

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2020

BETWEEN:

RONALD GREGORY KYNES SNR

PLAINTIFF

AND:

THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

DEFENDANT

AND

**(1) COMMISSIONER OF THE ROYAL CAYMAN ISLANDS POLICE SERVICE
(2) DIRECTOR OF PUBLIC PROSECUTION**

INTERESTED PARTIES

WRIT OF SUMMONS

TO: Attorney General
 Office of the Attorney General
 4th Floor Government Administration Building
 133 Elgin Avenue
 George Town,
 Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within 28 days after the service of the 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, Cayman Islands, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgement may be entered against you forthwith without further notice.

Issued this ____ **day** of _____ 2020.

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 renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The 1st Interested Party is and was at all material times the Commissioner of Police for the Cayman Islands. The police officers referred to in this claim were at all material times acting under his direction and control in the purported performance of their police functions within the meaning of the Police Law.
2. The 2nd Interested Party is the Post holder of the Office of Director of Public Prosecution and in charge of crown prosecution. The Prosecutor referred to in this claim was at all material times acting under the post holder's direction and control in the purported performance of his function.
3. The 1st and 2nd Interested Parties are being sued through the Defendant, Attorney General, pursuant to section 11 of the Crown Proceedings Law (1997 Revision).
4. The Plaintiff is a self-styled artist; a sculptor, a painter and a creator of visual arts who suffers from a genetic disorder, namely Marfan Syndrome.
5. The Plaintiff purchased a piece of property on South Side West Road, Cayman Brac found on the Register at Block 105A, Parcel 59, in 2007. Unbeknown to the Plaintiff the property was designated as land for public use in or around 1996. Notwithstanding this designation, and as a consequence of not being aware of same, the Plaintiff uses the land as an exhibition area for his art call "Dream Land". The Plaintiff did and continue to do so in the honest and reasonable belief that he is entitled to make such use of his property as permitted by law.
6. In 2014 the Plaintiff created pieces of art based on the bible, one was called "apocalypse now" and another "Rapture". These artworks were displayed on his South Side, Cayman Brac property.
7. As a consequence of the Plaintiff biblical themed pieces, the Plaintiff was visited by local RCIPS officers and clergy men who had interpreted the art as depicting scenes related to voodoo, obeah or devil worshipping. He was then made the subject of an investigation for just over a year conducted by PC Aston Ferguson.

8. In respect to such allegation:

(a) The Plaintiff denies that the depictions were as alleged; and

(b) In any event, even if such depictions had been as described, a mere depiction does not constitute the “practice” of obeah for the purposes of the Penal Code (2012 Revision).

9. Therefore, Plaintiff consider that this conduct constituted harassment and an infringement of his right to freedom of expression. This led him to write a letter to the Cayman Compass.

10. In addition, the Plaintiff art “apocalypse now” was vandalised. It was knocked over and dragged across the road

11. The Plaintiff’s artwork also included his creation in 2015 of a depiction of German Folklore, “Faust”, which a sect of the Cayman Brac residents took as being a demonic sculpture. It was vandalized by unknown person(s) in May 2015. This vandalism was reported to the 1st Interested Party. There was also vandalism to a sculpture called “Mephistopheles Throne” in May 2015.

12. Additionally, there was another sculpture of a pyramid that was set on fire in December 2009. It is understood that the 1st Interested Party never filed a report of the Plaintiff’s complaint from the incident. It is also understood that there was no investigation, arrest or recording of the complaint to the police. There was also no arrest or duly completed investigation of any of the previous incidents.

13. In the summer of 2017, the Plaintiff made several sculptures including units called “Eva and Eve”, “LGBT”, “ISIS-the Anti-Christ” and “Hecate”. These again were opposed by a sect of the Cayman Brac community who made their opposition known including through the media and repeated complaint to the 1st Interested Party.

14. The sculpture “LGBT” and “Eva and Eve” were vandalized in August 2017. This was again reported to the 1st Interested Party.

15. The Plaintiff made a Freedom of Information request on January 23, 2018 which was responded to in January 26, 2018. The request disclosed to the Plaintiff a series of emails showing an unjustifiable search for a cause to censor the Plaintiff in relation to his art that stretched back to at least 2014.
16. Frank Owen, Chief Inspector in 2014 sent to Mr. Ernie Scott, District Commissioner at time and Mark Tibbetts an email seeking the prosecution of Plaintiff in relation to offence relating to religion.
17. On 18th July 2017 Mark Tibbetts, Deputy District Commissioner again sought to have the Plaintiff prosecuted in relation to his art and signs he displayed on his property and instructed PC Tahal to undertake investigation to bring this to effect.
18. On July 2018, PC Tahal by email, with Mark Tibbetts, copied in and in furtherance of seeking to prosecute the Plaintiff reached out to the Deputy Director of Public Prosecutor at the time, Patrick Moran, in relation to the art displayed on the Plaintiff's property.
19. On the afternoon of 18th July 2017 at around 2:00pm, after a week of regular visits from officers of the 1st Interested Party, PC Tahal in the presence of PC Doreen McDonald arrested the Plaintiff for obscene publication or publication tending to corrupt morals related to the Plaintiff's art displayed. The Plaintiff suffered convulsions due to his genetic disorder at the time of arrest. He informed the Officers and was attended to by medics. He was later taken to the Cayman Brac Police Station where he endured questioning and being fingerprinted.
20. On 27th April 2018, 28th April and 27th June 2018 the Plaintiff was tried before the Honourable Magistrate Gunn in the Summary Court of the Cayman Islands and was acquitted of the offence of possessing obscene objects or objects tending to corrupt morals for the purposes of public exhibition.
21. The 1st and 2nd Interested Parties were the prosecutors in this matter in that:

(a) the evidence on which the Plaintiff was charged and prosecuted came exclusively from the biased collected accounts or assertions of obscenity by a limited section of the public which was reported to RCIPS and its officers, PC Smith and PC Tahal. PC Smith and PC Tahal pursued these biased accounts and assertions under the direction of the 1st Interested Party without due objectivity.

(b) the charge against the Plaintiff was laid by or at the instruction of the 2nd Interested Party on the basis of the false accounts of obscenity made by the limited section of the public and collected by PC Smith and PC Tahal upon the advice of the 2nd Interested Party and at the direction of the 1st Interested Party;

22. The prosecution of the Plaintiff was brought without reasonable and probable cause. There were no reasonable grounds to lay the charge.

PARTICULARS

23. The Plaintiff had not made or displayed art of an obscene nature.

24. None of the statues displayed any forms of sexual acts. None displayed any obscenity, nor did they impugn the morals of society by reference to public standard of the Cayman Islands community as a whole which put on two (2) (and sometimes three (3)) public national carnivals each year which display participants simulating sexual acts.

25. The Plaintiff expressed his artistic opinions and right to free speech.

26. The Plaintiff had on several occasions reached out to the 1st Interested Party having been the victim of vandalism of his art to no avail.

27. Despite the animosity of the complainants behind the 1st and 2nd Interested Parties' investigation and prosecution, the 1st Interested Party became a sponsor for the complainant(s) rather than an independent investigator.

28. The 2nd Interested Party by its servant, Patrick Moran, at a preliminary hearing called evidence from several Cayman Brac residents to support its contention that the Plaintiff's art was obscene despite civilian or expert evidence being not evidence to prove the same.

29. The action of charge and prosecution was without basis and malicious taking note of the several annual carnivals both in Grand Cayman and Cayman Brac hosted and sponsored by the Department of Tourism in which participants simulates sexual acts as they pass children and adult who line the streets.

30. None of the Statutes were obscene publication or tending to corrupt morals:

(a) ISIS: - Depicts a female figure with no arms with exposed breast and nipples. The pubic area of the statue is covered. A head is positioned in the area of the statue's thigh.

(b) Eva and Eve: - two female figure facing each other in an embrace, the face of the shorter on the chest of the taller.

(c) LGBT: -The statue is of two females without defined pubic areas or genitalia and no contact showing any sexual act.

(d) Hecate: - a statue of a female with a head protruding from the navel but with no sexual connotation.

31. PC Tahal and Smith under the instruction and direction of the 1st Interested Party so acted in the knowledge that the accounts they gave were flawed and that the Plaintiff would be charged and prosecuted for the offence. The images taken by PC Tahal of Eva and Eve gave the impression of a sexual act when in fact there was none. The same applied to the pictures taken of "LGBT" and submitted as evidence by PC Tahal.

32. The prosecution of the Claimant was malicious.

PARTICULARS OF MALICIOUS PROSECUTION

33. PC Tahal and Smith on the instruction of the 1st Interested Party acted intending that the Plaintiff should be convicted of an offence which they knew or ought to have known he had not committed.
34. Malice is to be inferred from the lack of reasonable and probable cause for the arrest and prosecution.
35. PC Tahal and Smith on the instruction of the 1st Interested Party so acted in purported performance of their duties. The Plaintiff will contend that they so acted in a bias and incompetent manner, taking note of the failure to investigate or arrest any of those persons engaged in the damage or destruction of the Plaintiff art whilst becoming an advocate for the cause that the Plaintiff art was obscene and tending to impugn the morals of society and the directions and instructions of the 1st Interested Party.
36. The 1st and 2nd Interested Parties' conduct was without consideration to and in breach of the Plaintiff constitutional rights:
- (a) To freedom of expression under section 11 of Part 1 of the Cayman Islands Constitutional Order 2009. The 1st and 2nd Interested Parties sought to prevent without reasonable justification the Plaintiff from displaying his art which were his expressions and statement in relation to matters in his life and his community.
 - (b) To peaceful enjoyment of his property under section 15 of Part 1 of the Cayman Islands Constitutional Order 2009. The 1st and 2nd Interested Parties sought to prevent without reasonable justification the Plaintiff from using his property to include but not limited to the creation, display and enjoyment of his art.
 - (c) Not to be treated in a discriminatory manner under section 16 of Part 1 of the Cayman Islands Constitutional Order 2009. The 1st and 2nd interested party failed in

the exercise of their duty to treat the Plaintiff without discrimination by failing to undertake an objective and unbiased investigation. The 1st and 2nd Interested parties afforded different and unjustifiable treatment to the Plaintiff on grounds including but not limited to his opinion.

37. As Public Officers the 1st and 2nd Interested Party failed to preserve the Plaintiff's constitutional rights. Malice is to be inferred from such failure and breach.

38. By reason of the matters set out above, the Claimant suffered loss and damage, including loss of liberty as set out above, distress and reputational damage of a prosecution lasting from 18th July 2017 to 17th June 2018. The Plaintiff will rely on the following facts and matters in support of his claim for aggravated damages.

PARTICULARS OF AGGRAVATED DAMAGES

39. The Claimant was required to attend court on several occasions where he was the subject of public attention, contempt, and ridicule. He was thereby gravely humiliated. He was arrested and samples taken from him. His name and reputation which is also borne by his son and grandson, Ronald Gregory Kynes and Ronal Gregory Kynes III respectively, is felt to have been tarnished.

40. From 18th July 2017 until 27th June 2018 the Plaintiff was under threat of being wrongly convicted of an offence based upon the skewed evidence gathered through a biased and unbalanced investigation.

41. From 18th July 2017 until 27th June 2018 the Plaintiff feared that he would be imprisoned if convicted of the offence.

42. Notwithstanding his acquittal the Plaintiff's reputation has been damaged.

43. The actions of the 1st Interested Party's officers were arbitrary, oppressive and unconstitutional. The Plaintiff claims that this is an appropriate case in which the Court

should mark its disapproval or condemnation of those actions with an award of exemplary damages. The Plaintiff will rely upon the matters above and on the following facts and matters in support of his claim for exemplary damages.

PARTICULARS OF EXEMPLARY DAMAGES

44. The 1st Interested Party's vigorously pursued their own distorted evidence against the Plaintiff.

45. The 2nd Interested Party prosecutor vigorously continued to prosecute the case even calling evidence which was clearly inadmissible to substantiate its claim.

46. Further, the Plaintiff claims interest upon such damages and amount found due pursuant to Section 34 of the Judicature Law 2017 or otherwise at such rate as this Honourable Court deems fit.

AND the Plaintiff claims:

- (a) Damages;
- (b) Exemplary Damages;
- (c) Interest;
- (d) Costs;
- (e) Such further or other relief;

BP & Associates, Attorneys for the Plaintiff

This **Writ** filed by **BP & Associates**, Attorneys-at-Law for the **Plaintiff**, whose address for service is Suite 3B, 3rd Floor Landmark Square, West Bay Road, George Town, P.O Box 30796, Grand Cayman KY1-1204, Grand Cayman, Cayman Islands, telephone 345-322-8088, 345-925-4621.

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICES
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 "Statements of Claim" appear on the top of page 2) the Defence must be served within 28 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 28 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 judgement 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
Please complete overleaf

1. Each Defendant (if there is 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 28 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 (.....)” 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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RONALD GREGORY KYNES SNR

PLAINTIFF

AND:

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DEFENDANT

AND

(1) COMMISSIONER OF THE ROYAL CAYMAN ISLANDS POLICE SERVICE

(2) DIRECTOR OF PUBLIC PROSECUTION

INTERESTED PARTIES

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.

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
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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 this 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 communication for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

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

BP & Associates
Suite 3B Landmark Square
West Bay Road,
P.O. Box 30796
Grand Cayman, KY1-1204
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.

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