

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

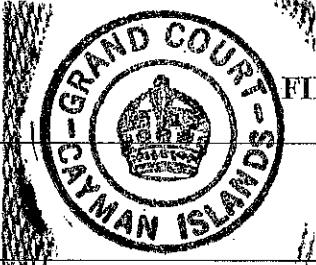
CAUSE NO: 247 of 2012

BETWEEN

PHILLIP HYRE and KEVON HYRE

Plaintiffs

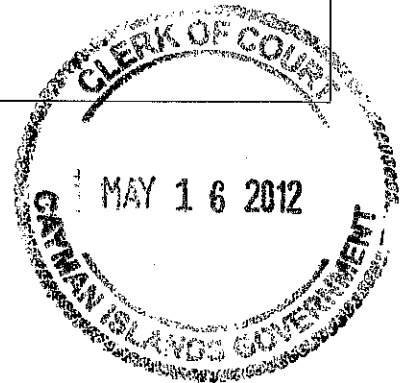
AND:



FIDELITY BANK (CAYMAN) LIMITED

Defendant

ORIGINATING SUMMONS



TO: Fidelity Bank (Cayman) Limited  
Cayman Financial Centre  
36A Doctor Roy's Drive  
P. O. Box 914  
Grand Cayman, KY1-1102  
Cayman Islands

**THIS ORIGINATING 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 Originating Service on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P. O. Box 495GT. George Town, Grand Cayman, 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 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 16th day of May 2012

**IMPORTANT**

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

NOTE: This Originating Summons may not be served later than 4 calendar months (or, if leaves is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

## INDORSEMENTS

- a. The Plaintiffs claims are for an injunction restraining and prohibiting the Defendant whether by himself, his servant or agent or otherwise, from any and all action pursuant to Section 64(2) of the Registered Land Law (2004 Revision) the objective of which is to proceed to sell the several properties (Block 20E, Parcel 83 REM1; Block 22E, Parcel 412 H8, & Block 22E, Parcel 412H1) owned by the Plaintiffs and which properties the Defendant holds the first legal charges over.
- b. The Plaintiffs, in addition to paragraphs 1, claim that the sale of the properties (Block 20E, Parcel 83 REM1; Block 22E, Parcel 412 H8; & Block 22E, Parcel 412H1) would be to the detriment to the Plaintiffs; because the Plaintiffs verily believes, the Defendant made a **false representation (i) knowingly, (ii) without belief in its truth, or (iii) recklessly**, to the detriment of the Plaintiffs. In addition, the Plaintiffs were given several assurances by the Defendant; among them was the assurance that the Plaintiffs were at all material times, still the lead parties in the new proposed company formed by the Defendant, for development of the proposed properties. That reliance caused the Plaintiffs to sign all the documents which purport to transfer the said property to Satin Gate Wood, the company formed at the instigation of the Defendant, purportedly to protect the Defendant's interest. Had the Plaintiffs been made aware of the true state of affair, and the intent of the Defendant at the material time the Plaintiffs would not have signed the said documents.
- c. **I verily believe that the failure of the defendant to encourage us to seek independent legal advise sufficiently demonstrate the assertion that proximity and duty of care, in the instant case cannot be confined to mere physical proximity, but is to be used, and extend to such close and direct relations, as in the instance case complained of, and which directly affected us, who the Defendant owed a duty, and was bound to take care, and at all material time must be said to have known that their action would directly affect us.** We therefore belief that the Defendant failed in their capacity as a lender by playing a role as a developer, and therefore, there was no contract of an "*uberrimae fidei*".

  
PHILLIP HYRE & KEVON HYRE  
PLAINTIFFS

This Originating Summons was prepared and issued by Phillip Hyre & Kevon Hyre, the Plaintiffs herein whose address for service is House # 24, Apt. 1 Poinsettia Lane, Tropical Gardens, P. O. Box 1671, Grand Cayman, KY1-1109, Cayman Islands

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO: of 2012

BETWEEN

PHILLIP HYRE and KEVON HYRE

Plaintiffs

AND:

FIDELTY BANK (CAYMAN) LIMITED

Defendant

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS

Important: Read the accompanying direction against 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 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 intends to contest the proceedings (tick the 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 Plaintiffs (tick the appropriate box)
Yes No

Service of the Writ is acknowledged accordingly

(Signed) .....

[Attorney] for

[Defendant in person]

This Originating Summons was prepared and issued by Phillip Hyre & Kevon Hyre, the Plaintiffs herein whose address for service is House # 24, Apt. 1 Poinsettia Lane, Tropical Gardens, P. O. Box 1671, Grand Cayman, KY1-1109, Cayman Islands

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 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 communication 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:

Phillip Hyre & Kevon Hyre,  
House # 24, Apt. 1 Poinsettia Lane,  
Tropical Gardens,  
P. O. Box 1671, Grand Cayman,  
KY1-1109, Cayman Islands

Indorsement by Defendants' attorney (or by Defendants if suing in person) of his name, address and reference, if any, in the box below:

[Empty box for defendant's attorney indorsement]

The Originating Summons was issued and prepared by Phillip & Kevon Hyre, Plaintiffs herein, whose address for service is House # 24, Apt. 1 Poinsettia Lane, Tropical Gardens, P. O. Box 1671, Grand Cayman, KY1-1109, Cayman Islands

**Notes for Guidance**

1. Each Defendant (if there is 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 serving on the day it 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 Originating 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 NAME, 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 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.

NOTE: This Originating Summons may not be served later than 4 calendar months (or, if leaves is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

## STATEMENT OF CLAIM

- 1.0 On Thursday March 11, 2010 the Plaintiffs met with the Defendants Fidelity Bank (Cayman) Limited. The purpose of the meeting was to resolve how the Defendant would go about consolidating the Plaintiff's company Hycam Ltd loan, Hycam Ltd overdraft facility and the Plaintiffs personal loan... The Plaintiff also presented drawings of a proposed development to the defendants during which the Plaintiffs ask the Defendants if they would be willing to finance the proposed development on Parcel 83 REM 1. The Defendants stated that it would be beneficial to both parties if the property could be developed and proceeds from the sales used to liquidate the loan as it would be of no benefit to either party to do otherwise. It was verbally agreed that the Defendant would approve and grant a refinance facility. The Plaintiffs waited in excess of two months without hearing from the Defendant.
- 1.1 On May 27, 2010 the Plaintiffs received an approval letter of agreement to enter into a Mortgage Loan contract ("the Mortgage) dated April 26<sup>th</sup>, 2010 with the Defendant, to establish a credit facility in the amount of CI\$2,580,000.00. Thus the date of acceptance of the letter would already have been passed. This commitment letter was then replaced by another letter on June 2, 2010 but the date of April 26, 2010 still remained the same as the previous commitment letter.
- 1.2 The purpose of the credit facility was to assist with the refinancing of (a) Raw land described as George Town East, Block 20E, Parcel 83REM 1 (b) a two bedroom apartment described as Prospect, Block 22E, Parcel 412H1 and (C) a two bedroom apartment described as Prospect, Block 22E, Parcel 412 H8. And secondly, a proposed plans to construct homes for low income earners within a price range of CI\$200,000.00.
- 1.3 This credit facility was repayable upon the rate of interest of based on Fidelity bank (Cayman) Limited's Base Lending Rate PLUS 3% per annum. At the time the current total effective rate was 6.25% per annum.
- 1.4 The proposed payment was to be interest only for 12 months, to commence May 26<sup>th</sup>, 2010 until April 26<sup>th</sup>, 2011 (CI\$13,437.50 monthly). Starting May 26, 2011- such amount necessary to repay the loan and interest within the Term (proposed payment CI \$19,360.27 monthly). The loan was for a term of 20 years.
- 1.5 Security obtained, (a) first charge varied from CI \$498,000.00 to CI \$2580,000.00 over property described as George Town East, Block 20E, Parcel 83 REM 1. (b) Life insurance to be increased in the amount of CI \$2,585,000.00 on the lives of Plaintiff's to be assigned to Fidelity Bank (Cayman) Limited and kept in effect over the Term. (c) Evidence of strata insurance for the replacement cost of Prospect, Block 22E, Parcel 412 H1 and H8. (d) Construction insurance to be assigned to Fidelity Bank (Cayman) Limited over property described as George Town East, Block 20E, Parcel 83 REM 1 for the full replacement cost of works to date. (e) Guarantee and Postponement of claim to be signed jointly and severally by Plaintiff's. (f) Promissory note to be signed by the borrower (s).

## 1.6 OTHER TERMS AND CONDITIONS

- (a) All legal fees and other out of pocket expenses are for the account of the Plaintiff's.
- (b) A commitment fee in the sum of CI \$25,301.00 is payable upon closing.
- (c) No further requests for refinancing will be entertained.
- (d) This offer would be deemed lapsed if not formally accepted within 30 days from the date of this letter of offer. The loan amount must be drawn within 60 days of the date of this letter failing which this offer will be withdrawn.
- (e) Fidelity bank shall have the right at any time on notice to inspect the property held as security for the mortgage.
- (f) The first monthly payments shall be paid on May 26<sup>th</sup>, 2010 and thereafter on the 26<sup>th</sup> day of each month or the next following business day.
- (g) The facility is payable on demand provided that the borrower(s) observe all their covenants under the charge and their obligation to repay the principal and interest by monthly payments no demand shall be made.
- (h) The bank will proceed with legal action should any of the terms be breached.
- (i) The terms and conditions of this facility (is) offered hereunder may varied or withdrawn at any time should the Bank, in its sole discretion, determine there has been nondisclosure by the borrower(s) or a material adverse change in the circumstances of the Borrower(s) (Or any guarantor, if any).
- (j) This mortgage facility and its interest rate are subject to an annual review at a cost of 1per cent of the borrowing.
- (k) Mr. Phillip Hyre & Mrs. Kevon Hyre are to provide personal statement of assets and liabilities.
- (l) Mr. Hyre is to provide a written letter of consent authorizing Fidelity Bank (Cayman) Ltd. to transfer all debt from Hycam Ltd. to Phillip Hugh Hyre.

2.0 **The Plaintiffs were not in agreement with some of the terms and conditions in the commitment letter dated April 26, 2010 which was received on May 27, 2010.** The Plaintiffs wrote a letter to the Defendant on June 7, 2010 stating their concerns and if these concerns can be dealt with prior to signing. (Letter to Mr. Brett Hill, the President of Fidelity Bank dated June 7, 2010). These concerns were never dealt with and neither was the commitment letter signed by the Plaintiffs or Defendants. However the Defendant went ahead and consolidated the Plaintiffs business loan and business overdraft making it a part of the Plaintiffs personal loan without any letter of consent to do so.

3.0 June 22, 2010 the Plaintiffs received a letter from the Defendant in response to the Plaintiffs letter of June 7, 2010. In the letter among other things the Defendant stated that the Plaintiffs were now in over a month in arrears as of May 25, 2010 and as a result the Defendant is of the opinion that the Plaintiffs are now in default of their obligation to repay the monies owing to the defendant and this letter therefore constitute the Bank's demand of the principal and interest that has accrued to the various facilities afforded to the Plaintiffs. The Defendants made the demand under Section 72 of the Registered Land Law (2004) Revision.

The Defendant further stated that in the event, the Plaintiffs failed to make payment of CI\$2,603,743.34 outstanding as at date of letter, the Bank shall proceed to realize its security under the charges held by it. **It must be noted that at this stage the Plaintiff could not have been in one**

**month arrears as stated by the Defendant.** Due to the fact that (a) the Plaintiff had only received the commitment letter on May 27, 2010 to sign (b) the Plaintiff or the defendant had not signed the letter and (c) the Defendant did not address the issues of concerns raised by the Plaintiff.

- 4.0 On August 10, 2010 the Plaintiffs received a demand letter from GIGLIOLI & COMPANY Attorneys-at-law on behalf of the Defendant.
- 5.0 Meetings were held at Fidelity Bank between the Plaintiff and Defendant during the months of October and November 2010, during which the Plaintiff submitted a proposal to the Defendant asking the Defendant to finance the Hyre Point Oasis project development affordable homes with the intention to pay off the debt from the sales and realize a substantial amount of cost savings to all the stakeholders. The Defendant agreed that this would be the way forward as the idea of foreclosure would not be beneficial to any of the parties involved. The Plaintiffs told the defendant that a feasibility study was conducted and there was a dire need for housing especially in the George Town area. The Plaintiff had a previous meeting with the national Housing Development which revealed that there were in excess of eight hundred persons in line who were pre-approved for housing. The Plaintiff also presented the Defendant with a Proposed Development costing dated November 10, 2010.
- 6.0 The Plaintiff also presented a letter addressed to the Defendant from Cayman Real Estate Company in support of the project. The letter read as follows: In my official opinion as the Broker of the Cayman Real Estate Company, I believe that we will have great success in promoting and selling the proposed development. Our company is experiencing a high demand for this type of housing by first time Caymanian home buyers and others that are looking for affordable homes in this current market and in the price range up to C\$200,000. At present time there are no available projects of this kind in the George Town and the surrounding areas. Unlike the apartment living that most customers are looking to move away from, we are offering individual homes with their own yard space and therefore more control over the purchaser's investment. We as Realtors would be excited to offer this property as the demand is greater than the current supply. Please feel free to contact me at any time for further question."
- 7.0 The Defendant informed the Plaintiff in one of the meetings with several shareholders of the bank who came from overseas and were in attendance, that the project seems viable and that they too will do a proposal base on the Plaintiffs feasibility study to their board for approval. The Defendant thank the Plaintiff for the brilliant idea as to the way forward that this would create a possible "win win" situation for all the stakeholders. The Defendant stated once more that it is not the intention of the Bank to destroy the good name of the Hyres who have been excellent customers to the bank and good citizens. The Defendant also informed the Plaintiff that he should keep in touch with a senior official of the Fidelity Bank who will act as the liaison officer between the Plaintiff and the Defendant. The Plaintiff and official of the Bank were in constant communication. The said official told the Plaintiff on several occasions in person and via telephone that he thinks the board will approve the development but will likely do so in the coming year 2011. During the months November 2010 to January 2011 the Plaintiff had several discussions with the same official in regards to the project. That same official requested a copy of the architectural plans from the Plaintiff which was emailed to the official on Thursday, February 3, 2011 at 11:13 am.

- 8.0 On Thursday, March 24, 2011 at 4:31 pm the Plaintiff emailed Mr. Johnson asking him to give an update in regards to the approval.
- 9.0 On Monday, April 4, 2011 at 4:05 pm the Plaintiff received an email with an attachment from the official which had an attachment revealing the proposal that was sent to the board for approval. The talking point official stated in his email "The attached is strictly private and confidential and should be used for information purposes only by the Second Plaintiff and you exclusively. Please do not share it with anyone else." The First Plaintiff called the official by phone after reviewing the Project funding Proposal which was done by the Defendant and thank him for the update. The Plaintiff informed the official that he thinks that he the Plaintiff should received more profit than shown in the Proposal. The official said that he agreed with the plaintiff and that he would suggest this to Mr. Anwer.
- 10.0 On Wednesday April 6, 2011 the Plaintiff was informed by Mr. Anwer who acted on behalf of the Defendant that the board had approved the project and has appointed a Management Team to give oversight of the project. Mr. Anwer said that the next step is for Mr. Brett Hill to arrange for Mr. Hyre to meet with the Management team that the board has appointed to oversee the project, so as to look at the plans, projections and discussed the way forward in doing the project. It was agreed that the project would be successful, considering the current demand for affordable housing. The Plaintiffs had done all the necessary feasibility study and met with the various authorities so as to guarantee the possible success of the project. The Defendant stated that the bank would provide financing for qualified buyers, this again would add to the success of the project. The Defendant requested that Plaintiff used other Fidelity clients who had construction companies and Mr. Harry who had a trucking business as part of the work team, as these persons were experiencing financial hardship due to lack of work. (This was also stated on page 6 of the **Project Funding Proposal** under **Special Conditions**. The Plaintiffs agreed to do so and as a result met with one of such persons namely M& R Construction. During the meeting the Plaintiff also told the Defendant that they would like the project name to remained Hyre Point Oasis Development, that the Plaintiffs Real Estate Company be the selling agent (as discussed in previous meetings) and that the Plaintiff had fifty workers on standby to commence the project. At the conclusion of the meeting Mr. Anwer walked the Plaintiff Phillip Hyre to the door and said everything will be fine. However something has to be in it for him (meaning Mr. Anwer) and that he could possibly have the project done privately through private investors instead of through the Fidelity bank.
- 11.0 On Thursday April 7, 2011 the Plaintiff met with the proposed management team. The management team were Brett Hill (President, CEO, Fidelity Bank), Derek Serpell (owner of Evolving Island Management Company along with his wife Amanda Serpell) and Simon Watson a Director of Charterland Ltd who had valued the raw land Block 20E, Parcel 83REM 1 in October 27, 2009 for CI \$2,500,000.00 (see valuation). During the meeting no plans, no discussion as to the way forward or projections in regards to the project were discussed. The only discussion that took place in regards to the project was when Derek Serpell the owner of Evolving Islands Management Company (**whose company SATIN WOOD GATE LIMITED and of which the Defendants Lawyer's company Boddan & Boddan law firm affiliate company Boddan Corporate Services Ltd is the Secretary of SATIN WOOD GATE LIMITED are now the owners of the development**) asked the Plaintiff

how much he would sell the land for. (Lyn M. Boddens a share holder of Boddens and Boddens law firm is also a director for Boddens Corporate Services Ltd which is in turn the secretary for both Charterland Ltd who valued the land for CI\$2,500,000.00 in October 27, 2009 and Chisha Development Ltd also owned by Derek Serpell which also did one of the design and feasibility study for the Hyre Point Development). The plaintiff said he was not here to discuss the sale of the land. Derek Serpell also mentioned that the raw land only had a value of CI \$682,000.00 which was stated by Simon Watson owner of Charterland Ltd (**Amanda Serpell the wife of Derek Serpell is also a Director of Charterland Ltd**). The Plaintiff was never given or shown a valuation suggesting a value of \$682,000.00 for raw land Block 20E Parcel 83 REM1. (**another valuation was done by DDL Studios on behalf of Fidelity Bank dated November 4, 2010 which showed a value of CI \$1,586,000.00**) The meeting ended without any further discussions. The Plaintiff left the meeting leaving all the other persons behind who appears to have continued in further discussions.

12.0 On Monday, April 11, 2011 at 02:53 pm the Plaintiff wrote an email to the Defendant as follows: "Hi Mr. Hill and Mr. Johnson, I was disappointed with the meeting held with the proposed management team on Thursday April 7, 2011. I was informed by Mr. Anwer at the meeting held on Wednesday April 6, 2011 that I would meet with the proposed management team to look at plans, projections and discussed the way forward in doing the project which is a viable project. Instead I was asked what I would sell the land for and nothing was shown to me by way of projections, plans or even how we would possible proceed forward with the project. I have done my research and I have looked at a number of scenarios and this is definitely a project if given the opportunity to do in stages would maximize the potential profits and pay off the debt with a substantial amount of cost savings. I have already over fifty workers on standby for this project and base on my calculations; I could get the house completed under 100 dollars per square foot. Despite what has happened already I do not see the point of selling the land, as this was not given to me as an option by Mr. Anwer. I look forward in being able to develop the land as agreed in the meeting with Mr. Anwer.

**On Monday, April 11, 2011 Mr. Hill wrote the Plaintiff: "Phil, The purpose of the meeting was to assess how you and Derek's companies might work together and to assess the extent to which you would be able to assist or would like to get involved. The question raised by Derek regarding the transfer of the land was to determine if it might be beneficial from a structural point of view to have the land in a separate development company to facilitate the land transfers as the strata lots are sold, and nothing more. At this stage we are simply weighing the options, according to Mr. Hill, the President of Fidelity Bank. Mr. Hill continued: "As I have indicated to you, our Board as appointed Derek's company to look after our interests and he is happy to include you in the project. However, before I get the final go-ahead from our board, I need all of the relevant agreements in place. At this time we are simply dealing with how the arrangement will be structured in order for us to move forward and how the various parties to this will participate. You need to appreciate that before we are allowed to advance the additional funds required to complete this project, we will make sure that the bank's interests are fully protected. In that regard we still have a few hurdles to clear before we get down to the detail of the project. Brett"** The Plaintiff responded by asking the Defendant when is the next meeting to discussed the way forward and to see the Management Team's proposal. Only to find out that the Bank interest is actually, something else. The property was transferred to the same person who supposes to assist the Plaintiffs to succeed in the project.

13.0 On Monday, April 18, 2011 the Defendant email the Plaintiff asking the Plaintiff to call him by phone. The Plaintiff called the Defendant as requested by the Defendant and was informed that Defendant along with its legal team would like to meet with the Plaintiffs so as to sign the necessary documents in order for the project to go through as discussed in previous meetings. **On Thursday, April 21, 2011 the Plaintiff asked the Defendant what was the payout figure for the loan. This was due to the fact that the Plaintiff had interested investors who were willing to pay off the Defendant and do a joint venture with the Plaintiff the defendant was informed of this but did not grant the request, instead the Defendant asked the Plaintiffs to meet with the Defendant and the Defendant's lawyer where the Plaintiffs were advised to follow a certain course of the signing of the necessary documents presented to the Plaintiffs which would be the course of action towards what is required so as to get final approval.**

Prior to the meeting the Plaintiff met with the Defendant liaisons officer Mr. Johnson and informed him that he would like to get the payout figure for the loan as he has interested investors who are willing to do the project and that he would like to possible inform the bank of this. Mr. Linval Johnson advise the Plaintiff that he did not think it would be a good idea to do so as he is of the opinion that the Board has approved the project and informing them at this time of new investors would likely confused the issue.

During the meeting the Defendant informed the Plaintiff that they need to appoint a receiver for the properties so as to be able to build and sell affordable housing on Property1 (the development) either as standalone houses or strata lots or some combination of both, to be determined by the developer retained. The Plaintiffs signed all the documents that were presented by the Defendants lawyer with the belief that in so doing was the only way in going forward and having the project done. The Plaintiffs honestly in good faith believed that by agreeing and signing the necessary documents this was only a part of the process that the board had agreed to and that they the Plaintiffs would still be a part of the development. At no time even up to this point has the Plaintiff been told by the Defendant that the Plaintiffs are no longer a part of the development. Had the Plaintiff known otherwise they would have pursued the option of other investors who had shown interest in doing the development? See all legal documents served by Defendants lawyer and signed by the Plaintiffs.

14.0 In the AFFIDAVIT served by the Defendant paragraph 2 stated that the Plaintiffs had entered into a letter of agreement with the Defendant on August 26, 2010 to borrow the sum of CI \$2,563,500.00. This is not so as the date of the commitment letter was April 26, 2010 and was handed to the Plaintiffs on May 27, 2012. The Plaintiffs was given charge documents which they signed .The commitment letter was never signed by the Defendant or Plaintiff. Therefore this contract is deemed null and void.

The ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS document paragraph 2 section marked yes was done by the Defendant and not the Plaintiff. Also the section for the address of the Plaintiff was pre-marked by the Defendant. **CAUSE NO: G0154.**

15. Mr. Leonard Ebanks a past President of Fidelity bank was appointed as the receiver on behalf of the Defendant. The Plaintiff was told to contact Mr. Ebanks if they had any questions as to what was taking place. The Plaintiff contacted Mr. Ebanks by phone and ask Mr. Ebanks what is the update in regards to the project and what are the benefits to the Plaintiff going forward. Mr. Ebanks told the

Plaintiff that he did not know as yet and when he finds out he will inform the Plaintiff. Mr. Ebanks went on to say that his job is to look out for the interest of both the Plaintiff and Defendant. The Plaintiff never heard from or saw Mr. Ebanks since that telephone discussion. At no time was the Plaintiff formally introduced to Mr. Ebanks as the receiver.

16. The property raw land George Town East Block 20E 83REM 1 was deceitfully transferred to Derek Serpell's newly formed company Satin Wood Gate Limited which was incorporated 27 September 2011 after written approval was already granted by the board to finance the development for the purpose of cheating the Plaintiff out of their development with the Defendant. Plaintiffs were told that the development land would be transferred from Phillip Hyre and Kevon Hyre name and place into a newly formed company of which the plaintiffs would also be the lead owner, while Derek Serpell was brought in to ensure that the Fidelity Bank interest is protected.

The company was formed as planned and the land was transferred to a company of which Derek Serpell, who supposed to be the "Anel guardian" ended up to be the Chairman, President, and the Director as well. Derek Serpell's wife Amanda Serpell is listed as the Assistance Secretary and Bodden Corporate Services Ltd as Secretary. This, in the Plaintiffs opinion, is a conflict of interest and an outright deception by the Defendants.

17. The Plaintiffs were astonished to receive a note from a friend who happens to have a property in the vicinity of the land location that an application has been tendered for a development has been tendered to Planning Department for approval without the Plaintiffs knowledge. The application states: Notice of application for planning permission from (Kariba) Chisha developments Limited (P.O. Box 30612 KY1-1203) on behalf of the owners of Block 20E Parcel 83 REM 1. Derek Serpell is listed as the Director as well as Bodden Corporate Services Ltd. as the Secretary for Chisha Developments Limited. To us as the Plaintiffs, it seems to us as a conflict of interest and clearly revealed the plans of the Defendants to deceive the Plaintiffs.
18. A letter was written by Defendant President to Ms. Ann Kirchman the Land Registrar giving permission to do the transfer of raw land registration Section George Town East, Block 20E, parcel 83 REM 1 to Satin Wood Gate Limited ("Satin Wood") providing the charges stay in place. This action in itself is defrauding the Cayman Island government of stamp duty since the property was transferred from Phillip Hyre & Kevon Hyre to Satin Wood Gate Limited on with the understanding up to this point that it is only for the project purposes.
19. Declaration on Conveyance of Preceding Agreement documents was shown to have been signed on 25 November 2011 without the Plaintiffs consent.
20. Stamp duty was paid in the sum of CI \$40,920.00 on the sale of raw land (Block 20E, Parcel 83 REM 1) for CI \$682,000.00 based on the valuation report done by Simon Watson of Charterland Limited which is owned by Simon Watson and who was part of the Management team and had valued the land on 27 October 2009 for CI \$2,500,000.00. This confirmed our belief that the switch of names are simply not for the project purposes.

21. On 28 November 2011, the defendant presented the Plaintiffs with an agreement, as a Deed, dated 28 day of November, 2011, to be signed by the Plaintiffs. **The Defendant thanked the plaintiffs for signing and making the process easier for the purpose of developing the land for the interest of all the stakeholders.** The Plaintiffs at the end of signing the documents thanked the Defendant for relieving them of the debt of CI\$2,500,000.00 from their names Phillip Hyre and Kevon Hyre. Up to this point the Plaintiffs were of the opinion that they were still a part of the new company that was formed namely Satin Wood Gate limited which has now assumed the debt of CI\$2,500,000.00 and would be still involved in the development. This assumption was as a result of an email correspondent between the Plaintiff and Defendant **dated 11, April 2011 to 21 April 2011)**

At the end of signing the documents the Plaintiffs asked the Defendants where do they go from here and what role would play in the development as discussed. The Defendants told the Plaintiffs that they will have to contact and speak to Derek Serpell as to what role he would like to have them play in the Development. The Plaintiffs again reminded the Defendants that they would like to continue to be part of the Development going forward.

22. On January 17, 2012 the Plaintiff requested a certified copy from the Registrar of land which showed that the development land at George Town East, Block 20E, and Parcel 83 REM1 was transferred from Phillip and Kevon Hyre to Satin Wood Gate Limited?

23. The Plaintiffs believe that the Defendant induced them to do something that if the facts were known they would not have done.

24. The Defendant has failed in their duty as a banker and instead has been playing the role as a real estate broker and developer. This confirms the assertion made by the official at the bank that it was and it has never been in the best interest of the banks a developer since \Cayman Islands authority (CIMA) forbid such practices. The Plaintiffs had originally believed the official's assessment of the issue. But, as per the current ongoing events little did the bank official knows much about his company.

On Friday May 1, 2012, page 27 of the Caymanian compass news paper there is an ad introducing Fidelity bank (Cayman) Ltd as a partner with Satin Wood Gate. The Plaintiffs believe that Fidelity bank deliberately and knowingly misled the Plaintiffs believing that Satin Wood Gate Limited is only assisting in moving forward the project without regards of the truth, as such at the detriment of the Plaintiffs.

It is a proposition which the Plaintiffs venture to say no one in the Cayman Islands or England or the British Commonwealth as a whole who was not a lawyer would for one moment doubt that the Fidelity Bank (Cayman) Limited has ever had the Plaintiffs best interest. It will be an advantage to make it clear that the law in this matter, as in most others, is in accordance with sound common sense. And, therefore, it is fair for the Plaintiffs to assert that the Fidelity Bank never was interested for the Plaintiffs to be the owners of the project.

**The Common Law has its roots in the customs of the people. one of that law's aims is to keep pace with the standards, values and interests of the ordinary people; and that in itself leads me to remind this Honourable court that the rights of people must be protected, irrespective who the Plaintiff might be.**

**AND THE PLAINTIFF claims:**

1. Summary judgment and/or
2. An injunction restraining and prohibiting the Defendant whether by himself, his servant or agent or otherwise, from any end all action pursuant to Section 64(2) of the Registered Land Law (2004 Revision) the objective of which is to proceed to sell the several properties (Block 20E, Parcel 83 REM1; Block 22E, Parcel 412 H8; & Block 22E, Parcel 412H1) owned by the Plaintiffs and which properties the Defendant holds the first legal charges over. "... [and/or]
3. In addition to paragraphs 1, claim that the sale of the properties (Block 20E, Parcel 83 REM1; Block 22E, Parcel 412 H8; & Block 22E, Parcel 412H1) would be a detriment to ourselves; because we believes the Defendant made a **false representation (i) knowingly, (ii) without belief in its truth, or (iii) recklessly, to the detriment of ourselves.** In addition, we had several assurances from the Defendant; among them was the assurance that we were still the lead parties in the new proposed company for the development of the proposed project to be undertaken on the said property. That reliance caused us to sign all documents in the absence of the benefit of independent legal advise. Had we been made aware of the true situation those documents would not have been sign.
4. In light of the foregoing we are hereby applying for an Order of Mandamus that the Defendant be prevented from selling or doing anything to our detriment with regards to the following Properties: (Block 20E, Parcel 83 REM1; Block 22E, Parcel 412 H8; & Block 22E, Parcel 412H1) which at all material time was owned by us and which properties the Defendant holds the first legal charges over.
5. We also make application for an order granting damages *for deceit and to put us back into our previous position, as was the case prior to the Defendant's action. Clearly the Defendants action was a misrepresentation made to us and which misrepresentation influence us to enter into the agreement which we signed at the urging of the Defendant for the transfer of the afore mention property, to the Defendant. In addition the Defendant asserted and certified to us that Satin Wood Gate Limited which was formed under the auspices of the Defendant was a mere formality been undertaken to protect the defendant's interest and that as soon as the Defendant's interest was satisfied, the project comprising the proposed development , would have been fully turned over to us.*

6. I relied on the facts presented in the Originating Summons and my Affidavits, and I pray for an order to rescind the agreement signed my ourselves and dated 25 November, 2011, on account of the fact that, the said agreement was signed by us only because of our belief and reliance upon misrepresentation made by the Defendant.

7. An injunction restraining and prohibiting the Defendant whether by himself, his servant or agent or otherwise, from any end all action pursuant to Section 64(2) of the Registered Land Law (2004 Revision) the objective of which is to proceed to sell the several properties (Block 20E, Parcel 83 REM1; Block 22E, Parcel 412 H8; & Block 22E, Parcel 412H1) owned by us ( Phillip Hyre and Kevon Hyre) and which properties the Defendant holds the first legal charges over. "... [and/or]

8. In addition to paragraphs 1, claim that the sale of the properties (Block 20E, Parcel 83 REM1; Block 22E, Parcel 412 H8; & Block 22E, Parcel 412H1) would be at a detriment of the Plaintiffs; because the Plaintiff believes the Defendant made a **false representation (i) knowingly, (ii) without belief in its truth, or (iii) recklessly, at the detriment of the Plaintiffs.** In addition, the Plaintiff had several

assurances from the Defendant; among them was the assurance that the Plaintiffs are still the lead parties in the new proposed company for the development of the proposed properties. That reliance caused the Plaintiffs to sign all those documents. Had the Plaintiff made to be aware as it stands now, those documents would not have been signed?

**The Plaintiffs think that this sufficiently states the truth if proximity be not confined to mere physical proximity, but be used, as they also think it was intended, to extend to such close and direct relations that the act complained of directly affects a person whom the person alleged to be bound to take care would know but could be directly affected by his careless act. The Plaintiff then belief that the Defendant failed in their capacity as a lender by playing a role as a developer not a lender and therefore, there was no contract of an “uberrimae fidei”... [and/or]**

9. An Order of mandamus that the Defendant be prevented from selling or doing anything to the detriment to the Plaintiffs in regards to the following Properties: (Block 20E, Parcel 83 REM1; Block 22E, Parcel 412 H8; & Block 22E, Parcel 412H1) owned by the Plaintiffs and which properties the Defendant holds the first legal charges over.

10. False representation made (i) knowingly, (ii) without belief in its truth, or (iii) recklessly”. *It is a tort and often a crime. The aim of damages for deceit is to put the claimant in the position as if the tort had not been committed. Edgington v Fitzmaurice* confirmed further that a misrepresentation need not be the sole cause of entering a contract, for a remedy to be available, so long as it is an influence. The Plaintiffs believe that all the documents signed were as a result that the Defendant made it known to them the project were still their own. It was further asserted that the new entity to be formed is needed for the bank to protect their interest and as soon as the bank investment is paid for the project will fully be turned over to the Plaintiffs. As it stands this is actually incorrect.

The Common Law has its roots in the customs of the people. One of that law's aims is to keep pace with the standards, values and interests of the ordinary people. Just as in ordinary dealings where people will indignantly claim that they are 'not to blame' or that it is 'not their fault'. That is the essence of common law to protect the ordinary people. And, even when the common law is in conflict, "equity law" supposes to prevail.

**Base on the facts presented in the Originating Summons and the Plaintiffs Affidavits, the Plaintiffs makes it to be known that the contract to be rescinded due to frustration and the false misrepresentation made by the Defendant to the Plaintiffs.**

In all circumstances, and subject to any correction that might come to our attention, I verify the facts set out in the Statement of Injunction, and repeat my belief that the Defendant has no defense to our claim.

