

IN THE GRAND COURT OF THE CAYMAN ISLANDS

60247  
CAUSE NO: OF 2014

BETWEEN:

VISTA DEL MAR DEVELOPMENT LTD

Plaintiff

AND

(1) JANET FRANCIS  
(2) DWIGHT CLARKE

Defendants



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**WRIT OF SUMMONS**

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- TO: (1) Janet Francis c/o Mourant Ozannes, 94 Solaris Avenue, Camana Bay  
PO Box 1348, Grand Cayman KY1-1108
- (2) Dwight Clarke c/o Mourant Ozannes, 94 Solaris Avenue, Camana Bay  
PO Box 1348, Grand Cayman KY1-1108

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, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to 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 be entered against you forthwith without further notice.

Issued this 13<sup>th</sup> day of November 2014

NOTE - This Writ 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 the date of issue unless renewed by order of the Court.

**IMPORTANT**

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

THIS WRIT OF SUMMONS was issued by Maples and Calder, attorneys for the Plaintiffs, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: MWI/GEN/622880.41/34047296.

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## STATEMENT OF CLAIM

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- 1 The Plaintiff is a duly incorporated company having its registered office at PO Box 309, Ugland House, Grand Cayman, Cayman Islands.
- 2 The Defendants are residents of the Cayman Islands whose addresses are said to be PO Box 31883, Grand Cayman, KY11208, Cayman Islands.
- 3 By a written Agreement for Sale dated 6 March 2009 ("**Agreement for Sale**") the Defendants agreed to purchase from the Plaintiff a parcel of land, namely block 10A parcel 290 in registration section West Bay Beach North ("**Property**").
- 4 The Agreement for Sale contained the following express terms:

Clause 5:

*The Purchaser acknowledges and agrees that it is under an obligation pursuant to the Restrictive Agreements to commence and diligently proceed with the construction of a residence and ancillary buildings, landscaping and other development works on the Property, in all respects subject to and in accordance with the Restrictive Agreements ("the Construction Works"). In relation to the Construction Works, the Purchaser hereby acknowledges and agrees:*

Clause 5.1:

*that it will engage a reputable local building contractor ("the Building Contractor") to undertake the Construction Works, whose appointment will be subject to the Vendor's prior written approval (which shall not be unreasonably withheld or delayed or subject to any unreasonable conditions);*

Clause 5.2:

*that it will submit to the Vendor a final draft of the building contract which it proposes to enter into with the Building Contractor ("the Building Contract") and will not execute same or otherwise allow the Building Contractor to commence the Construction Works until its terms have been approved in writing by the Vendor, such approval not to be unreasonably withheld, delayed or subject to conditions provided such terms comply with the Restrictive Agreements in all respects;*

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Clause 5.3:

*that the Construction Works will be carried out with all reasonable speed and in all respects in accordance with the Restrictive Agreements; and*

Clause 5.4:

*that the Building Contractor will undertake the Construction Works as principal under the Building Contract and not in any way as the Vendor's or any other person's agent, and therefore for the avoidance of doubt that the Purchaser will have no recourse or cause of action against the Vendor whatsoever in connection with the Construction Works notwithstanding the Vendor's approval of them.*

Clause 6.1:

*The Purchaser acknowledges and agrees that the Property comprises part of the Development and that it is or will be subject to various restrictions, guidelines and regulations from time to time in force which the Purchaser agrees are necessary for the upkeep and management of the Development...*

Clause 6.2:

*The Purchaser agrees, so that the same shall survive Completion, that if, save for reasons beyond its control (including acts of God), it has failed either to commence construction of a residence on the Property within eighteen (18) calendar months of Completion or to complete such construction by the date of being the third anniversary of the Completion Date, both pursuant to the Restrictive Agreements, then in either case it will upon receipt of the written notice from the Vendor requiring it to do so sell the Property back to the Vendor at a price equal to the Purchase Price plus the value of the Construction Works (if any) on it as at the date of receipt by it of the Vendor's notice. For the purpose of this clause, the value of the Construction Works shall mean the sum actually paid by the Purchaser for the Construction Works before its transfer of the Property back to the Vendor pursuant to this Clause 6.2.*

Clause 7.1:

*The Purchaser acknowledges that it will be deemed to have examined or had the opportunity to examine the Property and obtain such legal and other expert advice as it considers appropriate and the Purchaser purchases the Property in its existing condition and state of repair (including any faults or defects whether latent or patent) and relying on its own enquiries, inspections and investigations.*

Clause 19:

*In this Agreement time is of the essence.*

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5 The Restrictive Agreement included the following express covenants:

Clause 5:

*...The Property shall not remain unbuilt on for more than eighteen months from the date of registration of these covenants, and construction shall be completed and the Dwelling ready for occupancy within a reasonable length of time thereafter, and in any event within eighteen months from the date of commencement of construction.*

6 The Plaintiff will rely on the terms of the Agreement for Sale and the Restrictive Agreements for their full meaning, terms and effects.

7 In performance of its obligations under the Agreement for Sale the Plaintiff completed the Agreement and transferred the Property to the Defendants in accordance with the terms of the Agreement for Sale.

8 In breach of the express term, the Defendants failed to either commence construction of a residence on the Property within eighteen calendar months of Completion or to complete such construction by the third anniversary of the Completion Date.

9 On 11 April 2011 the Plaintiff and the Defendants entered into a written Deed of Variation to Agreement, which contained the following express terms:

Recital A:

*VDM entered into an agreement with Francis & Clarke on 6 March 2009 (which agreement is for the purposes of this Deed called the "Agreement") agreeing to sell to the Purchaser the whole of the land comprised in Parcel 290 Block 10A West Bay Beach North ("Land") for the consideration of Four Hundred and Sixty Two Thousand Four Hundred and Sixty United States Dollars (US\$462,460.00).*

Recital B:

*Pursuant to the Agreement, completion of the Agreement (and the transfer of the Land) was effected on or around 8 May 2009.*

Recital C:

*The Agreement contains various post-completion obligations on the part of Francis & Clarke including (but not limited to) the timing of the commencement and completion of the construction of a residential dwelling on the Land (to the intent that the provisions of the Agreement do not merge on completion) ("Post-Completion Obligations").*

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Recital D:

*Francis & Clarke have requested an extension of time from VDM in relation to the Post-Completion Obligations; VDM has agreed to that extension on the terms and conditions set out in this Deed.*

Recital E:

*VDM and Francis & Clarke have agreed to enter into this Deed to record the variations to the Agreement agreed between them.*

Clause 4.1:

*The contents of Clause 6.2 are deleted and the following inserted in its place:*

*"6.2 The Purchaser agrees, so that the same shall survive Completion, that if, save for reasons beyond its control (including acts of God), it has failed either to commence construction of a residence on the Property by 9 January 2012 or to complete such construction by eighteen (18) months thereafter, then in either case it will upon receipt of written notice from the Vendor requiring it to do so sell the Property back to the Vendor at a price equal to the Purchase Price plus the value of the Construction Works (if any) on it as at the date of receipt by it of the Vendor's notice. For the purpose of this clause, the value of the Construction Works shall mean the sum actually paid by the Purchaser for the Construction Works before its transfer of the Property back to the Vendor pursuant to this Clause 6.2."*

Clause 4.2:

*The contents of Clause 18 are varied by the inclusion of the following new Clause 18.10:*

*"all rights conferred by this Agreement are additional to and without prejudice to all other rights and remedies available to the Vendor and no exercise or lack of exercise of a right constitutes a waiver by the Vendor of any other right or remedy."*

10 In breach of the Deed of Variation to Agreement, the Defendants failed to:

10.1 Commence construction of a residence of the Property by 9 January 2012; and

10.2 Complete such construction by 18 months thereafter.

11 As at the date of filing this writ of summons and statement of claim, the Defendants have failed to commence any construction at all.

12 At various times between 2 October 2013 and the date of commencement of this action, the Plaintiff reserved its rights to exercise its right to repurchase the Property pursuant to Clause 4.1

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of the Deed of Variation to the Agreement.

Particulars

- 13 On 10 July 2014 the Plaintiff sent a Notice to the Defendant exercising its right to re-purchase the Property.
- 14 The Defendants acknowledged receipt of the above Notice of exercise of option by email dated 23 July 2014 which email did not dispute the contents of Notice of exercise of option. The Defendants' email noted the courtesies extended to the Defendants to date (which was based on constant written and oral assurances from the Defendants that construction would take place) and requested further time to complete the application process with their bank for funding for the construction project and that they expected that this process would be completed shortly.
- 15 Nothing further was heard from the Defendants and on 19 August 2014, the Plaintiff requested the Defendants to complete a Deed of Exercise of Option and Release, containing the following terms:

3 *Option Terms*

*The parties agree that closing for the Option is to be exercised on the following basis:*

- 3.1 *VDM will pay the Purchase Price to the Proprietor by way of banker's draft or cashier's cheque drawn on a Class A Licenced Cayman Islands bank;*
- 3.2 *the Proprietor will deliver to VDM a valid executed instrument of transfer in the form of the transfer in the appendix to this Deed (the "Transfer")*
- 3.3 *the Proprietor will deliver to VDM a valid statutory discharge of charge executed by Butterfield Bank (Cayman) Limited in respect to registered charge number 6608/09, together with a cheque payable to CI Government for CI\$100.00 in respect of that discharge; and*
- 3.4 *within forty five (45) days of the Date of this Deed, VDM will execute and file the Transfer for stamping and registration at the Land Registry,*
- (collectively the "Exercise of the Option").*

4 *Additional Terms*

- 4.1 *The Stamp Duty Amount and Registration Fees shall be by VDM.*

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- 4.2 *In the event that the Valuation Office of the Lands & Survey Department determines that the market value of the Property is higher than the Purchase Price, then VDM agrees to pay for all additional stamp duty which is assessed on the Property over the Purchase Price.*
- 16 On 15 September 2014 the Defendants by their attorneys refused to complete the Deed of Exercise of Option and Release.
- 17 On 5 November 2014, a further Notice was delivered by hand to the Defendants' address (as per the Agreement) in accordance with clause 17 of the Agreement. A copy of same was sent by email to the Defendants' attorneys.
- 18 Notwithstanding a further request by the Plaintiff in a letter dated 30 October 2014 from the Plaintiff's attorneys to complete the purchase of the Property, the Defendants have neglected and refused to take any steps to complete same.
- 19 The Plaintiff has suffered loss and damage as a result of the Defendants' default, namely the costs of enforcing the Agreement and the Deed.

**And the Plaintiff Claims**

- (1) Specific performance of the Agreement for Sale, as Amended by the Deed of Variation to Agreement, in the following manner:
- 1 Within 7 days, the Plaintiff will pay to the Defendants by way of banker's draft or cashier's cheque drawn on a Class A Licenced Cayman Islands bank, an amount equal to the purchase price of the Property plus the value of the Construction Works, if any, (as defined in the Deed of Variation to Agreement);
  - 2 the Defendants will deliver to the Plaintiff a valid executed instrument of transfer;
  - 3 the Defendants will deliver to the Plaintiff a valid statutory discharge of charge executed by Butterfield Bank (Cayman) Limited in respect to registered charge number 6608/09, together with a cheque payable to CI Government for CI\$100.00 in respect of that discharge;
  - 4 Thereafter, the Plaintiff will execute and file the Transfer for stamping and registration at the Land Registry,
  - 5 The Stamp Duty Amount and Registration Fees shall be by the Plaintiff; and

THIS WRIT OF SUMMONS was issued by Maples and Calder, attorneys for the Plaintiffs, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.  
(Ref: MWI/GEN/622880.41/34047296)

6 In the event that the Valuation Office of the Lands & Survey Department determines that the market value of the Property is higher than the Purchase Price, then the Plaintiff agrees to pay for all additional stamp duty which is assessed on the Property over the Purchase Price.

(2) Damages

(3) Interest

(4) Costs

DATED this 13<sup>th</sup> day of November 2014

Maples and Calder  
**Maples and Calder**

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**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, PO Box 495G, George Town, Grand Cayman, KY1-1106, Cayman Islands.

- 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 Plaintiffs 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 overleaf 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2014

BETWEEN:

VISTA DEL MAR DEVELOPMENT LTD

Plaintiff

AND

(1) JANET FRANCIS  
(2) DWIGHT CLARKE

Defendants

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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged. **JANET FRANCIS**

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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 Writ is acknowledged accordingly

(Signed).....

Attorney for

**Notes on address for service**

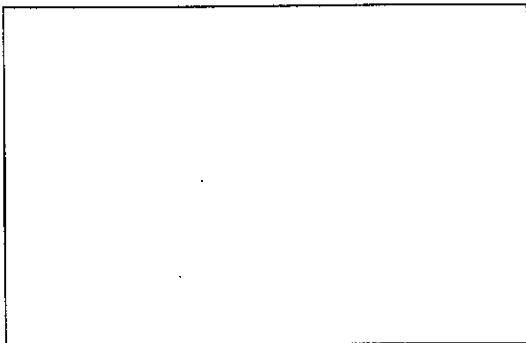
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

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

Maples and Calder  
Ugland House  
PO Box 309  
Grand Cayman  
Cayman Islands KY1-1104  
MWI/GEN/622880.

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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BETWEEN:

VISTA DEL MAR DEVELOPMENT LTD

Plaintiff

AND

(1) JANET FRANCIS  
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Defendants

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---

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged. **DWIGHT CLARKE**

---

2. State whether the Defendant intends 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

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

Maples and Calder  
Ugland House  
PO Box 309  
Grand Cayman  
Cayman Islands KY1-1104  
MWI/GEN/622880.16

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