

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

CAUSE NO. <sup>358</sup> OF 2013

**IN THE MATTER OF the By-Laws of Strata Plans 436, 437 and 550**

**AND IN THE MATTER OF:**

- (1) The Schedule ("Schedule 1") to an Agreement of Purchase and Sale entered into between Condoco Grand Cayman Resort Ltd, as Vendor, Cesar Hotelco (Cayman) Ltd and the First and Second Plaintiffs, as Purchaser, and dated 31 July 2004;**
- (2) The Schedule ("Schedule 2") to an Agreement of Purchase and Sale entered into between Condoco Properties Ltd, as Vendor, Cesar Properties Ltd and the Third Plaintiff, as Purchaser, and dated 12 May 2008;**
- (3) The Schedule of Covenants ("Schedule 3") attached to a Transfer of Lease made between Condoco Grand Cayman Resort Ltd and the First and Second Plaintiffs and dated April 2006;**
- (4) The Schedule of Covenants ("Schedule 4") attached to a Transfer of Lease made between Condoco Properties Ltd and the Third Plaintiff and dated 1 July 2008**

**AND IN THE MATTER OF section 21(4) of the Strata Titles Registration Law (2005 Revision)**

**BETWEEN:**

- (1) SCOT FOITH**
- (2) PAULA FOITH**
- (3) MARSHA LTD**

**Plaintiffs**

**-and-**

- (1) THE PROPRIETORS, STRATA PLAN 436**
- (2) THE PROPRIETORS, STRATA PLAN 437**
- (3) THE PROPRIETORS, STRATA PLAN 550**
- (4) RC CAYMAN PROPERTY HOLDINGS LTD**

**Defendants**

**ORIGINATING SUMMONS**

**LET** The Proprietors, Strata Plan 436, The Proprietors, Strata Plan 437 and the Proprietors, Strata Plan, 550, all of whose address for service as shown on their respective Strata Plans as PO Box 32319, Grand Cayman, KY1-1209 and RC Cayman Property Holdings Ltd, whose registered office is c/o Codan (Cayman) Ltd, Hutchins Drive, Cricket Square, George Town, Grand Cayman, Cayman Islands, and is believed to be claiming that the benefit of the provisions contained in Schedules 1 to 4 inclusive in favour of Condoco Grand Cayman Resort Ltd and Condoco Properties Ltd are now vested in RC Cayman Property Holdings Ltd (but which claim is not admitted by the Plaintiffs).

**LET THE DEFENDANTS**, within 14 days after service of this Summons on them respectively, counting the day of service, return the accompanying Acknowledgment of Service to the Court Office, PO Box 495, Grand Cayman KY1-1106, Cayman Islands.

By this Summons, which is issued on the application of Scot and Paula Foith, both of 6800 High Gate Road, Plano, Texas 75024, United States of America, the registered proprietors of Unit 104, Ritz Carlton Residences, South Tower (West Bay Beach South, 12C 451/3H2H4) being part of Strata Plan 437, Scot Foith of 6800 High Gate Road aforesaid, the registered proprietor of Deckhouses Unit 10 (West Bay Beach South, 12C 451/3H10H10) being part of Strata Plan 550 and Marsha Ltd, whose registered office is c/o FCM Ltd, Unit 2-105, Governor's Square, West Bay Road, Grand Cayman, the registered proprietor of Unit 510, Ritz Carlton Residences, North Tower (West Bay Beach South, 12C 451/3H1H34) being part of Strata 436, the Plaintiffs claim against the Defendants the following relief, namely:

**1. Declarations that:**

- (1) Clause 9 (other the sub-clause 9.9) of the By-Laws of Strata Plans 436 and 437 and clause 8 (other than sub-clause 8.9) of the By-Laws of Strata Plan 550 are null and void on the ground that they contravene section 21(4) of the Strata Title Registration Law (2005 Revision) ("the Law");
- (2) Clauses 9 and 10 of Schedules 1 and 2 are null and void on the ground that they contravene the public policy reflected in section 21 (4) of the Law;
- (3) Clauses 3 and 4 of Schedules 3 and clauses 2 and 3 of Schedule 4 are null and void on the ground that they contravene the public policy reflected in section 21(4) of the Law.

- 2. To the extent that the Court grants the declarations sought in paragraph 1 of this Summons, an Order that all entries in the Incumbrances Section of the Plaintiffs' respective titles which are inconsistent therewith be deleted.**

3. An Order that the costs of and incidental to this Summons be paid by the Fourth Defendant.

If any Defendant does not acknowledge service, such judgment may be given or order made against or in relation to that Defendant as the Court may think just and expedient.

Dated: 21<sup>st</sup> October 2013

HSM Chambers  
HSM Chambers  
Attorneys-at-law for the Plaintiffs

NOTE: This Summons 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 that date unless renewed by the Court.

**IMPORTANT**

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

This Originating Summons was issued by HSM Chambers, Attorneys-at-law for the Plaintiffs, whose address for service is Suite 3, Buckingham Square, PO Box 31726, 720 West Bay Road, Grand Cayman KY1-1207, Cayman Islands.

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- (3) THE PROPRIETORS, STRATA PLAN 550
- (4) RC CAYMAN PROPERTY HOLDINGS LTD

**Defendants**

**ACKNOWLEDGMENT OF SERVICE  
OF ORIGINATING 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 is 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.

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1. State the full names of the Defendant by whom or on whose behalf the service of the Writ of Summons is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

Yes

No

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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

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Service of the Originating Summons is acknowledged accordingly.

.....  
Attorney for the

Dated: 2013

**Notes on address for service: -**

Attorney: Where the Defendant is represented by an attorney, state 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.

*Endorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below: -*

HSM Chambers  
Suite 3, Buckingham Square  
720 West Bay Road  
Grand Cayman KY1-1207  
Cayman Islands  
Tel: 345 949 4766

*Endorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below: -*

[Empty box for defendant's endorsement]

## **DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS**

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. 495GT, George Town, Grand Cayman.

### **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. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessarily (although not necessarily in an adversarial manner) you should tick the "Yes " box in paragraph 2 of the acknowledgment of service.
3. 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.
4. Where the Defendant is used 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)".
5. 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.
6. 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.
7. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorized to act on behalf for the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office