

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

335
CAUSE NO: OF 2010

BETWEEN:

PROPRIETORS STRATA PLAN #191

PLAINTIFF

AND



DERRINGTON MILLER



AND

1st DEFENDANT

NORTHERN LIGHTS LIMITED

2nd DEFENDANT

WRIT OF SUMMONS

TO: Derrington Miller

Northern Light Ltd
P.O Box 1751

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 ^{10th} day of September 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 was at all material times a body corporate consisting of a collection of all the Strata Proprietors contained within Strata Plan #191, also known as 'Northern Lights', in accordance with Section 5(1) of the Strata Titles Registration Law (2005 Revision) (hereinafter 'the Law').
2. The first Defendant was at all material times the sole member and Chairman of the Executive Committee of the Plaintiff.
3. The second defendant was at all material times the owner of Units 5 and 6 at Strata Plan 191. The first defendant was at all material times a director, sole shareholder and directing mind of the second defendant.
4. All references to the 'Defendants' hereinafter are references to the first defendant in his capacity as an individual and/or as an agent for the second defendant.
5. The control, management and administration of the strata units and common property contained in the strata plan and forming the plaintiff were regulated by bye-laws. Those bye-laws having been registered with the Department of Lands and Survey on the 9th June 1995.
6. The Executive Committee is a body constituted under the registered bye-laws of the Plaintiff and empowered under bye-law 22 to;
'subject to the provisions of clause 39 of these bye-laws and subject to any restriction imposed or direction given at a General Meeting exercise the powers and perform the duties of the Corporation.' The 'Corporation' being the plaintiff.
7. The bye-laws of the plaintiff set out, inter alia, the powers and duties of the plaintiff and in particular state as follows:

Bye-law 42 (f)(i)

The Corporation shall :- 'insure Northern Lights Apartments (which for the avoidance of doubt shall for this purpose include each and every Strata Lot for the time being contained herein together with the Common Property and all erections, buildings and installations now or hereinafter standing or installed thereon or therein) and keep it insured against loss or damage by riot, civil commotion, fire, explosion, storm, hurricane, flooding, earthquake, impact damage or damage caused by aircraft or anything falling or dropping therefrom and such other risks as it shall from time to time think fit with such insurance company of repute as it may decide to an

amount or amounts equal to the full replacement value thereof plus surveyors' and architects' fees.

8. As a member of the Executive Committee of the plaintiff the first defendant acting as an individual or as agent of the second defendant owed to the plaintiff the following duties, inter alia:
 - (a) A duty to act bona fide in the interests of the plaintiff
 - (b) A duty to comply with the registered bye-laws of the plaintiff and in particular with bye-law 42(f)(i) to insure the Strata against risk of hurricane damage to full replacement value.
 - (c) To ensure compliance with the Strata Titles Registration Law in every respect and in particular with Section 6(1) and (2) of the Law.
 - (d) A duty to act for the proper purposes of the plaintiff in relation to its affairs.
9. As a member of the Executive Committee of the plaintiff the defendants were trustee of the assets of the plaintiff and/or owed the obligations of a trustee in respect of the assets of the plaintiff and was under a duty to act with reasonable care, skill and diligence in relation to the carrying out of this role.
10. On the 12th September 2004 Hurricane Ivan hit Grand Cayman and in the process caused major damage to the buildings of the plaintiff for which insurance was mandated to be in place in accordance with bye-law 42(f)(i).
11. Subsequent to the damage caused by the hurricane it was discovered by the proprietors of the plaintiff that no insurance coverage against the risk of hurricane damage.
12. The failure to so insure the buildings was made without the express or implied consent of the proprietors of the Strata and the plaintiff.
13. In failing or neglecting to effect such a policy of insurance the defendants acted:
 - (a) Mala fide and against the interest of the plaintiff
 - (b) Ultra vires his powers
 - (c) For improper purposes in relation to the affairs of the plaintiff
 - (d) In breach of trust and/or in breach of his obligations as trustee in respect of the obligations to the plaintiff
 - (e) Negligently
 - (f) In breach of his fiduciary duty to manage the plaintiff in accordance with the bye-laws and the in breach of their statutory duty under section 6(1) and (2) of the Strata Titles Registration Law.

Particulars

14. Failing to put in place a policy of insurance sufficient to insure the plaintiff against Hurricane damage to the property under the plaintiff's control on the 12th September 2010.
15. Failing to comply with his duty to act under the Bye-laws of the Plaintiff.

16. Failing to ensure the plaintiff's compliance with their Statutory duty to effect such a policy of insurance pursuant to the Strata Titles Registration Law.
17. Failing or omitting to seek unanimous approval for his failure to act from the proprietors of the plaintiff corporation at an annual general meeting.
18. Allowing the plaintiff to sustain uninsured losses through the defendants negligence.

Particulars of Loss and Damage

19. The plaintiff has had to effect repairs to all buildings and common property subject to the Strata plan for which insurance coverage was not in place but should have been.
20. The cost of the repairs to date is US\$144,000 with further amounts to be determined.
21. And the plaintiff claims interest.

STATEMENT REGARDING INTEREST

a) The Plaintiff seeks pre and post judgment interest from the date of issue of the Writ in accordance with the provisions of the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.

b) The interest rate claim as per the Judicature Law and the Judgment Debt (Rates of Interest) Rules is 5% per annum.

c) Interest is claimed from the date of settlement of the invoices for payment of the insured losses. A schedule of same will be forwarded in due course.

d) The amount of interest accruing each day following the issue of this Writ will be calculated in due course.

AND THE PLAINTIFF CLAIMS:

- (i) Damages.
- (ii) Pre and post judgment Interest on the sum awarded in accordance with the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
- (ii) Costs to be taxed or agreed.

Dated this 10th day of September 2010

Samson & McGrath

SAMSON & MCGRATH

Attorneys-at-Law for the Plaintiff

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 installments 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.

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2nd DEFENDANT

**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

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 communications 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.

Samson & McGrath Attorneys at Law 5 th Floor Genesis Building Genesis Close PO Box 446 George Town Grand Cayman
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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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