

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION



CAUSE NO: CIV ¹⁷¹ OF 2011

BETWEEN:

CAYMAN REALTY CONSULTANTS SERVICES LIMITED

AND:

REMAX INTERNATIONAL CORP. LIMITED

And

BOGGY SAND ROAD CORP. LIMITED



SECOND DEFENDANT

WRIT OF SUMMONS

TO:

Remax International Corp Ltd
P.O. Box 30491
Michael Ford #325 Treasure Island
Seven Mile Beach
West Bay Road
Cayman Islands

AND:

Boggy Sand Road Corp. Limited
Campbell Corporate Services Limited
P.O. Box 268
4th Floor Scotiabank Building
George Town
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, 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 16 day of May 2011.

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

Background

1. The plaintiff is a firm of realtors operating in the Cayman Islands as a limited liability company.
2. The first defendant is a firm of realtors operating in the Cayman Islands as a limited liability company.
3. The second defendant is a non-resident company registered in the Cayman Islands and until May 2, 2011 was the registered owner of a property known as "Sea Forever" and located at Registration Section West Bay South, Block 5C, Parcel 285 as per the Cayman Islands Land Registry.
4. On March 10, 2011 the plaintiff was approached through its agent Duke Tibbetts by Mrs. Janice Simpson on behalf of her and her husband Mr. Bill Simpson ("the purchasers") to assist them with the potential purchase of a high end residential property in the Cayman Islands.
5. The terms of this agreement were that the plaintiff would assist them with the viewing of and negotiations for the purchase of a property and that the plaintiff would be entitled to seek commission from the vendor of the property and/or their listing agent as payment for services rendered in introducing a buyer to a property.
6. The second defendant had at all relevant times listed their property, Registration Section West Bay South, Block 5C, Parcel 285 ("the property") for sale on the Cayman Islands Real Estate Brokers Association ("CIREBA") Multiple Listing Service through the first defendants as listing agents for sale at a price of US\$6.995 million dollars.
7. The full terms of the listing agreement ("listing agreement") as between the defendants are not known but it is believed that the second defendant agreed to pay the first defendant 5% of the purchase price for the property should it be sold during the currency of the agreement.
8. On or around March 12, 2011 the plaintiff accompanied the purchasers to a number of viewings of suitable residential properties in accordance with their instructions from the purchasers. As a part of this exercise the purchasers were taken to the property owned by the second defendant by the plaintiff. At this viewing Ms. Kass Coleman, an agent of the first defendant was present by arrangement with the plaintiff.
9. On the April 4, 2011 the purchasers made a written offer to purchase the property from the second defendant for the total purchase price of US\$6,600,000 (Six million and six hundred thousand dollars).
10. The said Offer to Purchase was signed as accepted by the second defendant by way of signature dated 4 April, 2011 and by initialed signature of the second defendant on each page of the Offer to Purchase.

11. The signed Offer to Purchase was delivered to the plaintiff on or about April 4, 2011.

Breach of Contract of First Defendant

12. On date unknown the first defendant listed the property for sale on the CIREBA Multiple Listing Service for sale in the Cayman Islands for the sum of US\$6.995 million.

13. By such listing the first defendant invited prospective purchasers directly or through the services of other real estate agents to view the property and enter into negotiations with the second defendant to purchase the property.

14. On or around March 12, 2011 the plaintiff accompanied the purchasers to the property owned by the second defendant. At this viewing the first defendant through their agent Ms. Kass Coleman was present by arrangement with the plaintiff.

15. By an agreement in writing contained in and evidenced by or is to be inferred from a document titled 'Offer to Purchase' and dated April 4, 2011 the first defendant agreed that upon the plaintiff obtaining a sale of the property to the purchasers that the first defendant would assign to them 50% of the total real estate commission payable by the second defendant to the first defendant pursuant to the listing agreement in consideration for the plaintiff introducing a purchaser for the property.

16. Such express term was contained in the Offer to Purchase at paragraph 19 of the Offer to Purchase and states as follows:

19.

"The Vendor also agrees to pay the broker for services rendered in securing sale of the Property the commission of 5% which shall be paid upon closing. In case of Co Broke sale, 50% of the total commission shall be paid to both brokers at closing."

17. The agreement was signed as accepted by the first defendant by their agent Ms. Kass Coleman on April 4, 2011.

18. On May 3, 2011 the purchasers introduced by the plaintiff completed the purchase of the property at the price of US\$6.6 million. Despite this and in breach of the agreement the first defendant has tendered to the plaintiff the sum of US\$33,000 only in full and final settlement of the dispute and have withheld the sum of US\$132,000.

19. In the premises, and by virtue of the written agreement between the parties the plaintiffs became and are entitled to be paid the sum of US\$165,000 being their commission on the said sum of US\$6.6 million on May 3, 2011 but the first defendant in breach of the agreement has despite repeated requests failed and refused to make payment thereof save and except the tendering of US\$33,000 in purported full and final settlement of the dispute.

20. And the plaintiff claims interest pursuant to Section 34 of the Judicature Law (2007 Revision).

Breach of Agency Agreement by the Second Defendant

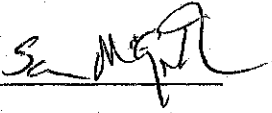
21. By an agreement in writing contained in and evidenced by or is to be inferred from a document titled Offer to Purchase and dated April 4, 2011 the plaintiff agreed to act as co-agent for the second defendant alongside the first defendant for the sale of the second defendants property to the purchasers in consideration for a commission of 2.5% of the sale price of the property payable by the second defendant to the plaintiff in the event of the purchasers purchasing the property.
22. The agreement between the plaintiff and the first defendant as is material to this action was contained in and evidenced by or is to be inferred from the following clauses to the offer to purchase dated 4 April 2011:

5. Conditions to Purchase
5.3 Vendor agrees to pay a total of 5% commission listing and selling brokers.

19.
"The Vendor also agrees to pay the broker for services rendered in securing sale of the Property the commission of 5% which shall be paid upon closing. In case of Co Broke sale, 50% of the total commission shall be paid to both brokers at closing."
23. On May 3, 2011 the purchasers introduced by the plaintiff completed the purchase of the property at the price of US\$6.6 million.
24. In the premises, the plaintiffs became and are entitled to be paid the sum of US\$165,000 being their commission on the said sum of US\$6.6 million but the second defendant has despite repeated requests failed and refused to make payment thereof.
25. And the plaintiff claims interest pursuant to Section 34 of the Judicature Law (2007 Revision).
26. Statement Regarding Interest as against both defendants:
 - (a) Interest is payable on the sum of US\$165,000 from May 5, 2011.
 - (b) Interest is calculated at the rate of 2 3/8% in accordance with the Judgment Debts (Rates of Interest) Rules 2010.
 - (c) Interest owing at the date of issue of this Writ is US\$53.68.
 - (d) Interest accrues at the rate of US\$10.70 per day thereafter until satisfaction of the sum owed.

AND THE PLAINTIFF claims:

1. US\$165,000
2. Interest in accordance with the Judicature Law (2007 Revision)
3. Costs



Samson & McGrath

Attorneys for the Plaintiff

Indorsement

If within the time for returning Acknowledgement of Service the Defendants pay to the Plaintiff's Attorneys-at-Law the total amount claimed of US\$165,000 and CI\$1,277.50 (filing fees of CI\$200, ad valorem fees of CI\$1,076.50) and interest claimed all further proceedings will be stayed.

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.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO: CIV OF 2011

BETWEEN:

CAYMAN REALTY CONSULTANTS SERVICES LIMITED

PLAINTIFF

AND:

REMAX INTERNATONAL CORP. LIMITED

FIRST DEFENDANT

And

BOGGY SAND ROAD CORP. LIMITED

SECOND 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
5th Floor Genesis Building
Genesis Close
PO Box 446
George Town
Grand Cayman

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

[Empty box for defendant's attorney indorsement]