

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>571</sup> OF 1997

BETWEEN: KENRICK ANTHONY HALL

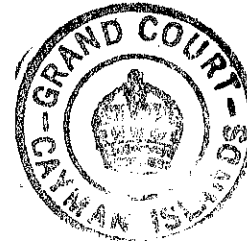
PLAINTIFF

AND: DEBRA J. PRENDERGAST

DEFENDANT

WRIT OF SUMMONS

TO: DEBRA J. PRENDERGAST  
P. O. Box 75  
Bodden Town  
Grand Cayman, B.W.I.



THIS WRIT OF SUMMONS has been issued against you by the abovenamed Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495, George Town, Grand Cayman B.W.I., the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

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

Issued this 11<sup>th</sup> day of July, 1997.

NOTE - This Writ may not be served later than 4 calendar months beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form

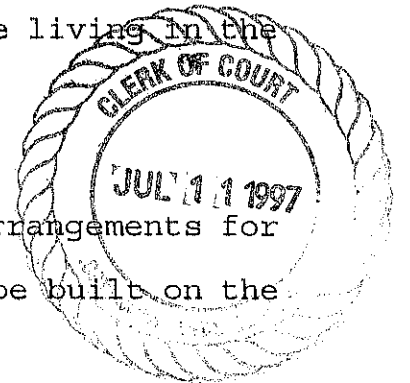


## STATEMENT OF CLAIM

1. The Plaintiff resides in the district of George Town, Grand Cayman and was granted Caymanian Status on the 15th day of March, 1982. The Plaintiff is a senior officer of the Royal Cayman Islands Police ("RCIP") and has been employed with the RCIP since the 17th October 1971.
  
2. The Defendant possesses Caymanian Status by birth and resides in the district of Lower Valley, Grand Cayman and is a Provision Officer at the Courts Building, George Town, Grand Cayman.
  
3. The Plaintiff and Defendant met in 1992. At the time the Plaintiff was in the process of getting a divorce and the Defendant was a widow.
  
4. The Plaintiff and the Defendant began to cohabit in June 1992 and lived together at Northward, Grand Cayman, B.W.I.
  
5. In May 1993 the Plaintiff and Defendant agreed to build a home together. Further to that agreement, the parties agreed to build a home on the land which should be owned by them in equal shares. The Plaintiff entered into negotiations on behalf of the Defendant to purchase land known as Lower Valley Block 32D Parcel 48 ("the Property"). The Defendant obtained a loan from the C.I. Civil Service Coop Credit Union ("the

Credit Union") and purchased the Property on or about July 1993. At the time of the purchase of the Property the Plaintiff and the Defendant were still cohabiting and there was a common intention that both parties should have a beneficial interest in the property in equal shares. The Plaintiff acted to his detriment on the basis of that common intention.

6. In December 1993 the Plaintiff obtained his divorce.
7. In January 1994 the parties ceased living in the same premises and the Plaintiff moved to an apartment located at Crewe Road, George Town, Grand Cayman. Subsequent to this, the parties continued their relationship but did not resume living in the same premises.
8. In May 1994 the Plaintiff and Defendant made arrangements for the drafting of plans to construct a house to be built on the Property.
9. The Plaintiff and the Defendant jointly submitted an application for planning permission for the construction of a house on the 10th June 1994 and all plans were approved on the 5th July 1994. The Plaintiff solely contributed towards the costs of the house plans in the sum of CI\$2,632.00.
10. The Plaintiff began construction on the house in September





1994 and in the months of September and October 1994 he incurred the sum of CI\$15,168.32 for the purpose of construction.

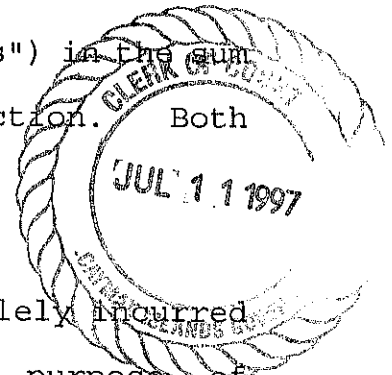
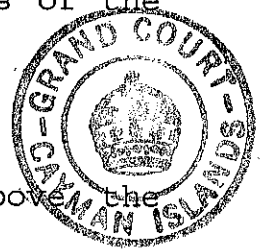
11. In November 1994 the Plaintiff obtained a separate loan and borrowed the sum of CI\$12,000.00 from the Credit Union for the purpose of continuing the construction on the house. The Plaintiff was solely responsible for the repayments of the loan at the Credit Union.

12. In addition to the loan referred to at paragraph 11 above, the Plaintiff solely incurred a further sum of CI\$20,139.06 for the purpose of construction on the house in November 1994.

13. In February 1995 the Plaintiff and the Defendant obtained a loan from Barclays Finance Corporation ("Barclays") in the sum of CI\$200,000.00 for the purpose of construction. Both parties signed the loan documents.

14. From January 1995 to March 1995 the Plaintiff solely incurred a further amount of CI\$8,615.64 for the purpose of construction to the house.

15. In September 1995 the Plaintiff and Defendant transferred the loan at Barclays to Cayman National Bank ("CNB") and increased the principal sum by CI\$50,000.00 to total CI\$250,000.00.





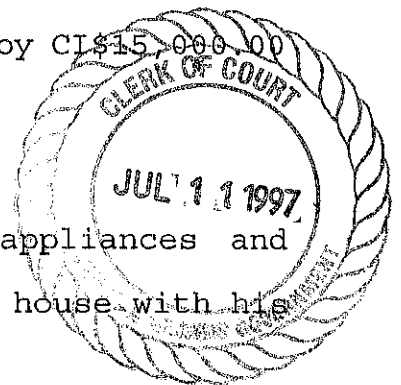
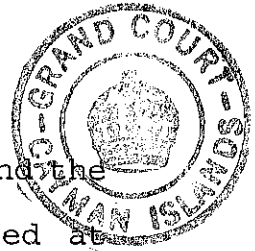
the principal sum by CI\$50,000.00 to total CI\$250,000.00. Both parties executed the loan documents and are liable for the loan repayments. In addition CNB required that the Plaintiff and Defendant have a joint account at CNB. The Plaintiff therefore joined the Defendant to his existing account at CNB being account number 365.

16. In November 1995 the parties after an argument discontinued the relationship and despite the separation the Plaintiff borrowed a further sum of CI\$10,000.00 from the Credit Union to continue construction of the house which construction at that time was well-advanced. The Plaintiff was solely responsible for the loan repayments.

17. In January 1996 the parties resumed their relationship and the Defendant moved into the Plaintiff's residence located at Spotts-Newlands, Grand Cayman. The Plaintiff and the Defendant increased the principal sum further by CI\$15,000.00 to total CI\$265,000.00 in January 1996.

18. The Plaintiff also purchased furnishings, appliances and housewares in the sum of US\$12,657.68 for the house with his American Express card in January 1996.

19. In July 1996 the parties again increased the principal sum by CI\$65,000.00 to total CI\$330,000.00 and the Plaintiff applied part of the loan in the amount of CI\$26,000.00 to pay off his





and the Defendant's debt at the Credit Union. The parties moved into the house in July 1996.

20. At all material times the parties contributed equally towards the loan repayments at CNB.

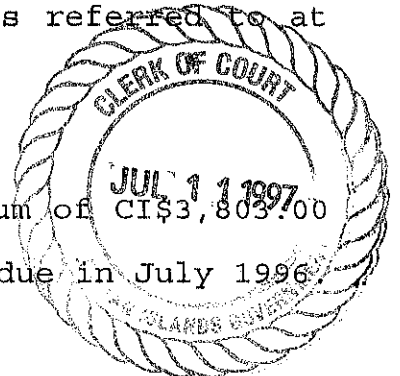
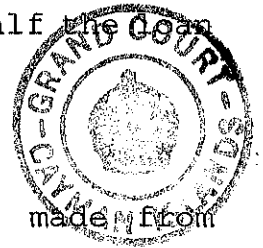
(1) From February 1996 to April 1996 the parties contributed equally whereas the Plaintiff repaid half the loan from account number 365 and the Defendant repaid half the loan from her personal account at Barclays.

(2) In July 1996 a payment of CI\$6,280.00 was made from account number 365 which was facilitated by the further loan of CI\$65,000.00 from CNB which is referred to at paragraph 19 above.

(3) In July 1996 the Plaintiff paid the sum of CI\$3,803.00 which represented the monthly payment due in July 1996.

(4) From August 1996 to December 1996 the Defendant deposited her salary into account number 365 for the purpose of the mortgage and the mortgage payments were made from account number 365.

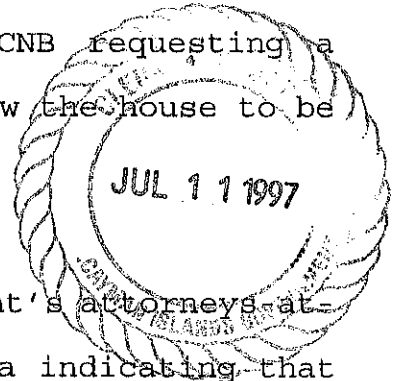
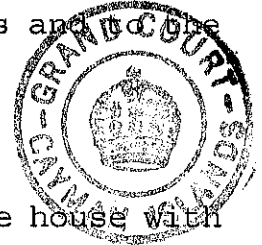
21. In late 1996 the relationship between the parties deteriorated. It was agreed between the parties that the





house would be put up for sale and proceeds would be split between the parties after repayment of outstanding loans. It was also agreed that the Defendant would be paid back the purchase price of the Land and that adjustments would be made for contributions which were made by the Plaintiff for the construction of the house not covered by the loans and the repayments of the loan.

22. The Defendant agreed with the Plaintiff to list the house with a real estate agency, namely, Better Properties and in the meantime the Plaintiff was to move out of the house. It was further agreed that the house would be rented and the rental income would be applied towards the mortgage payments.
23. Further to the agreement referred to at paragraphs 21 and 22, by letter dated the 5th February 1997 the Plaintiff's attorney-at-law, Myers & Alberga, wrote CNB requesting a moratorium on the interest payments to allow the house to be rented or sold.
24. By letter dated the 5th February the Defendant's attorneys-at-law, Brooks & Brooks, wrote Myers & Alberga indicating that subject to their client's instructions, that the Property should be sold subject to a deduction for the value of the land to the Defendant and the balance of the proceeds to be split between the parties. This letter reflected the





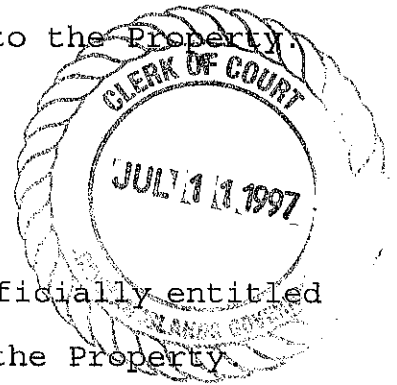
agreement reached between the Plaintiff and Defendant as alleged at paragraphs 21 and 22 herein.

25. By letter dated the 24th February 1997 CNB wrote to the Plaintiff and stated that CNB would be prepared to accept only interest payments for a period of 3 months with extension for up to 6 months if regular payments of the interest payments were received.

26. By letter dated the 15th April 1997 Brooks and Brooks suddenly communicated to Myers & Alberga that the Plaintiff was not entitled to any share in the sale proceeds of the Property as he was not a registered proprietor and that the Defendant was not entitled to any information pertaining to the Property.

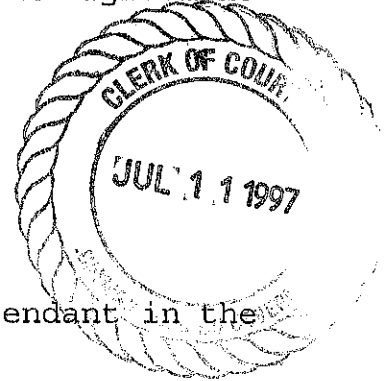
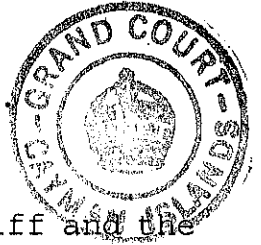
27. The Plaintiff therefore claims:

- (1) A declaration that the Plaintiff is beneficially entitled in equity to one-half the interest in the Property.
- (2) A declaration that the Defendant holds her legal interest as sole proprietor of the Property on constructive or resulting trust for the Plaintiff to the extent of one-half after deduction thereof of the contributions made by the Plaintiff and the Defendant.





- (3) A declaration that each party is entitled to deduct the amounts contributed to the purchase and development of the Property before the beneficial interest is ascertained.
- (4) An Order that the Defendant sell the property.
- (5) An accounting of all monies paid by the Plaintiff and the Defendant for the Property.
- (6) Further, or alternatively, an enquiry as to the beneficial interest of the Plaintiff in the Property and such order as this Honourable Court thinks fit to satisfy the same.
- (7) Alternatively, specific performance of the agreement referred to in paragraphs 21 and 22 above.
- (8) Alternatively, damages for conversion.
- (9) Judgment for the Plaintiff against the Defendant in the amount so found due and owing.
- (10) Interest at the statutory rate of 7 3/8% per annum from the 1st January 1997 to the date hereof and further interest at the aforesaid rate to judgment or sooner.





(11) Interest at the rate of 7 3/8% from the date of Judgment until payment of the judgment sum.

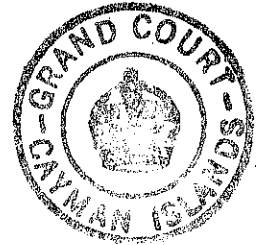
(12) Further and/or other relief.

(13) Costs.

Dated this 11 day of July 1997.

MYERS & ALBERGA

Per: *And. B. Coste*  
Attorneys-at-law for  
the Plaintiff



THIS WRIT and STATEMENT OF CLAIM was issued and filed by Myers & Alberga, Attorneys-at-Law for and on behalf of the Plaintiff whose address for services is One Regis Place, Fort and Mary Streets, P.O. Box 472, George Town, Grand Cayman B.W.I.



BETWEEN: KENRICK ANTHONY HALL Plaintiff
AND: DEBRA J. PRENDERGAST 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

Service of the Writ is acknowledged accordingly

(Signed) .....

[Attorney] for

[Defendant in person]

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

MYERS & ALBERGA One Regis Place P. O. Box 472 George Town Grand Cayman, B.W.I.
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*Indorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.*

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**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE**  
**OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

*See over for notes for guidance*

## 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.