

10/5/02

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. 16 of 2002

Between:

SUMMERSONG INVESTMENTS LTD.

Applicants

*Noted
jsh*

- and -

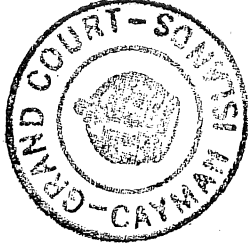
THE GRAND VIEW

Respondents

BEFORE: The Honourable Mr. Justice Kellock

Clyde Allen of Woodward Terry & Co. for the applicant.
Alistair Walters of Campbells for the respondent.

Heard: May 9th 2002



REASONS

On January 11th 2002 I heard an *ex parte* application brought by Mr. Allen on behalf of Summersong for a *quia timet* injunction based on an *ex parte* originating summons issued January 7th 2002. That application was dismissed for delay and accordingly Summersong's right to that injunction is now *res judicata*. That should have been the end of the matter.

When I noticed this matter on my list for this week I read the file and found nothing therein other than the *ex parte* originating summons and the material filed in support thereof in January 2002.

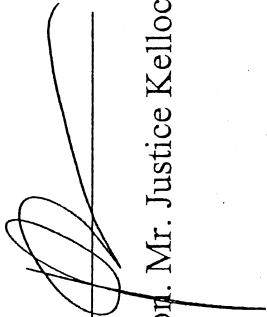
Accordingly, and at my direction, the listing officer contacted Mr. Allen and advised him (or his office) that a bundle would be required. No bundle was provided. I therefore made the following order for the following reasons:

1. There is no summons returnable today before me. Mr. Allen seeks to proceed on the basis of the originating *ex parte* summons (which has no return date) seeking an injunction and consequential relief and which was not adjourned on January 11th 2002.
2. Mr. Allen says that his client's cause of action is based on an alleged breach of the Condominium (Strata) Law. He acknowledges that there is no prayer for relief as yet based on that alleged cause of action. He contemplates that he will be seeking declarations and another injunction. A cause of action for breach of statute *per se* is unknown to the law.

3. The other relief that was asked for in the *ex parte* summons was consequential, i.e. an order disqualifying the respondent's attorneys and the production of documents. How either of these orders could be obtained *ex parte* is a mystery to me.
4. Mr. Allen did not seek to amend the summons in any way but sought an order pursuant to order 28, rule 8 continuing this proceeding as an action commenced by writ of summons. I declined to do so in the exercise of my discretion.
5. As noted, Mr. Allen declined to provide a bundle because it did not suit him so to do. In other words, Mr. Allen deliberately refused to comply with the Court's direction.
6. In the circumstances, the *ex parte* originating summons will be dismissed with costs payable forthwith by the applicant to the respondent. Such costs to be taxed if not agreed.

7. This order is made without prejudice to the commencement of such other proceedings as Summersong may see fit to commence save and except the injunction refused on January 11th 2002.

Dated the 10th day of May, 2002.


The Hon. Mr. Justice Kellock

