

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: GC 179 OF 2010

BETWEEN:

FERNANDO MENDES

PLAINTIFF

AND:

WEST INDIAN HOLDINGS LTD

DEFENDANT

WRIT OF SUMMONS

TO: West Indian Holdings Ltd

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 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

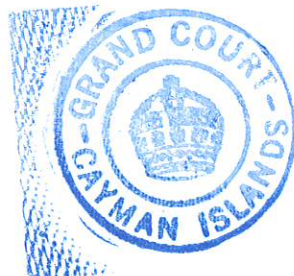
If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 23 day of April 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 Acknowledgment of Service are given with the accompanying form.



STATEMENT OF CLAIM

1. The Plaintiff is the registered owner of a fraction registered land parcel at West Bay, North East Block 9A, parcel 428 ('the land'). The Plaintiff owns a share of 2/10th as proprietor in common on the land register. All references to the plaintiff hereafter in the context of the purchase of the land includes the proprietors in common.
2. The Defendant is a company lawfully trading in the Cayman Islands and the holder of a charge over the land. Such charge being registered on the 14th November 2007. The Chargor, who consented to the placing of the charge over the land was the registered owner at that time, Mr Herbert Humphreys Junior. The charge being in the sum of US\$860,000.
3. On or about the April 2008, the Plaintiff along with the proprietors in common agreed to purchase the land from Herbert Humphreys Junior for the sum of US\$860,000.
4. The Plaintiff agreed to purchase the land from Mr Humphreys under the followings conditions:
 - (a) The Plaintiff would pay the sum of US\$85,000 by way of down payment.
 - (b) The Defendant would be paid the balance by the Plaintiffs.
 - (c) The Defendant would take a charge over the land, such charge being between the defendant and Mr Humphreys. (the charge referred to in paragraph 2).
 - (d) The Plaintiff would repay the Defendant the balance of the purchase price on or before February 22nd 2008.
5. Due to financing difficulties the Plaintiff has been unable to repay the balance of the purchase monies to the Defendant.
6. At all material times to the action, the Defendant has retained a charge over the land, Mr Hubert Humphreys continues to be named at the Land Registry as the Chargor on the property. At no time since purchase of the property has a variation or amendment to the charge been registered at the Land Registry.

7. Under the provision of Section 72 of the Registered land Law (2004 Revision) the Chargee is entitled to sell the property in the event of default by the Chargor 3 months after service of a notice in writing to the Chargor.
8. The Plaintiff has two valuations reports for the land, dated February 8 2006 from Evans & Oracle Quantity Surveyors and from JEC dated April 2008. These reports value the land at respectively US\$2.1 million and CI\$1.795 million.
9. On the 17th April 2009 the Plaintiff received a conditional offer to purchase the land for the sum of U.S. \$2.1 million although this sale was not completed.
10. The Defendant intends, unless otherwise restrained by this Honourable Court, to sell the property of the Plaintiff by public auction on the 23rd April 2010 with a reserve price of US\$695,000.
11. The defendant has an obligation under the provision of s75 of the Registered Land Law when exercising a power of sale to act in good faith and have regards to the interests of the chargor.
12. The Defendant in breach of its duty to act in good faith proposes to sell the land at public auction.

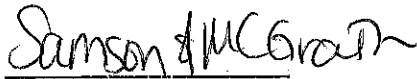
Particulars of breach of duty

13. The Defendant intends in breach of s72 of the Registered Land Law to sell the land in circumstances where no notice has been given to the Chargor and in the knowledge that such deficiency exists.
14. The Defendant intends to sell the land in circumstances where evidence exists and is within the knowledge of the defendant, that the reserve price as set for the auction is significantly below the true value of the land and will likely result in a sale at an undervalue.

15. As a result of the intended breach of statutory duty, the Plaintiff is entitled in respect of such damages as he may be awarded and to interest at such rate as this Honourable Court shall deem just pursuant to the Judicature Law.

AND THE PLAINTIFF claims:

1. An Order that the Defendant is in breach of the Registered Land Law (2004)
2. An injunction to restrain the defendant, by itself, its directors, servants, agents or other wise howsoever from proceeding with a public auction on the 23rd April 2010 for the land known as West Bay North East Block 9A parcel 428
3. Damages
4. Interest in accordance with the Judicature Law (2007 Revision)
5. Costs
6. Such further and other relief as this Court may deem just



Samson & McGrath

Attorneys for the Plaintiff

THIS WRIT was issued by Samson & McGrath, Attorneys for the Plaintiff whose address for service is 5th Floor Genesis Building, Genesis Close, P.O. Box 446 GT, George Town, Grand Cayman.

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 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 "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 instalments or otherwise.

See over for notes for guidance

Please complete overleaf

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 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.