

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: *G0013* OF 2016

BETWEEN:

WILLIAM RYAN

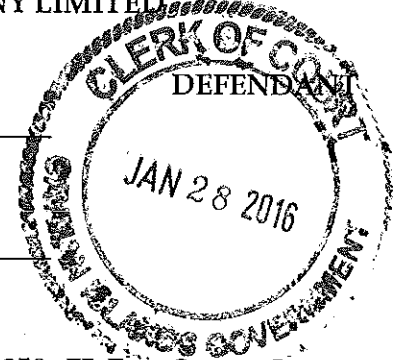
AND:

DEBORAH RYAN

EMPIRE DEVELOPMENT COMPANY LIMITED

PLAINTIFFS

AND:



WRIT OF SUMMONS

TO: Empire Development Company Limited of P.O. Box 1350, 75 Fort Street, George Town, Grand Cayman, Cayman Islands KY1-1001

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiffs, of P.O. Box 885, Grand Cayman, Cayman Islands, KY1-1103 in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

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

Issued this 28th day of January 2016.

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2016

BETWEEN:

WILLIAM RYAN

AND:

DEBORAH RYAN

AND:

EMPIRE DEVELOPMENT COMPANY LIMITED

PLAINTIFFS

DEFENDANT

STATEMENT OF CLAIM

The Parties

1. The Plaintiffs are Mr. William Ryan and his wife, Deborah Ryan of PO Box 885, Grand Cayman, KY1-1103 (together "the Plaintiffs").
2. The Defendant is Empire Development Company Limited, a duly incorporated Cayman Islands Company ("the Defendant").

The Purchase Agreement

3. By a contract in writing made on or about 19 June 2012, between the Defendant (as vendor), and the Plaintiffs (as purchasers), ("the Purchase Agreement"), the Defendant agreed to construct and sell to the Plaintiffs a Villa upon a Strata Lot comprised in Strata Plan No. 559, commonly known as Hilton Estates, Villa No. 54 and registered as Registration Section South Sound, Block 15C, Parcel 191H54 ("the Property").
4. The express terms of the Purchase Agreement included that:-
 - (a) The Plaintiffs would purchase the Property for a purchase price of CUS\$ 260,000("the Purchase Price") (Clause 2(a));
 - (b) The Plaintiffs would pay half the purchase price by way of a deposit towards the Purchase Price of CUS\$ 130,000 ("the Deposit") (Clause 2(b));

- (c) The balance of the Purchase Price was to be paid to the Defendant by the Plaintiffs at completion, as defined by Clause 3 ("Completion") (Clause 2(c));
- (d) At Completion, the Defendant would pay CI\$ 5,000 to the Plaintiffs to assist with stamp duty, together with a further payment of CI\$ 950.00 in exchange for the washer/dryer normally included (Clause 2(d));
- (e) The Defendant would provide a hedge along the side of the ground-floor bedroom of the Property and additionally provide an electrical meter box and Water Authority meter covers (Clause 2(d));
- (f) Completion was to take place on 31 May 2013 ("the Completion Date"), if by that date the Defendant had notified the Plaintiffs that a certificate of fitness for occupancy in respect of the Property had been issued by the Central Planning Authority ("the Certificate") (Clause 3(a));
- (g) In the event that by the Completion Date, the Defendant had not completed construction, received the Certificate and received notification from the Registrar of Lands that a Land Register had been opened for the Property (together "the Conditions"), Completion was to take place 14 days after the Defendant gave written notice to the Plaintiffs that the Conditions had been satisfied (Clause 3(a)); and
- (h) If, by the Completion Date the Certificate had not been issued or a "punch list" in respect of the Property had not been accepted and completed, then the Defendant agreed to pay to the Plaintiffs CI\$ 2,000 per month (or part thereof) as accommodation expenses until such time as these matters had been completed or obtained (Clause 3(a));
- (i) At Completion, in exchange for payment of the balance of the Purchase Price, the Defendant agreed to deliver to the Plaintiffs a duly executed transfer of absolute title to the Property, free of all Charges (Clause 3(c));
- (j) The Defendant would construct the Property in a good and workmanlike manner in accordance with the specifications annexed to the Purchase agreement (Clause 9);
- (k) Subject to Clause 12, any times, dates or periods specified in the Purchase Agreement could only be extended or altered by agreement in writing between the parties. Time was to be of the essence of the Purchase Agreement, both as regards times, dates and periods specified in the agreement and times, dates and periods altered by agreement. (Clause 19); and

(l) A party in default under the Purchase Agreement ("the defaulting party") would pay to the counter party the amount of all reasonable expenses incurred in connection with any steps taken with a view or in connection with its protection, exercise or enforcement of any right or interest created by the Purchase Agreement or a as a result of a breach by the defaulting party. All legal expenses, on a full indemnity basis both before and after any judgment, were to be recoverable from the defaulting party (Clause 31).

5. The following were implied terms of the Purchase Agreement:

- (a) The Defendant would carry out the building work (including all incidental work, remedial work and fittings to ensure that the building of the Property was completed properly) (the "Works") regularly and diligently so as to ensure that they were completed properly in accordance with the Purchase Agreement and together with all statutory requirements by the Completion Date or alternatively a reasonable time thereafter;
- (b) The design, execution of design and standard of workmanship would be of a standard to ensure the issue of a Certificate of Occupancy, Building consents and the practical completion on or about the Completion Date or alternatively a reasonable time thereafter;
- (c) The design, execution of design and the Works would comply with the requirements for the issue of a Certificate of Occupancy;
- (d) The Defendant would be responsible for all statutory fees, notices and charges necessary to obtain a certificate of occupancy;
- (e) Further and alternatively, that Completion would take place within a reasonable time;
- (f) That construction of the Property to a satisfactory standard would be completed within a reasonable time;
- (g) That the Defendant would act in good faith and use his best efforts to ensure that Property would be constructed within a reasonable time;
- (h) that the goods and materials used in the construction and finishing of the Property by the Defendant were of satisfactory quality suitable for their intended purpose;

- (i) that the fittings, goods and materials used in the construction and finishing of the Property by the Defendant were reasonably fit for the particular purposes for which they were being acquired;
- (j) that the Defendant would carry out the Works and the construction and finishing of the Property with reasonable care and skill; and
- (k) that the Works and all necessary work in or about the construction and finishing of the Property by the Defendant was done in a workmanlike manner with proper materials and so that, as regards that work, the Property when completed would be free from defects.

Unreasonable Delay

- 6. In accordance with their obligations under the Purchase Agreement, the Plaintiffs paid the Deposit to the Defendant, on or around June 2012.
- 7. Completion did not take place by the Completion Date and in accordance with its obligations pursuant to Clause 3(a), the Defendant began to make payments of CI\$ 2,000 per month (and parts thereof) to the Plaintiff, in respect of accommodation expenses.
- 8. Since on or around 31 May 2013, the Defendant has on numerous occasion orally and in writing promised the Plaintiffs that construction of the Property would be completed and that Completion would take place.
- 9. The Defendant in breach of the said Purchase Agreement has failed to carry out the Works regularly, diligently and in a good and workmanlike manner to ensure that they were completed properly and within a reasonable time in accordance with the Purchase Agreement and that all statutory requirements were met by the Completion Date or within a reasonable time thereafter.
- 10. In breach of the said Purchase Agreement the Defendant has failed:
 - (a) To carry out the building work (including all incidental work, remedial work and fittings to ensure that the building of the Property was completed properly) (the "Works") regularly and diligently and in a good and workmanlike manner;
 - (b) To carry out the Works so as to ensure that they were completed properly in accordance with the Contract and all statutory requirements by the Completion Date or alternatively a reasonable time thereafter;

- (c) To construct the Property in a good and workmanlike manner in accordance with the specifications annexed to the Purchase agreement;
- (d) To ensure that the design, execution of design and standard of workmanship would be of a standard to ensure the issue of a Certificate of Occupancy, Building consents and the practical completion on or about the Completion Date or alternatively a reasonable time thereafter;
- (e) To ensure that the design, execution of design and the Works would comply with the requirements for the issue of a Certificate of Occupancy.
- (f) To obtain and discharge all statutory fees, notices and charges necessary to obtain a certificate of occupancy
- (g) To Complete within a reasonable time or at all;
- (h) To Construct the Property to a satisfactory standard within a reasonable time;
- (i) To act in good faith and use its best efforts to ensure that Property would be constructed within a reasonable time;
- (j) To ensure that the goods and materials used in the construction and finishing of the Property were of satisfactory quality suitable for their intended purpose;
- (k) To ensure that the fittings, goods and materials used in the construction and finishing of the Property were reasonably fit for the particular purposes for which they were being acquired;
- (l) To carry out the Works and the construction and finishing of the Property with reasonable care and skill; and
- (m) To ensure that the Works and all necessary work in or about the construction and finishing of the Property were done in a workmanlike manner with proper materials and so that, as regards that work, the Property when completed would be free from defects.

11. As at the date of issue of the Writ, construction of the Property has not been completed and Completion has not taken place.

12. The Plaintiffs have demanded both orally and in writing that the Defendant complete construction of the Property and that Completion take place.

13. Notwithstanding these demands, the Defendant in breach of the terms of the Purchase Agreement has refused and refuses to take any steps towards the completion of construction and completion of the Purchase Agreement.
14. The Plaintiffs have at all material times fulfilled all of their obligations under the Purchase Agreement and are now ready and willing to fulfill all their obligations under the said agreement subject to an abatement of the Purchase Price to reflect the loss and damages they have suffered as a result the Defendant's breaches.

Accommodation Expenses

15. Notwithstanding, that the Defendant has failed to complete, in of breach of the terms, and its obligations under the Purchase Agreement, the Defendant ceased making payments towards the Plaintiffs' accommodation expenses on or around 1 March 2015.
16. Accordingly, by reason of the said breach the Plaintiffs have suffered loss.

Particulars of Loss

The Plaintiff have suffered a loss of from 1 March 2015 to the date of issue of the Writ and continuing at the rate of CI\$ 2,000 per month:

Loss of accommodation expenses between 1 March 2015 and 31 January 2016

11 months x CI\$ 2,000 = CI\$ 22,000.00

Such loss of earnings is expected to continue to date of trial.

Particulars of defective workmanship and/or materials

17. By reason of the Defendant's breaches of the Purchase Agreement and/or as result of the Defendant's failure to complete construction of the Property the Plaintiffs will be required to carry out remedial works in order to complete construction and obtain a Certificate ('the Remedial Works').
18. In the premises the Plaintiff will be required to carry out Remedial Works, including but not limited to:

Particulars of Loss

Remedial Works required in order to obtain a Certificate

Description of Work	Remedial Cost (CIS)
Purchase, installation and correction of issues with windows located at the downstairs of the Property (required to obtain certificate of occupancy):	
Casement window	575.00
Fire-rated window	4,085.56
Material and labour	5,439.75
Purchase and installation of eave vents for the dryer and exhaust fans	175.00
Costs associated with obtaining transfer of planning permission and a certificate of occupancy	300.00

Remedial Works required in correcting defective workmanship

Description of Work	Remedial Cost (CIS)
Painting: Paint for walls, ceiling and stain-blocker for the baseboards, to include labour and supplies	1,213.55
Purchase and installation of hurricane shutters	3,837.66
Kitchen cabinet repairs/touch ups including materials and labour	300.00
Repairs to doors and walls	250.00
Purchase and installation of fan light kit in living room	49.31

Purchase and installation of bathroom fixtures and fittings, including mirrors throughout the Property	1,456.45
Marmarand of back porch step	300.00
Flooring and tile work: Cleaning and polishing of living room floor, removing and replacing broken bathroom tiles, grouting and correcting missing tiles	200.00
Completion of hand rail staining	100.00
Purchase and installation of a hedge	296.00
Supply and installation of safety covers for water meters	250.00
Total Cost of Remedial Works	18,828.28

19. Accordingly, the Plaintiffs claim the costs of the Remedial Works together with the consequential costs associated with obtaining the Certificate.
20. Further or alternatively, the Plaintiffs are entitled to compensation for the aforesaid costs and are entitled to set off the same against the balance of the purchase price.

Legal Expenses

21. By reason of the Defendant's breaches of the Purchase Agreement the Plaintiffs have incurred legal expenses for which the Defendant is in accordance with Clause 31 required to pay on a full indemnity basis, together with all reasonable costs of consents fees & charges.

Particulars of Loss

As at the date of issue of the writ the Plaintiffs have incurred the following reasonable expenses:-

- (a) Professional fees and disbursements - Mr. Neil Timms Q.C CI\$ 4,856.20

(b) Professional fees and disbursements - Nelson & Company CI\$ 5,994.40.

Such loss is expected to continue to date of trial. Full and further particulars of which will be provided in advance of trial.

THE PLAINTIFFS THEREFORE CLAIM:

- (1) Specific performance of the said Purchase Agreement;
- (2) Further or alternatively, damages and or compensation for breach of the Purchase Agreement in addition to or in lieu of specific performance or at common law;
- (3) All necessary and consequential accounts, directions and inquiries;
- (4) Interest on any sums awarded in respect of compensation or damages on as at the date of issue of the Writ determined by the Court in accordance with s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time;
- (5) That the Defendant shall pay the Plaintiffs indemnity costs pursuant to Clause 31 of the Purchase Agreement; and
- (6) Such further and other relief as this Honourable Court may seem just.

DATED at Grand Cayman this 28th day of January 2016

Nelson & Co.

Nelson & Co.

Attorneys for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiffs, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

TO: The Clerk of the Grand Court

AND TO: Empire Development Company Limited

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2016

BETWEEN:

WILLIAM RYAN

AND:

DEBORAH RYAN

AND:

EMPIRE DEVELOPMENT COMPANY LIMITED

PLAINTIFFS

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.

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

Attorney for the Defendant

Address for service:

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

Nelson & Company
Attorneys at Law
PO Box 2075
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1105
Attn: C Flanagan/Ref: 5342-55

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

[Empty box for Defendant's Attorney indorsement]

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, 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

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.