



**Writ of Summons (O.6, r.1)**

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. OF 2021

BETWEEN

AVS Corp Ltd – t/a AUDIO VISUAL SOLUTIONS

PLAINTIFF

AND:

CAYMAN ISLANDS CUSTOMS AGENCY

1<sup>ST</sup> DEFENDANT

SPECIALLY ENDORSED WRIT OF SUMMONS

TO: DEFENDANT: CAYMAN ISLANDS CUSTOMS AGENCY, 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 495G, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 1<sup>st</sup> day of January 2021

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

1. The Plaintiff purchased various items from Ledman Optoelectronic Co. Ltd., here described as the shipper, which is located in Shenzhen, P. R. China which goods were to be sent to the Cayman Islands. Contracts for the carriage of these individual items were evidenced by Bill of Ladings which confirmed that the goods were in transit on board a ship/vessel, to include, Tropic Jade VYG, and acted as a receipt for the goods on board the ship and which also served as a document of title for the goods. The goods were to be carried from one or more load ports to one or more discharge ports. The ports here concerned were located in Yantian, China, Miami and the final destination and discharge port was the Cayman Islands.
2. The goods purchased were described on the various shipping forms or Bill of Ladings as 8 crates LED displays (the "goods") and are listed, for instance, in a document titled Shipco Transport Bill of Lading Tropical Shipping references 21914652 and 2005573158.
3. The goods were transported by sea from China arranged by a Forwarding Agent known as Shipco Transport (Shanghai) Ltd, (MIA)(Bill of Lading 10582410) for Delivery to Cayman Islands Custom Agency ("CICA"). Caribtrans Logistics, LLC (Shipper/Exporter) (Bill of Lading CBOG14361794), Tropical Shipping and Construction Company Limited to CICA. The latter company is the final agent located at the Port of Discharge and thus consignee for the goods.
4. On 27 June 2020 Kesley Rae-Smith as Agent for Tropical Shipping and Construction Company Limited released the goods to CICA. On 1 July 2020 an employee of CICA, Ms. L Robler, signed Tropical Shipping and Construction Company Limited Carrier Release form Bill of Lading TSCW 14336318 and stamped the Form "OK TO RELEASE".
5. The goods were to be used at a school in the Cayman Islands and so an application was submitted in July 2020 to the Ministry of Finance for a duty waiver on the goods.
6. By email dated 2 July 2020 sent at 10.45 a.m. the Defendant wrote to the Plaintiff "CORRECTION - -- CARIBTRANS DOCUMENTS READY - AVS AUDIO VIDEO SOLUTIONS - BOL 14336318 - INVOICE# 304939" and set out the following:-

"Good Afternoon,

Please see the correct information of your shipment, apologies on this mistake.

Please be advised that we have an invoice for CaribeTrans paperwork ready for collection and payment at our office.

The total of the invoice is: ***\$ 140.50 KYD***

Please note:

We do not accept debit/credit cards or cheques drawn on an overseas bank.

Your invoice will incur a 3.5% brokerage rate, if not paid within two days of notification.

Please note that CaribeTrans shipments are consigned to CICA. Therefore when cargo is cleared, the release notice from Customs will need to be brought to our office. We will then go to Port Authority to stamp this released for you to collect. If you need our services for collection/delivery, please let us know.

Please advise if you would like our assistance in clearing this cargo.

Should you have any questions or concerns regarding this, please do not hesitate in contacting us.

Regards,

LILIAN ROBLES

Customer Service Agent supervisor”.

7. The Defendant by the above email was aware of the fact that the goods were shipped to the Cayman Islands and that it was the consignee. At all times the Plaintiff therefore understood that it would have to take the Release Notice to the Defendant so that the Defendant would attend the Port Authority and have the release stamped in anticipation for the goods to be collected.
8. The Deputy Director of the Port Authority and another representative spoke to the Defendant on at least two occasions after 10 September 2020 regarding the cargo to bring it to the Defendant’s attention.
9. At all times the Plaintiff therefore understood that it would have to take the Release Notice to the Defendant so that the Defendant would attend the Port Authority and have the release stamped for the goods to be collected. The Plaintiff obtained a copy of the Release Notice dated 27 November 2020 reference 2402027 permitting the goods to be collected from Customs & Border Control. The Port Authority of The Cayman Islands receipt BOL #14336318578626 number 2402027 records that

the shipper was Caribtrans Logistics LLC in the account of (CICA) Cayman Islands Customs Agency arriving in Grand Cayman on 28 June 2020 and cleared customs and was released on 30 November 2020.

10. The Defendant wrote an email dated 1 December 2020 to the Plaintiff wherein, in short, it denies that it knew of the existence of the goods.
11. Karen Ebanks of (CICA) Cayman Islands Customs Agency on Tuesday, 1 December 2020, at 1:34 pm, wrote the email mentioned at paragraph 10 above to the Plaintiff and others wherein she denies any responsibility for the goods as the consignee:

Good morning Jesse,

As I mentioned to you yesterday, I was first contacted by the Port about two shipments and those were sorted out with the Port/customer. I did not go to the Port facility at any time to check on any cargo, as per Donovan's comment, both conversations with Rochon were over the phone. The third shipment Rochon is referring to is probably the one which was not logged in our system, which I mentioned to him at the time that we spoke. At no time were details or descriptions given to CICA by Rochon on the type of cargo. Only a BL was furnished to us and we disregarded the request for further investigation, once it was confirmed that the cargo was not in our system and therefore, not ours. I don't recall telling Rochon to auction any shipment. What we did tell the Port is that we would not be collecting the hotel cargo, but that we would be collecting the vehicle.

Please note that we do not record shipments in our system once we release the documents to the customers for clearance. Once you pay and sign off on those documents, the clearance and cargo is no longer the responsibility of CICA, but that of the customer. The return of these items to the school is not CICA's responsibility as those documents were released to you. Based on my comments above, I trust that you can see where the situation was not in the hands of CICA and that we were not aware that your cargo was being auctioned off.

I hope that this information helps to clarify this issue. However, if you wish to discuss it further, please let me know.

12. The above email is contrary to the email mentioned at paragraph 6 above, wherein it states "...Therefore when cargo is cleared, the release notice from Customs will need to be brought to our office. We will then go to Port Authority to stamp this released for you to collect." as the Plaintiff only received the Release Notice on 27 November 2020, this suggest that the Defendant remained responsible for the goods until such time as the Release Notice was signed.

13. As a result of the Defendant denial to the Port Authority representatives of any knowledge of the goods, the goods were put up for auction and auctioned off by the Port Authority to a Port Authority employee on 31 October 2020. The Port Authority employee in turn put the goods up for sale and the Plaintiff in order to recover the goods purchased them from Carlos Woods on 11 December 2020 to his account at Cayman National Bank reference number 1001PC1203460685 for the sum of \$19K in order to ensure that the goods were recovered and could be delivered to the school.
14. The Plaintiff has therefore suffered a loss as a result of the breach of contract or duty of care and/or for the negligence of the Defendant.

#### Particulars of Negligence

- a) The Defendant failed to ensure that the goods were collected by it and made available to the Plaintiff.
  - b) The Defendant misrepresented the true position as it knew that it was the consignee for the goods.
  - c) The Defendant told the Port Authority representatives that it was not aware of the existence of the goods as they were not in its system.
  - d) Failing to keep any or any proper record of the goods.
  - e) Failed to have any or any sufficient regard for the ownership and thus protection of the Plaintiff's goods.
  - f) That it informed the Port Authority that it could sell the goods by way of auction.
  - g) It failed to properly investigate this matter following the communication by the Port Authority representatives with it which failure caused the goods to be auctioned.
  - h) As a result of the Defendant's failure to carry out proper inquiries, it did not stop the auction or assists in identifying the true owner of the goods.
15. By reason of these matters, the Plaintiff has incurred further financial expenses and he has suffered loss and damage.

#### Particulars of Special Damage

- a. The Plaintiff's goods were sold on 31 October by Auction at a purported blind auction to Carlos Woods, an employee of the Port Authority. Mr. Woods operates the forklift truck at the Port and thus is involved in the removal of goods from vessels whereafter such goods are placed in storage until they are collected.
- b. In order to recover the goods, the Plaintiff had to pay Carlos Woods the sum of CI\$19K.

AND the Plaintiff claims

(i) Damages

(ii) Further, pursuant to The Judicature Law (1995 Revision), the Defendant is entitled to and claims interest on such sums as are found to be due at such daily rate and for such period as the Court shall think fit.

(iii) Costs

A handwritten signature in black ink, appearing to read 'C. H. Allen', written over a horizontal line.

**Clyde H. Allen, Chambers**

THIS WRIT was issued by Clyde H. Allen, Chambers on behalf of the Plaintiff whose address for service is P.O. Box 31076 SMB, 19 Fort Street, KYI-1205, George Town, Grand Cayman, Cayman Islands.

Acknowledgement of service of writ of summons (0.12, r.3)

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 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 Acknowledgement 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 judgement 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 the 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 liquidation 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 stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make or 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 Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of the 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 deferent 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 authorized 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.

IN THE GRAND COURT OF THE CAYMAN ISLAND  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. OF 2021

BETWEEN

AVS Corp Ltd – t/a AUDIO VISUAL SOLUTIONS

PLAINTIFF

AND:

CAYMAN ISLANDS CUSTOMS AGENCY

1<sup>ST</sup> 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.

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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 a 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

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Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for

Address for service: (please see overleaf)

*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.*

Clyde Allen  
Clyde H. Allen, Chambers,  
Attorney-At-Law  
PO Box 31076SMB  
KY1-1205  
Grand Cayman  
Cayman Islands

*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]