

THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO GEORHS OF 2013

BETWEEN

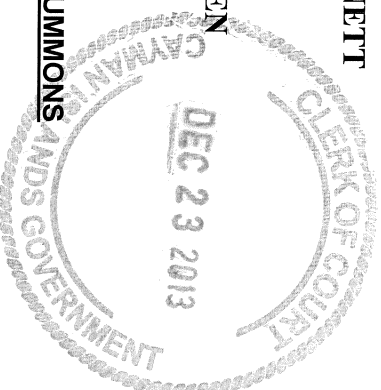
FRANK M. BARNETT

PLAINTIFF

AND

DAVID A. BODDEN

DEFENDANT



WRIT OF SUMMONS

TO: **DAVID A. BODDEN**
Walkers Road, George Town, Grand Cayman

DEFENDANT

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 495G, George Town, Grand Cayman, the accompanying Acknowledge of Service stating therein whether you intend to contest these proceedings.

If you fail to supply 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 day of 2013.

NOTE – This Writ may be served later 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 Acknowledgement of Service are given with the accompanying form.

This Writ of Summons was filed by H. Phillip Ebanks, Attorney at Law, for the Plaintiff, whose address for service is 62 Hospital Road Plaza, George Town, PO Box 30422, Grand Cayman, KY1-1202.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgement of Service should be completed by an Attorney on behalf of the Defendant or by Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO 495G, George Town, Grand Cayman.
2. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings must also serve a defense on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is not endorsed 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 defense 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 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 Acknowledgement, 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 installments or otherwise.

See overleaf for notes for guidance

Please complete overleaf

Notes of Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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 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 form 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 authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney 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. The Defendant acting in person may obtain help in completing the form at the Court Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO _____ OF 2013

BETWEEN FRANK M. BARNETT PLAINTIFF

AND DAVID A. BODDEN DEFENDANT

WRIT OF SUMMONS

TO: DAVID A. BODDEN DEFENDANT
Walkers Road, George Town, Grand Cayman

ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS

1. State the full name of the Defendant's by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings.
_____ Yes _____ No

3. If the claim against the Defendant is for a debt or liquidation 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.
_____ Yes _____ No

Service of the Writ is acknowledged accordingly.

(Signed).....

Attorney for

Notes on address for service

Please complete overleaf

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

H. Phillip Ebanks
Attorney-at-Law
62 Hospital Plaza, George Town, PO
Box 30422, Grand Cayman, KY1-1202,
Cayman Islands

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

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IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO _____ OF 2013

BETWEEN

FRANK M. BARNETT

PLAINTIFF

AND

DAVID A. BODDEN

DEFENDANT

STATEMENT OF CLAIM

1. In or around 2001 the Plaintiff and Defendant agreed that they would jointly undertake land and housing development projects on the basis that they would both contribute money to financing the schemes and the Defendant would be primarily responsible for the management of their undertaking.
2. In July 2001, the Plaintiff and the Defendant incorporated a company called Denny's Ltd. to carry on the business of their partnership, it being agreed that the Defendant would be the managing director and/or person in charge of the conduct and management of the affairs and operations of the said company.
3. The Plaintiff and the Defendant each subscribed for one share in Denny's Ltd.
4. In or around 2001 a property at Prospect was acquired for the purposes of carrying out a project of preparing and selling the lots. The Property was subdivided for sale and for the part of proceeds of sale of the lots to be used to pay the purchase price to the owner of the property. The Plaintiff contributed

- CI\$34,500.00 to the initial costs on the basis of the agreement between the Plaintiff and the Defendant that they would both contribute to the costs of the projects undertaken by the company. However the Defendant failed to contribute his CI\$34,500.00 to the initial costs.
5. The Defendant proposed that a house should be built on one lot and this was done. The lot with the house as well as the other eleven lots were sold and the owner of the property paid, but there has been no accounting by the Defendant who managed the transactions and the Plaintiff was not repaid the CI\$34,500.00 he had advanced.
6. In 2004 it was agreed by the Plaintiff and the Defendant that Denny's Ltd. would purchase the property identified as Block 22D Parcel 277 (remainder one), located East and West of the area called "the Island" ("Parcel 277"); the two areas thereof are known as "the Point" and "The Peninsula".
7. The purpose of the purchase of Parcel 277 was to carry out a subdivision and housing development project. Although possession was given to Denny's the actual purchase and transfer was completed in 2008.
8. By an Agreement in writing dated August 8, 2008, Denny's Ltd. purchased Parcel 277. For the purpose of carrying out this project, financing by way of loans to Denny's Ltd. were obtained from Scotia Bank (Cayman) Ltd.
9. Following the loan with Scotia Bank (Cayman) Ltd., Denny's Ltd obtained refinancing from First Caribbean International Bank (Cayman) Limited ("the Bank").

10. Refinancing obtained from the Bank was as follows:
 - Credit (A): US\$625,808.36 – Non Revolving Demand facility by way of demand Promissory Note.
 - (Credit (AA): US\$1,000,000.00. Non-Revolving Demand facility by way of demand promissory note.
 - Credit (B): US\$3,785,000 – Revolving Demand facility by way of Demand Promissory Note.
 - Credit (C): US\$1,600,000 – Non-Revolving Demand facility.
 - Credit (D): US\$1,650,000 – Non-Revolving Demand facility.
11. Security for the said loans included the Plaintiff and the Defendant assigning life insurance policies to the Bank, each in the sum of US\$1,500,000.00, the pledge of their shares in Denny's Ltd., unlimited guarantees from the Plaintiff and the Defendant of the repayment of the loans and a mortgage of the property acquired by Denny's Ltd.
12. The scheme was adversely following the affects of Hurricane Ivan (in 2004) and other financing problems. Denny's Ltd. was unable to repay the loan as stipulated by the loan agreement with the Bank.
13. Advances were made by the Plaintiff to Denny's Ltd., to meet its costs as follows:
 - a. CI\$10,000 – June 2006
 - b. CI\$47,500 – May 2007

c. C1\$9,900 – August 2007

d. C1\$6,000 – September 2007

Coming to C1\$72,000

However, the Defendant failed to pay his one-half of the costs as had been agreed between the parties.

14. In or around November 2008, the first Defendant obtained the agreement of Naul Bodden to guarantee a loan of US\$450,000.00 to Denny's Ltd. using his personal property as collateral.

15. By an Agreement dated November 26, 2009, the Bank, Denny's Ltd., Naul Bodden, the Plaintiff and the Defendant agreed on the terms to settle the liability of Naul Bodden as guarantor with respect to Credit Facilities C and D, on the basis that this Agreement did not affect any of the rights and liabilities as exist between them and the Bank.

16. On June 24, 2009, the Bank through its attorneys Charles Adams Ritchie & Duckworth served Notice of Default on Denny's Ltd. and the Defendant.

17. Denny's Ltd. defaulted in meeting its obligations to complete the construction of housing units which it had undertaken to provide to several purchasers in the scheme and in November 2009 seven purchasers brought an action against Denny's Ltd. and the Defendant.

18. By May 2013 the liability to the Bank was in excess of US\$4.7 million and Denny's Ltd. was unable to realise its assets so as to pay down the debt.

19. By an Instrument of Personal Guarantee executed in October 2010 in consideration of James and Fleur Robinson forbearing to institute action against Denny's Ltd. pursuant to the Deed of Settlement and Release dated June 23, 2010 for failing to pay C1\$200,000.00 within 28 days of June 2010, the Plaintiff and the Defendant agreed to pay C1\$200,000.00 to the Robinsons.
20. On March 17, 2011 the Plaintiff and the Defendant entered into a written agreement to settle a personal guarantee given by them in respect of James and Fleur Robinson. Each agreed that they would be responsible for half of the debt and if one paid more than half, he would be entitled to recover the difference from the other.
21. There was also a demand for payment of an outstanding debt owed by Denny's Ltd. to Mario & Sons Ltd and on October 11, 2012 Mario & Sons Ltd., through their attorneys-at-law Bodden & Bodden, served a notice of demand on Denny's Ltd. for the outstanding amount of C1\$255,593.70.
22. On February 8, 2011, the Bank, Naul Bodden the Plaintiff and the Defendant executed an Addendum to settle Guarantor's Liability dated November 16, 2011, by which Naul Bodden as Guarantor was permitted to draw down funds to pay for the effective completion of units 5 and 6 in the Scheme.
23. The apartment units were recently completed, except for 1 and 4. The indebtedness to Bank has increased by reason of the accumulation of interest charges, the debt to Bank is still outstanding with the result that the Plaintiff is exposed to liability to the Bank and Mario & Sons Ltd & Robinsons.

24. The Plaintiff claims that these liabilities have arisen from the Defendant's negligence in the management of the company and the carrying out of the housing development scheme.

PARTICULARS OF NEGLIGENCE

- (1) Failing to administer the development scheme in a business-like manner or with reasonable care.
- (2) Failure to monitor the progress of the construction or to seek competent professional assistance.
- (3) Failure to provide sufficient information so as to properly account and maintain proper accounts or to monitor the expenditure in relation to the progress of the works, as a result the Plaintiff was unable to produce any accounts as he intended to.
25. Further or in the alternative, the Plaintiff has paid and contributed in respect of the scheme land worth CI\$125,000.00 and cash CI\$25,000 and further has also paid the sum of CI\$117,294.26 and the Defendant has failed to make any payments and the Plaintiff is entitled to recover half of the amount he has paid from the Defendant.
26. The Defendant has failed to provide any or any proper account of his conduct of the company's affairs and the management of the housing development.

27. The Plaintiff therefore claims:

- (1) Damages for negligence;
- (2) Recovery of the sum of \$242,294.26 plus C1\$25,000.00. being his portion of the advances or contribution made by him; and
- (3) Recovery of C1\$34,500 referred to in the Paragraph 4.
- (4) An Order that the Plaintiff recover such amount which is verified and vouched of all receipts and payments in respect of the Scheme undertaken in the name of Denny's Ltd.
- (5) An account of what is due from the Defendant to the Plaintiff in respect of the matters above specified and payment by the Defendant to the Plaintiff of any sum found to be due upon taking such account;
- (6) An account of all moneys of Denny's Ltd. which were received by the Defendant or by any person on his instructions and of the matter in which the Defendant applied such moneys; and
- (7) All further proper accounts, inquiries and directions.

AND THE PLAINTIFF ALSO CLAIMS AGAINST THE DEFENDANTS:

1. Damages
2. Interest
3. Cost

Dated the 23 day of December, 2013



H. Phillip Ebanks
Attorney at Law for the Plaintiff

This Statement of Claim is filed by: H. Phillip Ebanks, Attorney-at-Law, PO Box 30422, whose address for service is 2nd Floor 62 Hospital Road Plaza (Unit H), George Town, Grand Cayman KY1-1202, Phone: 1345 749 8082 (office) | 1345 323 0482 (Cell), Email: pebanks@premiergroup.ky