



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

CAUSE NO.                      OF 2022

BETWEEN:

**DARIC DONAN EBANKS**

Plaintiff

**-AND-**

**TABITHA PHILANDER (1)**

**KSG ATTORNEYS Ltd.  
(trading as KSG Attorneys-at-law) (2)**

Defendants

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**WRIT OF SUMMONS**

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TO:                      Tabitha Philander as purported "Interim Receiver" c/o KSG Attorneys, Grand Cayman and personally by personal service in Wisconsin, USA  
 AND TO:              KSG Attorneys Ltd., Chiliad Corp Services, George Town, Grand Cayman

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 495GT, 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 21<sup>st</sup> day of April 2021

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 Acknowledgement of Service are given with the accompanying form.

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Statement of Claim

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1. The Plaintiff herein was the Plaintiff in GC 154 of 2001. That cause was a personal injuries action and the Plaintiff was awarded in 2016 personal injuries damages of KYD5,946,889.00 . The final Order ending the personal injuries action is dated 9<sup>th</sup> June 2017 stating the total damages awarded were KYD6,760,355.00. The Defendants knew at all material time that the total damages award was a fund to support the Plaintiff and his dependants financially for the rest of the Plaintiff’s life (40 odd years). The Plaintiff was aged 12 when injured and aged 31 in 2016.
2. The damages (“the Trust Fund”) were paid in tranches to the Second Defendant on various dates and have been held, to the best of the Plaintiff’s knowledge and belief, at all material times by the Second Defendant on trust for the Plaintiff in a bank account owned by the Second Defendant at Butterfield Bank, Grand Cayman. The Plaintiff is the beneficial owner of his trust fund so held and same ought to be so recorded with Butterfield Bank.
3. The First Defendant claims to be the client of the Second Defendant and a form of trustee for the Plaintiff who “holds” the Plaintiff’s trust fund on trust for him with her agents the Second Defendant. These are the best particulars available to the Plaintiff as to the agreements/arrangements between the Defendants until discovery be given herein.
4. The Trust Fund is held on constructive/resulting/other trust by one or either or both of the Defendants for the Plaintiff in the premises aforesaid from at least 8<sup>th</sup> March 2017.

5. As trustee(s), of whatever description, the Second Defendant and/or the First Defendant and/or the Defendants were at all material times and are under a primary duty owed to the Plaintiff to preserve the Trust Fund and to invest the capital to generate adequate returns for the Plaintiff beneficiary of the Trust Fund.
6. The Defendants claim to be professional advisors with special skills and hence to be fully aware of
  - (A) the duty in law (whether in the Trusts Act or otherwise) owed by them to the Plaintiff, when holding his Trust Fund as his trustee(s) and hence the duty to make investments necessary to protect the trust capital, and to provide income, and to exercise the care, skill, diligence and judgment that a prudent investor would adopt in making investments; and
  - (B) further, if such were in any way uncertain, of the obligation to seek directions from the Court under the Trusts Act.
7. In breach of the aforesaid duties the Second Defendant and/or the First Defendant and/or the Defendants have failed and in fact refused for the past 5 years and 6 months to preserve the Trust Fund and failed and in fact refused to invest the Trust Fund, or any part of it, at all, and without seeking any direction from the Court under the Trusts Act as to their said inexplicable refusals.
8. The aforesaid breaches and failures to invest the Trust Fund and to seek any direction under the Trusts Act on the issue has caused the Fund, and the Plaintiff, its beneficial owner, loss and damage which is continuing

Particulars

The Trust Fund in 2022, to the best of the Plaintiff's knowledge and belief, appears to be worth less than half that awarded in 2016 in real terms. The Plaintiff is unable to give full/better particulars until discovery herein and provision of accounts and bank statements and The Account as is prayed for below.

And the Plaintiff claims:

- (1) An Order that the Defendant(s) do not have recourse to the Plaintiff's said Trust Fund to pay for her/their/its defence(s) of/to this claim or pay their expenses for providing the Account to be given by them per (3) below;
- (2) An Order that forthwith payment be made to the Plaintiff's trustee of his choice (i) the full remaining balance of his Trust Fund, or (ii) at least KYD 3 million thereof, to stop and/or mitigate the loss and damage being inflicted on the Plaintiff and his Trust Fund;

- (3) An Order for an Account to be given by the Second Defendant as to all Trust Funds received and held by it as *de facto* trustee and how they were held, and reduced to the remaining balance, paid over per (2) above;
- (4) Damages, for breach of duty to preserve the Trust Fund and invest same, so as to bring the Trust Fund to the level at which it would be today but for the Defendant(s) breach of the duty to preserve the Fund and invest same;
- (5) Interest pursuant to statute on the damages awarded under (4) above from the date of judgment herein until payment;
- (6) Costs

Dated this 21<sup>th</sup> April 2022



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**CHAPMANS**  
Attorneys for the Plaintiff

**THIS WRIT OF SUMMONS** was issued by CHAPMANS, Attorneys for the Plaintiff, whose address for service is:  
Commonwealth House, PO Box 742, 81 West Church St, West Bay, Grand Cayman KYI-1303 (jchapman@chapmanslegal.com)

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, 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 installments or otherwise.

**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 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.

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Plaintiff

**-AND-**

**TABITHA PHILANDER (1)  
KSG ATTORNEYS Ltd.  
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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 box)

yes

no

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Service of the Writ is acknowledged accordingly

(Signed).....

Defendant / Attorney for the Defendant

**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.

**Chapmans**  
**Commonwealth House**  
**81 West Church St, West Bay,**  
**Grand Cayman KY1-1303**  
**Cayman Islands**  
jchapman@chapmanslegal.com

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