

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ⁵⁷ OF 2012

BETWEEN:

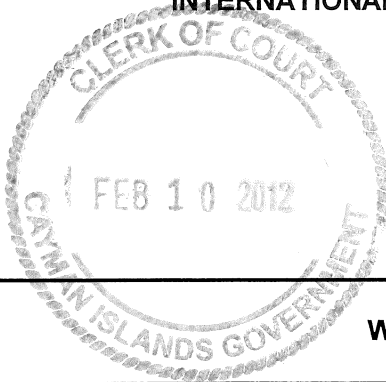
INTERNATIONAL FIDELITY CENTURY CORP. LTD

Plaintiff

AND

LAND LTD

Defendant



WRIT OF SUMMONS

TO: **LAND LTD** of K Corporate Services Ltd, 4th Floor, Genesis Building, Jennet Street, P.O. Box 1371 GT, Grand Cayman, 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 495 GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest the proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time state, 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 8th day of February 2012

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 reviewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

- 1 The Plaintiff International Fidelity Century Corp. Ltd. (hereinafter "IFCCL") is a company incorporated in the Cayman Islands on 12 April 1996 and having its registered office at 269 West Bay Road, Suite 125, PO Box 30491 SMB, Grand Cayman, Cayman Islands.
- 2 The Defendant is a company incorporated in the Cayman Islands on 7 November 1993 and having its registered office at K Corporate Services Ltd, 4th Floor, Genesis Building, Jennet Street, P.O. Box 1371 GT, Grand Cayman, Cayman Islands. At all material times, Rex Crighton was and is a director and principal of the Defendant.
- 3 National Financial Corp. Ltd. (hereinafter "NFCL") is a company incorporated in the Cayman Islands on June 10, 1994.
- 4 On a date unknown but prior to 1991, the Defendant became the registered proprietor of lands situated in the West Bay Beach North Registration section and registered as Block 11C Parcel 238 and Block 17A Parcels 3 (the latter subsequently being subdivided and registered as Parcels 11 to 14), and began their development into a subdivision containing mainly residential house lots known as 'Crystal Harbour' (the "Crystal Harbour Development" or "CHD").
- 5 By a written agreement entered into between NFCL and the Defendant on 28 April 1995 ("the 1995 Agreement"), it was agreed (inter alia) that NFCL would purchase from the Defendant 34 lots to be created and to form part of the CHD and registered as West Bay Beach North Block 11C Parcel 238 and West Bay Beach North Block 17A Parcels 11 and 12 (the "Parcels") at a price of US \$6.20 per square foot, amounting to a cumulative purchase price of US \$3,999,713.00.
- 6 Disputes subsequently arose between the parties to the 1995 Agreement with regard (inter alia) to the performance of the 1995 Agreement and with regard to sums due and outstanding to National Business Corp. Ltd in respect to a mortgage loan which that company made to the Defendant in relation to this transaction.

7 Further to a resolution of the said disputes, by two written agreements entered into between (inter alios) IFCCCL, and the Defendant on 2 May 1997 ("the 1997 Agreements"), it was agreed (inter alia) that:

- (i) IFCCCL (and not NFCL) would complete a purchase from the Defendant of 15 lots and on no other lots in the CHD ("the Lots"). The Lots were described in Attachment C to the Fifth Schedule to one of the 1997 Agreements ("the Fifth Schedule");
- (ii) the Defendant would execute new individual transfer agreements transferring the Lots directly to IFCCCL;
- (iii) the Defendant would sell and IFCCCL would purchase the Lots, subject to the conditions set out in the Fifth Schedule; and
- (iv) the purchase price for the Lots would be US \$6.20 per square foot, amounting to a cumulative purchase price of US \$1,872,152.00 (subject to additions, or subtractions if applicable: to take account of an adjustment in the purchase price after a precise survey for each lot to be delivered on completion), which amount would be set off against any amount of principal and interest owing to National Business Corp. Ltd. by the Defendant on the completion date and any balance owing on the mortgage loan would be paid by the Defendant to National Business Corp. Ltd.

8 The lot now designated as Block 17A Parcel 257 (formerly Parcel 125), described as Lot 191 in Plan B and Attachment C to the Fifth Schedule ("Lot 191"), was and is one of the Lots.

9 By the special terms and conditions contained in the Fifth Schedule, the Defendant covenanted and warranted (inter alia) that:

- (i) the Defendant would complete the Lots on or before 48 months from the date of execution of the 1997 Agreements, that is on or before 1 May 2001; and
- (ii) completion of the Lots for the purpose of the 1997 Agreements included that:

- i) ...
- ii) *All canals will be bulkheaded with concrete walls, or cut stone walls or by polyvinylchloride sheet piling known as Shoreguard which product is guaranteed for 15 years from the manufacturers.*
- iii) *All areas exposed to Mitchells Creek will be bulkheaded in accordance with (ii) above.*

10 The Defendant was an experienced developer. In 1997 the Defendant knew that Lot 191 was a unique lot in that:

- (i) it was a part of a point of land projecting into the open waters of Governors Harbour, near the mouth of Mitchell Creek;
- (ii) it was also located at the mouth of a private canal created by the Defendant to give other CHD lot owners access to the open waters of Governors Harbour;
- (iii) Lot 191 was exposed to natural wind and wave action because of its location, as well as to artificial wave action created by boats slowing down to enter and speeding up to exit the private canal to which it was adjacent; and
- (iv) Lot 191 was developed on land partially reclaimed from tidal swamp and had been filled with loose, uncompacted fill at its waterside perimeters.

11 It was an implied term of the 1997 Agreements that the Lots which IFCCCL acquired, including Lot 191, would be fit for their purpose and of reasonable, acceptable and satisfactory quality, for use and enjoyment and/or for sale to third party purchasers for construction of residential properties, which future use was well known to the Defendant.

12 It was also an implied term of the 1997 Agreements that in respect of the Lots which abutted the water, including Lot 191, the Defendant would construct a sea wall which would be fit for its purposes and of reasonable, acceptable and satisfactory structural quality.

13 In late 1997, the Defendant erected bulkheads or seawalls around those of the Lots which were in any way bordered by water. Specifically, in 1997 a seawall was

constructed by the Defendant around the perimeter of Lot 191 that was bordered by water ("the Seawall").

- 14 Having regard to the unique circumstances of Lot 191, referenced in Paragraph 10 hereof, the Defendant knew that a Seawall fit for its purposes at that location would require construction methods that were more robust than those required at other locations in the subdivision.
- 15 The Defendant failed to build a Seawall fit for its purposes at Lot 191.
- 16 While the special terms to the Fifth Schedule contemplated 3 modes of construction, as described in Paragraph 9 (ii) hereof, it was an implied or express term of the said Agreements that the Defendant would utilise the mode of approved bulkhead construction which was appropriate for each Lot, having regard to their location and circumstances, and which was necessary to provide a seawall that was fit for its purposes.
- 17 Having regard to the unique location and circumstances of Lot 191, the Defendant's failure to erect a bulkhead using the sheet piling alternative was a deliberate breach of contract since any other approved mode of construction would result in the undercutting and eventual collapse of the Seawall by erosion caused by wave action. The defendant was an experienced developer of canal lots. The Defendant knew that a cut stone wall erected using the methods employed by the Defendant, on a narrow concrete footing at Lot 191 was planning for failure.
- 18 Further, the Defendant, in the knowledge that such constituted a breach of the 1997 Agreements with the Plaintiff intentionally :
 - (a) Failed to provide an adequate foundation for the Seawall; and
 - (b) Failed to tie the horizontal footings of the Seawall to the vertical cut stone/rock rubble wall by means of internal steel reinforcing bars or otherwise.

- 19 The Defendant knew that these structural flaws could not be detected by a purchaser without construction/engineering experience and without underwater inspection of the Seawall in respect to the foundation or deconstructing a portion of the Seawall in the case of lack of reinforcement.
- 20 Furthermore, the Defendant was aware that the Seawall erected at Lot 191 was not fit for its required purpose and not of reasonable, acceptable and satisfactory structural quality in that:
- (a) The foundations of the Seawall were placed on an inadequate footing which tended to sink into the seabed when subjected to wave action;
 - (b) The Seawall was constructed on a foundation of insufficient breadth to properly support the vertical wall at this particular location;
 - (c) The concrete horizontal foundation footing was not tied together with the vertical wall by means of steel reinforcing bars or otherwise. Thus, the stone veneer/rubble wall was attached to its foundation only by the force of gravity, and some mortar, making it susceptible to collapse in the event of erosion of the underlying seabed through wave action;
 - (d) Prior to 2009, at a time known to the Defendant but not the Plaintiff, the Defendant caused concrete bags to be installed at or under the foundations of the Seawall in order to shore up the foundations which had been undermined by wave action. The Defendant installed these concrete bags because it knew the Seawall in its most exposed section would collapse if remedial action were not taken, given the Defendant's failure at the time of initial construction to use sheet piling or to tie the wall into the foundation by means of reinforcing bars or otherwise. But concrete bags are a temporary expedient and could not and did not prevent further erosion and the eventual collapse of a portion of the Seawall;
 - (e) The Seawall was not constructed in a continuous manner. Rather, it was constructed of individual sections of approximately 8 feet in length. Each section of the vertical wall was tied to the next section with a steel reinforcing bar which was susceptible to rust and corrosion. This design allowed the Seawall to fail in sections when its foundations were eroded;

- (f) The reclaimed ground on which the foundation of the Seawall was built was made with fill material placed on top of wet swamp which had not been demucked of peat and vegetation and was poorly compacted. The foundation was therefore unstable and inadequate to support a seawall built without sheet piling in this location.
- 21 The failure to build a seawall in accordance with the express and implied terms of the 1997 Agreements was concealed from the Plaintiff by the Defendant, and the Defendant was aware that these failures were undiscoverable by the Plaintiff or any future purchaser until the wall collapsed or was deconstructed.
- 22 Pursuant to the 1997 Agreements, title to the Lots were transferred to IFCCCL on 13 February 1998.
- 23 In or before early 2009, the Seawall at Lot 191 failed in that sections cracked, sections were leaning precipitously and sections collapsed completely. The sections which failed were at the most exposed sections of the seawall in respect to wave action. Other sections remained with minor or no damage. This damage to the Seawall was the result of the failure of the Defendant to use the appropriate mode of construction contemplated in the 1997 Agreements and the failure of the Defendant to design, to engineer and to construct the Seawall, with reinforcing bars or otherwise so that it would be fit for its purposes, having regard to its unique location.
- 24 The damage to the Seawall and its inadequate design and construction for the location was such that a significant portion of the Seawall at Lot 191 required replacement.
- 25 Lot 191 was being marketed for sale in 2008/2009 when it was discovered that the Seawall had failed and its structural inadequacy became known to the Plaintiff.
- 26 In 2009 Lot 191 was sold to a third party. In order to effect the sale, the purchase price was reduced by the cost to the purchaser of replacing the portion of the Seawall which failed, in the amount of US\$68,341.46. The Plaintiff also paid an additional C\$600 to the structural and civil engineering firm which carried out the repairs to inspect the wall and to provide a quote for the rebuilding / repair work. But for the breach of contract of the Defendant in failing to comply with the express and implied provisions of the 1997 Agreements, the Plaintiff would not have suffered the loss of

the cost of the inspection and the cost of replacing the Seawall through a reduction in the purchase price. The Plaintiff thereby suffered damage.

- 27 The Plaintiff's complete economic loss will be provided in detail at trial.
- 28 Further, the Plaintiff is entitled to and claims interest on all sums found due to it, pursuant to section 34 of the Judicature Law (2007 Revision) at such rate and for such periods as the Court may determine.

AND THE PLAINTIFF claims:

- 1 Damages of US\$68,341.46 plus CI\$600;
- 2 Interest pursuant to section 34 of the Judicature Law (2007 Revision);
- 3 Its costs of this action on an indemnity basis;
- 4 Such further or other relief as the Court shall think fit.

Dated this 10th day of February 2012

Filed this day of 2012



Ogier

David Roebuck

THIS WRIT was issued by Ogier of 89 Nexus Way, Camana Bay, Grand Cayman KY1-9007, Cayman Islands
(Ref. CRU/RAR/403295.00001), Attorneys-at-Law for the Plaintiff.

**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 495GT, 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 of 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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2012

BETWEEN:

INTERNATIONAL FIDELITY CENTURY CORP. LTD

Plaintiff

AND

LAND LTD

Defendant

**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 of Summons is being acknowledged.

2. State whether the Defendant intends to contest or otherwise participate in 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

Service of the Writ of Summons is acknowledged accordingly.

Attorney for the Defendant
Address for service:

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 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.

OGIER
Attorneys-at-Law
89 Nexus Way
Camana Bay
Grand Cayman
Cayman Islands KY1-9007
(Reference:
LIT/CRU/RAR/403295.00001)

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