

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO.

416

OF 2010



BETWEEN: (1) **ALEXANDER LORENZ**
(2) **KAY LORENZ**

PLAINTIFFS

AND: GRAND CAYMANIAN BEACH CLUB & RESORT LTD.

DEFENDANT

WRIT OF SUMMONS

To: Grand Caymanian Beach Club & Resort Ltd.
c/o SH Corporate Services Ltd.
PO Box 61
4th Floor, Harbour Centre
North Church Street/Mary Street
Grand Cayman KY1-1102
Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 7 Vienna Circle, George Town, Grand Cayman in respect of the claim set out in the next pages.

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, Cayman Islands, the accompanying 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 thisday of November 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 of Acknowledgment for Service are given with accompanying form.

THIS WRIT was issued by Campbells, Attorneys-At-Law for the Plaintiff whose address for service is P.O. Box 884, 4th Floor, Scotia Centre, Albert Panton Street, George Town, Grand Cayman KY1-1103 (STM/KAH/sam /13365-17709)

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**BETWEEN: (1) ALEXANDER LORENZ
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DEFENDANT

STATEMENT OF CLAIM

1. The Defendant is a Cayman Islands registered company which carries on business as a condominium hotel and resort from premises known as the Ramada Grand Caymanian Resort, overlooking the North Sound of Grand Cayman.
2. The Defendant's registered office is situated at SH Corporate Services Ltd., PO Box 61, 4th Floor, Harbour Centre, North Church Street/Mary Street, Grand Cayman KY1-1102.
3. By 15 separate deeds of assignment and novation dated 16th April 2010 ("the Assignments"), the Plaintiffs agreed to take absolute and assignments and novations of 15 separate purchase agreements for units in Phase II of the Development made between the Defendant and an entity known as Esperada Holdings ("the Purchase Agreements") as follows:

	Unit no.	Land Registry no.	Date of Agreement	Purchase price
		WBBN Block 17A		US\$
(a)	2100	Parcel 149H95	17 th September 2008	600,000
(b)	2103	Parcel 149H94	17 th September 2008	600,000
(c)	2104*	Parcel 149H79	17 th September 2008	587,000

	Unit no.	Land Registry no.	Date of Agreement	Purchase price
		WBBN Block 17A		US\$
(d)	2105*	Parcel 149H80	17 th September 2008	587,000
(e)	2112*	Parcel 149H59	18 th August 2008	476,000
(f)	2115*	Parcel 149H58	18 th August 2008	400,000
(g)	2200	Parcel 149H99	17 th September 2008	600,000
(h)	2202	Parcel 149H97	17 th September 2008	600,000
(i)	2204*	Parcel 149H85	17 th September 2008	587,000
(j)	2205*	Parcel 149H86	17 th September 2008	587,000
(k)	2213*	Parcel 149H66	18 th August 2008	476,000
(l)	2215*	Parcel 149H64	18 th August 2008	400,000
(m)	2304	Parcel 149H91	17 th September 2008	600,000
(n)	2305*	Parcel 149H92	17 th September 2008	587,000
(o)	2312*	Parcel 149H71	18 th August 2008	476,000

("the Units").

4. In the case of Units marked "*" in the table above, the purchase price was payable by way of an initial deposit and defined instalments ("Instalments"). In each such case, Esperada Holdings had paid the initial deposit and the first 3 Instalments prior to 16th April 2010. In the case of the remaining Units, the purchase price was payable by way of an initial deposit, with the balance payable on completion.
5. In the case of Units marked "*" in the table above, the consideration for the Assignments was defined, by Clause 3 thereof as follows:
 - (a) To pay the balance of the purchase price to the Defendant (i.e. the difference between the purchase price, the initial deposit and the first 3 stage payments).

9. Accordingly, by 30th June 2010, the Plaintiffs and Esperada Holdings had paid a total of US\$3,406,500 to the Defendant towards the total purchase price of the Units.
10. The following were, amongst others, express terms of each of the Purchase Agreements (as amended by two deeds of variation dated 13th August 2009 and 16th April 2010):

Completion

5. (a) Save as hereinafter provided, Completion shall take place on the earlier of: i) the [30th day of June 2010] or ii) within twenty-eight (28) days of such earlier date on which the Vendor has notified the Purchaser that a Certificate has been issued for the [Unit] by the Central Planning Authority of the Cayman Islands and the Vendor's Quantity Surveyor or supervising architect has certified in writing that the Resort Amenities are substantially completed in all material aspects and are ready for use and enjoyment in respect whereof time shall be of the essence. In the event that the Vendor has not by the [30th June 2010]:
- (i) Completed construction of the [Unit]
 - (ii) Received from the Registrar of Lands notification that a Land Register has been opened for the [Unit]; and
 - (iii) Received a Certificate for the [Unit]
 - (iv) The Resort Amenities are substantially completed
- then Completion shall take place twenty-eight (28) days after the Vendor has given written notice to the Purchaser that each of the items set out in above subclauses 5(a)(i) to [(iv)²], inclusive (the "Completion Notice"), have been achieved or are available as the case may be, subject to clause 5(d) below.
- (d) Notwithstanding sub-clause 5(a) above and subject to sub-clause 5(e) below, in the event either that the Vendor has not commenced construction of the building containing the [Unit] by the [30th June 2010], or that the items set out in subclauses 5(a)(i) to [(iv)] inclusive, have not been achieved or are not available, as the case may be, by the [30th June 2010], then the Purchaser may by notice in writing to the other rescind this Agreement, whereupon the Vendor shall be liable to repay to the Purchaser all the monies paid hereunder without interest and the Purchaser shall accept the same in full satisfaction of all claims under this Agreement, and this Agreement shall thereupon be terminated and neither party shall have any further rights of action or claim of any nature against the other in respect hereof.
- (e) Notwithstanding anything to the contrary in the Agreement, if the Vendor is unable to continue the construction of the Residence by reason of a force

² The Purchase Agreements contain a mistake; clause 5(a)(iv) was added in manuscript, but the remaining text was not, as it should have been, amended to reflect its addition

majeure as defined below, the parties' obligations will be suspended until such time as construction can proceed (as to which a certificate of the Vendor's quantity surveyor or architect will be final and conclusive), and the Vendor may, at its sole decision, within sixty (60) days of the happening of an event which constitutes force majeure, terminate this Agreement and repay to the Purchaser all money paid by it without interest. In the event that the Vendor is unable or unwilling to recommence construction within 120 days of an event of force majeure either the Vendor or the Purchaser may by notice terminate this Agreement at their sole option and the Vendor shall within 30 days of such notice of termination repay to the Purchaser all money paid by it without interest.

Entire Agreement

18. The Vendor and the Purchaser hereby agree that this Agreement constitutes the entire and complete agreement between them in connection with the Residence and may be varied only by express agreement in writing. The Purchaser hereby confirms and acknowledges that, other than with respect to terms expressly set out herein, there are and have been no representations, warranties, covenants, guarantees, promises or agreements on the part of the Vendor or any real estate broker or any other person representing the Vendor or purporting to do so which have induced the Purchaser to enter into this Agreement or to purchase the Residence. Without limiting the generality of the foregoing, nothing contained in the Vendor's brochures, drawings, plans or other sales or marketing materials shall form part of this Agreement unless expressly set out herein.

Successors and Assigns

21. To the fullest extent possible and permitted by law, this Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors, assigns, heirs, and estate representatives (as the case may be); provided without the prior written consent of the Vendor (such consent not to be unreasonably withheld) the Purchaser shall not assign this Agreement other than to a company that is wholly owned and controlled by the Purchaser (or which owns and controls the Purchaser). For the avoidance of doubt, an assignment to such a company shall not require the Vendor's consent, but the Purchaser shall also remain liable to the Vendor in relation to all obligations of the Purchaser pursuant hereto in the event of default by such a company.

Time of the Essence

22. Any times, dates or periods specified in this Agreement may be extended or altered only by agreement in writing between the parties. Time shall however be of the essence of this Agreement, both as regards times, dates and periods specified in the Agreement and as to any times, dates or periods that may by Agreement between the parties be substituted of any of them.

No Waiver of Terms

25. In the absence of an express written agreement to the contrary, no neglect, omission or forbearance on the part of the Vendor to take advantage of or enforce any right or remedy arising out of any breach or non-observance of any of the terms and conditions contained or implied herein shall be deemed to be or operate as a general waiver of such term or condition or of the right to enforce or take advantage of the same in respect of any breach or non-observance thereof, either original or recurring.

Amendments

32. The provisions of this Agreement may be waived, supplemented or amended only by an instrument in writing signed by a duly authorised person or persons on behalf of each of the parties hereto.
11. Completion in accordance with Clause 5(a) of the Purchase Agreements had not taken place by 30th June 2010.
12. Accordingly, by a letter dated 2nd July 2010 ("the Rescission Notice"), which letter was personally delivered to the registered office of the Defendant on 6th July 2010 and emailed to Alan Thorburn, the [general manager] of the Defendant on 2nd July 2010, the Plaintiffs, by their attorneys, Charles Adams Ritchie & Duckworth, rescinded the Purchase Agreements in accordance with Clause 5(d) of the Purchase Agreements and made demand for repayment of the sum of US\$3,406,500. The Rescission Notice was in the following terms:

"NOTICE OF RESCISSION

I am instructed by Alexander Lorenz and Kay Lorenz, the contracting purchasers of the Properties pursuant to the various Deeds of Assignment and Novation dated the 16th day of April 2010 between Esperada Holdings ("Esperada"), Alexander Lorenz and Kay Lorenz (the "Purchasers") and Grand Caymanian Beach Club & Resort Ltd. (the "Vendor").

Pursuant to clause 5(d) of each of the Purchase Agreements entered into between the Vendor and Esperada as amended pursuant to the First Deed of Amendment between the Vendor and Esperada on the 13th August 2009 and the Second Deed of Amendment between the Vendor and Esperada executed in April 2010 (collectively, in respect of all of the Properties, the "Agreements"), my clients are entitled to serve written notice upon you to rescind the Agreements if the Vendor fails to achieve the items set out in subclause 5(a)(i) to (iii), inclusively, of the Agreements by the 30th day of June 2010.

I am advised by the Purchasers that the Vendor has not achieved the items set out in subclause 5(a)(i) to (iii), inclusively, of the Agreements.

Please consider this the requisite written notice that my clients hereby rescind the Agreements and, accordingly, we hereby demand repayment to my clients of all the monies paid under the Agreements in the aggregate amount of US\$3,406,500.00."

13. Wrongfully, and in breach of Clause 5(d) of the Purchase Agreements, the Defendant has failed to repay the Plaintiffs any of the monies received by it in relation to the Units in accordance with the terms of the Purchase Agreements,


and the Plaintiffs have accordingly suffered loss and damage in the sum of US\$3,406,500 and the Defendant is justly and truly indebted to them in like amount.

14. Further, the Plaintiff claims and is entitled to interest on the sums claimed in this action, at such rate from such date and on such amounts as this honourable Court thinks fit, calculated in accordance with the Judgment Debts (Rates of Interest) Rules (2008 Revision) and s. 34(1) of the Judicature Law (2007 Revision).

AND THE PLAINTIFFS CLAIM:

- (1) A declaration that each of the Purchase Agreements has been validly rescinded by the Plaintiffs
- (2) US\$3,406,500 alternatively damages in like amount
- (3) Interest pursuant to s.34(1) of the Judicature Law (2007 Revision) to be assessed.
- (4) Such further or other relief as this honourable court thinks fit.
- (5) Costs.

Dated 8th November 2010
FiledNovember 2010



CAMPBELLS
Attorneys-at-Law for the Plaintiffs

THIS STATEMENT OF CLAIM was filed by Campbells, Attorneys-At-Law for the Plaintiff whose address for service is P.O. Box 884, 4th Floor, Scotia Centre, Albert Panton Street, George Town, Grand Cayman KY1-1103 (STM/KAH/sam/13365-17709)

BETWEEN: (1) ALEXANDER LORENZ
(2) KAY LORENZ

PLAINTIFFS

AND: GRAND CAYMANIAN BEACH CLUB & RESORT LTD.
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.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged –
GRAND CAYMANIAN BEACH CLUB & RESORT LTD.

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 N/A

Service of the Writ of Summons is acknowledged accordingly.

(Signed)

..... [Attorneys for the Defendant]

Address for service: (*see 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 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.

Campbells
Attorneys-at-Law
P.O. Box 885
4th Floor Scotia Centre
George Town
Grand Cayman KY1-1103

Ref: STM/KAH/sam/13365-17709

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 instalments 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.