff;
  - e. a witness statement taken from the Chief Financial Secretary (Kenneth Jefferson) appeared to have suggested that, at the material time, there was a written policy

in place prohibiting personal use. When giving evidence, Jefferson admitted that this was "an inexplicable mistake"; and

- f. there was in fact no policy against cash withdrawals and personal use on CIG credit cards in place until 2 July 2010, which was after the period in which it was alleged that the Plaintiff had used the card to withdraw cash. As soon as the new policy was introduced, the Plaintiff had ceased to use the card to withdraw cash for personal purposes.
8. The relevant witness statements taken by officers of the RCIPS for the purposes of the investigation, and which were referred to the DPP for her decision as to prosecution, contained no reference to the above facts and matters, which were subsequently given in evidence under cross-examination by the said civil service witnesses. The said facts and matters are wholly inconsistent with the Plaintiff's guilt in relation to the charges of Misconduct in a Public Office because they tended to show that:
- a. no relevant legal duty or rule had been breached, intentionally or otherwise, by the Plaintiff;
  - b. there had been no dishonesty on the part of the Plaintiff; and
  - c. the contents of a formal Letter of Request from the Chief Justice dated 3 January 2013 seeking assistance from the US - pursuant to the Treaty relating to Mutual Legal Assistance in Criminal Matters - were materially incorrect and contained allegations about the Plaintiff which were fundamentally untrue.
9. Further, cogent evidence of the following facts and matters was given at the Plaintiff's trial, and it is averred that:
- a. the Second Defendant, along with the First Defendant, assumed responsibility for the investigation into the Plaintiff and the Second Defendant gave directions and issued instructions to the First Defendant as to the conduct of the investigation before a decision had been taken as to the nature of the charge to be investigated, during the investigation and after the Plaintiff was charged in March 2013. The

Second Defendant who was also, under the Constitution, ultimately in charge of policing, is therefore liable for the actions of the First Defendant and the RCIPS;

- b. prior to any evidence having been obtained, there had been an agreement made between, *inter alia*, the First and Second Defendants, the object of which was urgently to find a plausible basis for causing criminal charges to be brought against the Plaintiff before the May 2013 general election, in order to procure his removal from office as Premier and to inflict such serious political damage upon him that he and his Party would lose the general election;
- c. that substantial police resources, including special officers brought into the Islands from the UK for the matter, had been devoted to a concerted "fishing expedition" to seek evidence against the Plaintiff to support his arrest and a plausible criminal charge against him prior to the 2013 general election and that the predominant or a dominant purpose for so doing was to ensure that he was so politically damaged that he would lose both his position as Premier and the 2013 general election;
- d. pursuant to the said purpose, the First and Second Defendants ordered the Auditor General and police officers to examine the Plaintiff's use of the Government of the Cayman Islands Credit Card to withdraw cash for personal purposes that had taken place over three years before, of which the said senior civil servants and the Cayman Islands Treasury Department had been aware and concerning which no action had then been taken for the reasons set out at paragraph 7 above;
- e. pursuant to the said purpose, the First and Second Defendants caused the Plaintiff's personal bank accounts and other personal financial information relating to the Plaintiff and his family to be provided to them without any notification to the Plaintiff or his family members before, during, or after obtaining the information; and
- f. in order to bring about the said political ends, the Second Defendant conducted himself contrary to the constitutional duties of his office, *inter alia*, by interfering in and manipulating the political, democratic and criminal justice processes in the following ways:

- (i) ordering an accelerated police investigation, including his arrest, the search of his home and the preferment of criminal charges within a timetable exclusively or mainly designed to serve the political objective of causing the maximum political damage to the Plaintiff;
- (ii) leaking confidential information concerning his investigation, arrest and charge and secretly briefing international and domestic journalists against the Plaintiff;
- (iii) arranging for the media to be present to film and broadcast the Plaintiff's arrest and the searches of his premises so as to exacerbate the effect thereof on the Plaintiff's political support in the Legislative Assembly and in the Territory;
- (iv) directly or indirectly exerting pressure on the Director of Public Prosecutions to bring forward criminal charges within the said timetable;
- (v) putting direct personal pressure on MLAs belonging to the Plaintiff's Party to vote for the "no confidence" motion against the Plaintiff;
- (vi) secretly agreeing with certain MLAs of the Plaintiff's Party a plan to allow them to continue to govern as ministers until the general election, if they voted for the no-confidence motion against the Defendant; and
- (vii) secretly agreeing a plan of events up to the general election with the then Leader of the Opposition to ensure that the Plaintiff's arrest and subsequent charge had the desired political outcome, namely his permanent removal from the office of Premier.

10. In the light of the said facts and matters set out at paragraphs 7, 8 and 9 above, it is averred that:

- a. There was no reasonable and probable cause for the Plaintiff's arrest, the search of his premises and/or bringing and/or continuing the prosecution against the Plaintiff; and/or

- b. the Defendants had no honest belief in the truth of the allegations made against the Plaintiff.

Particulars of the allegation of lack of honest belief

- (i) Adequate and accurate witness statements could and ought to have been taken before the Plaintiff was indicted, which would have revealed the absence of a case against him. In the light of the First and Second Defendant's dominant purpose to destroy the Plaintiff politically, the Plaintiff will invite the reasonable inference that they, their servants or agents, either deliberately did not investigate and raise the said issues by asking the relevant and obvious questions of these witnesses or did not include them in the said witness statements for fear that the answers would impede or put an end to the prosecution;
- (ii) it was not a mere coincidence that the Defendants' imperative was that charges should be brought against the Plaintiff as quickly as possible and, in any event, before the May 2013 general election;
- (iii) it was not a mere coincidence that the conduct, which became the focus of the investigation and subsequent criminal charges, had taken place over three years previously and had been known to senior civil servants who had not regarded it as warranting sanction;
- (iv) it was not a mere coincidence that the said issues were not raised and/or the right questions were not asked and proper investigations made to establish the facts and matters set out at paragraph 7 above and that there was neither a breach of the terms of the use of the card nor dishonesty on the part of the Plaintiff;
- (v) in light of the agreement made by the Defendants to find a way to charge the Plaintiff, there is a legitimate inference that the Defendants either:
- a. withheld the said information; or

- b. deliberately "shut their eyes" to and refrained from asking questions to which the answers would be inconvenient, since they would have established that the Plaintiff had not breached any duty and nor had he acted dishonestly; alternatively they were reckless as to whether there was a proper justification of the charge against the Plaintiff; and
- c. the evidential justification for the charge against the Plaintiff was subordinate to the main purpose of procuring his removal from office as Premier and his loss of the general election.

(vi) In the premises, the prosecution of the Plaintiff was malicious. The predominant purpose, alternatively a dominant purpose, of the prosecution was other than the proper invocation of the criminal law and a legitimate desire to bring the Plaintiff to justice. The Defendants wanted to bring him down politically and to have him arrested and charged prior to the 2013 general election, so that he would be forced to resign as Premier before the election and to ensure that he was not re-elected as Premier of the Cayman Islands. The Defendants agreed to damage the Plaintiff by manipulating and abusing the constitutional and legal system in the Cayman Islands to create the impression that there was a legitimate and reasonable basis for the charges brought against the Plaintiff and by taking steps to ensure that they resulted in his loss of office.

11. Further or in the alternative, the Defendants conspired by unlawful means to bring down the Plaintiff and, in so doing, breached their respective constitutional and legal duties as Governor to the Cayman Islands and Commissioner of Police of the RCIPS. The Second Defendant abused his office as Governor to the Cayman Islands to damage the Plaintiff, with the complicity of the First Defendant who had operational control of the RCIPS.

Particulars of Conspiracy to Commit Misfeasance in a Public Office and/or of Unlawful Means

- a. The Plaintiff repeats the matters set out at paragraph 9 herein.

12. Further or in the alternative, it is averred that the Defendants entered into a combination or understanding with each other, with the predominant intention to injure the Plaintiff. The agreement made between the Defendants to bring about the Plaintiff's permanent removal from office as Premier and to ensure that he lost the general election amounted to a conspiracy to injure the Plaintiff and, as a consequence, the Plaintiff indeed suffered such injury.

Particulars of Conspiracy to Injure

- a. The Defendants conspired to destroy the Plaintiff politically and to cause him to lose his office as Premier by the means set out at paragraph 9 and/or by causing the said prosecution to be brought against him.
13. As a result of both the malicious prosecution and/or the said conspiracies, the Plaintiff has suffered loss and damage.
14. The Plaintiff will rely on the following facts and matters in support of his claim for aggravated and exemplary damages:

Particulars of Aggravated and Exemplary Damages

- a. The Plaintiff was arrested, his home searched and property seized in a blaze of publicity, which was substantially orchestrated by the Defendants for political ends;
- b. The Plaintiff's long standing banking relationships with Royal Bank of Canada and other banking institutions were terminated and the Plaintiff's mortgage arrangements were also terminated causing the Plaintiff to suffer loss and damage;
- c. The Plaintiff's family business suffered loss and damage as a result of the publications and prosecution of the Plaintiff;
- d. He was required to expend considerable sums of money in defending himself against criminal charges that were brought as instruments for political ends;

- e. He was obliged to attend court on numerous occasions, in addition to a six week trial, where he was the subject of public attention, contempt and ridicule. He was therefore gravely humiliated. The existence of the charges against him and each court appearance were reported in the local Cayman Islands' newspapers and television stations, along with reports appearing in the international media;
  - f. From 11 December 2012 until 9 October 2014, the Plaintiff was under threat of being wrongly convicted of a number of serious offences based upon the actions of the Defendants;
  - g. From 4 June 2013 until 9 October 2014 the Plaintiff feared that he would be imprisoned if convicted of the offences in the indictment;
  - h. Notwithstanding his acquittal the Plaintiff lost his office as the first Premier of the Cayman Islands and his reputation has been damaged;
  - i. News of the Plaintiff's arrest in December 2012 was broadcast all over the world within minutes by the international media, which media broadcast had to be prearranged by the First and/or Second Defendants; and
  - j. The conspiracy against the Plaintiff to bring him down and to interfere in the democratic process was of such magnitude that it represented an affront to democracy in the Cayman Islands and an abuse of the public's trust in the offices of Governor and Commissioner of Police.
15. As a result of his arrest the Plaintiff was removed as Premier of the Cayman Islands by the Second Defendant following the carrying of the No Confidence motion in the Legislative Assembly on 18 December 2012. His party subsequently lost the general election in May 2013 and the Plaintiff has since then been the Leader of the Opposition. He has lost his Premier's salary as a result and would likely have been re-elected as Premier at the May 2013 general election, had he not been the subject of the said criminal investigation. He has suffered considerably, both financially and otherwise, as a direct consequence of his arrest and subsequent prosecution. The Plaintiff has suffered considerable loss and damage and his reputation has been severely and irreparably damaged internationally and in the Cayman Islands.


Particulars of Special Damages

- a. Legal Fees and Expenses of CI\$875,000.

**AND THE PLAINTIFF CLAIMS:**

- (1) Damages;
- (2) Aggravated damages; and
- (3) Exemplary damages.

Dated: 21 October 2015



**TRAVERS THORP ALBERGA**  
Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Courts  
AND TO: Commissioner of Police, David Baines OBE  
AND TO: Duncan Taylor CBE  
AND TO: The Attorney General of the Cayman Islands

ADDRESS: c/o Portfolio of Legal Affairs  
PO Box 104, 4<sup>th</sup> Floor, Government Administration Building  
Grand Cayman KY1-1900  
CAYMAN ISLANDS

**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 495, Grand Cayman, KY1-1106.

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 installments 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.

BETWEEN:

WILLIAM McKEEVA BUSH OBE

Plaintiff

AND:

- (1) DAVID BAINES OBE, COMMISSIONER OF POLICE
- (2) DUNCAN TAYLOR CBE
- (3) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Defendants

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ACKNOWLEDGEMENT OF SERVICE OF  
WRIT OF SUMMONS

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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 box*)

YES

NO

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Service of the Writ is acknowledged accordingly

(Signed) .....

*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.*

Travers Thorp Alberga  
Attorneys-at-Law  
P.O. Box 472  
Grand Cayman, KY1-1106  
Cayman Islands  
Phone: +1 (345) 949-0699  
Facsimile: +1 (345) 949-8171  
ATTN: Michael Alberga  
Ref: MLA/B0985-005

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

[Empty box for Defendant's Attorney indorsement]