

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 27 OF 2019

BETWEEN:



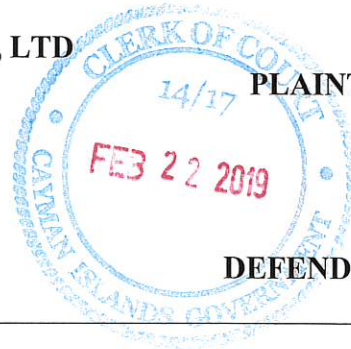
VISTA SUR MAINTENANCE CO., LTD

PLAINTIFF

AND:

KAREL MINNEBOO

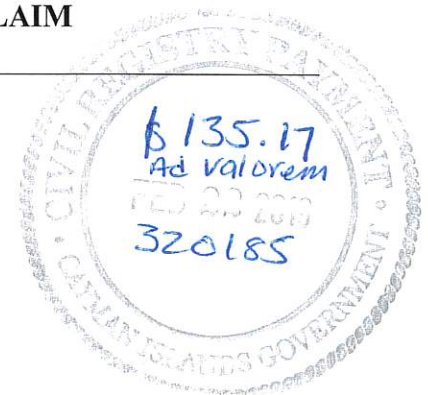
DEFENDANT



SPECIALLY ENDORSED
WRIT OF SUMMONS AND STATEMENT OF CLAIM

TO:

Mr. Karel Minneboo
35 Turtle Crawl Drive
Vista Del Mar
Grand Cayman
Cayman Islands



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out in the Statement of Claim annexed hereto.

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 22nd day of February 2019.

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.

BETWEEN:

VISTA SUR MAINTENANCE CO., LTD

PLAINTIFF

AND:

KAREL MINNEBOO

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is a company limited by guarantee and established for the purposes, inter alia, of taking title to and maintaining the common parts of the Vista del Mar development of which the Property to Land described in paragraphs 3 and 4 of this Statement of Claim forms part. The Plaintiff maintained the common parts of the Vista del Mar development and was authorised pursuant to its memorandum of association to enforce such covenants and promulgate such rules and regulations in relation to such development as it considers appropriate and to contract and subcontract with all or any parties as may be appropriate and to employ all staff and generally do anything further as shall be necessary to achieve such objects.
2. The Defendant is an owner of property described in paragraphs 3 and 4 of this Statement of Claim in the Vista del Mar residential development in Grand Cayman. The Defendant is an owner of property at Vista del Mar and therefore a member of the Plaintiff.
3. By a Transfer of Land dated 17 October 2014 the Defendant purchased three parcels of land from Vista Del Mar Development Ltd. These three parcels were originally registered as Registration Section West Bay Beach North Block 10A Parcels 319, 320 and 321. Certain Restrictive Covenants were attached to all three transfers of land and they were duly registered at the Cayman Islands Land Registry.
4. Subsequently Parcels 319 and 320 were re-parceled to create Parcels 328 and 329. Parcel 319 was decreased in size and became parcel 328 as listed in the filed instrument with the Cayman Islands Land Register. Parcel 320 was increased in size and became Parcel 329, and the original parcel 321 remains intact (these are collectively referred to as the “re-parceled Parcels”).

5. From the date on which the Defendant became the registered owner of the various properties referred to in paragraphs 3 and 4 above, namely on or about 17 October 2014, the Defendant paid the assessment fees levied by the Plaintiff from time to time pursuant to the covenants as described hereunder, and in particular the covenant entitled "21. Maintenance Assessment" described hereunder.
6. From a date in about 2017 the Defendant became delinquent in his payments of the "assessment fees" assessed by the Plaintiff pursuant to the covenants as described hereunder. On 25 January 2019, these fees amounted to CI\$18,292.03. The last invoice sent to the Defendant by the Plaintiff is dated 25 January 2019 and sets out a balance of CI\$23,517.03 (which includes the haulage and storage costs of removing various items as set out hereunder).
7. Although the Plaintiff has made demands for payment of the outstanding assessment fees, the Defendant has refused and failed to pay them, including the haulage and storage costs in the assessments in part or at all and the sum of CI\$23,517.03 remains due and owing to the Plaintiff as of 25 January 2019.
8. Further, or in the alternative, by purchasing the aforesaid parcels of land and signing a subscription agreement in relation thereto the Defendant became a member of the Plaintiff and the Defendant purchased the aforesaid parcels of land subject to the covenants, restrictive agreements and stipulations set out in a document entitled "Restrictive Covenants". In the said document, the Defendant agreed (inter alia) as follows:

The Transferee has purchased the Property to Land from the Transferor (as all three such terms are defined in the Statutory Transfer Form R.L.1 ("the Transfer") to which this schedule is attached) subject to the covenants, restrictive agreements and stipulations hereinafter set out;

By purchasing the Property to Land and signing a subscription agreement in relation thereto the Transferee has become a member of Vista Sur Maintenance Co. Ltd. (hereinafter called "the Guarantee Company") a company limited by guarantee and established for the purposes, inter alia, of taking title to and maintaining the common parts of the Vista del Mar development of which the Property to Land forms part (hereinafter called "the Development")

...

The Transferee with the intent and so as to bind the Property to Land into whosoever hands the same may come and to benefit and protect the Development and each and every part thereof hereby covenants with the Transferor and separately with the Guarantee Company that he the Transferee and his successors in title will at all times hereafter observe and perform the covenants, restrictive agreements and stipulations following in relation to the Property to Land forms part...

21. Maintenance Assessment

The Transferee and the owners for the time being of the Property to Land shall contribute jointly with the Transferor or other owners for the time being of the properties within the Development to the Guarantee Company a fair and just proportion of the expenses for clearing, repairing, maintaining or renewing any landscaping, street, gate, entrance, sewer or storm water drains and any other facility, utility or service to be used in common by the Transferee and the Guarantee Company or the owners for the time being of the properties within the Development.

The assessment will be determined by the Guarantee Company based on the area of each residential property expressed as a percentage of the total area of all residential properties at the Development, which for the avoidance of doubt shall include undeveloped lots, and shall be paid quarterly in advance starting from the date of the Transfer. In the absence of manifest error, the amount so assessed by the Guarantee Company shall be conclusive and shall not be open to question by the Transferee or by any third party.

22. Enforcement

If the owner of any property in the Development shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other owner within the Development to pursue any proceedings at law or in equity against such covenants, either to restrain him from such violation or to recover damages therefor, or both.

Although the Transferor and the Guarantee Company may enforce the covenants contained herein, they shall not be obligated to do so. Any person, including the Transferor, who shall bring successful legal proceedings to enforce said covenants shall be entitled to recover his costs and reasonable expenses of such proceedings, from any person found to be in violation of said covenants, provided the violator shall have first been given written notice of his violation and at least 30 days in which to correct it.

28. Transferee's Successors

The Transferee will procure that his successor or successors in title shall enter into a Deed of Covenants with the Guarantee Company simultaneously with the transfer of the Property to Land to it covenanting with it to comply with the covenants hereinbefore contained.

16. Unsightly Appearance

All buildings on the Property to Land shall be kept in good state of repair and appearance and the Property to Land shall be kept clean and tidy at all times. If the building and Property are not so maintained, the Transferor or the Guarantee Company as its agent reserves the right to enter the Property to Land and make such repairs as are deemed necessary by the Transferor subsequent to giving notice to the Transferee of 30 days, and if after the end of that period of the notice the Transferee has failed to make necessary repairs the Transferee shall be liable and accountable for any expense properly incurred by the Transferor or the Guarantee Company as its agent making repairs.

The neat and tidy appearance of the Property to Land at all times should include, but not be limited to, the following:

a) No garbage or trash containers, oil tanks, water pumps, bottled gas tanks, or external mechanical equipment may be installed or placed anywhere except underground or otherwise hidden from view by a structural wall or fence...

9. In breach of the aforesaid covenants contained within the document entitled "Restrictive Covenants" the Defendant has failed (a) to keep the Property to Land in the re-parceled parcels clean and tidy; (b) to remove the unsightly construction materials from the aforesaid Property despite repeated requests from the Plaintiff to do so and (c) to pay the "assessment fees", including the haulage costs of removing the unsightly construction materials rendered by the Plaintiff.
10. In accordance with the provisions of Section 93 of the Registered Land Law (2018 Revision) and clause 3.1 of the Plaintiff's memorandum of association and clauses 21 and 22 of the Restrictive Covenants, the Plaintiff has the right to enforce a restrictive covenant on the aforesaid properties, including the re-parceled parcels.

11. Mr. Timothy Hepburn, the Plaintiff's agent and Property Manager corresponded with the Defendant on various occasions concerning the breach of the relevant covenant referred to in paragraph 8 of this Statement of Claim, "16. Unsightly Appearance" as follows:
12. On 16 Jul 2018, Mr. Hepburn emailed the Defendant on behalf of the Plaintiff and stated:
"Further to our correspondence below, it is noted that various items of construction material remain on the land. Please take notice that in accordance with the covenants attached to the land (and highlighted below), we shall begin removing these items from the land tomorrow (17th July) at 10am. Items will be stored in the garage area of the management office building. The costs of removal and storage will be added to your account. The covenants attached to the land (to which you signed up when you bought the land), clearly authorize Vista Sur Maintenance Co Ltd. to take this action in order to ensure compliance with the covenants. Vista Sur Maintenance Co Ltd. would much prefer not to have to take this approach, and would again urge you to make arrangements to clean up the land yourself."
13. The construction materials in question were not removed on 17 July 2018 by either the Plaintiff or Defendant.
14. On 25 June 2018 the Defendant wrote to Mr. Hepburn. He stated (inter alia):
"Should Vista Sur Maintenance Co Ltd. or any other party remove any of our belongings, they will be held responsible. Any vehicle/person, from this point forward, that trespasses on any of my properties will be held liable and if needed, prosecuted. I request you to inform contractors of this change, as they seem to have adopted the parcel as a public parking space and lunch area. I now have 24 hour camera surveillance in place."
15. On 22 June 2018, Mr. Hepburn wrote to the Defendant to advise him *"that all remaining construction materials and other items must be removed from the land before 30th June 2018, failing which Vista Sur Maintenance Co Ltd will arrange removal of these items."* Mr. Hepburn concluded that the costs of removal and storage would be added to the Defendant's account.
16. On 3 July 2018, Mr. Hepburn wrote again to the Defendant once more stating that because there was no construction on the land in question, it had to be kept clean and tidy and once more quoted the applicable covenant set out at paragraph 8 of this Statement of Claim. The Defendant was given until 13 July 2018 to remove materials from the land in question and warned that after that time these materials would be removed and stored and the cost of this would be passed on to the Defendant.

17. Neither the Plaintiff nor the Defendant removed the material from the property in question on 13 July 2018.
18. On 17 July 2018 Mr. Hepburn sent the Defendant the covenant referred to in paragraph 8 of this Statement of Claim namely "16. Unsightly Appearance" as well as photographs of the land in question with construction material present.
19. On 30 July 2018, Mr. Hepburn wrote to the Defendant and stated that if the material on the land in question was not moved by 31 July 2018, it would be removed and stored, the cost for which would be added to the Defendant's account.
20. On 31 July 2018, Mr. Hepburn wrote to the Defendant noting that the Defendant's house had been granted a Certificate of Occupancy, and therefore construction was deemed to have finished, and therefore the Plaintiff would tidy the land if the Defendant would not do so.
21. On or about 30 August 2018 JNM Equipment, of Bodden Town, acting on behalf of the Plaintiff, removed the construction material in question on the land to place it in storage, where it remains, as at the date of filing these proceedings. JNM Equipment issued an invoice to for this work and the first month of storage of the construction material in question on 30 August 2018 in the amount of CI\$4,025.00. The invoice was billed to "BCQS" the property management company employed by the Plaintiff to oversee the removal of the construction material from the land.
22. The construction material would require forty-five palettes to haul away and included terracotta tiles, sacks of mortar, glass sheets, cans of liquid, tiles of various materials, pipes and other construction debris.
23. On or about 6 November 2018 JNM Equipment invoiced the Plaintiff CI\$1,200 for storage fees.
24. On 25 January 2019 the Plaintiff's attorneys, Ritch & Conolly, wrote to the Defendant demanding payment of the sum of CI\$23,517.03 being the sum then due for overdue assessment fees, including the amount paid to JNM Equipment referred to in paragraph 21 of this Statement of Claim. As at the date of filing this Statement of Claim the sum of CI\$23,517.03 remains unpaid and the debt remains due and owing to the Plaintiff.
25. By reason of the Defendant's breaches of the aforesaid covenants, the Plaintiff has suffered damages in the form of unpaid assessment fees, including the removal fees and storage costs and legal costs.

PARTICULARS

Overdue transport and storage fees for the construction material on the land CI\$5,225.00 until 25 January 2019. Overdue Assessment Fees for the land CI\$18,292.03 until 25 January 2019.

26. Pursuant to the covenants contained in the document entitled "Restrictive Covenants", the Plaintiff is entitled to recover its costs and reasonable expenses of these proceedings, from any person found to be in violation of said covenants, provided the violator shall have first been given written notice of his violation and at least 30 days in which to correct it. The Defendant was given the relevant notice of his violation and his statement and he has failed to correct it within 30 days.
27. The Plaintiff is entitled to interest on such sums as may be recovered by it pursuant to section 34 of the Judicature Law (2017 Revision) and sections 4 and/or 5 of the Judgment Debts (Rates of Interest) Rules 2012 (as amended from time to time) or at such rate and/or for such period as the Court finds to be just or alternatively equitable interest under the inherent jurisdiction of the Court.

AND THE PLAINTIFF CLAIMS:

- (1) Payment of the outstanding debt due of CI\$23,517.03; and/or further or in the alternative
- (2) Damages for breach of the covenants contained in the document entitled "Restrictive Covenants";
- (3) Interest as pleaded in paragraph 27 herein;
- (4) Costs pursuant to contract and/or clauses 21 and 22 of the covenants and/or such other order for costs as the Court deems just;
- (5) Such further or other relief as the Court thinks just.

DATED this 22nd day of February 2019



RITCH & CONOLLY

Attorneys-at-Law for the Plaintiff

THIS WRIT AND STATEMENT OF CLAIM is filed by Ritch & Conolly, Attorneys-at-Law acting on behalf of the Plaintiff whose address for service is Queensgate House, 113 South Church Street, P.O. Box 1994, Grand Cayman, Cayman Islands KY1-1104 Tel: + 1 345 925 3003 Attn: Nigel Stone

Acknowledgement of service of writ of summons (0.12, r.3)

**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

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.

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.

Ritch & Conolly
Attorney-At-Law
113 South Church Street
Queensgate House
PO Box 1994
Grand Cayman
KY1-1104
Cayman Islands
Tel: + 1 345 949 7366

Attn: David Collier: E-mail:
dcollier@rc.com.ky

Nigel Stone: E-mail:
nstone@rc.com.ky

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

[Empty box for Defendant's Attorney indorsement]