

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO: SC <sup>0006</sup> OF 2018

B E T W E E N:

THE PROPRIETORS STRATA PLAN NO 624

Plaintiff

AND

(1) CARY BARTON ENGLISH

First Defendant

(2) RACQUEL ANN MORGAN

Second Defendant



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PLAINT

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TO:

Cary Barton English and Racquel Ann Morgan  
Omega Bay Gardens – Block B, Apt. 12  
P.O. Box 346,  
Grand Cayman KY1-1106  
Cayman Islands



**THIS PLAINT** 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 service of this Complaint on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out full particulars of your defence in the space provided in the Acknowledgment of Service form.

If you fail to satisfy the claim or to return the Acknowledgment of Service form containing full particulars of your defence, the Plaintiff may apply for a default judgment without any further notice to you.

Issued this 10 day of January 2018

**See overleaf for particulars of the Plaintiff's claim**

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## PARTICULARS OF CLAIM

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1. The Plaintiff is a strata corporation consisting of all Strata Proprietors contained in Strata Plan No. 624 pursuant to section 5(1) of the Strata Titles Registration Law (2013 Revision) (hereinafter "the Law"). The Plaintiff's address for service is care of its Attorneys, HSM Chambers, 68 Fort Street, George Town, P.O. Box 31726, Grand Cayman, KY1-1207, Cayman Islands.
  
2. The First and Second Defendants are individuals who reside in the Cayman Islands with a mailing address of P.O. Box 346, Grand Cayman KY1-1106 Cayman Islands. The Defendants are the registered proprietors of the property known and situate as Registration Section Spotts Block 24E Parcel No. 339H12, Omega Bay Gardens, Apartment No. 12 ("the Property"), a residential development subject of Strata Plan No. 624. Exhibited as "POC1" is a copy of the Cayman Islands Land Registry Search.
  
3. The Duties and Powers of Strata Plan No. 155 are set out in section 6 of the Law, which states *inter alia*, as follows:

*"...(2) The powers of a corporation include the following- (a) to establish a fund for administrative expenses sufficient in the opinion of such corporation for the control, management and administration of the common property, for the payment of any premiums of insurance and for the discharge of any of its other obligations; (b) to determine, from time to time, the amounts to be raised for the fund referred to in paragraph (a) and to raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective lots."*

Exhibited as "POC2" is a copy of the relevant pages to the Strata Titles Registration Law (2013 Revision).
  
4. The Plaintiff exercised such powers by both establishing a fund for administrative expenses and by determining from time to time the amounts to be raised for the fund for administrative expenses.
  
5. In accordance with section 21 of the Law the control, management, administration, use and enjoyment of Strata Plan No. 624 must be regulated by Bylaws. The Bylaws state, *inter alia*, as follows:

*“...61.2 Pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his Strata Lot; 61.3 Pay to the Corporation within 30 days of demand...61.3.1 all contributions necessary to establish and maintain the fund for the Operating Budget, Reserve Fund Budget and Capital Budget levied by the Corporation pursuant to clause 6(2) of the Law; 61.3.2 his contributions to all other costs and expenses incurred by the Corporation in connection with the performance of its duties under the Law and under these By-laws calculated by reference to his Unit Entitlement...in the event of any such payments not being made within thirty (30) days of such demand he shall pay interest thereon at the rate of U.S. prime plus three per cent (3%) such interest shall accrue from day to day until payment; and in the event of any such payments (together with interest accrued) not being made within sixty (60) days of such demand...authorise and permit the Corporation without recourse or liability to enter into possession of his Strata lot and....does hereby irrevocably and exclusively appoint the Corporation without recourse or liability to be the receiver of the rents and profits of his Strata Lot...until such time as said payments (together with interest accrued) have been made by him to the Corporation.”*

Exhibited as “**POC3**” is a copy of the relevant pages of the Bylaws.

6. The Defendants defaulted on their strata payments and as of 1 January 2018, owed to the Plaintiff is the principal sum of CI\$4,178.88. The Plaintiff has not charged any interest on the outstanding amounts to date. Exhibited as “**POC4**” is a copy of the Defendants’ account showing all strata fees charges, any payments made by the Defendants
7. The First and Second Defendants have either failed or neglected to make full payment to the Plaintiff notwithstanding a Demand for the monies served upon them on 6 November 2017. A payment of CI\$3,000.00 was made on 28 November 2017 by the First Defendant, however, despite subsequent demand the arrears remain.
8. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

**AND THE PLAINTIFF** claims:

- a) CI\$4,178.88 being the principal sum due.
- b) Pre- and post-judgment interest from 10 January 2018 in accordance with Section 34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules, 2012 at the rate of 2.38% per annum being CI\$0.27 per diem.

- c) C\$175.00 fixed costs pursuant to Section 11 of the *Summary Court Rules 2004*; and
- d) Such further and other relief as this Court may deem just.

HSM Chambers

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**HSM Chambers**  
Attorneys for the Plaintiff

### **INDORSEMENT**

The principal amount claimed in respect of the debt is CI\$4,178.88 as of the date of filing. The amount of the filing fees to commence the proceeding is CI\$25.00 (US\$30.49). If, within the time for returning the acknowledgement of service, the defendants pay the plaintiff or its attorneys-at-law the total amount claimed in principal and the costs of issuing the Plaint, further proceedings will be stayed. The money must be paid to the plaintiff or to its attorneys-at-law.

### **INDORSEMENT REGARDING INTEREST**

Interest at a rate in accordance with Section 34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules, 2012 as set out in the prayer above.

This Plaint was filed by HSM Chambers, Attorneys-at-Law for the Plaintiff whose address for service is 68 Fort Street, George Town, PO Box 31726, Grand Cayman, KY1-1207, Cayman Islands (ref: 420058.0004).

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**ACKNOWLEDGMENT OF SERVICE**

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1. State Defendant's name and address:-

2. State whether the Defendant intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Plaintiff is acknowledged accordingly.

\_\_\_\_\_  
Defendant's Signature

Dated this      day of      2018.

**See overleaf**

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**PARTICULARS OF DEFENCE**

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1. *[Here set out in numbered paragraphs the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him]*

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Defendant's Signature

**REMINDER** -This form must be taken or sent to the Court Office, P.O. Box 495, Grand Cayman KY1-1106 within 14 days of receipt otherwise a default judgment may be entered against you.

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EXHIBIT "POC1"

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EXHIBIT "POC2"

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**CAYMAN ISLANDS**



Supplement No. 14 published with Gazette No. 21 of 21st October, 2013.

**STRATA TITLES REGISTRATION LAW**

**(2013 Revision)**

Law 14 of 1973 consolidated with Laws 1 of 1983, 14 of 1994, 8 of 2005 and 10 of 2012.

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted:

Law 14 of 1973-25th October, 1973  
Law 1 of 1983-22nd February, 1983  
Law 14 of 1994-23rd September, 1994  
Law 8 of 2005-24th February, 2005

- (f) contain such other particulars and be accompanied by such certificates and other documents as may be prescribed.

(2) The reference of the parcel and the number of the strata lot shall together be a sufficient reference to a strata lot.

(3) The common boundary between any two strata lots or between a strata lot and common property shall, unless otherwise specified in the relevant strata plan, be the boundary line or the centre line of the floor, wall or ceiling between such strata lots or between such strata lot and the common property, as the case may be.

(4) The unit entitlement of each strata lot shall, as respects the proprietor of such strata lot, determine-

- (a) the quantum of his share in the relevant corporation; and
- (b) the proportion payable by him of contributions levied pursuant to paragraph (b) of section 6(2).

### **PART III- Corporations**

5. (1) The proprietors of all the strata lots contained in any strata plan shall, upon registration of the strata plan, become a body corporate (hereafter referred to as "a corporation") under the name "The proprietors, Strata Plan No." (with the appropriate number of the strata plan inserted in the blank space).

Establishment of a corporation

(2) Every corporation shall have perpetual succession, a common seal and be capable of suing and being sued in its name.

(3) Any enactment providing for the incorporation, regulation and winding-up of companies shall not apply to corporations.

6. (1) The duties of a corporation shall include the following-

Duties and powers of a corporation

- (a) to insure and keep insured the building to the replacement value thereof against fire, earthquake, hurricane and such other risks as may be prescribed, unless the proprietors by super-majority resolution otherwise determine;
- (b) to effect such insurance as it may be required by law to effect;
- (c) to insure against such risks other than those referred to elsewhere in this subsection as the proprietors may, from time to time by unanimous resolution, determine;
- (d) subject to section 23(2) and (3) and to such conditions as may be prescribed, to apply insurance moneys received by it in respect of damage to the building in rebuilding and reinstating the building so far as it may be lawful so to do;

- (e) to pay premiums on any policies of insurance effected by it;
- (f) to keep in a state of good and serviceable repair and properly maintain the common property;
- (g) to comply with notices or orders by any competent public or local authority requiring repairs to, or work to be done in respect of, the parcel; and
- (h) to comply with any reasonable request for the names and addresses of the members of the executive committee.

(2) The powers of a corporation include the following-

- (a) to establish a fund for administrative expenses sufficient in the opinion of such corporation for the control, management and administration of the common property, for the payment of any premiums of insurance and for the discharge of any of its other obligations;
- (b) to determine, from time to time, the amounts to be raised for the fund referred to in paragraph (a) and to raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective lots;
- (c) to recover from any proprietor, by an action for debt in any court of competent jurisdiction, any sum of money expended by the corporation for repairs to or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building which constitutes or includes the strata lot of that proprietor; and
- (d) to enter any strata lot and effect repairs or carry out work pursuant to its duty under paragraph (g) of subsection (1).

(3) Subject to subsection (4), any contribution levied pursuant to subsection (2) shall be due and payable on the passing of a resolution to that effect and in accordance with the terms of such resolution, and may be recovered as a debt by a corporation in an action in any court of competent jurisdiction from the proprietor entitled at the time when such resolution was passed and from the proprietor entitled at the time when such action was instituted, both jointly and severally.

(4) A corporation shall, on the application of a proprietor or any person authorised in writing by him, certify-

- (a) the amount of any contribution determined as the contribution of that proprietor;
- (b) the manner in which such contribution is payable; and
- (c) the extent to which such contribution has been paid by that proprietor,

and, in favour of any person dealing with that proprietor, such certificate shall be conclusive evidence of the matters certified therein.

(5) A policy of insurance authorised by subsection (1) and in respect of the building shall not be liable to be brought into contribution with any other policy of insurance save another policy authorised by this section in respect of the same building.

7. (1) Every corporation shall cause to be kept, at a conspicuous place at or near the front of the land to which the relevant strata plan relates, a receptacle suitable for purposes of postal delivery, with the name of the corporation clearly shown thereon.

Service of documents on corporations

(2) Any summons, notice, order or other document may be served on the corporation by post in a prepaid letter addressed to the corporation at the address shown on the strata plan, or by placing it in the receptacle referred to in subsection (1).

8. (1) Any powers of voting conferred by or under this Law may be exercised-

Voting rights

- (a) in the case of a proprietor who is an infant, by his guardian; or
- (b) in the case of a proprietor who is for any other reason unable to control his property, by the person who for the time being is authorised by law to control that property.

(2) Where the court, upon the application of a corporation or of any proprietor, is satisfied that there is no person able to vote in respect of a strata lot the court-

- (a) shall, in cases where a super-majority resolution is required by this Law; and
- (b) may, in its discretion in any other case,

appoint some fit and proper person for the purpose of exercising such powers of voting under this Law as the court shall determine, and the court may, in making such appointment, make such order as it thinks necessary or expedient to give effect to such appointment, including an order as to the payment of costs of the application, and may vary any order so made.

(3) The court may order service of notice of the application referred to in subsection (2) on such person as it thinks fit or may dispense with service of such notice.

9. (1) Every corporation or any person having an interest in a strata lot may apply to the court for appointment of an administrator.

Administration

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Second Defendant

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EXHIBIT "POC3"

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**Proprietors Of OMEGA BAY GARDENS**

**BY-LAWS**

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Bodden & Bodden  
802 Grand Pavillion Commercial Centre  
P O Box 10335 APO  
Grand Cayman, Cayman Islands

Tel: 345 945 0400 - Fax: 345 945 0345  
Email: [bodco@candw.ky](mailto:bodco@candw.ky)

March 19, 2010

58. A notice may be given by the Corporation to the person entitled to a Strata Lot in consequence of the death or bankruptcy of a Proprietor by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

#### COMMENCEMENT CONDITIONS PRECEDENT

59. Notwithstanding anything to the contrary contained in these By-laws, until the sale of at least 6 Strata Lots, the following provisions shall have effect and shall prevail:
- 59.1 Extraordinary General Meetings of the Proprietors of the Corporation shall be called only at the sole discretion of the Developers.;
- 59.2 Annual General Meetings of the Corporation shall not transact any special business but shall be restricted to the consideration of accounts alone;
- 59.3 The Executive Committee and any audit committee or finance committee shall consist of the Developers or its nominee or nominees alone;
- 59.4 The annual budgets will be prepared and set by the Executive Committee; and
- 59.5 The date of the first Annual General Meeting will be set by the Executive Committee.

#### EASEMENTS AND OTHER RIGHTS

60. In addition to any easements prescribed or implied by or under the Law or any rule of common law the Proprietors shall have the benefit of the following easements:
- 60.1 The right in common with all other Proprietors and all others having the like right to use for the purposes only of access and egress from Omega Bay Gardens all such parts of the Common Property as afford access thereto;
- 60.2 The right to use in common with the Proprietors and their visitors the gardens, swimming pool, roads, driveways and paths;
- 60.3 The exclusive right for himself or those expressly authorised by him on his behalf to park one motor car on the parking lot in the parking stall with the corresponding number to the Strata Lot owned by such Proprietor and further provided the Executive Committee shall be authorised to make Uniform and Non-Discriminatory regulations in the event of additional parking needs including the storage of all vehicles on the parking lot by occupants of the Strata Lots while absent from Grand Cayman.

#### PROPRIETOR'S OBLIGATIONS

61. A Proprietor shall:
- 61.1 Permit the Corporation its Manager or its agents at all reasonable times on notice (except in case of an emergency when no notice shall be required) to enter his Strata Lot for the purpose of repairing or renewing pipes, wires, cables and ducts for the time being existing in the Strata Lot and capable of being used in connection with the enjoyment of any other Strata Lot or Common Property, or for the purpose of maintaining, repairing or renewing property, or for the purpose of ensuring that the By-laws are being observed;
- 61.2 Pay all fees, rates, taxes, charges, outgoings and assessments that may be payable in respect of his Strata Lot;
- 61.3 Pay to the Corporation within thirty (30) days of demand:

61.3.1. all contributions necessary to establish and maintain the fund for the Operating Budget, Reserve Fund Budget and Capital Budget levied by the Corporation pursuant to clause 6 (2) of the Law;

61.3.2. his contribution to all other costs and expenses incurred by the Corporation in connection with the performance of its duties under the Law and under these By-laws calculated by reference to his Unit Entitlement;

~~\*~~ 61.3.3. his contribution to the Deductible calculated by reference to his Unit Entitlement;

PROVIDED ALWAYS that in the event of any such payments not being made within thirty (30) days of such demand he shall pay interest thereon at the rate of U.S. prime plus three per cent (3%) such interest shall accrue from day to day until payment; and in the event of any such payments (together with interest accrued) not being made within sixty (60) days of such demand or in the event of his becoming bankrupt or making composition with his creditors or being a corporation entering into liquidation then and in any of these events he shall and does hereby irrevocably and exclusively authorize and permit the Corporation without recourse or liability to enter into possession of his Strata Lot and further does hereby irrevocably and exclusively appoint the Corporation without recourse or liability to be the receiver of the rents and profits of his Strata Lot in each case until such time as the said payments (together with interest accrued) have been made by him to the Corporation or received by the Corporation pursuant to the appointment aforesaid;

- 61.4 Keep and maintain the interior of his Strata Lot, in a good state of repair;
- 61.5 Pursuant to a Pet Agreement, keep or permit household pets in the Strata Lot or on the Common Property. Household pets are not permitted in the pool or pool area of the Development. However, the Proprietor is responsible to clean up after any pet and ensure that the pet does not become a nuisance to the other Proprietors.
- 61.6 Use and enjoy the Common Property in such manner as not unreasonably to interfere with the use and enjoyment thereof by other Proprietors or their families or visitors;
- 61.7 Not use his Strata Lot or permit it to be used in such manner or for such purpose as shall cause a nuisance or hazard to the occupier of any other Strata Lot (whether a Proprietor or not) or any member of the household or any guest of such occupier;
- 61.8 Within twenty-one (21) days of the date of every transfer, lease, grant of probate or administration, mortgage, charge, discharge, order of the Court or other event or document relating to the Strata Lot give notice thereof in writing to the Corporation and in the case of a document send a copy thereof to the Corporation's attorneys for the time being with a registration fee of C1\$20.00;
- 61.9 Not use his Strata Lot or permit it to be used for any purpose other than as a private residence;
- 61.10 Not to permit more than three tenants at any one time to reside in a one bedroom Strata Lot and not more than six tenants at any one time to reside in a two bedroom Strata lot.
- 61.11 Not permit or suffer to be done in or upon his Strata Lot anything whereby any insurance for the time being effected on the Common Property, the Strata Lot or any other Strata Lot or any part thereof may be rendered void or voidable or whereby the rate of premium may be increased;
- 61.12 Not at any time cut, maim or remove the main walls or timbers in the Strata Lot unless for the purpose of remedying and making good any defects therein which shall be remedied and made good accordingly;
- 61.13 Not make or cause to be made any structural alterations in the Strata Lot without the approval in writing of the Executive Committee to the plans and specifications thereof and make such alterations only in accordance with such plans and specifications when approved;

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---

EXHIBIT "POC4"

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# Omega Bay Gardens

% Estate Management Services Ltd  
 P.O. Box 30082,  
 Grand Cayman, KY1-1201

Statement



<b>Bill To</b>
Cary English & Raquel Morgan (H12)

Date	Amount Due	Enclosed
01/01/18	\$4,178.88	

Date	Description	Amount	Balance
12/31/16	Balance forward		6,723.20
01/01/17	INV #820 - Monthly Strata Fee	427.07	7,150.27
02/01/17	INV #831 - Monthly Strata Fee	427.07	7,577.34
02/13/17	PMT - Payment - C English	-2,000.00	5,577.34
03/01/17	INV #844 - Monthly Strata Fee	427.07	6,004.41
04/01/17	INV #856 - Monthly Strata Fee	427.07	6,431.48
05/01/17	INV #863 - Monthly Strata Fee	427.07	6,858.55
05/03/17	PMT - Payment - English	-2,000.00	4,858.55
06/01/17	INV #882 - Monthly Strata Fee	427.07	5,285.62
06/01/17	INV #888 - Special Assessment for 2017	403.77	5,689.39
07/01/17	INV #906 - Monthly Strata Fee	427.07	6,116.46
08/01/17	INV #918 - Monthly Strata Fee	427.07	6,543.53
08/15/17	PMT - Payment - C English	-1,500.00	5,043.53
09/01/17	INV #925 - Monthly Strata Fee	427.07	5,470.60
10/01/17	INV #943 - Monthly Strata Fee	427.07	5,897.67
11/01/17	INV #956 - Monthly Strata Fee	427.07	6,324.74
11/28/17	PMT - Payment - Cary English	-3,000.00	3,324.74
12/01/17	INV #966 - Monthly Strata Fee	427.07	3,751.81
01/01/18	INV #976 - Monthly Strata Fee	427.07	4,178.88
<b>Current</b>			<b>Amount Due</b>
\$427.07	1-30 Days Past Due	\$427.07	\$4,178.88
	31-60 Days Past Due	\$427.07	
	61-90 Days Past Due	\$427.07	
	OVER 90 Days Past Due	\$2,897.67	