

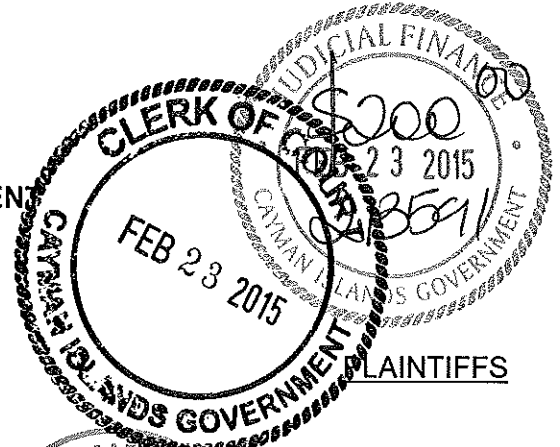
IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. *70028* OF 2015

IN THE MATTER OF THE STRATA TITLES REGISTRATION LAW (2013 REVISION), SECTION 9

BETWEEN:

- 1) ROBERT STEWART
- 2) TAIMOON STEWART
- 3) DIANA PRATT
- 4) HAROLD LEVY
- 5) MATTHEWS CAYMAN DEVELOPMENT
- 6) TIM BURKE
- 7) DARLENE THEODORE
- 8) AL FOGARTY
- 9) CEDAR VALLEY LIMITED



PLAINTIFFS

AND:

- 1) BEACH BAY LIMITED
- 2) THE REGISTRAR OF LANDS

DEFENDANTS

WRIT OF SUMMONS

TO: Beach Bay Limited
 PO Box 1350
 Clifton House, 75 Fort Street
 Grand Cayman KY1-1108
 CAYMAN ISLANDS

AND TO: The Registrar of Lands
 PO Box 1089
 Government Admin Bldg
 Grand Cayman KY1-1102
 CAYMAN ISLANDS

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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 Acknowledgement 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 Plaintiffs may proceed with an action and judgment may be entered against you forthwith without further notice.

Issued: 23 February 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

PARTIES

1. The Plaintiffs are proprietors in Strata Plan 39, known as Beach Bay Condominiums (“**the Strata**”).
2. The First Defendant is a company incorporated in the Cayman Islands under number 201798 and is believed to be in the business of property development.
3. The Second Defendant is the Registrar of Lands and is named as a party in order that she may be bound by and give effect to any interlocutory orders (including discovery) and/or final judgments given in this action.

THE CONSENT JUDGMENT

4. The Strata was registered on 10 December 1980. At around this time two residential buildings (the “**Buildings**”) were constructed as part of a larger intended development. The developer Beach Bay Development Co Ltd (“**BBDCL**”) caused part of the intended development land to become owned by the Strata (the “**Strata Land**”) and retained ownership of the rest itself (the “**Original Land**”). The Strata Land is shown on the plan at Appendix A shaded orange. The Original Land is shown shaded in yellow.
5. During the early 1990’s BBDCL appropriated part of the Strata Land to itself, in particular the part of the Strata Land that fronted the beach. The Strata together with certain individual proprietors brought an action against BBDCL and its beneficial owner Mr Guest in the Grand Court under Cause Number 498 of 1993 (the “**First Action**”). In or around March 1996, the parties to the First Action agreed upon terms of a compromise. Those terms were set out in a consent judgment sealed on 25 March 1996 (the “**Consent Judgment**”). The Plaintiffs will rely on all of the terms of the Consent Judgment at trial, but set out the principal terms below for ease of reference:

- (a) The land fronting the beach that BBDCL had appropriated was declared to be part of

the common property of and would be transferred back to the Strata immediately; further, none of the parties nor their successors in title would construct nor make any application to construct any building or structure whatsoever in the said area nor would they sell, lease, mortgage, encumber or otherwise deal with the Beach Land (paragraph 1(i) of the Consent Judgment).

- (b) Parking areas, a septic tank and a tennis court on the Original Land were also declared to be part of the common property of the Strata but would not be transferred to the Strata until completion of the phase of development containing and comprising that area of land (paragraphs 1(iii) to (v) and 5 of the Consent Judgment).
- (c) Any other undeveloped parts of the Original Land would become part of the common property of and be transferred to the Strata upon completion of BBDCL's intended development (or earlier, by means of an implied term, if the development did not take place within a reasonable time - paragraph 6 of the Consent Judgment).
- (d) The intended development was to be for condominiums only and upon completion the new condominiums would be added to the Strata (paragraph 2 of the Consent Judgment, emphasis added).
- (e) The terms of the Judgment would bind not only BBDCL but also its successors in title and a restriction to this effect should be entered on the title of the Original Land (paragraph 11 of the Consent Judgment).
- (f) The Strata would not amend its bylaws to impede or interfere with the implementation of the Judgment (paragraph 12 of the Judgment).

BREACH OF THE CONSENT JUDGMENT

6. On or around 1 April 2008 the First Defendant acquired the Original Land. Between 2009 and 2014 the First Defendant acquired a number of units in the Strata and, acting in concert with certain existing proprietors, acquired control of over half of the votes in the Strata. At an extraordinary general meeting of the Strata on 24 July 2014 the First Defendant caused the existing executive committee to be replaced by individuals under its control.

7. In late 2014, the First Defendant secretly applied to the Second Defendant to have the Original Land combined with the Strata Land by way of rectification. In early December 2014, the Second Defendant acceded to its request. One of the intended and actual effects of the combination of the two parcels was to allocate the First Defendant sufficient votes (by reason of the Original Land) to cause the Strata to pass a super majority resolution against the wishes and interests of the Plaintiffs.
8. At the same time the First Defendant also caused the Second Defendant to remove entries on the land registers for the Original Land which required the First Defendant to comply with the terms of the Consent Judgment. The effect of doing so was to eliminate amongst other things the right for proprietors of the Strata to use the parking areas, septic tank and tennis court as part of the common property of the Strata as provided for by paragraph 5 of the Consent Judgment.
9. On 15 December 2015 the First Defendant used the additional votes it had acquired control of following the combination of the Original Land with the Strata Land to pass a super majority resolution to declare the Buildings destroyed. Acting in bad faith, the First Defendant failed to provide any notice to the Plaintiffs of its intention to cause the Strata to pass such a resolution and caused the executive committee to permit the First Defendant to vote on the resolution despite the fact that it had not paid any strata fees and was accordingly not entitled to vote in any event.
10. In causing the Second Defendant to combine the Original Land with the Strata Land in order to gain complete control of the Strata, the First Defendant is in breach of and/or has procured a breach of the Consent Judgment. In particular the First Defendant is in breach of and/or has procured a breach of paragraph 2 of the Consent Judgment which provided that the condominiums forming part of the intended development would be transferred to the Strata upon completion. Completion has not taken place, therefore no entitlement to transfer has or could have arisen.
11. Further or in the alternative, the intended development contemplated by the Consent Judgment has not taken place within a reasonable time, with the result that the First Defendant is bound to transfer all the Original Land to become part of the common property of the Strata pursuant to paragraph 5 of the Consent Judgment. It was an implied term of the Consent Judgment that the intended development would take place within a reasonable time.

This was recognised by the Court in a ruling of the Honourable Justice Smellie (as he was then) dated 22 January 1997 to which none of the parties objected. Such a term would be implied in any event so as to give business efficacy and or give effect to the intention of the parties. It would be inequitable for the proprietors to have the threat of development hanging over them beyond a reasonable period of time. The Plaintiffs consider that it is unreasonable for the development to take place 22 years after the First Action was brought. Accordingly all of the undeveloped Original Land should be transferred to the Strata to be held as its common property.

WRONGFUL RECTIFICATION

12. The Second Defendant was not entitled to act upon the First Defendant's application to combine the Original Land with the Strata Land by way of rectification. The power to rectify is (so far as material) limited under S. 139 of the Registered Land Law (2004) to either cases of errors or omissions not materially affecting the interests of any proprietor or cases where the consent of all persons interested has been obtained.
13. There was no error or omission, less so one that did not materially affect the interests of any proprietor. The Strata Land and the Original Land had been registered in the names of the Strata and the First Defendant for over 6 years without objection. The reason given by the First Defendant for the rectification (that it was required to implement the Consent Judgment) is inconsistent with there having been an error or omission in any event. The rectification significantly affected the interests of the Plaintiffs, amongst others, in that it deprived them of the right to block a super majority resolution and thereby prevent the destruction of their homes. Prior to the rectification, they had control of just under half of the votes of the Strata.
14. None of the Strata proprietors has consented to the rectification. A document signed by two members of the executive committee on 23 October 2014 was submitted to the Second Defendant in which they acknowledged the First Defendant had applied to rectify the register, but the two individuals had no authority to bind the Strata. The document did not contain the Strata's consent to the rectification in any event. Merely acknowledging that an application has not been made does not signify consent.
15. Further or in the alternative, the combination of the two parcels represented a reparation under S. 22 Registered Land Law (2004), an application for registration of a further proposed

strata lot development plan and/or an acquisition by the Strata of additional property. As such the Plaintiffs' consent and/or a special resolution of the Strata were required under S. 22 Registered Land Law (2004) and/or S. 14A(1) and/or S. 18(3) Strata Titles Registration Law (2013). Neither was obtained nor were the Plaintiffs even consulted. The application was made in secret in order to prevent the Plaintiffs from exercising their right to object.

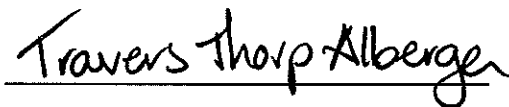
16. Further or in the alternative, the rectification should not have been allowed because it was in furtherance of a breach of the Consent Judgment.
17. Further or in the alternative, paragraph 11 of the Consent Judgment provided that the First Defendant as successor in title to BBDCL should be bound by the restrictions contained in the Consent Judgment. The Consent Judgment was registered against the First Defendant's title as an incumbrance (burden) and not an appurtenance (benefit). Accordingly under S. 93 (3) Registered Land Law (2004) and/or the common law, the Consent Judgment binds but does not confer any rights on the First Defendant.

ALTERNATIVE PLEA

18. In the alternative, the Plaintiffs are entitled to rectification under S. 140(1) of the Registered Land Law (2004 Revision) and/or by way of appeal under S. 147(1) of the Second Defendant's decision not to restore the register, which was communicated to the Plaintiffs on 10 February 2015.
19. If, which is denied, the First Defendant was entitled to cause the Strata to pass a resolution to declare the Buildings destroyed, the Plaintiffs will seek a direction pursuant to S. 23(3) of the Strata Titles Registration Law (2013 Revision) that the compensation payable to the Plaintiffs shall be determined by an independent expert appointed by this Court and that no steps shall be taken pursuant to the resolution until the amount due by way of compensation has been determined and paid.

AND THE PLAINTIFFS CLAIM:

- (1) A Declaration that the First Defendant has acted in breach of or has procured a breach of the Consent Judgment.
- (2) A Declaration that the Second Defendant was not entitled to combine the Original Land with the Strata Land by way of rectification or otherwise.
- (3) A Direction requiring the Second Defendant to transfer the Original Land to become part of the common property of the Strata or to rectify the register accordingly.
- (4) A Direction requiring the Second Defendant to restore the parties to the position prior to December 2014 or to rectify the register accordingly.
- (5) A permanent injunction in terms of paragraph 2 of the Consent Judgment preventing the construction of anything other than condominiums on the Original and Strata Land.
- (6) Further or other relief pursuant to S. 23 (3) Strata Titles Registration Law (2013) or the Court's inherent jurisdiction.
- (7) Costs.



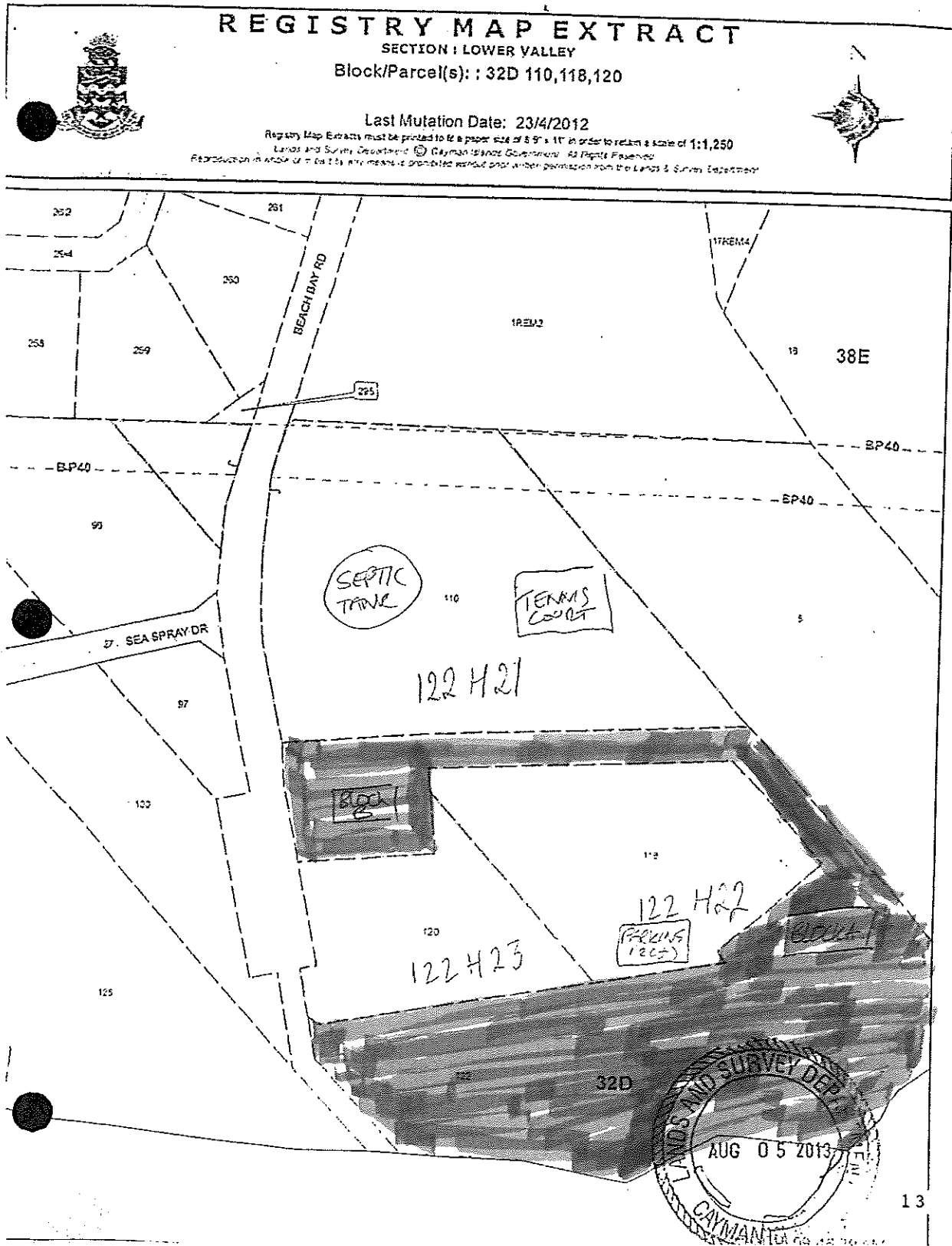
TRAVERS THORP ALBERGA
Attorneys-at-Law for the Plaintiffs

TO: The Clerk of the Courts

AND TO: Beach Bay Limited
PO Box 1350
Clifton House, 75 Fort Street
Grand Cayman KY1-1108
CAYMAN ISLANDS

AND TO: The Registrar of Lands
PO Box 1089
Government Admin Bldg
Grand Cayman KY1-1102
CAYMAN ISLANDS

APPENDIX A:
Registry Map Extract (Strata Land in orange/ Original Land in yellow)



**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 495, Grand Cayman, KY1-1106.

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

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 MATTER OF THE STRATA TITLES REGISTRATION LAW (2013 REVISION), SECTION 9

BETWEEN:

- 1) ROBERT STEWART
- 2) TAIMOON STEWART
- 3) DIANA PRATT
- 4) HAROLD LEVY
- 5) MATTHEWS CAYMAN DEVELOPMENT
- 6) TIM BURKE
- 7) DARLENE THEODORE
- 8) AL FOGERTY
- 9) CEDAR VALLEY LIMITED

PLAINTIFFS

AND:

- 1) BBL LIMITED
- 2) REGISTRAR OF LANDS

DEFENDANTS

**ACKNOWLEDGEMENT 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.

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

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)

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.

Travers Thorp Alberga Attorneys-at-Law P.O. Box 472 Grand Cayman, KY1-1106 Cayman Islands Phone: +1 (345) 949-0699 Facsimile: +1 (345) 949-8171 ATTN: Ian Huskisson Ref: IEH/S1172-001
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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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