

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: *G0007* OF 2015  
Legal Aid 024/2014

BETWEEN:

SHONNA STEVENS

PLAINTIFF

AND

THE PROPRIETORS, STRATA PLAN No. 178

DEFENDANT

WRIT OF SUMMONS

TO:

The Proprietors, Strata Plan No. 178  
c/o P.O. Box 80, Bodden Town

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.

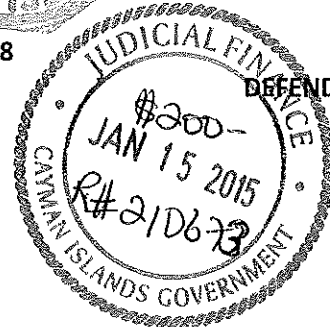
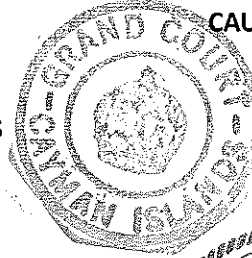
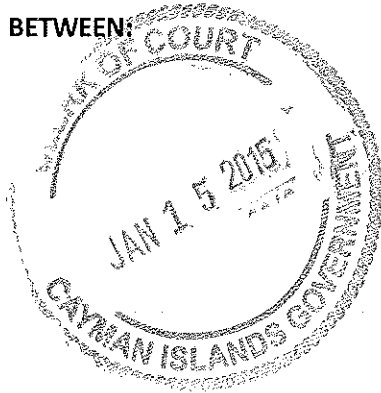
If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 15<sup>th</sup> day of January 2015

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.



## STATEMENT OF CLAIM

1. The plaintiff is an individual who resides in the Cayman Islands and was at all relevant times the sole legal owner of property known as Registration Section Savannah Block 28B parcel 240 H2 (hereinafter called "the property").
2. The defendant is a Strata Corporation formed pursuant to the Strata Titles Registration Law as amended.
3. The property of the plaintiff is situated within the defendant Strata Corporation.
4. The defendant is bound by the obligations set out in the Strata Titles Registration Law (the "Law") as amended from time to time and pursuant to section 21(7) of the Law, the by-laws of the defendant in force at the time shall bind the Defendant and the proprietors as if such bye-laws had been signed and sealed by such corporation and each proprietor and contained covenants on the part of such corporation with each proprietor and on the part of each proprietor with every other proprietor and with such corporation to observe and perform all the by-laws.
5. Section 21 of the Law mandates that until such time as a Strata Corporation files its own bye-laws, the bye-laws set out in Schedules 1 and 2 of the Law shall be in force as between the owner of the relevant parcel and the strata lots and common property within the Strata.
6. On the 1<sup>st</sup> November 2005 the defendant amended the bye-laws of the defendant Strata Corporation by lodging with the Registrar of Lands a notification of amendment of the bye-laws.
7. The amended bye-laws included the following provisions:

*Proprietor's Obligations and Powers*

*6(2) pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his strata lot including user fees.*

*6(3) pay to the Corporation within fourteen (14) days of demand or at such times as the Executive Committee determines his pro rata share of all money necessary in the Executive Committee's opinion to establish and maintain the funds referred to in clauses 3(15) and 3 (17) including any special*

*contributions levied for those purposes, and also any expenses which the Corporation incurs in collecting any amount which the Proprietor owes the Corporation;*

AND:-

*(a) if he does not pay (together with interest accrued and ascertained as set out in sub-clause (38) of the bye-law) within 30 days of demand or the due date as the case may be or if he becomes bankrupt or makes any composition with his creditors or being a corporation enters into liquidation or is unable to pay its debts within the meaning of Section 94 of the Companies Law, then, and in any of those events. He irrevocably authorizes the Corporation to enter into possession of his strata lot and further irrevocably appoints the Corporation to be the receiver of the rents and profits of his Strata Lot in each case until such time as he pays (together with interest accrued) the Corporation of the Corporation is paid pursuant to the appointment under this by-law; and should the Strata Lot not be rented he authorises the Executive Committee to rent it for such period as they see fit (but subject to clause 6(15) in order to recover the money due and owing to the Corporation, together with all expenses which it incurs in recovering it; and*

*(b) if any Proprietor is more than 30 days in arrears with any payment due to the Corporation, the Executive Committee may in addition to any other remedy which it has, change the locks on the Strata lot in order to rent it and may enter his Strata lot and remove any or all the contents in it without being liable for any loss whatever so caused to the Proprietor and apply the rent received towards payment of any sums due to the Corporation; and for the purposes of this sub-clause (3) "Strata Lot" includes any goods in it as in the Executive Committee's opinion can be advantageously rented with it.*

8. The Law and the bye-laws expressly and by implication require that each proprietor be treated fairly, reasonably and consistently by the defendant strata corporation.
9. In December 2012 the plaintiff was in arrears with her contributions to the defendant Strata payable pursuant to the by-laws and the Law as assessed by the defendant and owed the sum of C1\$4,986.78 as of 30<sup>th</sup> November 2012.
10. On the 21<sup>st</sup> December 2012 the defendant caused a notice of demand and notice pursuant to Section 6(3)(a) and (b) of the bye-laws to be issued seeking repayment of the sum owing within 30 days and further giving notice that in default of such payment the defendant would enter into possession of the Strata Unit owned by the plaintiff.

11. Such action was threatened pursuant to the alleged authority given to the defendant by Section 6(3) of the bye-laws as amended.
12. By December 2013 the plaintiff owed to the defendant (by the account of the defendant) CI\$10,127.73. At that time 3 other owners at the 14 Unit defendant Strata owed sums in excess of this figure and a further 4 owners owed sums that resulted in arrears of payments of in excess of 30 days on each account.
13. On or around 12 December 2013 and without further notice since 21 December 2012 the defendant changed the locks of the Plaintiff's strata lot on the asserted basis that it was permitted to exercise receivership rights as set out in the defendant's by-laws by Section 6(3).
14. Since that time the plaintiff has been denied access and occupation of her property and has suffered loss and damage including foreclosure proceedings being commenced by a secured lender over the property due to the plaintiff's inability to make loan payments as a result of the defendant's actions.

#### **Unlawful Receivership**

15. The plaintiff asserts that the defendant did not have lawful authority to exercise a right of receivership nor to change the locks to the property in that the bye-law setting out the right of receivership is *ultra vires* the power of the defendant and accordingly is invalid.

#### Particulars of *Ultra Vires* claim

16. The acts of receivership and of changing the locks to the property under the authority of Bye-law 6(3) of the defendant bye-laws are ultra vires the powers of the defendant Strata corporation because:
  - (a) the acts are beyond and outside the power conferred to the defendant to recover arrears of payments from owners provided for at Section 6(3) of the enabling legislation, the Strata Titles Registration Act as amended, such power being expressly limited to recovering any arrears owed by the plaintiff as a debt in an action before a Court of competent jurisdiction.
  - (b) The bye-law is inconsistent with the law of the Cayman Islands which provides a regime for the appointment of a receiver as provided for in Order 30 of the Grand Court Rules subsequent to the debt action as the Strata was empowered to commence pursuant to Section 6(3) of the Law.

(c) The bye-law is unreasonable as being both manifestly unjust and permitting gratuitous, oppressive interference with the property rights of the plaintiff and others by the defendant.

(d) The defendant unfairly and unreasonably singled out the plaintiff by locking her unit whilst taking no such action against other owners at the defendant Strata including 3 other owners who owed sums in excess of the sum owed by the plaintiff at the time.

17. As a consequence of the occupation of the plaintiff's unit being unlawful, the defendant has committed a trespass. Accordingly the plaintiff is entitled to:

- a. Damages for loss of use and ability to rent her unit from the date of the unlawful receivership to the date upon which she obtains access to her unit. The amount of the loss is, at a minimum, the prevailing market rent for the entire period during which the plaintiff was excluded from her unit.
- b. Damages for any other loss sustained as a result of the trespass to property including all interest, fees and charges charged by the plaintiff's secured lender to the plaintiff's account as a result of her payment default.
- b. A credit to her account reversing any charges relating to the unlawful receivership including all legal fees and interest charges.
- c. an accounting of all items charged or credited to her account in relation to the receivership.

**Accounting**

18. The plaintiff claims she is entitled to an accounting of all credits and debits relating to her strata lot from the date of the taking of unlawful possession of the unit.

**Interest**

19. The plaintiff claims interest at the rate established by the Judgment Debts (Rate of Interest) Rules as amended from time to time for sums found due to her from the defendant.

And the Plaintiff claims;

- a) Damages
- b) A declaration that the receivership provisions in the bye-laws of the defendant at 6(3) are ultra vires and unenforceable;
- c) An account of all monies paid and received by the defendant in relation to the plaintiff's property.
- d) Possession of the property Registration Section Savannah Block 28B parcel 240 H2 be surrendered to the plaintiff by the defendant forthwith.
- e) Pre and post judgment interest in accordance with the Judicature Law (2013 Revision) and the Judgment Debts (Rates of Interest) Rules as amended from time to time.
- d) Costs
- g) Such further and other relief as this Court may deem just.



**Samson & McGrath**

**Attorneys for the Plaintiff**

**Indorsement as to Interest**

1. interest is claimed is pursuant to the Judicature Law and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
2. The prescribed rate of interest is 2 3/8% pursuant to the Judicature Law and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
3. The interest claimed and date from which interest will run will be determined by the accounting.

**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 495G, 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**

**Please complete overleaf**

## 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 2015

BETWEEN:

SHONNA STEVENS

PLAINTIFF

AND

THE PROPRIETORS, STRATA PLAN No. 178

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.

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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.

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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

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

Samson & McGrath  
Attorneys at Law  
5<sup>th</sup> Floor Genesis Building  
Genesis Close  
PO Box 446  
George Town  
Grand Cayman

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