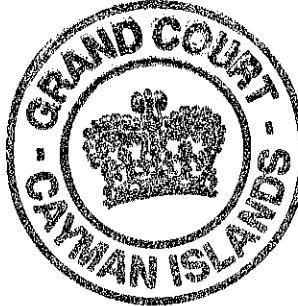


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO. G0228 of 2016

LACV0202/2016



BETWEEN: MARVEL EBANKS

AND:	B & H INVESTMENTS LTD, as Owner	DEFENDANT
AND:	HERO JAIRAM, as Beneficial Owner	CO-DEFENDANT
AND:	DDL STUDIOS LTD, as Landlord	CO-DEFENDANT
AND:	JOSEPHINE BROWN, as Property Manager	CO-DEFENDANT
AND:	PHILBERT, as Maintenance Man	CO-DEFENDANT
AND:	SHARLENE B. ROGERS, as Smoker Tenant	CO-DEFENDANT
AND:	MELISSA SMITH, DEMSEN WATLER and ELLEN EBANKS from the Needs Assessment Unit	CO-DEFENDANT
AND:	MINISTER MARCO ARCHER and DIANDRA BODDEN from the Ministry of Finance	CO-DEFENDANT
AND:	CLIFF ROBINSON and ROYDELL CARTER from the Department of Environmental Health	CO-DEFENDANT
AND:	COMMISSIONER OF POLICE DEREK BYRNE, PC 437 SMITH and ANTHONY HILL from the Royal Cayman Islands Police Service	CO-DEFENDANT
AND:	MINISTER of HEALTH ALDEN McLAUGHLIN from the Ministry of Health and Environmental Health	CO-DEFENDANT

**ORIGINATING SUMMONS**

1. This case is requesting this Honourable Court to recognise and enforce the valid and legally binding contract that was signed between the PLAINTIFF and the DEFENDANT PROPERTY MANAGER.
2. This matter primarily centres around breaches of contract and neglect of official duty to act and the subsequent retaliation of the collective DEFENDANTS, as well as intentional harassment, defamation, physical assault and battery, intentional infliction of emotional distress, pain and suffering, negligence, trespass, constitutional enforcement of rights and freedoms, and the constitutional duty of public officials to act, where the damages are in excess of \$20,000 (twenty thousand dollars) exclusive of costs, interest and attorney fees.

### PARTIES

3. Marvel Ebanks (hereinafter referred to as the “PLAINTIFF”) is, and at all times material hereto, a tenant of DDL Studios Ltd. (hereinafter referred to as the “DEFENDANT LANDLORD”) who lives in Apartment #2A.
4. Sharlene B. Rogers (hereinafter referred to as the “DEFENDANT SMOKER TENANT”) is, and at all times material hereto, a tenant of the DEFENDANT LANDLORD who lives next door to the PLAINTIFF in Apartment #3A.
5. Josephine Brown (hereinafter referred to as the “DEFENDANT PROPERTY MANAGER”) works at DDL Studios Ltd., (hereinafter referred to as the “DEFENDANT LANDLORD’S OFFICE”)
6. The DEFENDANT LANDLORD’S OFFICE is authorised to manage the West Bay property known as Tranquility Apartments, an apartment building which is owned by B & H Investments Ltd. (hereinafter referred to as the “DEFENDANT OWNER”).
7. The DEFENDANT OWNER company is partially owned by Hero Jairam (hereinafter referred to as the “DEFENDANT BENEFICIAL OWNER”), who gave illegal orders to the DEFENDANT LANDLORD’S OFFICE to carry out against the PLAINTIFF.
8. Philbert (hereinafter referred to as the “DEFENDANT MAINTENANCE MAN”) works at the DEFENDANT LANDLORD’S OFFICE and committed illegal acts against the PLAINTIFF.
9. Unless the context otherwise requires, any reference to the DEFENDANT includes the Property Manager, Beneficial Owner, Landlord’s Office and Owner.
10. Various Cayman Islands Government departments have constitutional authority in this instant case, and its public officials had a duty to act by enforcing the applicable laws and by enforcing the relevant human rights in this matter, including but not limited to:
  - (1) the Needs Assessment Unit to ensure that safe and tenable housing as a human right was provided to the tenants they assisted with housing in accordance with Article 25(1) of the Universal Declaration of Human Rights;
  - (2) the Ministry of Finance as Collector of Stamp Duty to register residential leases and protect tenants’ interests in accordance with Section 20(1) of the Stamp Duty Law (2008 Revision);
  - (3) the Department of Environmental Health to enforce public safety health laws in accordance with Section 2 Nuisance Definitions, Section 7(m) Statutory Nuisance and Section 6(1) Duty of Officers of the Public Health Law (2002 Revision);
  - (4) the Royal Cayman Islands Police Service to protect the public when citizens report law violations in accordance with the Penal Code (2013 Revision) and to enforce the Tobacco Law (2008);
  - (5) the Ministry of Health to enforce the Tobacco Law (2008); and
  - (6) the Immigration Enforcement to remove and deport people who were born in other countries with no generational ties or Caymanian grandparents as the Immigration law stipulates, who have since settled in the Cayman Islands, where they continue to egregiously and callously break multiple laws and refuse to follow the legal directives of law enforcement officials.
11. As there are other public officials, civil servants and members of the public who have also violated applicable laws and the PLAINTIFF’s rights in this instant case, the PLAINTIFF reserves the right to add additional Co-Defendants to this action and personally sue them as this matter progresses through this Honourable Court.

### EVALUATING THE CASE

12. This case seeks to have the PLAINTIFF's contract recognised and enforced.
13. This case further seeks determination on whether the DEFENDANT LANDLORD has the legal right to punish the PLAINTIFF by arbitrarily deciding to terminate the PLAINTIFF's contract after the PLAINTIFF engaged in a constitutionally protected activity of complaining about the property condition to Government, who investigated her complaints and found them to be valid.
14. This case also seeks determination on whether the DEFENDANT LANDLORD has the legal right to further seek revenge against the PLAINTIFF, after she reported the DEFENDANTS to the authorities and after the DEFENDANTS became aware of the PLAINTIFF's respiratory illness by including but not limited to:
  - (1) unilaterally removing the contractual smoke-free protections afforded to the PLAINTIFF and by replacing it with a new addendum that violates the applicable Tobacco Law (2008) and Regulations (2010), where the DEFENDANTS then permitted smoking in legally prohibited smoking areas in the Cayman Islands,
  - (2) purposefully refusing to provide monthly electricity usage bills to the PLAINTIFF even though this service was provided to other tenants similarly situated to the PLAINTIFF whose rent was also paid by the Cayman Islands Government where the electricity was included in the rent,
  - (3) illegally disconnecting the PLAINTIFF's electricity with no notice whatsoever to the PLAINTIFF, and then re-connecting it again after three days only through intervention from the police department,
  - (4) then threatening to disconnect the PLAINTIFF's electricity again after learning that the PLAINTIFF's breathing equipment that she needed to use daily was powered by electricity,
  - (5) intentionally harassing the PLAINTIFF by disconnecting her internet (which is contractually included in the rent),
  - (6) deliberately reducing the services of no longer providing receipts for payment of the PLAINTIFF's internet bill,all this and more the DEFENDANTS committed against the PLAINTIFF in an effort to punish and constructively evict the tenant and illegally force her out of her apartment after the PLAINTIFF complained to the Government about the DEFENDANTS.
15. This case likewise seeks determination on what the legal protections are for a patient in the Cayman Islands like the PLAINTIFF who is a lifetime NON-smoker, and who has been diagnosed with multiple chronic respiratory illnesses and permanent disabilities by registered medical practitioners over the years.
16. The PLAINTIFF will submit video evidence of the DEFENDANT SMOKER TENANT admitting to **premeditation** by deliberately blowing her cigarette smoke into the PLAINTIFF's apartment where the PLAINTIFF was inside, in addition to admitting on video that the DEFENDANT SMOKER TENANT was "waiting on you [the PLAINTIFF]" after the PLAINTIFF repeatedly came outside of her apartment to record the DEFENDANT SMOKER TENANT and give the video evidence to the police and judge when the DEFENDANT SMOKER TENANT refused to stop smoking in legally prohibited smoking areas which caused her cigarette smoke to drift inside the PLAINTIFF's apartment, which strangled the PLAINTIFF multiple times per hour every day around the clock as early as 4:48am.

17. In addition, the PLAINTIFF will submit at the trial epidemiology reports from the Cayman Islands and testimony from Canadian and British experts, including the American Lung Association, and will further submit governmental reports from the United States Surgeon General's office which will prove that "there is no safe level of exposure to secondhand smoke" and will furthermore prove government's conclusion that "the scientific evidence is now indisputable: secondhand smoke is not a mere annoyance. It is a serious health hazard that leads to disease and premature death in children and nonsmoking adults."
18. Furthermore, the PLAINTIFF will submit forensic evidence of the diametre of the PLAINTIFF's hair curlers including the exact measurements of the PLAINTIFF's shoulder-length hair where, through the neglect of enforcement and official duty to act, the DEFENDANT SMOKER TENANT repeatedly beat the PLAINTIFF and knocked her curlers out of her head onto the ground with such force that the police and Minister of Health, who have the remit to enforce the Tobacco Law (2008), retained photographic evidence of the PLAINTIFF's bruises and cuts after the DEFENDANT SMOKER TENANT physically assaulted and battered the PLAINTIFF.
19. Moreover, this case will prove beyond a reasonable doubt through national weather reports from the Cayman Islands Weather Service and the National Aeronautical and Space Administration (NASA) on the wind direction, patterns and velocity which carried the DEFENDANT SMOKER TENANT's cigarette smoke inside the PLAINTIFF's apartment while the PLAINTIFF was inside her apartment, including when the PLAINTIFF is in the shower at the farthest point from the PLAINTIFF's apartment entry way, whether the window is open or closed and whether the air conditioner is on or off, up until the very filing of this Originating Summons.
20. As such, this case will also prove beyond a reasonable doubt that a patient's exposure, and likewise the PLAINTIFF's exposure, to secondhand smoke makes the patient's chronic respiratory illnesses worse.
21. This case further seeks to determine in court whether the DEFENDANT SMOKER TENANT has the legal right to repeatedly physically assault and batter the PLAINTIFF who is requesting that the law and contracts be obeyed and enforced, and if the conditions as stated herewith permits that DEFENDANT SMOKER TENANT to repeatedly injure the PLAINTIFF.

#### STATEMENT OF FACTS

22. On the 23<sup>rd</sup> August, 2016, the PLAINTIFF contacted the DEFENDANT about an apartment rental vacancy that the DEFENDANT was advertising.
23. On the 24<sup>th</sup> August, 2016, the DEFENDANT shared the apartment information with the PLAINTIFF and subsequently emailed the PLAINTIFF a copy of the proposed contract and the Residential Tenancies Bill (2009), which the parties agreed would be the controlling document that would govern any disputes arising during this tenancy, even though the proposed Residential Tenancies Bill (2009) had not commenced yet.

**No contract provision for early termination at will**

24. The contract term expires on the 14<sup>th</sup> September, 2017 and the contract does not contain any provisions granting either party the right to terminate the contract at will prior to the expiration date next year.

- (1) Exhibit #1: Contract, Page 1, AGREED TERMS, Section 2.1 stating “*Term: 1 year commencing on the 15<sup>th</sup> day of September 2016 and ending on the 14<sup>th</sup> day of September 2017.*”

**Contract provided that the Defendant would receive rental payments from Government**

25. The contract also contains a provision that the rent would be paid by the Cayman Islands Government on behalf of the Plaintiff.

- (1) Exhibit #2: Contract, Page 10, Schedule 3, Tenant Covenants, Section 1.1 Rent stating “*The Landlord agrees to receive rental payments from the Cayman Islands Government.*”

**Contract provided that the property was smoke-free**

26. The contract further contains a provision which prohibits smoking at the property, and all of the current tenants at the apartment building have the same smoke-free provision in their signed contracts as well, recognising the apartment building as a smoke-free building.

- (1) Exhibit #3: Contract, Page 14, Schedule 4 The Regulation, Section 18 stating “*Not to smoke at the Property*”

27. In addition, the contract specifically clarifies that any references to the property were meant to apply to the whole property and any part of the property, which also complies with the applicable Tobacco Law (2008) as well as the Residential Tenancies Bill (2009).

- (1) Exhibit #4: Contract, Page 2, Interpretation, Section 2.5 stating “*references to the Property are to the whole and any part of it*”

28. Furthermore, the Residential Tenancies Bill (2009) clarifies the various common areas at the property where smoking is prohibited, including all facilities provided by the landlord for the use and enjoyment of the tenants, such as the parking lot, laundry room, stairways, garbage area and any property easements and walks.

- (1) Exhibit #5: The Residential Tenancies Bill (2009), Page 23, Interpretations stating “*‘facilities’ in relation to a tenancy agreement, includes all facilities provided by the landlord for the use and enjoyment of the tenant, otherwise than as part of the premises that are the subject of the agreement, such as the following-*

- (a) *any land intended for the parking of motor vehicles;*
- (b) *laundry facilities;*
- (c) *lifts and stairways;*
- (d) *rubbish disposal facilities;*
- (h) *lawns, gardens*”

29. Moreover, the contract’s smoke-free provision complies with The Tobacco Law (2008), which prohibits smoking in public places, including all common areas of apartment buildings.

- (1) Exhibit #6: The Tobacco Law (2008), Page 13, Section 12(1), Distribution, Display and Use stating “*no person shall smoke in or within ten feet of a public place*”
- (2) Exhibit #7: The Tobacco Law (2008), Page 8, Section 2, Definitions stating “*‘public place’ includes those places enumerated in the Schedule*”
- (3) Exhibit #8: The Tobacco Law (2008), Page 20, Schedule that identifies legally prohibited smoking areas in the Cayman Islands stating “*For the purposes of this Law, public places include the following: 2. common areas in apartment buildings*”

and:

The Tobacco Law (2008), Page 20, Section 28 Binding on the Crown stating “*This Law shall be binding on the Crown.*”

30. Therefore, agreeing to the terms of the revised contract, on the 25<sup>th</sup> August, 2016, the PLAINTIFF and the DEFENDANT entered into and signed a one-year contract for the PLAINTIFF to lease Apartment #2A at Tranquility Apartments to begin on the 15<sup>th</sup> September, 2016 and ending on the 14<sup>th</sup> September, 2017.

(1) Exhibit #9: 18-page contract signed by both parties (PLAINTIFF and DEFENDANT)

**Plaintiff truthfully complied with all her obligations under the contract, including the applicable Stamp Duty Law, to register her residential lease with Government**

31. In accordance with the PLAINTIFF's obligations under Section 15.1 of the contract and under Section 20(1) and Schedule Page 21(c)(1) of the Stamp Duty Law (2013 Revision), the day after signing the contract, on the 26<sup>th</sup> August, 2016, the PLAINTIFF registered the residential lease at the Government Administration Building and requested a Stamp Duty Waiver from the Minister of Finance, as he instructed the PLAINTIFF to do through his Personal Assistant.

(1) Exhibit #10: Contract, Page 6, Stamp Duty, Section 15.1 stating "*Immediately following the grant of this lease the Tenant shall arrange for the stamping and registration of this lease to the extent required by law*"

(2) Exhibit #11: Stamp Duty Law (2013 Revision), Page 9, Section 16 Facts and Circumstances Affecting Duty to be Set Forth in Instruments stating "*All facts and circumstances affecting the liability of an instrument to duty or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument.*"

(3) Exhibit #12: PLAINTIFF's letter to the Minister of Finance requesting the Stamp Duty Waiver for lease registration

(4) Exhibit #13: Stamp Duty Law (2013 Revision), Page 6, Section 3(1) Charge of Stamp Duty stating "*There shall be charged for the revenue of the Islands stamp duties upon the instruments specified in the Schedule at the rates therein prescribed.*"

(5) Exhibit #14: Stamp Duty Law (2013 Revision), Page 21(c)(i), Schedule, Rates of Duty, Lease or Agreement for a Lease of Immovable Property or any Interest Therein stating "*where the consideration or any part of the consideration is rent and the term is thirty years or less if the term does not exceed five years, a duty equal to 5% of the average annual rent*"

**Government Payment Agreement signed**

32. In addition, on the 5<sup>th</sup> September, 2016, both parties (the PLAINTIFF and the DEFENDANT PROPERTY MANAGER on behalf of the collective DEFENDANT OWNER, BENEFICIAL OWNER and LANDLORD's OFFICE) signed a Payment Agreement with the Needs Assessment Unit agreeing that Government would pay the PLAINTIFF's monthly rent directly to the DEFENDANT.

33. This governmental Payment Agreement expressly stated that Government's role with the parties was to the extent that the Cayman Islands Government would only be paying the monthly rent for the PLAINTIFF and in no way was Government a party to the one-year contract that the parties signed, nor did Government's payment to the DEFENDANT LANDLORD create a relationship of landlord or tenant in any way.

(1) Exhibit #15: Agreement for Rental Payment, Page 1, Section 2 stating "*The Landlord agrees that the payment of rent to the Landlord by the NAU is being made on behalf of the tenant and was not intended to and does not create a relationship of landlord and tenant.*"

34. The governmental Payment Agreement contains a clause which recommends a minimum of thirty calendar days prior to the tenant being evicted or vacating the premises for any reason, which conflicts with the legal contract the PLAINTIFF and the DEFENDANT signed which contains no early termination provisions.

35. In addition, the clause in Section 3 of the governmental Payment Agreement is an illegal provision that seeks to defeat the PLAINTIFF's Bill of Rights in the Cayman Islands Constitution Order (2009), Section 26 Enforcement of Rights and Freedoms, where the instant claim is made that the DEFENDANT punished the PLAINTIFF with eviction for engaging in a constitutionally protected activity after the PLAINTIFF filed a complaint with Government against the DEFENDANT to enforce the Public Health Law (2002 Revision) where, during the public health inspection of the apartment building where Government deemed the PLAINTIFF's complaints to be valid, and where the DEFENDANT retaliated against the PLAINTIFF by unilaterally terminating the contract by handing the PLAINTIFF an eviction notice during the middle of the Environmental Health inspection, especially when the PLAINTIFF had not violated ANY terms of the contract.

(1) *See Exhibit #15 again: Agreement for Rental Payment, Page 1, Section 3 stating "The landlord and tenant agree to provide notification at least thirty (30) calendar days prior to the tenant being evicted or vacating the premises for any reason. Once due notification has been given the NAU will not be held liable to pay for any period of time that the premises was not occupied by the tenant."*

36. **WHEREBY, the PLAINTIFF requests this Honourable Court to find Government's clause that permits a landlord or tenant to cancel the contract, even for illegal reasons, to be incompatible with the Bill of Rights that constitutionally give people the right to complain without fear of reprisal.**

(1) Exhibit #16: The Residential Tenancies Bill (2009), Page 28, Section 28(1) Law Generally to Apply Despite Contrary Provisions stating "*Any agreement or arrangement, or any provision of any agreement or arrangement, entered into in respect of a tenancy to which this Law applies, that is inconsistent with any of the provisions of this Law, or that purports to exclude, modify, or restrict the operation of any such provision, shall be of no effect*"

#### **Plaintiff reported Defendant's public safety health violations reported to Government**

37. After the PLAINTIFF moved in the apartment, she became aware of the toxic smells and sounds of raw sewage being splashed onto the ground in between her apartment walls, which came from the apartment directly above her when the upstairs tenants flushed the toilet.

38. The sounds were videoed of the raw sewage remaining in building after being flushed, which contravenes the Public Health Law (2002 Revision).

(1) Exhibit #17: Public Health Law (2002 Revision), Page 8, Section 2 Definitions stating "*“nuisance” includes any act, omission, or thing occasioning or likely to occasion injury, annoyance, offence, harm, danger or damage to the sense of sight, smell or hearing, or which is or is likely to be dangerous or injurious to person or property;*

(2) Exhibit #18: Public Health Law (2002 Revision), Page 11, Section 6(1) Duty of Officers to Inspect the Islands for Detection of Nuisances and to Secure their Abatement stating "*It shall be the duty of the Chief Environmental Health Officer to take such steps as he deems necessary to remove or secure the abatement of all statutory nuisances and, if the circumstances so warrant, proceed at law against any person committing any such nuisances."*

(3) Exhibit #19: Public Health Law (2002 Revision), Page 12, Section 7(m) Statutory Nuisances stating "*In this part, collection of water, sewage, rubbish, refuse, garbage or other fluid or solid matter which permits or facilitates the multiplication of parasites of man or animals or of organisms which may otherwise cause or facilitate the infection of man or animals by such parasites; is a statutory nuisance."*

39. The PLAINTIFF sent the video to the DEFENDANT and various Government officials, and took pictures of the floor tiles next to her apartment walls which showed signs of damage and swelling in the respective area, in addition to the PLAINTIFF's ceiling that the DEFENDANT previously attempted to cut out and repair directly underneath the upstairs apartment's toilet pipes.
- (1) Exhibit #20: 02-Oct-2016 1:02am 21-second video of upstairs apartment flushing raw sewage that splashes down in between PLAINTIFF's apartment walls
  - (2) Exhibit #21: 03-Oct-2016 10:51am photograph of previously cut ceiling in PLAINTIFF's apartment
  - (3) Exhibit #22: 10-Dec-2016 2:30pm photograph of swollen floor tiles in PLAINTIFF's apartment where the raw sewage seeps into PLAINTIFF's apartment
40. Although the PLAINTIFF brought this and other violations to the landlord's attention, the public safety health issues remained unresolved after the DEFENDANT refused to fix the leaking sewage.
41. Therefore, on the 20<sup>th</sup> October, 2016, the PLAINTIFF reported her complaints to Government.

#### **Environmental Health Inspection scheduled on 03-Nov-2016**

42. On the 3<sup>rd</sup> November, 2016, the Department of Environmental Health called the PLAINTIFF requesting the DEFENDANT's contact information and subsequently set up an appointment to conduct an inspection of the property on the 4<sup>th</sup> November, 2016.
43. After that, the DEFENDANT PROPERTY MANAGER contacted the Cayman Islands Government to terminate the PLAINTIFF's contract, and at 4:49pm on 03-Nov-2016, the DEFENDANT PROPERTY MANAGER emailed both the Cayman Islands Government and the PLAINTIFF that the DEFENDANT was hereby terminating the Payment Agreement with the Cayman Islands Government.
- (1) Exhibit #23: Email on 03-Nov-2016 at 4:49pm from DEFENDANT PROPERTY MANAGER to PLAINTIFF and CAYMAN ISLANDS GOVERNMENT notifying PLAINTIFF of termination stating "*Please see attached notice informing you that the agreement with NAU has been terminated.*"
  - (2) Exhibit #24: Attachment to 03-Nov-2016 4:49pm email containing Notice to Tenant to Deliver up the Premises stating that the CAYMAN ISLANDS GOVERNMENT "*has confirmed and agreed to terminate the lease agreement between NAU and DDL Studio Ltd. – B&H Investments Ltd. (B&H) and that the "NAU has confirmed that as of 16<sup>th</sup> December 2016 they will no longer be responsible for you[r] rent to DDL Studio since the agreement has been terminated".*"

#### **Defendant admits initiating the Plaintiff's contract termination to police on 04-Nov-2016**

44. Since the PLAINTIFF felt that the DEFENDANT was retaliating against her, the PLAINTIFF filed a police report.
45. The police contacted the DEFENDANT and asked who initiated the Payment Agreement termination with the Cayman Islands Government since the PLAINTIFF was approved for rental payment assistance through the following year.
46. The DEFENDANT PROPERTY MANAGER admitted to the police that the DEFENDANT PROPERTY MANAGER terminated the contract with Government.
47. Subsequently, on the scheduled 4<sup>th</sup> November, 2016 apartment building inspection, the Department of Environmental Health investigated, found the PLAINTIFF's multiple public health complaints to be valid and gave the DEFENDANT 30 days to correct the public health risk violations, which was never completed up until the filing of this Originating Summons.
- (1) Exhibit #25: 25-Feb-2017 3:30pm photograph of apartment building mould and mildew that Department of Environmental Health ordered DEFENDANTS to fix by 04-Dec-2016

#### **Eviction notice given during Environmental Health Inspection on 04-Nov-2016**

48. During the middle of the environmental health officer's inspection of the property, the DEFENDANT PROPERTY MANAGER personally handed the PLAINTIFF the illegal unsigned notice terminating her contract and giving the PLAINTIFF until the 15<sup>th</sup> of December, 2016 to leave the apartment, even though the PLAINTIFF had not violated ANY of the terms of the contract.

#### **Plaintiff repeatedly complained about non-enforcement of the smoke-free provisions**

49. In addition, after repeatedly bringing smoking violations to the DEFENDANT's attention without successful intervention from the very first day of the apartment viewing appointment, and because the DEFENDANT repeatedly refused to enforce the smoke-free provisions in the contract which caused the PLAINTIFF immediate pain and suffering due to being diagnosed with multiple chronic respiratory illnesses, on the 9<sup>th</sup> November, 2016 the PLAINTIFF escalated her complaints to the authorities that the DEFENDANT SMOKER TENANT next door would not stop smoking on the patio common area of the apartment building, which abuts right in front of the PLAINTIFF's apartment window and entry way and caused the PLAINTIFF immediate difficulty breathing when the cigarette smoke was deliberately blown into her apartment around the clock as early as 4:48am to all hours of the day and night every day.

(1) Exhibit #26: Photograph of the four ground level apartments in the front of the apartment building that share the common patio area

50. The DEFENDANT POLICE had a duty to arrest and enforce the law, but failed to do so, which put the PLAINTIFF's safety in jeopardy when the DEFENDANT SMOKER TENANT's illegal behaviour escalated against the PLAINTIFF.

(1) Exhibit #27: The Tobacco Law (2008), Page 6, Part 1 Introductory, Section 2 Definitions stating "*Authorised Officer*" means an Environmental Health Officer appointed under section 3 of the Public Health Law (2002 Revision) and includes a police officer".

#### **Plaintiff was physically assaulted because of each of the Defendants' neglect of duty**

51. When the police and the DEFENDANT came, they witnessed the DEFENDANT SMOKER TENANT physically assault the PLAINTIFF in connection with the DEFENDANT SMOKER TENANT storing her personal smoking property in the common area of the apartment building, where the DEFENDANT SMOKER TENANT continuously blew her cigarette smoke inside the PLAINTIFF's apartment and deliberately and repeatedly relocated her smoking activities, ashtray, patio table and chairs **directly** in front of the PLAINTIFF's window, which the PLAINTIFF moved away from her window.

(1) Exhibit #28: 25-Aug-2016 10:00am photograph of the PLAINTIFF's first appointment to view the advertised apartment proving that the DEFENDANT SMOKER TENANT had her patio furniture and ashtray in front of the DEFENDANT SMOKER TENANT's apartment

(2) *See Exhibit #26 again:* Photograph of the four ground level apartments in the front of the apartment building that share the common patio area

(3) Exhibit #29: 12-Sep-2016 5:56pm photograph of the DEFENDANT SMOKER TENANT provoking the PLAINTIFF by relocating her smoking activity directly in front of the PLAINTIFF's window after the DEFENDANT SMOKER TENANT realised that the apartment had been rented

(4) Exhibit #30: 01-Nov-2016 7:47am photograph of the DEFENDANT SMOKER TENANT continuing to smoke in a legally prohibited smoking area on the patio common area of the apartment building directly in front of the PLAINTIFF's window

(5) Exhibit #31: 09-Nov-2016 8:14am photograph of the DEFENDANT SMOKER TENANT continuing to provoke the PLAINTIFF by storing her personal property in a common area, which blocked the handicapped access ramp that the PLAINTIFF's completely disabled family members needed when visiting the PLAINTIFF

52. The police pulled the DEFENDANT SMOKER TENANT off the PLAINTIFF and told the DEFENDANT SMOKER TENANT to go back inside her apartment.
53. While the DEFENDANT and the police were inside of the tenant's apartment, the DEFENDANT allegedly advised the DEFENDANT SMOKER TENANT not to smoke at the property until the contract's no-smoking clause could be amended, which the tenant repeatedly ignored and continued to smoke in the common areas of the apartment building, which is illegal under Section 12(1) in the Tobacco Law (2008).

**DEFENDANT permitted DEFENDANT SMOKER TENANT to block handicapped ramp that was needed by the PLAINTIFF's visiting and completely disabled family members**

54. In addition, the DEFENDANTS permitted the DEFENDANT SMOKER TENANT to store her other personal property and potted plants, patio table and chairs on and along the perimeter of the patio common area which blocked the patio wheelchair ramp where certain of the PLAINTIFF's family members who are completely disabled needed to use while visiting the PLAINTIFF.
- (1) *See Exhibit #29 again:* Photograph taken on 12-Sep-2016 at 5:56pm of tenant storing personal property in the common areas of the apartment building blocking handicapped access ramp
- (2) *See Exhibit #31 again:* 09-Nov-2016 8:14am photograph of the DEFENDANT SMOKER TENANT continuing to provoke the PLAINTIFF by storing her personal property in a common area, which blocked the handicapped access ramp that the PLAINTIFF's completely disabled family members needed to use when visiting the PLAINTIFF
55. In violation of the law, the Cayman Islands Government and relevant authorities refused to enforce the smoke-free laws of the Cayman Islands, and the DEFENDANT refused to enforce the smoke-free terms of the contract after the PLAINTIFF continued to contact them without successful intervention, which put the PLAINTIFF's safety at significant risk and injury after the DEFENDANT SMOKER TENANT's behaviour became more emboldened after seeing the PLAINTIFF's unsuccessful requests of intervention from the authorities and repeatedly mocked the PLAINTIFF when the DEFENDANT SMOKER TENANT began defaming the PLAINTIFF in the community and to the authorities.
- (1) Exhibit #32: Penal Code (2013 Revision), Page 49, Section 121 Disobedience of Lawful Duty stating "*A person who wilfully disobeys any law by doing any act which such law forbids, or by omitting to do any act which such law requires to be done, and which concerns the public or any part of the public, commits an offence and, unless the law provides some other penalty, is liable to imprisonment for two years.*"
56. As provided for in Section 88A Intentional Harassment, Alarm or Distress in the Penal Code (2013 Revision) and Section 24 Duty of Public Officials and Section 26 Enforcement of Rights and Freedoms in the Cayman Islands Constitution Order (2009), through the neglect of duty to act and to enforce the contract and applicable laws of the Cayman Islands, the collective DEFENDANTS and the Cayman Islands Government facilitated the DEFENDANT SMOKER TENANT to repeatedly physically assault the PLAINTIFF, to batter, beat, cut and bruise (which the Minister of Health and the RCIPS retain the photographic evidence of), attempt to hack into the PLAINTIFF's account, hide a medium-sized rock behind her ashtray and throw at the PLAINTIFF, threaten to "bust" the PLAINTIFF's "ass", threaten to throw hot water on the PLAINTIFF's "ugly face" and daily strangle the PLAINTIFF by interfering with the PLAINTIFF's breathing without legal consequence up to multiple times an hour every day while the PLAINTIFF was inside her apartment.
- (1) Exhibit #33: Constitution (2009), Page 21, Section 24 Duty of Public Officials stating "*It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights*"

- (2) Exhibit #34: Cayman Islands Constitution Order (2009), Page 22, Section 26(1) Enforcement of Rights and Freedoms stating “*Any person may apply to the Grand Court to claim that government has breached or threatened his or her rights and freedoms under the Bill of Rights*”
- (3) Exhibit #35: Penal Code (2013 Revision), Page 42, Section 88A(1)(a) Intentional Harassment, Alarm or Distress stating “*A person who, with the intent to cause a person harassment, alarm or distress uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, thereby causing that or another person harassment, alarm or distress commits an offence and is liable to imprisonment for three years or, if the offence is committed in the night, to imprisonment for four years.*”

#### **Defendant changes contract to permit smoking in legally prohibited smoking areas**

57. Furthermore, still harbouring resentment against the PLAINTIFF for initiating a Government investigation into their property, on the 17<sup>th</sup> November, 2016, the DEFENDANT presented the PLAINTIFF an addendum to her contract, which the police confirmed from the DEFENDANT PROPERTY MANAGER at the scene that the DEFENDANT SMOKER TENANT provided the information to her regarding the distance of ten feet to draft up the new contract terms, which now illegally permitted the DEFENDANT SMOKER TENANT to smoke on the patio common area of the apartment building as long as the DEFENDANT SMOKER TENANT was not within ten feet of the PLAINTIFF’s entry way, which violates the Tobacco Law (2008) since the law specifically prohibits smoking in ANY common area of apartment buildings **regardless** of the amount of feet away it is from another tenant’s entryway.

- (1) Exhibit #36: Illegal Schedule 4, Section 18 Addendum from DEFENDANT stating “*This is to clarify that, smoking is not permitted inside the leased premises or anywhere within 10 ft. from any entry, exit or other openings of other tenants’ apartment. Owner cannot guarantee that the premises will be free of secondhand smoke and is not assuming any greater duty of care to enforce this Addendum than any other condition of the Lease Agreement.*”

#### **Defendant disconnects Plaintiff’s electricity without any notice**

58. Additionally, knowing that the PLAINTIFF was diagnosed with multiple chronic respiratory illnesses that necessitated the daily use of various oxygen and breathing machines which required electricity, on the 25<sup>th</sup> November, 2016 at 2:29pm, the DEFENDANT BENEFICIAL OWNER instructed the DEFENDANT MAINTENANCE MAN to disconnect the electricity to the PLAINTIFF’s apartment, which he did without giving any notice to the PLAINTIFF.

59. After PLAINTIFF experienced difficulty breathing, the PLAINTIFF filed a police report.

60. After the police advised the DEFENDANT BENEFICIAL OWNER that his obligations under a tenancy agreement were not suspended while this matter was being dealt with by the court, the DEFENDANT BENEFICIAL OWNER admitted to police that he instructed the DEFENDANT MAINTENANCE MAN to disconnect the PLAINTIFF’s electricity, and further told the police he would turn it back on, but did not know when.

61. The DEFENDANTS ended up turning back on the PLAINTIFF’s electricity **after three days**, causing the PLAINTIFF much pain and suffering, in addition to causing the PLAINTIFF’s perishable groceries, including meat and dairy products, to fall below the refrigerated food safety temperatures during those three days, which were just purchased the night before the DEFENDANT illegally disconnected the PLAINTIFF’s electricity with no notice to the PLAINTIFF.

- (1) Exhibit #37: Foster’s Food Fair perishable groceries receipt purchased at 6:19pm on 24-Nov-2016

### **Defendant lies to police while obstructing and hindering a police inquiry**

62. The DEFENDANTS' extremely illegal conduct continued as the DEFENDANT PROPERTY MANAGER obstructed a police inquiry by telling the police that no contact numbers or addresses were known for the DEFENDANT BENEFICIAL OWNER or the MAINTENANCE MAN since contact was only ever made through email.

- (1) Exhibit #38: The Tobacco Law (2008), Page 15, Section 18(2) **Authorised Officers to be Assisted and Not Obstructed** stating "*No person shall obstruct or hinder, or knowingly make a false or misleading statement to, an Authorised Officer who is carrying out his duties under this Law.*"
- (2) Exhibit #39: Penal Code (2013 Revision), Page 58, Section 158(e) stating "*A person who in any public place conducts himself in a manner likely to cause a breach of the peace shall be deemed an idle and disorderly person and shall be liable to a fine of two thousand dollars and to imprisonment for four years.*"

### **Defendant again threatens Plaintiff with illegal lock-out and utility disconnection, citing lack of rental payment**

63. After turning PLAINTIFF's electricity back on, the DEFENDANT again threatened to change the PLAINTIFF's locks and disconnect the utilities citing lack of rental payment from the Government, even though the DEFENDANT breached Government's Payment Agreement by failing to maintain the property "in a safe, dry and habitable condition, with all facilities in working order, **for the duration of this rental agreement.**"

- (1) Exhibit #40: Illegal Lock-out and Inhumane Treatment Notice dated 28-Nov-2016 stating "*Due to the constant disruption with other tenants and nonpayment of rent, we hereby give you notice that if we do not receive the two months outstanding rental payment by Friday, December 2<sup>nd</sup>, 2016, 5:00PM EST for Tranquility Apartment #2A, 261 Lucy Welds Close, West Church Street, W.B., we are then left with no choice but to turn off the power and change the lock.*"
- (2) Exhibit #41: Agreement for Rental Payment with the Cayman Islands Government, Page 2, Section 7 with the DEFENDANT PROPERTY MANAGER agreeing and contracting that "*The Landlord agrees to maintain the premises rented in a safe, dry and habitable condition, with all facilities in working order, **for the duration of this rental agreement.***"

### **Plaintiff seeks relief from this Honourable Court**

64. Because of the extreme and outrageous conduct of the DEFENDANTS, along with the non-action of public officials, civil servants and Government authorities having responsibility in this instant matter, the PLAINTIFF had no choice but to seek relief from the incredible amount of intentional harassment from the collective DEFENDANTS by filing an Emergency Injunction with the court after coming out of a surgical procedure done at the Cayman Islands Hospital to rule out cancer due to the PLAINTIFF's illness.

65. At the hearing, the DEFENDANT testified that the Government had contacted them informing them that the PLAINTIFF's rent cheque had been ready to be picked up.

66. This Honourable Court then advised the DEFENDANT that the PLAINTIFF's Emergency Injunction seeking relief was then a moot point since the basis of the action stemmed from the DEFENDANT's position that they would not change the locks or disconnect the PLAINTIFF's utilities if they received the rental payment from the Government.

67. This Honourable Court further stated that the PLAINTIFF's Emergency Injunction could be subject to dismissal with the DEFENDANT's undertaking to not change the locks or disconnect the PLAINTIFF's utilities, but the DEFENDANT PROPERTY MANAGER told this Honourable Court she would not agree to that.

68. Nevertheless, the court immediately granted the PLAINTIFF's Emergency Injunction, further ordering the DEFENDANT's to NOT change the PLAINTIFF's locks or disconnect the PLAINTIFF's utilities and stated that another hearing would be scheduled forthwith.

### CAYMAN ISLANDS GOVERNMENT

69. As provided for in Article 25 of the Universal Declaration of Human Rights, the neglectful delay caused by the Needs Assessment Unit beyond the initial 21 business days contributed to medical injury, pain and suffering when the DEFENDANT cited the lack of rental payment as the reason for illegally disconnecting the PLAINTIFF's electricity without notice, of which the PLAINTIFF needed said electricity to operate her breathing machines.
- (1) Exhibit #42: Universal Declaration of Human Rights, Page 7, Article 25(1) stating "*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*"
70. Moreover, the PLAINTIFF, and all members of the public seeking Government assistance, were told from the Needs Assessment Unit that rental assistance payment limits were in the amount of up to \$850 per month, and that she was to bring back a lease agreement for no more than \$850 per month, which the PLAINTIFF complied with.
71. Additionally, even though the PLAINTIFF was approved for food, clothing, housing and medical care assistance through April, 2017, the Needs Assessment Unit has withheld without cause multiple food benefits that the PLAINTIFF is eligible for, which remains unfunded as of the filing of this Originating Summons.
72. Furthermore, the governmental Payment Agreement contains a clause that attempts to defeat the PLAINTIFF's Bill of Rights since the governmental Payment Agreement contains an illegal provision stating Government's willingness to accept a cancellation of a contract for ANY reason, whether that specific reason violates the law or not, thereby subjecting them to inclusion as a party again in future litigation whenever a landlord illegally retaliates against a tenant for engaging in a constitutionally protected activity.
73. The Needs Assessment Unit might consider rewording their cancellation clause by recognising that any contract cancellation presented to them should be agreed in writing by both the landlord and the tenant, or by a substantiated breach of contractual obligation by either party, which would eliminate landlords retaliating and punishing a tenant for engaging in a constitutionally protected activity like they did in this instant case.
74. In addition, the Needs Assessment Unit might also consider including a provision that their tenant client can be considered for immediate termination of benefits if they or any member of their household commit any act of violence or a drug related offence, whereas the landlord client can be considered for immediate termination and exclusion from participation of any further bidding or contracting with the Cayman Islands Government if they commit any violation of any law or regulation that they are bound to obey.
75. **WHEREBY, the PLAINTIFF requests this Honourable Court to set aside Section 3 of the Agreement for Rental Payment as a constitutionally flawed provision and find that the 30-day notification clause for ANY reason elucidated to attempts to defeat the rights of individuals who do not violate any terms of their respective contract.**
- (1) *See Exhibit #16 again:: The Residential Tenancies Bill (2009), Page 28, Section 28(1) Law Generally to Apply Despite Contrary Provisions stating "Any agreement or arrangement, or any provision of any agreement or arrangement, entered into in respect of a tenancy to which this Law applies, that is inconsistent with any of the provisions of this Law, or that purports to exclude, modify, or restrict the operation of any such provision, shall be of no effect"*

76. The neglectful duty to act by the Ministry of Health, the Department of Environmental Health and the Royal Cayman Islands Police Service, having direct remit to administer and enforce the Tobacco Law (2008), put the PLAINTIFF's safety and health in jeopardy by their continued non-action to resolve the matter, citing unfounded concerns of not having the legal remit in this matter as well as citing the lack of resources and manpower to attend to enforcing the law.

- (1) See Exhibit #27 again: The Tobacco Law (2008), Page 6, Part 1 Introductory, Section 2 Definitions stating " 'Authorised Officer' means an Environmental Health Officer appointed under section 3 of the Public Health Law (2002 Revision) and includes a police officer".
- (2) Exhibit #43: Penal Code (2013 Revision), Page 48, Section 119, Neglect of Official Duty stating "A person who being employed in the public service, in the discharge of his duties, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, commits an offence."

77. As such, the current laws in the Cayman Islands impose a positive obligation on the DEFENDANT OWNER, BENEFICIAL OWNER, LANDLORD and PROPERTY MANAGER, any other person in charge, including the DEFENDANT SMOKER TENANT who leased an apartment on the property, to prevent smoking in legally prohibited areas.

(1) Exhibit #44: The Tobacco Law (2008), Page 18, Section 23 Vicarious Liability of Registrant stating that

- (1) "Every registrant shall ensure that his servants, agents and other persons under his control comply with the provisions of this Law and where such person is guilty of an offence against this Law the registrant shall be taken also to have committed such offence and is liable to the same penalty as is prescribed for the principal offence whether or not he was present at the time of the commission of the offence.
- (2) In this section "person under his control", in relation to a registrant, includes-
  - a. a person to whom he has leased the registered premises or delegated control thereof; and
  - b. a servant, agent or person under the control of a person referred to in paragraph (a).

78. In addition, on the 30<sup>th</sup> November, 2016 when the PLAINTIFF took a copy of the Emergency Injunction to the West Bay Police Station, Sgt. Anthony Hill of the Royal Cayman Islands Police Service told the PLAINTIFF that he believes that if this situation continues, "someone is going to end up getting hurt"...his words.

79. Therefore, by refusing to enforce the law even though the law expressly granted them that authority as an Authorised Officer in the Tobacco Law (2008), the Royal Cayman Islands Police Service thereby recklessly continued to put the PLAINTIFF's safety at risk.

80. Furthermore, the neglect of duty by the Chief Environmental Health Officer to ensure that the PLAINTIFF's complaints of mould and mildew surrounding the entire outside of the building, as well as the raw sewage being flushed and not leaving the building when the upstairs unit flushed their toilet thereby permitting the raw sewage toxic properties to seep into the PLAINTIFF's apartment in between the walls is, at a minimum, gross misconduct on Government's part since the DEFENDANT ignored the Department of Environmental Health's 30-day grace period to fix the various public health risk violations, when the DEFENDANT stated that they would get around to it after the holidays.

81. The Hansard transcripts of Finance Committee proceedings in the Legislative Assembly will confirm that the Minister of Finance, who is the designated Collector of Stamp Duty, stated in parliamentary proceedings that, while registering leases is a law that he would not be enforcing, anyone so minded to comply with the law would benefit by registering their leases since “landlords would not be able to put them out so easy”...his words.
82. As such, the PLAINTIFF sought the protection that the Minister of Finance testified to, but the Minister of Finance deliberately refused to enforce the Stamp Duty Law, and as a result, the PLAINTIFF was harmed when the DEFENDANT LANDLORDS violated her rights.
83. All public officials have a duty to enforce the law, whether they agree with the law or not.
84. Civil servants, especially elected Government officials, cannot be allowed to randomly pick and choose which laws they will enforce, nor which member of the community they will attend to, after repeatedly ignoring the PLAINTIFF’s emails as she attempted to follow up on the registration of her one year residential contract.
85. The PLAINTIFF did everything she was obligated to do under the terms of the contract and under the law, but the Minister of Finance willfully neglected to act where he had a constitutional duty to act, thereby putting the PLAINTIFF’s safety and health in jeopardy.
86. In addition, **by refusing to enforce collecting taxes on lease agreements as mandated by the relevant legislation, the Minister of Finance (who is also the Cayman Islands Tax Collector) is effectively advocating stamp duty tax evasion.**
- (1) Exhibit #45: Stamp Duty Law (2013 Revision), Page 10, Section 20(1) Time for Stamping of Instruments stating *“Subject to this section, an instrument which is required to be stamped shall be stamped at the time of its execution.”*
  - (2) Exhibit #46: Stamp Duty Law (2013 Revision), Page 11, Section 21 Stamping After Adjudication stating *“All unstamped instruments presented for adjudication shall, within seven days of adjudication, be stamped or stamped up to the extent of the amount adjudicated and with stamps to cover the adjudication fee and, until so stamped, shall remain in the custody of the adjudicator who shall give facilities to the owner for the stamping thereof while in such custody, and shall give notice to the owner or his agents in any reasonable manner the owner or his agent may stipulate, of the completion of the adjudication.”*
  - (3) Exhibit #47: 10-Sep-2009 Director of Lands and Survey Memo to Financial Secretary regarding Stamp Duty on Residential Leases stating *“The change from an effective rate of 0% (through lack of collection) is unlikely to attract public criticism, as doing so would in effect be advocating stamp duty evasion. Indeed, the recent introduction of enforcement of Duty on Purchase Agreement resulted in no negative publicity (in public at least).”*
87. The Immigration Enforcement has a duty to enforce Section 28(1) of the Immigration Law (2015 Revision), especially to remove and deport people who were born in countries outside of the Cayman Islands with no generational ties or Caymanian grandparents as the Immigration Law stipulates, who have since settled within the Cayman Islands, only to continue to egregiously and callously break multiple laws and refuse to follow the legal directives of law enforcement officials...AND WHO DO IT WITH ATTITUDE.
88. The actions against the PLAINTIFF from ALL DEFENDANTS are extreme, outrageous, neglectful and constitute a reckless and conscious disregard for the rights of the PLAINTIFF, and are beyond the bounds of what should be accepted in a civilised society.

**EVALUATING THE CONDUCT OF THE PLAINTIFF**

89. The PLAINTIFF fulfilled every obligation she contractually agreed to do and obeyed every law she was required to obey.
90. As the PLAINTIFF tried to do everything she thought was right and legal, and even when she exceeded her tolerance and the scope of her patience as she repeatedly attempted to cooperate with all of the DEFENDANTS, the collective DEFENDANTS who had the power to act did not assist the PLAINTIFF in resolving this matter when they had the legal duty to do so.

**EVALUATING THE CONDUCT OF THE DEFENDANTS**

**(Constitutional enforcement of rights and freedoms,**

**Constitutional duty of public officials to act, Negligence, Neglect of official duty to act,**

**Negligent supervision, Negligent retention of employment,**

**Breach of contract, Retaliation, Defamation, Physical Assault and Battery,**

**Intentional infliction of emotional distress, Intentional harassment,**

**Pain and Suffering, Trespass, Interference with a police investigation)**

91. Furthermore, after the PLAINTIFF further brought to light several improprieties and violations of the law, the DEFENDANTS sought to vilify the PLAINTIFF and falsely portray her as a trouble-maker in order to protect their own reputation by maliciously destroying hers.
92. As part of their ongoing campaign to destroy the PLAINTIFF's reputation, the DEFENDANTS and public officials took no action to sanction or punish those who defamed the PLAINTIFF, even though they knew or should have known that the defamatory statements about the PLAINTIFF referred to herein were false.
93. The defamatory statements made by the DEFENDANTS were negligently made in the course and scope of their employment.
94. In addition, when the DEFENDANTS took the aforementioned actions against the PLAINTIFF, they should not have been retained at their employment.
95. The DEFENDANT in charge wrongfully permitted the other DEFENDANTS to remain in positions of authority where they and the DEFENDANT SMOKER TENANT could further harm the PLAINTIFF, long after they knew or should have known that they had already harmed the PLAINTIFF and that they would continue to harm the PLAINTIFF in their position of authority.
96. The DEFENDANT OWNER, DEFENDANT LANDLORD, DEFENDANT CHIEF ENVIRONMENTAL OFFICER, DEFENDANT CHIEF OFFICER, DEFENDANT DIRECTORS and DEFENDANT MINISTERS are responsible for the actions and the neglectful omission of actions made by the DEFENDANTS against the PLAINTIFF under the doctrine of *respondeat superior*, because they did nothing to stop these actions when they became aware of them.
97. In addition, as a direct and proximate result of the defamatory statements and the neglect of official duty by the public officials described herein, the PLAINTIFF has been harmed in her personal and business reputation, which constitutes defamation per se.
98. This harm includes, but is not limited to physical and medical harm, trespass, pain and suffering, harm to her professional reputation, harm to her personal reputation in and outside the community, loss and breach of contract, and emotional distress.

99. Likewise, the failure of the DEFENDANTS in charge to punish or otherwise sanction the other DEFENDANTS, and their acquiescence and ratification of their actions, contributed to the harm caused by the neglectful actions of the public officials and the defamatory statements described herein, because this failure to act gave the imprimatur of the other DEFENDANTS to the neglectful actions and to the defamatory statements of the other DEFENDANTS inside and outside the community, which carried more weight and put the PLAINTIFF's safety in further jeopardy.
100. Moreover, the DEFENDANTS tried to constructively evict and force the PLAINTIFF to move out when they had no legal grounds to do so, which was extremely traumatic and painful for the PLAINTIFF.
101. Because the DEFENDANTS were successful in their retaliatory efforts to disconnect the electricity for three days which interfered with the PLAINTIFF being able to breathe, and also because the DEFENDANTS were successful in their retaliatory efforts to turn the other tenants, neighbours, public officials and others in the community against the PLAINTIFF with comments from those in authority to the DEFENDANT SMOKER TENANT that they are "working on getting her out" "since Government was now involved" when the No-Smoking signs were put up on the 14<sup>th</sup> December, 2016, the anxiety which surrounded this effort, and the uncertainty of the PLAINTIFF as to whether she would be forced to be homeless caused the PLAINTIFF much emotional distress and pain and suffering.
102. The DEFENDANTS allowed the PLAINTIFF to be exposed to vicious slander, rumours, defamation, innuendoes and aspersions cast by the other DEFENDANTS, which resulted in great embarrassment both within and outside of the community.
103. Although the PLAINTIFF did not hear all the comments that were falsely made against her, she suffered additional emotional distress upon hearing what was being said about her.
104. The actions of the DEFENDANTS in allowing this to take place against the PLAINTIFF, either through negligence or a conscious disregard for her safety...the efforts of the DEFENDANTS to destroy the PLAINTIFF's reputation in order to protect their own reputation from harm...the willingness of the collective DEFENDANTS in retaliating not only against the PLAINTIFF but the PLAINTIFF's completely disabled family members, as described herein, merely because the PLAINTIFF was being a law abiding citizen and tried to protect the DEFENDANTS from further improprieties, are extreme, outrageous, wanton, constitute a reckless and/or a conscious disregard for the rights of the PLAINTIFF, and are beyond the bounds of what should be accepted in a civilised society.
105. As a direct and proximate result of the DEFENDANTS' extreme and outrageous conduct, the PLAINTIFF has been harmed.
106. WHEREFORE, the PLAINTIFF demands the maximum judgement against all of the DEFENDANTS jointly and severally for their continued harassment, plus punitive and exemplary damages, costs and interest, immediate employment termination, incarceration, deportation, and revocation of Caymanian Status upon conviction in this matter if applicable in accordance with the Section 28(1) of the Immigration Law (2015 Revision) and any other remedy that this Honourable Court may deem just and proper.

## **APPLICABLE LAWS THAT DEFENDANTS BROKE**

107. Based on the Statement of Facts as recounted above, the following are a minimum of the current laws that have been violated which are applicable to this lawsuit:

### **(1) The Tobacco Law (2008)**

- (a) Page 20, Section 28 stating “This Law shall be binding on the Crown.”
- (b) Page 13, Section 12(1) stating “no person shall smoke in or within ten feet of a public place.”
- (c) Page 8, Definitions section stating “ ‘public place’ includes those places enumerated in the Schedule;”
- (d) Page 20, Schedule stating “For the purposes of this Law, public places include the following: 2. common areas in apartment buildings;”.
- (e) Page 13, Section 12(4) stating “*The management of all public places where smoking is prohibited shall post no-smoking signs as may be prescribed, which signs shall visibly bear the international no-smoking symbol clearly indicating that the establishment is smoke-free.*”
- (f) Page 17, Section 22(5) stating “The owner of any premises referred to in Part V who fails to enforce the smoke-free policy applicable to the facility under his responsibility, including the posting of prescribed signs, is guilty of an offence and liable on summary conviction –
  - (a) A for a first offence, to a fine of fifteen thousand dollars; and
  - (b) for a subsequent offence, to a fine of thirty thousand dollars and imprisonment for twelve months.
- (g) Page 15, Section 18(2) Authorised Officers to be Assisted and Not Obstructed stating “No person shall obstruct or hinder, or knowingly make a false or misleading statement to, an Authorised Officer who is carrying out his duties under this Law.”
- (h) Page 18, Section 23 Vicarious Liability of Registrant states that
  - (1) “Every registrant shall ensure that his servants, agents and other persons under his control comply with the provisions of this Law and where such person is guilty of an offence against this Law the registrant shall be taken also to have committed such offence and is liable to the same penalty as is prescribed for the principal offence whether or not he was present at the time of the commission of the offence.
  - (2) In this section “person under his control”, in relation to a registrant, includes
    - a. a person to whom he has leased the registered premises or delegated control thereof; and
    - b. a servant, agent or person under the control of a person referred to in paragraph (a).
- (i) Page 18, Section 22(8) states that “Where a registrant is convicted of an offence under this Law, the Clerk of the court shall report such conviction to the Chief Officer and, if the registrant is so convicted on more than one occasion, the Chief Officer may revoke or refuse to renew his Certificate of Registration.

### **(2) Public Health Law (2002 Revision)**

- (a) Page 8, Section 2 Definitions
  - (1) “nuisance” includes any act, omission, or thing occasioning or likely to occasion injury, annoyance, offence, harm, danger or damage to the sense of sight, smell or hearing, or which is or is likely to be dangerous or injurious to person or property;
- (b) Page 11, Section 6(1) Duty of Officers to Inspect the Islands for Detection of Nuisances and to Secure their Abatement stating “*It shall be the duty of the Chief Environmental Health Officer to take such steps as he deems necessary to remove or secure the abatement of all statutory nuisances and, if the circumstances so warrant, proceed at law against any person committing any such nuisances.*”
- (c) Page 12, Section 7(m) Statutory Nuisances stating “*In this part, collection of water, sewage, rubbish, refuse, garbage or other fluid or solid matter which permits or facilitates*

*the multiplication of parasites of man or animals or of organisms which may otherwise cause or facilitate the infection of man or animals by such parasites; is a statutory nuisance.”*

- (d) Page 14, Section 9(1) **Power of Court to Make Abatement or Closing Order** stating
- (1) *“If the person on whom a notice to abate a nuisance has been served under section 8 makes default in complying with any of the requisitions thereof within the time and date specified on complaint by the Chief Environmental Health Officer or the Senior Medical Officer of Health the Court may make on such person an order (hereinafter in this Law referred to as a “nuisance order”).*
  - (2) *A nuisance order may be an abatement order or a closing order.*
  - (3) *An abatement order may require a person to comply with all or any of the requisitions in the notice, or otherwise to abate the nuisance within the time and date specified in the order.*
  - (4) *An abatement order shall, if the person on whom the order is made so requires, or the Court considers it desirable, specify the works to be executed by such person for the purpose of abating the nuisance.*
  - (5) *A closing order may prohibit a dwelling-house from being used for human habitation.*
  - (6) **If any person can establish to the reasonable satisfaction of the Chief Medical Officer that –**
    - a. *he is as the result of a closing order relating to a dwelling-house unable to continue to reside therein;*
    - b. *he was residing in that dwelling-house at the time when the notice to abate the nuisance to which such closing order relates was served; and*
    - c. **by reason of lack of means, illness or other sufficient cause he neither has been, or is, able to obtain accommodation elsewhere,****the Chief Medical Officer shall use his best endeavours to obtain such suitable accommodation.**
  - (7) *A closing order shall only be made where it is proved to the satisfaction of the Court that by reason of a nuisance a dwelling-house is unfit for human habitation and, if such proof is given, the Court shall make a closing order.*

**(3) Stamp Duty Law (2013 Revision)**

- (a) Page 9, Section 16 Facts and Circumstances Affecting Duty to be Set Forth in Instruments stating *“All facts and circumstances affecting the liability of an instrument to duty or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument.”*
- (b) Page 6, Charge of Stamp Duty, Section 3(1) stating *“There shall be charged for the revenue of the Islands stamp duties upon the instruments specified in the Schedule at the rates therein prescribed.”*
- (c) Page 21(c)(i), Schedule, Rates of Duty, Lease or Agreement for a Lease of Immovable Property or any Interest Therein stating *“where the consideration or any part of the consideration is rent and the term is thirty years or less if the term does not exceed five years, a duty equal to 5% of the average annual rent”*
- (d) Page 10, Section 20(1) Time for Stamping of Instruments stating *“Subject to this section, an instrument which is required to be stamped shall be stamped at the time of its execution.”*
- (e) Page 11, Section 21 Stamping After Adjudication stating *“All unstamped instruments presented for adjudication shall, within seven day of adjudication, be stamped or stamped up to the extent of the amount adjudicated and with stamps to cover the adjudication fee and, until so stamped, shall remain in the custody of the adjudicator who shall give facilities to the owner for the stamping thereof while in such custody, and shall give notice to the owner or his agents in any reasonable manner the owner or his agent may stipulate, of the completion of the adjudication.”*

(4) Penal Code (2013 Revision)

- (a) Page 22, Section 28 Fines stating
- (1) where no limit is expressed to which the fine may extend, the amount of the fine may be imposed is unlimited, but shall not be excessive;
  - (2) in the case of an offence punishable with a fine or a term of imprisonment, the imposition of a fine or a term of imprisonment shall be in the discretion of the court; and
  - (3) in the case of an offence punishable with the imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment and in every case of an offence punishable with fine only in which the offender is sentenced to a fine, the court passing sentence may, in its discretion –
    - a. direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and
    - b. issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant:  
Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such person has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary to do so.
- (b) Page 42, Section 88A, Intentional Harassment, Alarm or Distress stating
- (1) “A person who, with intent to cause a person harassment, alarm or distress –
    - a. Uses threatening, abusive or insulting words or behaviour, or disorderly behaviour
  - (2) An offence under this section may be committed in a public place or a private place.
  - (4) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.  
*Thereby causing that or another person harassment, alarm or distress commits an offence and is liable to imprisonment for three years or, if the offence is committed in the night, to imprisonment for four years.*
- (c) Page 48, Section 119, Neglect of Official Duty stating “A person who being employed in the public service, in the discharge of his duties, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, commits an offence.”
- (d) Page 49, Section 121, Disobedience of Lawful Duty stating “A person who wilfully disobeys any law by doing any act which such law forbids, or by omitting to do any act which such law requires to be done, and which concerns the public or any part of the public, commits an offence and, unless the law provides some other penalty, is liable to imprisonment for two years.”
- (e) Page 58, Section 158(d)(e) stating “A person who publicly does any indecent act in any public place conducts himself in a manner likely to cause a breach of the peace shall be deemed an idle and disorderly person and shall be liable to a fine of two thousand dollars and to imprisonment for four years.”
- (f) Page 74, Section 215, Common Assault stating “A person who unlawfully assaults another commits an offence and, if the assault is not committed in circumstances for which a greater punishment is provided by this or any other law, is liable to imprisonment for one year.”
- (g) Page 74, Section 216, Assault Causing Actual Bodily Harm stating “A person who commits an assault occasioning actual bodily harm commits an offence and is liable to imprisonment for five years.”

(5) Immigration Law (2015 Revision)

- (a) Page 36, Section 28(1) Revocation of Caymanian Status upon Conviction stating “Where the grantee of the right to be Caymanian or of Caymanian status under this or any earlier law is convicted by any court in the Islands or elsewhere of an offence-
- (1) for which he is sentenced to an immediate term of imprisonment of twelve months or more, other than for non-payment of a fine; and in respect of which conviction his rights of appeal have been exhausted; or
- (2) which, in the opinion of the grantor, was made possible by, facilitated by or connected with the grant
- the grantor may revoke the grant on his own motion.”

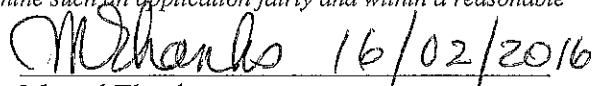
(6) Universal Declaration of Human Rights

- (a) Page 1, Preamble stating “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people”
- (b) Page 1, Preamble stating “Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”
- (c) Page 2, Article 3 stating “Everyone has the right to life”
- (d) Page 2, Article 5 “No one shall be subjected to cruel or degrading treatment”
- (e) Page 3, Article 8 stating “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”
- (f) Page 3, Article 10 stating “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations”
- (g) Page 6, Article 21(2) stating “Everyone has the right to equal access to public service in his country.”
- (h) Page 6, Article 24 stating “Everyone has the right to rest and leisure”
- (i) Page 7, Article 25(1) stating “Everyone has the right to a standard of living adequate for the health and well-being of himself, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability or other lack of livelihood in circumstances beyond his control.”
- (j) Page 8, Article 29(2) stating “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”
- (k) Page 8, Article 30 stating “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”

(7) Cayman Islands Constitution Order (2009)

- (a) Page 21, Section 24 Duty of Public Officials stating “It is unlawful for a public official to make a decision or act in a way that is incompatible with the Bill of Rights”
- (b) Page 22, Section 26 Enforcement of rights and freedoms
- (1) Any person may apply to the Grand Court to claim that government has breached or threatened his or her rights and freedoms under the Bill of Rights and the Grand Court shall determine such an application fairly and within a reasonable time.”

Signed:

 16/02/2016

Marvel Ebanks

[EbanksMarvel@gmail.com](mailto:EbanksMarvel@gmail.com)

**AFFIDAVIT OF SERVICE**

I, **Marvel Ebanks**, of **216 Lucy Welds Close, off West Church Street, West Bay**, do hereby **MAKE OATH AND SAY** as follows:

That on the \_\_\_<sup>th</sup> February, 2017 at \_\_\_\_\_, I served by email a true copy of the **ORIGINATING SUMMONS** served upon all of the following Defendants as follows:

**B&H INVESTMENTS LTD, HERO JAIRAM, DDL STUDIOS LTD., JOSEPHINE BROWN, PHILBERT, SHARLENE B. ROGERS**

to Josephine.Brown@DDLstudios.com

**Cayman Islands Government Attorney General**

to Samuel.Bulgin@Gov.KY

**Needs Assessment Unit**

to Osbourne.Bodden@Gov.KY, Melissa.Smith2@Gov.KY and Demsen.Watler@Gov.KY

**Ministry of Finance**

to Marco.Archer@Gov.KY and Diandra.Bodden@Gov.KY

**Department of Environmental Health**

to Alden.McLaughlin@Gov.KY, Roydell.Carter@Gov.KY and Cliff.Robinson@Gov.KY

**Royal Cayman Islands Police Service**

to Anthony.Hill@Gov.KY and Derek.Byrne@Gov.KY

**Ministry of Health**

to Nancy.Barnard@Gov.KY

**Immigration Enforcement**

to Wesley.Howell@Gov.KY

Service for the **ORIGINATING SUMMONS** was delivered to Josephine Brown at Josephine.Brown@DDLstudios.com as Property Manager to distribute to the Owners, Co-worker and Smoker Tenant.

Service for the **ORIGINATING SUMMONS** was delivered to Osbourne Bodden at Osbourne.Bodden@Gov.KY as Minister of Community Affairs to distribute to Ellen Ebanks.

Service for the **ORIGINATING SUMMONS** was delivered to Derek Byrne at Derek.Byrne@Gov.KY as Commissioner of Police to distribute to PC 437 Smith.

**SWORN** at George Town, Grand Cayman

This \_\_\_<sup>th</sup> day of February, 2017

Before me:

\_\_\_\_\_  
**NOTARY PUBLIC/JUSTICE OF THE PEACE**

\_\_\_\_\_  
**MARVEL EBANKS**

THIS **AFFIDAVIT OF SERVICE** is filed by the Plaintiff, whose address for service is 216 Lucy Welds Close, off West Church Street, Apartment #2, West Bay or EbanksMarvel@gmail.com.

**AFFIDAVIT OF SERVICE**

I, **Marvel Ebanks**, of **216 Lucy Welds Close, off West Church Street, West Bay**, do hereby **MAKE OATH AND SAY** as follows:

That on the \_\_\_<sup>th</sup> February, 2017 at \_\_\_\_\_, I served by email a true copy of the **ORIGINATING SUMMONS** served upon all of the following Defendants as follows:

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**SWORN** at George Town, Grand Cayman

This \_\_\_<sup>th</sup> day of February, 2017

Before me:

\_\_\_\_\_  
**NOTARY PUBLIC/JUSTICE OF THE PEACE**

\_\_\_\_\_  
**MARVEL EBANKS**

**THIS AFFIDAVIT OF SERVICE** is filed by the Plaintiff, whose address for service is **216 Lucy Welds Close, off West Church Street, Apartment #2, West Bay** or EbanksMarvel@gmail.com.