

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 323 OF 2011

BETWEEN:

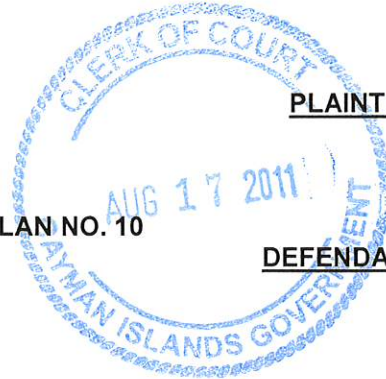
GEOFF ATKINSON

PLAINTIFF

AND:

THE PROPRIETORS OF STRATA PLAN NO. 10

DEFENDANT



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WRIT OF SUMMONS

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**TO:** The Proprietors of Strata Plan No. 10  
P.O. Box 30864  
Grand Cayman  
KY1-1204  
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 Courts Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgement of Service 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 17<sup>th</sup> day of August 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 Acknowledgement of Service are given with the accompanying form.

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### PARTICULARS OF CLAIM

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1. The Plaintiff is an entrepreneur.
2. The Defendant is a Strata Company duly incorporated and registered pursuant to the Strata Title Registration Law (1996 Revision) of the Cayman Islands. Furthermore, the Defendant was, at all material times, the registered proprietor of all that parcel of land known as West Bay Beach North Block 10E, Parcel 7 (hereinafter referred to as the "**Land**").
3. At all material times, said Land was treated as the intended site of a newly constructed development of condominiums (hereinafter referred to as "**The Renaissance**").
4. By way of a sale and purchase agreement dated 18 July 2005, it was agreed between the parties that the Plaintiff would purchase, and the Defendant would sell, a strata lot within the Renaissance (hereinafter referred to as the "**Agreement**").
5. In respect of the Agreement, the Plaintiff was defined therein as the Purchaser and the Defendant was defined therein as the Vendor.
6. The material terms of the Agreement are as follows:-

"... **WHEREAS:**

- (1) *The Vendor intends to construct a condominium development of 37 villas (hereinafter called "The Development") to be known as THE RENAISSANCE on*

land with Seven Mile Beach frontage on the Island of Grand Cayman legally described as West Bay Beach North Block 10E, Parcel 7 (the "Land").

- (2) The Vendor intends to register a Strata Plan pursuant to the provisions of the Strata Title Registration Law (1996 R.) in respect of the Development.
- (3) The Vendor has agreed to sell and the Purchaser has agreed to buy all that Villa (hereinafter called "The Villa") in The Renaissance, to be known as Villa No. 37 (Strata Lot No. H36) to contain 2131 square feet together with a garage space to be known as Garage No 37 (Strata Lot No. H37) containing 128 square feet located on the Land which, for the purposes of identification of Villa site location only, is shown outlined in red on the plan attached hereto ("Schedule A"), at the price and upon the terms and conditions hereinafter appearing ...

**NOW IT IS AGREED** as follows:

- (1) The Vendor hereby agrees to sell and the Purchaser hereby agrees to purchase the Villa for a price (the "Purchase Price") of ONE MILLION EIGHT HUNDRED AND NINETY-FIVE THOUSAND United States Dollars (US\$1,895,000.00), of which the sum of NIL United States Dollars (US\$) -0- is now paid as a down payment to the Vendor's Estate Agent, as stakeholders. The further sum of TWO HUNDRED AND EIGHTY-FOUR THOUSAND TWO HUNDRED AND FIFTY United States Dollars (US\$284,250.00) as a deposit shall be paid to the Vendor's Estate Agent on the execution hereof. Upon receipt of a copy of the notice referred to in the following sub-clause (a) the Vendor's Estate Agent shall pay over the deposit(s), together with any interest earned, to the Vendor, provided however that such interest shall form a credit against the Purchase Price on closing.
- (2) The balance of the purchase price namely ONE MILLION SIX HUNDRED AND TEN THOUSAND SEVEN HUNDRED AND FIFTY United States Dollars (US\$1,610,750.00) shall be paid to the Vendor as follows:
  - (a) The sum of NINETY-FOUR THOUSAND SEVEN HUNDRED AND FIFTY United States Dollars (US\$94,750.00) not later than seven (7) days after written notice by the Vendor that demolition of the existing structures on the land has commenced and thereby construction of the Development is underway. Such notice to be effective must be accompanied by a Certificate to that effect signed by the Development's Architect or Quantity Surveyor.

- (b) The sum of TWO HUNDRED AND EIGHTY-FOUR THOUSAND TWO HUNDRED AND FIFTY United States Dollars (US\$284,250.00) not later than (7) days after written notice by the Vendor that the second floor concrete slab is completed in the building containing the Villa. Such notice to be effective must be accompanied by a Certificate to that effect signed by the Development's Architect or Quantity Surveyor.
- (c) The sum of ONE HUNDRED AND EIGHTY-NINE THOUSAND FIVE HUNDRED United States Dollars (US\$189,500.00) not later than (7) days after written notice by the Vendor that the fifth floor concrete slab is completed in the building containing the Villa. Such notice to be effective must be accompanied by a Certificate to that effect signed by the Development's Architect or Quantity Surveyor.
- (d) The sum of ONE HUNDRED AND EIGHTY-NINE THOUSAND FIVE HUNDRED United States Dollars (US\$189,500.00) not later than (7) days after written notice by the Vendor that the roof sheathing is completed in the building contained the Villa. Such notice to be effective must be accompanied by a Certificate to that effect signed by the Development's Architect or Quantity Surveyor.
- (e) The sum of TWO HUNDRED AND EIGHTY-FOUR THOUSAND TWO HUNDRED AND FIFTY United States Dollars (US\$284,250.00) not later than (7) days after written notice by the Vendor that the Interior Walls are completed in the Villa. Such notice to be effective must be accompanied by a Certificate to that effect signed by the Development's Architect or Quantity Surveyor.
- (f) The final balance of the Purchase Price, in the total sum of FIVE HUNDRED AND SIXTY-EIGHT THOUSAND FIVE HUNDRED United States Dollars (US\$568,500.00) shall be paid to the Vendor at completion, as hereinafter defined".

7. Furthermore, on even date, the Plaintiff and the Defendant agreed to, and duly executed, an addendum to the Agreement (hereinafter referred to as the "**Addendum**"). As before, the Plaintiff and the Defendant were respectively defined therein as the Purchaser and the Vendor.

8. The material terms of the Addendum are as follows:-

**"WHEREAS**

- (A) *The Vendor and Purchaser entered into an agreement (the "Agreement") of even date herewith regarding the sale and purchase of the Villa No. 37 and Garage No. 37 at the development to be known as The Renaissance on land legally described as West Bay Beach North Block 10E, Parcel 7 (the "Land") for the purchase price of US\$1,895,000.00;*
- (B) *The parties which to modify further certain terms of the Agreement by Addendum; and*
- (C) *Terms used herein and not otherwise defined shall have the respective meanings ascribed thereto in the Agreement.*

**NOW THEREFORE IT IS FURTHER AGREED AS FOLLOWS:**

1. *Notwithstanding any terms to the contrary, the Agreement shall be conditional until 31<sup>st</sup> day of December 2005 upon the following having been completed by the Vendor:*
  - a) *that all the buildings on the Land as of the date hereof be declared destroyed for the purposes of Section 23 of the Strata Titled Registration Law (1996 Revision);*
  - b) *that the Executive Committee of the Vendor has lodged with the Registrar of Lands a notification of such destruction in the prescribed form;*
  - c) *that the Registrar of Lands has registered the Land as a single parcel in the name of The Proprietors Strata Plan No. 10 to be held pursuant to Section 23 (1) of the Strata Titles Registration Law (1996 Revision), as trustee, for the present Proprietors as proprietors in common proportionate to the unit entitlement of their present respective strata lots; and*
  - d) *that the Executive Committee of the Vendor, as trustee, delivers confirmation in writing to the Purchaser of its unanimous approval and authority to enter into the Agreement and confirmation that it continues to hold valid consents from the individual proprietors of the Vendor permitting and authorizing it to complete the Development.*
2. *The foregoing conditions precedent are for the benefit of the Purchaser. The Purchaser may at any time during this Agreement, by notice in writing, waive all conditions precedent.*

3. *In the event that any of the conditions precedent are not waived by the Purchaser, or satisfied by the Vendor, as the case may be, by 12.00 p.m. on the 31<sup>st</sup> day of December 2005, then the Deposit shall be returned to the Purchaser and the Agreement shall be terminated and neither party shall have any right of action or claim of any nature against the other.*
4. *The Purchaser has paid the deposit of US\$284,250.00 upon execution of the Agreement as required under clause 1 of the Agreement.*
5. *Notwithstanding that the sum of US\$94,750.00 is due under sub-clause 2(a) of the Agreement, upon commencement of demolition of the existing structure on the Land, the Purchaser shall pay to the Vendor the further sum of US\$1,610,750 representing payment of the full balance of the Purchase Price.*
6. *Interest thereon shall accrue at the rate of eight per centum (8%) per annum, calculated daily and compounded monthly on the balance, from time to time, of the said purchase price not yet due to the Vendor under clause 2 of the Agreement.*
7. *For the time being, upon payment under clause 5 above, said interest shall accrued on the sum of US\$1,516,000.00. As the notices under sub-clauses 2 (a) through (e) are delivered by the Vendor, the amount on which such interest accrues shall decrease in accordance with the amounts that would otherwise have been due and payable by the Purchaser.*
8. *The accrued interest shall be paid by the Vendor to the Purchaser on the Completion Date. If the Vendor has not paid such interest in full within ten (10) days of the Completion Date, the Vendor shall be required to pay interest on the unpaid interest at the rate of eighteen per centum (18%) per annum, until payment in full is received.*
9. *In all other respects, the Agreement is and shall remain in full force and effect, and is hereby ratified and confirmed".*
9. As set out by Clause 4 of the Addendum, the Plaintiff paid the sum of US\$284,250.00 to the Defendant (hereinafter referred to as the "**Deposit**").
10. Furthermore, in accordance with and in full performance of his obligations pursuant to Clause 5 of the Addendum, the Plaintiff duly advanced the further sum of US\$1,516,000.00 to the Defendant on 19 December 2005 (hereinafter referred to as the "**Pre-payment**").

11. Pursuant to Clauses 6 and 7 of the Addendum, on 30 September 2009, Defendant became liable to pay interest to the Plaintiff at a rate of accrual of eight percent (8%) per annum, calculated daily and compounded monthly on the Pre-payment, less any payments which would otherwise have been due to the Plaintiff pursuant to Clause 2 of the Agreement.
12. As at 31 October 2009, the Defendant was indebted to the Plaintiff in the sum of US\$401,513.84 such sum representing the interest owed on the Pre-payment.
13. Subsequent to 30 September 2009, it was agreed between the Plaintiff and the Defendant that the Plaintiff would purchase an additional parking space in the Renaissance from the Defendant. As consideration for this additional parking space, it was agreed between the parties that the sum of US\$15,850.05 would be deducted from the interest owed on the Pre-payment.
14. Accordingly, the Defendant is and continues to be indebted to the Plaintiff in the sum of US\$385,663.79 such sum representing the interest owed on the Pre-payment minus the consideration for the additional parking space purchased (hereinafter referred to as the "Debt").
15. In breach of the Addendum as hereinbefore set out, the Plaintiff has failed to perform, satisfactorily or at all, his obligations pursuant to Clauses 6 and 7 of the Addendum as it has failed to pay the Debt or any part thereof.
16. By reason of the aforesaid facts and matters, the Plaintiff claims payment of the said sum of US\$385,663.79 from the Defendant.
17. Further, the Plaintiff claims interest pursuant to Clause 8 of the Addendum at a contractual rate of 18% with the amount of interest due at the date hereof being US\$145,782.41 and continuing.

**AND THE PLAINTIFF claims:**

1. US\$385,663.79 as the debt currently due and owing;
2. the aforesaid interest due under the Addendum as set out in Paragraph 15 herein, read together with the Second Schedule hereto;
3. further interest at the contractual rate of 18% pursuant to Clause 8 of the Addendum from the date of issue of the Writ to judgment or sooner payment;

4. Such further and other relief as this Honourable Court may deem just and equitable.

Dated this 15<sup>th</sup> day of August 2011

Stuarts Walker Hersant

**STUARTS WALKER HERSANT**

**Attorneys-at-Law for the Plaintiff**

**TO:** The Clerk of the Court

**AND TO:** The Defendant  
P.O. Box 30864  
Grand Cayman KY1-1204  
Cayman Islands

**NOTE 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/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her 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/her name, address and reference, if any, in the box below.

Anthony Akiwumi/Christopher Levers  
STUARTS WALKER HERSANT  
Attorneys-at-Law  
4<sup>th</sup> Floor, Cayman Financial Centre  
36A Dr. Roy's Drive  
P.O. Box 2510 GT  
George Town  
Grand Cayman, KY1-1104  
Cayman Islands

Tel: 345 949 3344  
Fax: 345 949 2888  
Ref: AA/CL/4899

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

[Empty box for Defendant's Attorney endorsement]

BETWEEN:

GEOFF ATKINSON

PLAINTIFF

AND:

THE PROPRIETORS OF STRATA PLAN NO. 10

DEFENDANT

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ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

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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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes  No

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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 of Summons is acknowledged accordingly

(Signed) \_\_\_\_\_  
Attorney for

**DIRECTIONS FOR ACKNOWLEDGEMENT 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, PO 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 installments or otherwise.

***See over for Notes of Guidance***

**Notes for Guidance:**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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/her.
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 authorized 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.