

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO: GC 151 OF 2017

BETWEEN:

PATRICIA M. BORST as TRUSTEE OF THE PATRICIA M. BORST REVOCABLE TRUST

PLAINTIFF

AND:

GRAND CAYMANIAN BEACH CLUB & RESORT LTD.

1ST DEFENDANT

AND:

GRAND CAYMANIAN LTD.

2ND DEFENDANT



WRIT OF SUMMONS

TO:

Grand Caymanian Beach Club & Resort Ltd.
SH Corporate Services Ltd.
P.O. Box 61
George Town
Cayman Islands
The Grand Caymanian Ltd.

Cayman International Corporate & Marine
Services Ltd
PO Box 822
2nd Floor Jack and Jill Building
19 Fort Street



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

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

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

Issued this 7th day of September 2017.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is a U.S. citizen with a residential address in the Cayman Islands of Unit 1314 Grand Caymanian Beach Club and Resort.
2. On or about March 2009 the plaintiff agreed to purchase Unit 1314 at the Grand Caymanian Beach Club and Resort, legally described as West Bay Beach North, Block 17A, Parcel 149H46 from the 1st defendant upon certain terms and conditons.
3. On date unknown between 1st April 2009 and May 2017 it is averred that the 2nd defendant became the legal successor or assign of the 1st defendant and therefore any agreement between the 1st defendant and plaintiff binds the 2nd defendant.
4. A condition of the plaintiff agreeing to purchase the said property was that the 1st defendant would provide a guarantee and return on investment for the property by way of Deed subsequent to the plainiff executing a rental management agreement for the property with the 1st defendant.
5. The plaintiff executed a rental management agreement and purchased the property and the 1st defendant and plaintiff entered into a Deed of Agreement for a Return on Investment and Guarantee on or about the 1st April 2009.
6. The terms of the Deed included as follows:
 - 6.1 The defendant guaranteed a net return on investment from the rental income of the property of 10 per cent per annum over the 24 months following completion. Such return equated to a net figure of USD\$87,000.
 - 6.2 Payments were to be made by the defendant quarterly from actual rental income received and if a shortfall existed between the actual rental income and the guaranteed net return the defendant would not later than 30 days following the end of calendar years 2009 and 2010 pay any shortfall having arisen in that year.
7. In breach of the Deed the 1st defendant paid in total the sum of USD\$51,500 only to the plaintiff broken down as:
 - 6.1 \$18,125 on December 14, 2009
 - 6.2 \$23,375 on July 14, 2010
 - 6.3 \$10,000 on October 7, 2011
8. By reason of the above the plaintiff claims payment of the sum of US\$35,500 from the 1st or 2nd defendant in the alternative together with interest and costs.
9. It was further agreed at clause 2.3 that if a payment was not made on its due date that interest shall be payable at the rate of 5% per annum until payment is made.

10. STATEMENT REGARDING INTEREST

- a) The interest rate claimed is 5% per annum in accordance with clause 2.3 of the Deed.
- c) Interest is claimed from 1 April 2012 and all claims for interest preceding that date are waived.
- d) The amount of interest owing at date of issue of this Plaint is \$12,998.79 as broken down in the schedule attached.
- e) The amount of interest accruing each day following the issue of this Plaint is US\$14.49.

AND THE PLAINTIFF CLAIMS:

- (i) The principal sum of US\$35,500 as monies due and owing.
- (ii) Pre and post judgment Interest on the said sum in accordance with the terms of the agreement and the Judicature Law (2016 Revision) and the Judgment Debt (Rates of Interest) Rules as amended from time to time.
- (ii) Costs or alternatively fixed costs in the sum of CI\$500.00 plus filing fees and bailiff's fee for service.



Attorneys for the Plaintiff

Endorsement

If within the time for returning Acknowledgement of Service either Defendant does pay to the Plaintiff's Attorneys-at-Law the total amount claimed of US\$35,500 and all filing fees, ad valorem fees, and all interest claimed all further proceedings will be stayed.

**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 installments or otherwise.

See over for notes for guidance

Please complete overleaf

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

Interest Calculation

Principal Sum owing \$35,500

April 1, 2012- $\$35,500 \times 1.05\% = \$37,275.00$
April 1, 2013- $\$37,275 \times 1.05\% = \$39,138.75$
April 1, 2014- $\$39,138.75 \times 1.05\% = \$41,095.68$
April 1, 2015- $\$41,095.68 \times 1.05\% = \$43,150.47$
April 1, 2016- $\$43,150.47 \times 1.05\% = \$45,307.99$
April 1, 2017- $\$45,307.99 \times 1.05\% = \$47,573.39$
April 1, 2017 - 12 June 2017 (142 days) = $\$925.40 + \$47,573.39 = \$48,498.79$

$\$49,498.79 - \text{principal } \$35,500 = \text{interest } \$12,998.79.$

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.

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

KSG
Attorneys at Law
4th Floor Harbour Centre
42 North Church Street
PO Box 2255 KY1-1107
George Town
Grand Cayman

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

[Empty box for defendant's Attorney endorsement]