

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0316 OF 2009

BETWEEN:

MALCOLM STEPHENSON

PLAINTIFF

AND:



PROPRIETORS OF STRATA PLAN # 151
(ALSO KNOWN AS WINDSOR VILLAGE)

DEFENDANT



AMENDED SPECIALLY ENDORSED WRIT OF SUMMONS

TO: PROPRIETORS OF STRATA PLAN # 151
(ALSO KNOWN AS WINDSOR VILLAGE)
P.O. Box 242
George Town
Grand Cayman

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

Within 14 days after 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 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 judgment may be entered against you forthwith without further notice.

Issued this day of July 2009

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.

This Writ was filed by Stenning & Associates, Attorneys-at-Law for the Plaintiff whose address for service is 58, Mary Street, Unit #8 Thompson Building, George Town, Grand Cayman. (JS/793/001)

AMENDED PARTICULARS OF CLAIM

1. The Plaintiff is a sole trader, who has been providing architect services for approximately 40 years within the Cayman Islands and is currently located at 58 Mary Street, George Town, Grand Cayman, Cayman Islands.
2. The Defendant is a registered strata company, being registered as Strata Plan # 151 at the Lands Registry and is also known as Windsor Village.
3. On or around the 11th September 2004 the Cayman Islands suffered catastrophic damage as a result of Hurricane Ivan.
4. Hurricane Ivan caused catastrophic damage to the Defendant, destroying or otherwise severely damaging all of the buildings forming a part of and constituting Strata Plan # 151, which is the Defendant.
5. On or around November 2004 the Defendant, through its agents or otherwise, instructed the Plaintiff to prepare drawings and scale plans for the reconstruction of the buildings known as "Building Number One" and "Building Number Six".
6. On or around November 2004 the Defendant, through its agents or otherwise, instructed the Plaintiff to meet with any and all owners/members within Strata Plan #151 that contacted the Plaintiff to provide architect services for their unit if it formed a part of Strata Plan #151, which is the Defendant.
7. The Defendant agreed to pay a fixed fee of US\$75,000.00 to the Plaintiff for any and all architect services provided as summarised in paragraph 5 and 6 of these particulars of claim, hereinafter referred to as the "Contract".
8. The Plaintiff provided professional services as an architect to the Defendant during the month of November 2004 continuing until and concluding on the 12th February 2006, hereinafter referred to as the "Service Period".
9. The professional services provided by Plaintiff to the Defendant, pursuant to the Contract, during the Service Period, were in accordance with the Defendant's instructions at all times.
10. The Defendant benefited, and still retains a benefit, from the provision of professional services provided by the Plaintiff through the use and retention of the drawings and scale plans produced for and delivered to the Defendant by the Plaintiff in accordance with the Contract and /or instructions received from the same.
11. ~~Intellectual property rights, such as but not limited to copyright, are created through~~ Copyright subsists in the production of the drawings and scale plans by the Plaintiff for the Defendant, such copyright belonging to ~~and at all times belonged to and continue to belong to~~ the Plaintiff.

12. The use of the plans and /or scale drawings, as produced by the Plaintiff, **by the Defendant to rebuild and or upgrade the buildings making up Strata Plan # 151** is in breach of the Plaintiff's copyright in the same, given that the Plaintiff only gave a licence for the use of the same on the condition, **implied or otherwise**, of payment for his professional services **provided to the Defendant pursuant to the Contract ~~per the invoice of the 12th February 2006~~**, or in the alternative payment of a reasonable fee.
13. It is an implied term of the **Contract** that the Defendant would pay the Plaintiff a fee in accordance to the plaintiff's standard rates for professional services as an architect, or alternatively a reasonable fee.
14. The Plaintiff's fee, calculated in accordance with the Plaintiff's standard rates for professional services provided during the Service Period, per the Plaintiff's invoice of the 12th February 2006, is US\$55,000.00. Alternatively, C1\$55,000.00 is a reasonable fee.
15. On the 1st June 2005 the Plaintiff sent an invoice to the Defendant requesting payment in total for US\$55,000.00 for professional services provided but the Defendant has failed and/or otherwise refused to pay the outstanding balance or any part thereof.
16. The Plaintiff followed up his invoice sent to the Defendant on the 1st June 2005 with further reminder invoices culminating in the last reminder invoice of the 12th February 2006 (attached to these Particulars of Claim) but the Defendant continues to fail and/or otherwise refuse to pay the outstanding balance or any part thereof.
17. In the premises the Plaintiff claims interest pursuant to section 34 (1) Judicature Law (2007 Revision) and the relevant Judgment Debts (Rates of Interest) Rules as gazetted on the amount due and contained in the Plaintiff's Invoice 12th February 2006.

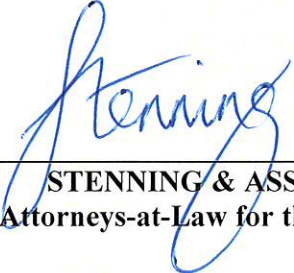
STATEMENT REGARDING INTEREST

18. The rate of Pre-judgment interest for US Dollar Judgments from 12th February 2006 to 30th June 2006 is 3% per annum.
19. The rate of Pre-judgment interest for US Dollar Judgments from 1st July 2006 to 30th November 2008 is 7¼ % per annum.
20. The rate of Pre-judgment interest for US Dollar Judgments from 1st December 2008 to 27th May 2009 is 5 % per annum
21. The total amount of interest claimed US\$12,286.31
22. The interest accruing US\$ 8.96 per day

AND THE PLAINTIFF CLAIMS:

23. The sum of US\$55,000.00;
24. Damages for breach of copyright;
25. Pre-judgment Interest on the amount of US\$12,286.31, calculated pursuant to Section 34 of the Judicature Law at a rate of 3% per annum from 12th February 2006 to 30th June 2006 and the rate of 7 ¼ % per annum from the 1st July 2006 to 30th November 2008; and from the 1st December 2008 to 27th May 2009 at 5% - or at such other rate as the Honourable Court determines.
26. Post-judgment interest thereafter pursuant to section 34 of the Judicature Law or as determined by the Honourable Court.
27. Costs; and
28. Such further equitable and/or other relief.

Dated: 21st July 2009



STENNING & ASSOCIATES
Attorneys-at-Law for the Plaintiff

MALCOLM M. STEPHENSON
ARCHITECT
BOX 872 GT
GRAND CAYMAN

CELL: (345) 925-5927
TEL: (345) 949-5927

12 February 2006
1 June 2005

DR. TO ; Windsor Village Condominia/Cayman General Insurance
Strata Plan # 151
P.O. Box 242 GT
Attention: Mr. Patrick Harrigan
By fax on 23 May 2006
Grand Cayman

TO : Professional services rendered in the surveys of Building Number One and Building Number Six at Windsor Village; to the preparation of plans therefrom; to examinations of the existing buildings and discussions with various owners to lay out the standard internal plans of the apartments as they originally existed: to the survey and layout of the electrical plans of the apartments as closely as possible to that which existed originally: to discussing and arranging for the plumbing drainage in Building Number One to be re-routed: to meeting with those owners who contacted me to discuss and amend the plans of their units to conform to their requirements; to meeting with several owners of apartments in other buildings in the complex to discuss and prepare plans illustrating their requested changes; to dispensing copies of the plans to the owners, the contractor and the project manager.

To interim account on the agreed contract fee of US\$ 75,000.00

US\$ 55,000.00

(Fifty five thousand United States dollars)

BETWEEN: MALCOLM STEPHENSON PLAINTIFF

AND: PROPRIETORS OF STRATA PLAN # 151
(ALSO KNOWN AS WINDSOR VILLAGE) DEFENDANT

ACKNOWLEDGEMENT 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.

2. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged -

3. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)
 yes no

4. 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

Service of the Writ is acknowledged accordingly

Attorneys for Defendant

Address for service:

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.

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

STENNING & ASSOCIATES

Attorneys-at-Law

Unit # 8 Thompson Building

58, Mary Street

George Town

Grand Cayman

REF: JS/793/001

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

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.

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 his 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.