

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 8 OF 2010



B E T W E E N:

ROWAN MULLINGS

Plaintiffs

AND

1. OMAR DUVAL
2. KIRK DUVAL

Defendants

WRIT OF SUMMONS

TO: **Omar Duval**
Kirk Duval
P.O. Box 10538
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, PO Box 495, Grand Cayman, KY1-1106 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 January 2010

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.

GENERAL INDORSEMENT

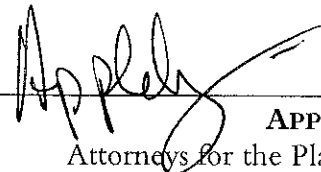
1. The Plaintiff is a resident of the Cayman Islands whose address is P.O. Box1390 KY1-1110 His address for service is in care of their attorneys, Appleby, of PO Box 190, Grand Cayman KY1-1104, Cayman Islands.
2. The 1st Defendant is an individual residing in the Cayman Islands.
3. The 2nd Defendant is an individual who formerly resided in the Cayman Islands and his current residence is believed to be in Jamaica, British West Indies. The 1st and 2nd Defendants are brothers.
4. By Agreement made in September 2004, the Plaintiff and the 1st Defendant, on his own behalf and on the behalf of the 2nd Defendant, entered into an agreement (the "Agreement") whereby the Plaintiff agreed to purchase property described Registration Section Spotts, Block 25B Parcel 88/2 (the "Property"). The Agreement has been lost or misplaced.
5. The terms of the agreement were as follows:
 - a. The Plaintiff would pay to the 1st Defendant the sum of CI\$30,000 which sum included the insurance payment which the Defendants anticipated receiving in connection with the loss due to Hurricane Ivan;
 - b. The Plaintiff would pay to FirstCaribbean International Finance Corporation (Cayman) Limited the mortgage payments of the mortgage registered against the Property which the 1st Defendant advised the Plaintiff was estimated to be CI\$120,000;
 - c. The Plaintiff would pay the then existing utility arrears of approximately CI\$4,863.

- d. The Plaintiff would have the right to immediate occupation of the Property and would arrange for utility services in his own name;
 - e. The Property would be transferred to the Plaintiff;
 - f. The Plaintiff was entitled to all chattels then in the Property;
 - g. The Plaintiff would make repairs at his expense to make the Property habitable.
6. The Plaintiff has part performed the Agreement by paying:
- a. Paid the sum referred to at paragraph 5 a., above;
 - b. Paid mortgage payments from the date of the Agreement until January 2009 at which time he ceased making payments for the reasons set out below;
 - c. He paid the utility arrears referred to at paragraph 5 c., above;
 - d. He took occupation and repaired the Property expending approximately CI\$35,000 on materials and labour;
 - e. He established his own utility accounts and paid for services provided to the Property by service providers including CUC and Cayman Water Authority;
7. The Defendants are refusing to complete the Agreement by refusing to confirm in writing the terms of the Agreement to permit the Plaintiff to obtain financing.
8. The Defendants are wrongfully denying the Plaintiff's right to complete the Agreement and his rights as contracting purchaser.
9. The Defendants are wrongfully attempting to take possession of the Property and sell it notwithstanding the Agreement.

10. The Defendants have wrongfully had utility services to the Property terminated in their capacity of registered proprietors.

AND THE PLAINTIFF claims:

- a) A declaration that on or about September 2004 the Plaintiff and the Defendants entered into a written agreement for the sale of the Property by the Defendants to the Plaintiff;
- b) Alternatively, a declaration that the Plaintiff and the Defendants entered into an oral agreement for the sale of the Property by the Defendants to the Plaintiff;
- c) An Order for specific performance of either the written Agreement or the oral agreement;
- d) Alternatively, a declaration that the Plaintiff is entitled to restitution or for moneys expended on the Property in accordance with the doctrine of proprietary estoppel;
- e) Alternatively, a declaration that the Defendants hold the Property in trust for the Plaintiff;
- f) An order granting possession of the Property to the Plaintiff on terms considered just. declaration that the Defendants;
- g) An order that the Plaintiff is entitled to contract for utility services for the Property and that the Defendants not interfere with the Plaintiffs contractual relations with utility providers;
- h) An inhibition pending the determination of matters relating to this proceeding;
- i) In the event of an order for restitution, pre and post judgment interest in accordance with the *Judicature Law (2004 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
- j) Costs on an indemnity basis or standard basis in accordance with the Court Costs Rules 2001; and,
- k) Such further and other relief as this Court may deem just.



APPLEBY
Attorneys for the Plaintiff

This WRIT OF SUMMONS was filed by Appleby, Attorneys-at-Law, for and on behalf of the Plaintiff whose address for service is Clifton House, 75 Fort Street, PO Box 190, Grand Cayman, KY1-1104, Cayman Islands (ref: WAS/11087.001)

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 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 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.

Acknowledgment of service of writ of summons (O.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 each Defendant or by each Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495 GT, 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

Please complete overleaf

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ROWAN MULLINGS

Plaintiffs

AND

3. OMAR DUVAL

4. KIRK DUVAL

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.

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

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

Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for
[Defendant in person]

Address for service:

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

Appleby Attorneys-at-Law 75 Fort Street PO Box 190 Grand Cayman KY1-1104 CAYMAN ISLANDS Ref: WAS/11087.001
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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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