

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 412 OF 2012

BETWEEN:

LOOKOUT HOLDINGS LTD

PLAINTIFF

AND:

ARDEL ARCHER

DEFENDANT



WRIT OF SUMMONS

TO: ARDEL ARCHER of PO Box 10936, Grand Cayman, Cayman Islands, KY1-1007

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiffs, of P.O Box 290, Grand Cayman, 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 4th day of October 2012.

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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LOOKOUT HOLDINGS LTD

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STATEMENT OF CLAIM

Introduction

1. The Plaintiff, Lookout Holdings, is a duly company duly incorporated in the Cayman Islands whose registered office is at 45 Anton Bodden, Bodden Town, Grand Cayman
2. The Defendant, Ardel Archer, is insofar as is known to the Plaintiff a Caymanian national of P.O. Box 10936, Grand Cayman, Cayman Islands, KY1-1007.
3. The Plaintiff was at all material times the owner and title holder of property known as Registration Section Bodden Town, Block 43A, Parcels 288, H11 and otherwise known as Griffin Manor Unit #11 ("**the Property**")

The Agreement

4. By a contract in writing made between the Plaintiff and the Defendant on 29th January 2010 ("**the Agreement**"), the Plaintiff agreed to sell and the Defendant agreed buy the Property, including chattels. A copy of the Agreement is annexed hereto.
5. Pursuant to the express and material terms of the Agreement, the Defendant, *inter alia*, agreed and covenanted with the Plaintiff as follows:-
 - (a) The Defendant would purchase the Property for a purchase price ("**the Purchase Price**") of CUS\$ 225,000 (Clause 2);
 - (b) The Defendant would pay the Purchase Price to the Plaintiff in installments ("**the Installments**"). The Sum of CUS\$ 5,000.00 was to be paid on the date of the making of the

Agreement. Thereafter, the balance of the Purchase Price, of CI\$220,000.00 was to be paid to the Plaintiff in equal monthly installments of CI\$ 1,705.66, representing both principal and interest, to be begin on the 1st February 2010 and thereafter be paid on the first day of every consecutive month until 1st January 2030 at which time the Defendant was required to pay the balance remaining of the Purchase Price together with all other monies owing to the Plaintiff (Clause 2a);

- (c) The rate of interest payable by the Defendant on the outstanding principal balance was CI\$ Prime plus 3 per cent, with a minimum interest rate of 7 per cent (Clause 2b);
- (d) Time for paying the Installments was of the essence (Clause 2b);
- (e) In the event the Defendant failed to pay any of the Installments at the times provided for by the Agreement, upon the giving of 30 days written notice to the Defendant, the Plaintiff would be entitled without prejudice to any other remedy available, to forfeit and keep as liquidated damages all monies paid to the date of the written notice together with any interest thereon and further that the Agreement would automatically terminate and the Plaintiff would be entitled to re-enter upon the Property and take possession (Clause 2b);
- (f) Upon payment of the first Installment the Plaintiff would give to the Defendant vacant possession of the Property. (Clause 4);
- (g) Time was of the essence under the Agreement (Clause 6);
- (h) At any time after the execution of the Agreement and pending payment of the Purchase Price and interest thereon the Defendant was permitted to keep a Caution on the Land Register without any objection by the Plaintiff (Clause 8);
- (i) In the event the Defendant failed to pay any of the Installments at the times provided for by the Agreement, the Plaintiff would be entitled to charge interest on the late installment or the balance remaining of the Purchase Price at the rate of 10 percent calculated on a daily basis (Clause 11);
- (j) Should the Defendant fail to observe any of the terms of the Agreement, including the Covenants, upon the giving of 30 days written notice to the Defendant to cure any such breaches, the Plaintiff would be entitled without prejudice to any other remedy available, to retain as liquidated damages all monies paid to the date of the written notice together with any interest thereon and further that the Agreement would automatically terminate and the Plaintiff would be entitled to remove any Caution entered upon the Land Register by the Defendant (Clause 18);
- (k) In consideration of the covenants referred to in the Agreement at Clause 20 to be observed and performed by the Defendant, the Plaintiff granted the Plaintiff a right to possession and use of the Property and chattels, such license to occupy to be terminated in the event of a breach of Clauses 2 or covenants at Clause 20 (Clause 19);

- (l) That for the duration of the Agreement the Defendant would punctually pay all insurance premiums and/or maintenance charges and other outgoings attributable to the Property. This included monthly payments due to the Proprietors of Strata Plan No 549. In the event of a failure of this covenant by the Defendant the Plaintiff was entitled to expend such sums as to cure the breach and add the amount so spent to the Purchase Price (Clause 20(a));
 - (m) That for the duration of the Agreement the Defendant would perform and observe all covenants and stipulations and restrictions as to the use of the Property and indemnify the Plaintiff from and against from and against, *inter alia*, any costs and expenses on account of any breach of the covenants (Clause 20(e));
 - (n) In the event of any failure to discharge the monetary obligation at Clause 2 of the Agreement or in the event of any breach of Defendant's covenants or obligation under the Agreement, the whole of the unpaid balance of the Purchase Price would be due and payable (Clause 20 (e));
 - (o) That the Plaintiff's written Consent was required in the event the Defendants wished to enter into a tenancy agreement for the Property with a third party (Clause 25).
6. Up to and including, on or about 1st March 2012 the Defendant had paid C\$40,283.66, including interest to the Plaintiff by way of Installments.
7. Since on or about 1st March 2012, in breach of the Agreement and the terms, conditions and covenants hereinbefore set out the Defendant has:-
- (i) neglected, defaulted and failed, at any time or at all, to pay the Plaintiff the Installments due;
 - (ii) neglected and failed within a reasonable time or at all to remedy the breach of the covenants and conditions by paying the Installments and arrears together with interest thereon to the Plaintiff;
 - (iii) neglected, defaulted and failed, at any time or at all, to pay punctually the monthly maintenance fees and payments to Proprietors of Strata Plan No 549;
 - (iv) neglected and failed within a reasonable time or at all to remedy the breach of the covenants and conditions paying punctually the monthly maintenance fees and payments to Proprietors of Strata Plan No 549 and arrears to the Plaintiff; and
 - (v) Entered into a tenancy agreement for the property with a third party without the consent of the Plaintiff.
8. By letter and service of a formal notice on or about 16th August 2012 ("the Notice") as provided for at Clause 2, Clause 18 and Clause 20 of the Agreement the Plaintiff demanded that the Defendant remedy the breaches of the terms, covenants and obligations of the

Agreement in full within 30 days and warned the Defendant that steps would be taken to exercise any remedies available to them should she fail to do so.

9. Notwithstanding the Notice and demands made by the Plaintiff, the Defendant in breach of the terms, covenants and obligations of Agreement has failed to remedy or cure the breaches.

10. As at 1st October 2012:-

- (i) the Defendant was in arrears with the Installments payable to the Plaintiff in the total sum of CI\$ 13,471.46, together with interest thereon;
- (ii) the Defendant was in arrears with the monthly maintenance fees and payments due to Proprietors of Strata Plan No 549 in the total sum of CI\$3,862.30;
- (iii) the unpaid balance of the Purchase Price due and owing by the Defendant was CI\$ 205,189.30; and
- (iv) pursuant to Clause 11 of the Agreement, the interest due and owing by the Defendant on the unpaid balance remaining of the Purchase Price, calculated on a daily basis was CI\$ 10,392.66.

Accordingly, as at 1st October 2012, the Defendant was indebted to the Plaintiff in the total sum of CI\$ 232,915.72.

11. The Plaintiff has at all material times fulfilled all of his obligations under the Contract.

12. By reason of the Defendant's breaches the Plaintiff has suffered loss and damage.

13. The Plaintiff therefore seeks to enforce his rights against the Defendant in accordance with the Agreement.

The Plaintiff therefore claims against the Defendant

- (1) Specific performance of the said Agreement to purchase the Property;
- (2) Further or alternatively, damages for breach of contract in addition to or in lieu of specific performance or at common law;
- (3) All necessary and consequential accounts, directions and inquiries;
- (4) Further or alternatively, by virtue of the breach of Clause 2 and Clause 20(e) of the Agreement, judgment against the Defendant in the sum of CI\$ CI\$ 232,915.72 together with interest at 10% per annum calculated pursuant to Clause 11 of the Agreement or in

the alternative, pre and post-judgment interest calculated pursuant to the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules, as amended from time to time:

(5) Further or alternatively, pursuant to Clauses 2, 18 and 20 of the Agreement, Declarations or Orders;

- (a) that the Agreement is terminated;
- (b) that the Plaintiff has the right to forfeit and keep as liquidated damages the sum of CI\$40,283.66 paid to date by the Defendant;
- (c) damages against the Defendant for breach of contract
- (c) that the Plaintiff has the right to remove any Caution placed upon the Property by the Defendant in the Land Registry;
- (d) that the Plaintiff has the right of re-possession of the Property with the immediate right of re-entry into the Property;
- (e) that the Defendant do deliver up the Property forthwith, or alternatively, the Plaintiff has leave to issue a Writ of Possession pursuant to Order 45, rule 3 of the Grand Court Rules 1995 (Revised Edition)

(5) That the Defendant pay the Plaintiff's indemnity costs pursuant to Clause 20(a) of the Agreement

(6) Such further and other relief as this Honourable may seem just; and

DATED at Grand Cayman this 4th day of October 2012

Nelson & Co.

Nelson & Co.
Attorneys for the Plaintiff

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: The Defendant

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2012

BETWEEN:

LOOKOUT HOLDINGS LTD

PLAINTIFF

AND:

ARDEL ARCHER

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 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.

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.