

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 452 OF 2011

BETWEEN:

- (1) COASTAL TWO LTD.
- (2) AXIS INTERNATIONAL LTD.

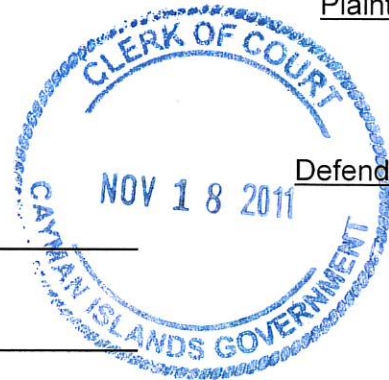
Plaintiffs

AND



CAYMAN ISLANDS HELICOPTERS LTD.

Defendant



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**WRIT OF SUMMONS**

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TO: Cayman Islands Helicopters Ltd. of PO Box 738, 88B Owen Roberts Drive, Grand Cayman, Cayman Islands, KY1-1103

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiffs 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, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 18th day of November 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.

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**STATEMENT OF CLAIM**

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- 1 The First Plaintiff is and was at all material times the registered owner of property known as One Cayman House ("**OCH**"), located on North Church Street, George Town, Grand Cayman, Cayman Islands, located on Block 13EH, Parcel 144. OCH is a partitioned two-storied building presently leased and available for lease as commercial premises.
- 2 The Second Plaintiff is and was at all material times the registered owner of property known as Whitehall House, located on Block 13EH, Parcel 172 (OCH and Whitehall House, where referred to collectively herein, the "**Affected Properties**"). Whitehall House is a four storied building presently leased as commercial premises and its fourth floor used as a residential dwelling.
- 3 The Defendant is and was at all material times a resident company in the business of operating commercial helicopter flights. Since 2003, the Defendant has carried out commercial flight operations from a site at 88B Airport Road, Grand Cayman, Cayman Islands. The Defendant operates a single engine Eurocopter AS350 B2 helicopter (the "**Helicopter**") piloted by its principal, Mr Jerome Begot.
- 4 The Defendant leases a property situated at Block 13EH, Parcels 9 and 10 which is on the western (seaward) side of North Church Street in the area known as Whitehall Bay (the "**Property**").
- 5 The Property's southern boundary abuts OCH's northern boundary and is adjacent to Whitehall House which is situated immediately to the east of the Property on the opposite side of North Church Street.
- 6 In or about January 2011, following the grant of planning approval from the Central Planning Authority on 15 September 2010, the Defendant caused to be constructed a 50 x 50 foot concrete helipad (the "**Helipad**") at the Property and commenced renovations to the existing building on the Property in preparation for commencing helicopter flight operations once the

appropriate regulatory approval from the Cayman Islands Civil Aviation Authority ("CAACI") had been obtained.

7 The decision of the Central Planning Authority referred to in paragraph 6 is subject to an appeal by the First and Second Plaintiffs to the Planning Appeals Tribunal and is scheduled to be heard on 24 January 2012. The Defendant undertook the substantial majority of the building works referred to in paragraph 6, including the pouring of the concrete Helipad, in the knowledge that the First Plaintiff was opposed to the development and the proposal to commence helicopter flight operations at the Property.

8 By letter dated 18 March 2011, the First Plaintiff, by its attorneys, Maples and Calder, wrote to the Defendant describing the nuisance that would be caused by its proposed helicopter flight operations and sought an undertaking from the Defendant to cease and desist. The Defendant refused to provide any such undertaking, continued to develop the Property and to seek the requisite regulatory approvals from the CAACI.

9 On Friday 11 November 2011, the Defendant commenced helicopter flight operations from the Property using the Helicopter. It is understood that the Defendant had previously obtained the requisite regulatory approval to do so from the CAACI. The Helicopter has and will undertake flights from the Property several times per day.

10 As a result, on 11 November 2011 and since that date, the Defendant has wrongfully caused or permitted to be caused excessive noise and vibration to come into the Affected Properties during the Helicopter's operation at the Property:

#### Particulars

10.1 The Helicopter emits noise measuring, according to the Defendant's principal, Mr Begot, 112dB when stationary on the Helipad for periods of around three minutes while passengers embark and disembark and for a further approximately 30 seconds after take off. The precise noise emitted and the time period thereof will be subject to discovery, verification and expert evidence at trial and remains subject to the Plaintiffs' right to supplement or amend this Statement of Claim;

- 10.2 The noise emitted is more than twice as loud as that emitted by a passing large truck, save that noise produced by passing traffic is transient and not stationery, such as that produced for sustained periods by the Helicopter;
  - 10.3 The noise emitted is sufficient to prohibit reasonable or proper face to face and telephonic conversations inside OCH;
  - 10.4 The Helicopter's operation at the Property causes the desks in OCH to vibrate;
  - 10.5 The noise emitted is sufficient to materially and unreasonably prevent effective or ordinary business operations within the Affected Properties; and
  - 10.6 The noise emitted is sufficient to materially and unreasonably affect the ordinary residential use of the fourth floor of Whitehall House.
- 11 Further, the Defendant has wrongfully caused or permitted an encroachment onto OCH during the Helicopter's operation at the Property:

Particulars


- 11.1 The driveway to OCH abutting the Property is rendered unusable by cars and pedestrians because of the proximity of the Helicopter (including its rotor blades) to the driveway, causing it to become unsafe and/or creating the impression of imminent physical danger to persons apprehending to use the driveway at OCH;
  - 11.2 The landing walkway and stair areas on the northern side of OCH are rendered unusable by pedestrians for the same reasons;
  - 11.3 The car park on the seaward side of OCH is rendered unusable because of debris dispersed by the Helicopter causing damage to vehicles and/or the risk thereof; and
  - 11.4 The tenants in OCH are fearful for their own personal safety.
- 12 Further or alternatively, by the Helicopter's operation at the Property, the Defendant has wrongfully caused or permitted a nuisance or annoyance and impaired the Plaintiffs' comfortable and convenient enjoyment of the Affected Properties.

- 13 Further or alternatively, the Defendant has allowed to be brought onto the Property an inherently dangerous thing which poses an unnecessary safety risk to the Plaintiffs and the public.
- 14 On Wednesday 16 November 2011, the Plaintiffs, by their attorneys Maples and Calder, wrote a final letter before action to the Defendant's attorneys seeking an undertaking to cease and desist all helicopter flight operations from the Property by 12 noon on Thursday 16 November 2011. The Defendant has refused to provide a permanent undertaking.
- 15 The Defendant's use of the Helicopter at the Property as a result of the aforesaid has and will cause the Plaintiffs loss and damage.
- 16 The Defendant, by its conduct, threatens and intends, unless restrained by injunction, to continue to cause the nuisances pleaded at paragraphs 10 to 13 above.

**And the Plaintiffs' Claim:**

- (1) A permanent injunction to restrain the Defendant by its principal, servants, agents or otherwise howsoever from any and all helicopter flight operations at the Property.
- (2) Damages.
- (3) Interest pursuant to section 34 of the Judicature Law (2007 Revision).
- (4) Costs.
- (5) Such further or other relief as the Court sees fit.

DATED this 18th day of November 2011

  
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**Maples and Calder**

THIS WRIT was issued by Maples and Calder, Attorneys for the Plaintiffs, whose address for service is PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: MJC/JJG/BWB/663557/22206184)