

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: CIV ⁴⁰²⁸¹ OF 2011

BETWEEN:

CAYMAN REALTY CONSULTANTS SERVICES LIMITED

PLAINTIFF

AND:



SIMBA LIMITED T/A RE/MAX CAYMAN ISLANDS

FIRST DEFENDANT

AND:

BOGGY SAND RD. LAND COMPANY LIMITED

SECOND DEFENDANT

WRIT OF SUMMONS

TO:

Simba Limited T/A RE/MAX Cayman Islands
PO Box 30189
Seven Mile Shops
West Bay Road
Cayman Islands

AND:

Boggy Sand Rd Land Company Limited
Bodden Corporate Services Limited
P.O. Box 10335
802 Grand Pavilion Commercial Centre
West Bay Road
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 20 day of July 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 and trading under the name RE/MAX Cayman Islands.
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 as listing agent ("listing agent") 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. On a date between 15 – 22 March 2011, the plaintiff's agent Duke Tibbetts verbally informed the first defendant through their agent Kass Coleman that the fee sought by the plaintiff as selling agent ("selling agent") was 50% of the total commissions payable by the vendor at closing to the first defendant pursuant to the listing agreement.
16. By an agreement in writing contained in and evidenced by or 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.
17. 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."
18. The agreement was signed as accepted by the first defendant through their agent Ms. Kass Coleman on April 4, 2011.
19. 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 between the plaintiff and the first defendant, the first defendant has tendered to the plaintiff the sum of US\$33,000 only in full and final settlement of the dispute and has withheld the sum of US\$132,000.
20. In the premises, and by virtue of the written agreement between the parties, the plaintiff became and is 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.

21. And the plaintiff claims interest pursuant to Section 34 of the Judicature Law (2007 Revision).
22. Alternatively, the plaintiff provided services to the first defendant at the first defendant's request and the first defendant took the benefit of those services thereby entitling the Plaintiff to claim a reasonable sum in respect of such services.

Particulars

23. 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.
24. By such listing the first defendant invited other real estate agents to view the property with their clients and agreed that should the property be sold that the real estate commissions payable would be shared between the real estate agents.
25. 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.
26. The plaintiff was engaged in numerous phone calls and correspondence with both the purchaser and the first defendant in order to attempt to secure a sale of the property.
27. On April 4, 2011 the plaintiff provided a willing buyer for the property who signed an Offer to Purchase the property for US \$6.6 million.
28. By so doing the first defendant became entitled, upon completion of the sale to real estate commissions of US\$330,000.
29. The first defendant thereby benefitted from the services of the plaintiff in sourcing and providing a purchaser for the property and the plaintiff claims a reasonable sum in respect of such services.
30. The plaintiff asserts that division of real estate commission as between the plaintiff and first defendant of 50:50 is reasonable by virtue of the following:
 - (a) The practice and custom as between CIREBA real estate agents in the Cayman Islands is that the division of commission between listing and selling agents in the circumstances of this transaction is that they are to be shared equitably 50:50.
 - (b) That the practice and custom as between non-CIREBA real estate agents in the Cayman Islands accept that the division of commission between listing and selling agents in the circumstances of this transaction is that they are to be shared equitably 50:50.
 - (c) That CIREBA agents, including the plaintiff will seek and are granted 50% of total commissions on all sales with Non-CIREBA agents where they act as selling agents.

- (d) That CIREBA agents, including the plaintiff has previously agreed to share commissions equitably 50:50 in other real estate transactions.
 - (e) That the work undertaken by the listing and selling agents in procuring a sale of the property is such that it is reasonable to share the commission equally.
 - (f) The conduct of the first defendant in acquiescing to the oral demand made by the plaintiff for an equal split of commissions on a date between 15-22 March 2011 up to and until the purchaser had signed a binding Offer to Purchase.
 - (g) The written agreement of the first defendant to pay 50% commission to the plaintiff as evidenced by the Offer to Purchase dated 4 April 2011.
31. The plaintiff's fee is therefore US\$165,000 being 50% of the total commission of \$330,000 payable on the sale of the property at 5% of US\$6.6 million.

Breach of Agency Agreement by the Second Defendant

32. By an agreement in writing contained in and evidenced by or 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 defendant's 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.
33. 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 of 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.

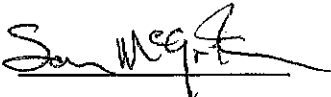
"The Vendor also agrees to pay the broker for services rendered in securing sale of the Property the commission of 5% which shall be paid upon closing. In case of Co Broke sale, 50% of the total commission shall be paid to both brokers at closing."

34. On May 3, 2011 the purchasers introduced by the plaintiff completed the purchase of the property at the price of US\$6.6 million.
35. In the premises, the plaintiff 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.
36. And the plaintiff claims interest pursuant to Section 34 of the Judicature Law (2007 Revision).
37. 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\$791.80.
- (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 for breach of contract from the first defendant
- 2. Alternatively US\$165,000 as upon a quantum meruit basis from the first defendant
- 3. Alternatively US\$165,000 for breach of agency agreement from the second defendant
- 4. Interest in accordance with the Judicature Law (2007 Revision)
- 5. 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.

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.

(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 indorsement]