

BETWEEN:



AND

- (1) ALAN ROFFEY
- (2) LYNN ROFFEY



PLAINTIFFS

THE PROPRIETORS, STRATA PLAN NO. 147

DEFENDANT

WRIT OF SUMMONS

TO: THE PROPRIETORS, STRATA PLAN NO. 147
C/o Higgs & Johnson, Attorneys at Law
Grand Pavilion, Seven Mile Beach, Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiffs, both of 50 Calico Quay, Canal Point, George Town, Grand Cayman in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) 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 3rd day of October 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 original issuance unless renewed by order of the Court

IMPORTANT

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

BETWEEN:

(1) ALAN ROFFEY

(2) LYNN ROFFEY

PLAINTIFFS

AND

THE PROPRIETORS, STRATA PLAN NO. 147

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiffs are husband and wife and reside at 50 Calico Quay, Canal Point, George Town, Grand Cayman and are the registered proprietors of that strata lot described as West Bay Beach South Block 12D, Strata Lot No. 40H56 within Strata Plan No. 147, and otherwise known as Apartment #811, Britannia Condominiums Phase II, Building B1 and located at Seven Mile Beach, Grand Cayman, hereinafter referred to as the "Plaintiffs' Condominium."
2. The Defendant is a statutory corporation (commonly referred to as a "strata corporation") established by virtue of the provisions of s.5 of the Strata Titles Registration Law (2005 Revision) (the "STRL") and was at all material times the registered proprietor and owner and occupier of the common property comprised within Strata Plan No. 147.
3. The registered strata plan for Strata Plan No. 147 contains no specification to the contrary and in the circumstances the boundary between the Plaintiff's strata lot and the common property is the centre line of the exterior walls of the strata lot, as more particularly set out at s.4(3) of the STRL in the following terms:
 - (3) The common boundary between any two strata lots or between a strata lot and the common property shall, unless otherwise specified in the relevant strata plan, be the boundary line or the centre line of the floor, wall or ceiling between such strata lots or between such strata lot and the common property, as the case may be.
4. Consistent with the foregoing, "common property" is defined at s.2 of the STRL as comprising all that land within the strata plan, save that contained in any strata lot.
5. The STRL imposes statutory duties upon the Defendant including the obligation to maintain the common property within the strata plan, in the following terms:
 - s.6(1) The duties of a corporation shall include the following-
 -
 - (f) to keep in a state of good and serviceable repair and properly maintain the common property;

6. The distinction between the strata lots and common property is reflected in the Defendant's by-laws registered on 7 June 1991 (the "By-laws"). The terms "common property" and "strata lot" are defined in Article 1 of the By-laws. The strata lot "does not include the outside walls, roofs and other exterior or common parts of the Apartments." "[C]ommon property" is defined as that land "which is not included in any strata lot".
7. The Defendant's statutory obligation to maintain the common property is reinforced by the By-laws including Article 34(8) thereof:

The Corporation shall:

....

- (8) Subject to the contribution and payment by the proprietors as herein provided, keep the Common property and all fixtures and fittings therein and thereon and additions thereto in a good state of repair and condition including the renewal and replacement of all worn or damaged parts"
8. At all material times and commencing on 1 December 2007 and continuing through to 27 July 2010 the Plaintiffs' Condominium was leased to Dr John Addleson and occupied by him and his family most recently under a written lease for rent of US\$5,500.00 per month terminating on 30 November 2010.

Particulars of negligence and breach of duty

9. The Plaintiffs state that on numerous occasions including, (i) in July 2008, (ii) on or about 27 October 2009, (iii) during the weekend of 3 July 2010 and (iv) on 17 July 2010, water entered through the exterior wall of the Plaintiffs' Condominium into the Plaintiffs' master bedroom, resulting in water damage to the Plaintiffs' Condominium including causing mould and rot to the carpet in the said master bedroom, and damaging the sheetrock and baseboard, requiring professional cleaning, repairs and replacement of the carpet and walls and requiring that Dr Addleson and his family vacate the premises on several occasions including August 2008 and July 2010 while the remedial work was effected.
10. The Plaintiffs state that the water entry into the Plaintiffs' Condominium was promptly notified in writing to the Defendant's property manager, Willy Giger, on each occasion and remedial works to the exterior of the Plaintiffs' Condominium for which the Defendant was responsible, were undertaken by the Defendant including caulking the exterior windows, re-routing rainwater leaders, and repairing the outside wall which was comprised of a Dryvit type EIFS (Exterior Insulation and Finish System) wall system, but that continuing through to at least 17 July 2010 these remedial works failed to prevent continued and recurrent water entry into the Plaintiffs' Condominium, specifically into the master bedroom, and resultant damage.
11. The Plaintiffs state that at all material times the Defendant by its representative, property manager, Willy Giger, acknowledged the Defendant's responsibility for the maintenance of the exterior wall and its obligation to prevent water entry into the Plaintiffs' Condominium. Consistent with the Defendant's recognition of its obligations, the costs of water extraction, steam cleaning of carpet, dehumidification of the unit, and repair of affected baseboard and sheetrock were honoured by the Defendant in July and August 2008 and November 2009.

12. The Plaintiffs plead and rely on the doctrine of *res ipsa loquitur* and state that a properly repaired and maintained exterior wall should not permit the ingress of water and that the Defendant is in the circumstances liable to the Plaintiffs for the said water entry through the exterior wall forming part of the "common property" for which the Defendant is responsible, and the resultant loss and damage incurred.
13. The Plaintiffs plead that the Defendant, negligently, and in breach of its statutory duty under s.6(1) of the STRL and/or in breach of its obligations under Article 34(8) of the By-Laws failed to keep the common property and specifically the exterior walls of the Plaintiffs' Condominium in a good and proper state of repair and maintenance and when notified of the water entry the Defendant failed over a period of two years commencing with the notification in July 2008 to properly repair the exterior wall, as a result of which negligence and breach of duty of care, water entered through the exterior walls and into the Plaintiffs' Condominium on repeated subsequent occasions, resulting in loss and damages.
14. In the alternative the Plaintiffs plead that the escape of water from the common property which the Defendant owned and occupied, through the exterior wall also owned by the Defendant, into the Plaintiff's Condominium constitutes a nuisance for which damages the Defendant is strictly liable under the doctrine in *Rylands v. Fletcher*.

Particulars of damages

15. On 17 July 2010 the Plaintiff's tenant, Dr John Addleson advised the Plaintiffs that there had been water entry yet again into the master bedroom of the Plaintiffs' Condominium and that the repeated disruption, inconvenience and exposure to mould and damp was unacceptable and gave notice of termination forthwith of the lease of the Plaintiffs' Condominium, terminating the lease with effect from 27 July 2010.
16. The Plaintiffs advised the Defendant by its representative, property manager, Willy Giger, of the water entry, and in discussions with Mr Giger it was agreed that the Addlesons were justified in terminating the lease, and Mr Giger invited the Plaintiffs to submit their claim for damages to the Defendant.
17. Despite diligent efforts to rent the Plaintiffs' Condominium following repair works, it remained vacant and unoccupied for the balance of the term of the lease to Dr John Addleson i.e. to 30 November 2010 at a loss of US\$5,500.00 per month rent, plus the cost of electricity to maintain the air conditioning which would otherwise have been paid by the Plaintiffs' tenant.
18. The Plaintiffs claim damages as follows as a result of the water entry in July 2010:

Loss of rent for the period 28 to 31 July 2010 (4/31 x US\$5,500 per month):	709.68
Loss of rent August to November 2010 (4 months at US\$5,500 per month):	22,000.00
Electricity expense (CUC) 27 July to 30 November 2010 to maintain air conditioning CI\$1,238.78 at CI\$0.82/US\$1.00:	1,499.98
Replacing master bedroom carpet August and September 2010 (Paramount Carpets) CI\$1,164.90 at CI\$0.82/US\$1.00:	1,510.71
Total:	<u>US\$25,720.37</u>

19. The Plaintiffs made demand upon the Defendant for payment of their damages by email of 16 September 2010 and by their attorneys' letter of 3 March 2011, but the Defendant has despite the repeated requests, and despite the Defendant's settlement of similar claims for water entry in 2008 and 2009, failed to reasonably settle the Plaintiffs' claim or to offer any cogent or substantive grounds for its refusal to do.
20. In the circumstances set out at paragraphs 9-11 and 16 above the Plaintiffs plead that the Defendant is estopped from denying liability for the loss and damage sustained from water entry occurring in July 2010 and which is the subject of this claim.
21. In the circumstances as aforesaid the Plaintiffs seek their costs of this action payable by the Defendant on the indemnity basis.
22. The Plaintiffs claim pre-judgment interest from 16 September 2010 in respect of the carpet expense of US\$1,510.71 at the rate of 5% per annum (US\$0.21 per diem) to 31 October 2010 being a total of US\$9.45, and at the rate of 2½% per annum (US\$0.10 per diem) thereafter pursuant s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rate of Interest) Rules 2008 and 2010 respectively, being US\$33.70 to 3 October 2011.
23. The Plaintiffs claim pre-judgment interest from 1 December 2010 in respect of the loss of rent and electricity expense totalling US\$24,209.66 at the rate of 2½% per annum (US\$1.58 per diem) pursuant s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rate of Interest) Rules 2010, being a total of US\$483.48 to 3 October 2011.
24. The Plaintiffs claim interest on all fixed or assessed costs and orders running from the date of service of the judgment, order or certificate of taxation respectively at the prescribed rate of 2½% per annum in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules 2010 or other rate then prevailing.

THE PLAINTIFFS THEREFORE CLAIM:

- (a) Damages in the sum of US\$25,720.37;
- (b) Prejudgment interest in total sum of US\$526.63 owing as of 3 October 2011 as more particularly calculated and pleaded above, and continuing at the rate of 2½% or US\$1.67 per diem on the principal sum of US\$25,720.37 to the date of judgment ;
- (c) Post-judgment interest in accordance with s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules (2010);
- (d) Fixed costs pursuant to GCR Order 62/7(1) in the sum of CI\$500.00 together with the prescribed fees for issue of the Writ or alternatively their costs to be assessed, including on the indemnity basis in the circumstances; and
- (e) Such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 3rd day of October 2011.

Hampson. Co.,

Hampson and Company
Attorneys for the Plaintiffs

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM are filed by Hampson and Company, attorneys for the Plaintiffs, whose address for service is that of their said attorneys, at Citrus Grove, 5th Floor, Goring Avenue, George Town P.O. Box 698, Grand Cayman, KY1-1107.

TO: The Clerk of the Grand Court

AND TO: The Proprietors, Strata Plan No. 147
C/o Higgs & Johnson, Attorneys at Law, Grand Pavilion, Seven Mile Beach, Grand Cayman