

IN THE GRAND COURT OF THE CAYMAN ISLANDS

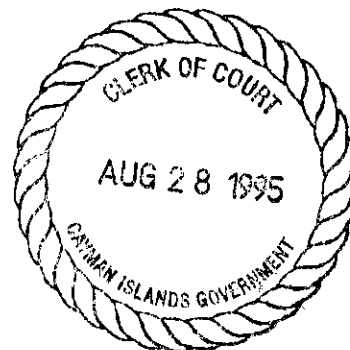
CAUSE NO: 365 OF 1995

BETWEEN: THE PROPRIETORS, STRATA PLAN NO. 76 Plaintiff

AND: ELLESMERE (CAYMAN) LTD. Defendant

WRIT OF SUMMONS

TO: Ellesmere (Cayman) Ltd.
Hyatt Regency Hotel
Seven Mile Beach
Grand Cayman



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 Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or return the Acknowledgment within the time stated, 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 entered against you forthwith without further notice.

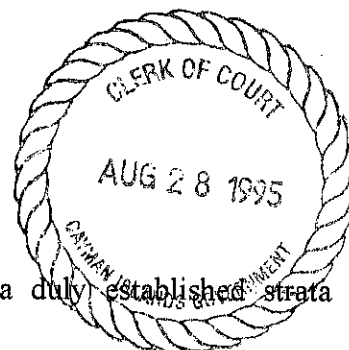
Issued this 26th day of August 1995.

NOTE - This Writ may not be served later than 4 calendar months beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

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

STATEMENT OF CLAIM



1) The Plaintiff, Strata Plan No. 76 (The Colonial Club) is a duly established strata corporation in respect of West Bay Beach South, block 12C parcel 26, and comprises a development of residential condominiums.



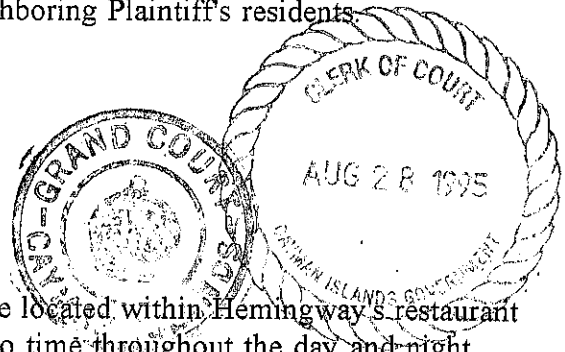
2) The Defendant is the owner of the adjoining parcel, West Bay Beach South, block 12C parcel 27, and further owns and operates a beach club facility being part of the Hyatt Hotel. Since sometime in 1987, the Defendant has operated Hemingway's Restaurant situated therein.

3) An agreement in writing dated 21 April 1987 was entered into between the Plaintiff and the Defendant concerning the Defendant's development and operation of the said beach club facility.

4) By clauses 1(b)(iii) and (2), the Defendant covenanted to install a "vent master ecology system air purification device" suitable for the kitchen which it undertook to maintain on a regular basis and to the highest standard. Furthermore, by clause (3) of the said agreement, the Defendant covenanted to operate the Hyatt Beach Club Resort in a responsible manner, in accordance with the standards to be reasonably expected of a first class restaurant and resort operation, and to operate the same in manner in that would not cause a nuisance to the proprietors of The Colonial Club.

- 5) Since the opening of the beach club and Hemingway's Restaurant sometime in 1987, the Defendants have operated the facility in breach of the said agreement such as to cause nuisance, annoyance and discomfort to the neighboring Plaintiff's residents.

Particulars



- (1) The production and handling of ice by a machine located within Hemingway's restaurant results in a loud cacophonous noise from time to time throughout the day and night.
 - (2) Waste products from Hemingways are deposited for collection such as to cause offensive smells.
 - (3) Furthermore, such garbage is collected at various time throughout the day by a lorry resulting in further offensive smells and noise.
 - (4) The air purification device as fitted in the kitchen facility is either inadequate or inadequately maintained in that offensive cooking smells frequently pervade the surrounding area.
 - (5) Employees of Hemingway's Restaurant regularly work in the kitchens in a noisy fashion and furthermore conduct loud conversation outside the premises throughout the day and night.
 - (6) One or more of the Defendant's employees uses a horticultural power vacuum early each morning thereby causing noise and disturbance.
 - (7) Likewise, a tractor/raking machine is used each morning on the beach causing noise and disturbance.
- 6) As a result of the above breaches, residents of The Colonial Club have been caused annoyance and discomfort, and have suffered inconvenience and interference with their enjoyment and use of their property.
- 7) Despite correspondence between the Plaintiffs and the Defendants, the Defendants have

failed to abate the said nuisance, and in the absence of restraint continue to persist in the same.

AND THE PLAINTIFF claims:



- (1) A declaration that the Defendants are in breach of the above-mentioned agreement dated 21 April 1987.
- (2) An injunction to restrain the Defendants by their servants or agents or otherwise howsoever from continuing the said nuisance;
- (3) Damages;
- (4) Interest; and
- (5) Costs

DATED the 17th day of August 1995.

Truman Bodden & Co

THIS WRIT was issued by Messrs. Truman Bodden & Co., Attorneys-at-Law for the Plaintiff herein whose address for service is that of its said Attorneys-at-Law, PO Box 866, Anderson Square Building, George Town, Grand Cayman

**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. Box 495G, George Town, Grand Cayman.

Notes for 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 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 named 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**, 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.

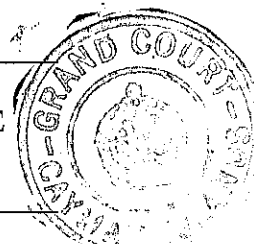
BETWEEN: THE PROPRIETORS, STRATA PLAN NO. 76

Plaintiff

AND: ELLESMERE (CAYMAN) LTD.

Defendant

ACKNOWLEDGEMENT 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 required is omitted or given wrongly, **THIS FORM MAY HAVE TO BE RETURNED**.

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

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

Yes

No

Service of the Originating Summons is acknowledged accordingly

(Signed).....

[Attorney] for

[Defendant in person]

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.

Please complete overleaf