

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 391 OF 2011

BETWEEN:



TERENCE CHESNARD



PLAINTIFF

AND:

EDDYLEE MARTIN

DEFENDANTS

WRIT OF SUMMONS

TO: Eddylee Martin of P.O. Box 19, Stake Bay, Cayman Brac, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiffs, of Cayman Brac, Cayman Islands in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 26th day of September 2011.

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form.

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AND:

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DEFENDANTS

STATEMENT OF CLAIM

1. The Plaintiff, Terence Chesnard, is a United States Citizen and resident and status holder of the Cayman Islands of Creek 33, KY2-2301, Cayman Brac, Cayman Islands
2. The Defendant, Eddylee Martin, is a Caymanian national of P.O. Box 19, Stake Bay, Cayman Brac, Cayman Islands.
3. Following the execution of a letter of intent dated 14 December 2010 by a contract in writing made between the Plaintiff and the Defendant on 25 January 2011 ('the Contract'), the Defendant agreed to sell and the Plaintiff agreed to buy two parcels of land in Cayman Brac, which are the site of a business known as "Edd's Place" and are known as Registration Section Cayman Brac West, Block 95B, Parcel 91 and Registration Section Cayman Brac West, Block 95B, Parcel 283 ("the Property")
4. The agreed price for the property was US\$ 400,000.00.
5. A copy of the Contract is annexed hereto.
6. Under the express terms of the Contract at section 10 A, completion was to take place before 13 April 2011.

7. Furthermore at section 10 C it was a term of the Contract that the Defendant convey the property to the Plaintiff without lien, assessment or any security interest.
8. At the time of entering into the contract the Plaintiff paid a deposit of US\$10,000.00 to the Defendant. The deposit is held by a third party.
9. On or around 1 March 2011 the Defendant made it known to the Plaintiff that he would be unable to complete on the Contract as originally agreed due to there being insufficient time to resolve the issue of a Court imposed Charge upon Parcel 95B 91 ('the Charge'). It was agreed in writing between the Plaintiff and Defendant on 1 March 2011 to vary the terms of the Contract by a extending the date for completion by a further 14 days ('the 1st Addendum'). A copy of the 1st Addendum is annexed hereto.
10. On or around 30 March 2011 the Plaintiff and Defendant agreed in writing to further vary the Contract as a result of the Defendant encountering difficulties with removing the Charge ('the 2nd Addendum'). A copy of the 2nd Addendum is annexed hereto.
11. It was an express term of the 2nd Addendum that that the time needed to remove the lien (the Charge) would be as expeditious as possible under the circumstances prevailing and further that the completion of the contract take place within 14 days notice being provided to the Plaintiff by the Defendant that the Charge had been removed.
12. Furthermore, the Defendant stated in the 2nd Addendum that he had initiated the process with his attorney to address the issue of removing the Charge with the Court and that it would be finalized as soon as possible.
13. Following the execution of the 2nd Addendum, in or around July 2011 the Defendant indicated orally to the Plaintiff that he no longer wished to sell the Property.
14. By letter and service of Notice to Complete, dated 23 August 2011 the Plaintiff made time of the essence under the Contract and requested that the Defendant complete in accordance with the terms of the Contract as varied by 12 September 2011.
15. Notwithstanding this request the Defendant in breach of the terms of agreement has refused and refuses to take any steps towards the completion of the Contract.
16. The Plaintiff has at all material times been and is now ready and willing to fulfill all his obligations under the Contract.
17. By reason of the Defendant's breaches the Plaintiff has suffered loss and damage.

PARTICULARS

18. In reliance upon the said Contract and as a result of the Defendant's breaches the Plaintiff has incurred expenses including but not limited to the purchase of building materials, the cost of labour, the purchase of various items to be used in the business known as "Ed's Place, costs of due diligence upon the agreement itself and the costs of investigating the title. Further details of the loss and damages suffered by the Plaintiff will be supplied in advance of trial.
19. Furthermore, had the contract been completed the Plaintiff would have obtained rents from the premises in or about the lease of the business known as "Ed's Place" and further from a food stand situate upon the Property. Full particulars of these losses will be provided in advance of trial.
20. In the alternative, the Plaintiff contends that he has suffered loss of profit as a result of being prevented from carrying on the business known as "Ed's Place". Full particulars of will be provided in advance of trial.

THE PLAINTIFF THEREFORE CLAIMS AGAINST THE DEFENDANT:

- (1) Specific performance of the said Contract;
- (2) Further or alternatively, damages for breach of contract in addition to or in lieu of specific performance or at common law;
- (3) Further or alternatively;
 - (a) a declaration that the Contract is discharged by reason of the repudiation of it by the Defendant;
 - (b) repayment to the Plaintiff of the deposit of CI\$10,000 paid under the Contract with interest at 5% per annum
Alternatively interest on damages at such rate and for such period as the Court thinks fit.
 - (c) a declaration that the Plaintiff is entitled to a Charge on the said Property for the deposit (together with interest thereon) and any damages and costs awarded in this action;
- (5) Interest;
- (6) Such further and other relief as this Honourable may seem just; and
- (7) Costs.

DATED at Grand Cayman this 26th day of September 2011

Nelson & Co.

Nelson & Co.
Attorneys for the Plaintiffs

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiffs, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

TO: The Clerk of the Grand Court

AND TO: Eddylee Martin

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2011

BETWEEN:

TERENCE CHESNARD

PLAINTIFF

AND:

EDDYLEE MARTIN

DEFENDANTS

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 intend 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 the Defendant

Address for service:

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

Nelson & Company
Attorneys at Law
PO Box 2075
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1105
Attn: C Flanagan

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]

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 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.