

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 105 OF 2019

BETWEEN:

SILVER THATCH HOLDINGS LTD

PLAINTIFF

AND:



IVAN JOHN SUTLIC



DEFENDANT

WRIT OF SUMMONS

TO: Ivan John Sutlic
Roxborough Street
Savannah, Grand Cayman
Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of Cayman International Corporate and Marine Services Ltd. PO Box 822, George Town, Grand Cayman, in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any 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 28th day of June 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 original issuance unless renewed by order of the Court.

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form.

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STATEMENT OF CLAIM

1. The Plaintiff is duly incorporated Cayman Islands company, having a registered office located c/o Cayman International Corporate and Marine Services Ltd. PO Box 822, George Town, Grand Cayman and is the registered proprietor of that parcel of land on Roxborough Street, Spotts, Grand Cayman more specifically described as Spotts Block 24E, Parcel 622 (“the Plaintiff’s Parcel”).
2. The Defendant is a resident of the Cayman Island and since 18 July 2017 has been the registered proprietor, of that parcel of land on Roxborough Street, Spotts, Grand Cayman adjacent to and abutting to the more specifically described as Spotts Block 24E, Parcel 623 (“the Defendant’s Parcel”), and being adjacent to the Plaintiff’s Parcel and abutting it immediately to the south, and sharing a common boundary of some 128.1 feet.
3. The Plaintiff’s Parcel is presently unimproved land. The Plaintiff intends to construct a stand-alone residential home on the Plaintiff’s Parcel, but is presently unable to do so, as a consequence on the facts and circumstances pleaded in this Statement of Claim.
4. As the registered proprietor of the Plaintiff’s Parcel, the Plaintiff has the exclusive right, subject to limitations imposed by law, to the possession, use and enjoyment of the Plaintiff’s Parcel. By virtue of the facts, matters and circumstances more fully particularized in this Statement of Claim, the Plaintiff has been deprived of that exclusive right.
5. The Defendant’s Parcel is developed land, with a single family residential dwelling, swimming pool, concrete slab parking area/driveway, and a concrete slab for the swimming pool pump, filter and related equipment (“the pool equipment slab”), erected or installed thereon.
6. In or about 2010 the Defendant’s predecessor in title, Thomas Sofield, constructed a concrete block wall (“the block wall”), and the pool equipment slab on the boundary as aforesaid between the Plaintiff’s Parcel and the Defendant’s Parcel, and installed the swimming pool pump, filter and related equipment (“the pool equipment”) thereon. The block wall comprises some five to six courses of standard 16” x 8” concrete blocks and is approximately 4 feet in height and 8 inches in

width, with the last 16.8 feet of the block wall abutting the canal, being comprised of a white plastic/PVC fence (referred to collectively in common with the concrete block wall, as “the block wall”).


7. The block wall, the pool equipment slab and the pool equipment so constructed and installed, encroach upon the Plaintiff's Parcel throughout the 128.1 foot length of the common boundary between the Plaintiff's Parcel and the Defendant's Parcel, and by up to 3 feet in some parts along the said common boundary.
8. The Defendant purchased, and became registered proprietor of the Defendant's Parcel effective 18 July 2017, with the full knowledge of the encroachment as aforesaid upon the Plaintiff's Parcel and obtained from the Defendant's predecessor in title, Thomas Sofield, an agreement to indemnify the Defendant against any costs and liability incurred related to or arising from the encroachment upon the Plaintiff's Parcel, the precise terms of which indemnity agreement are not known to the Plaintiff, save that it is triggered by the commencement of legal proceedings against the Defendant for the rectification and remediation of the encroachment.
9. Neither the Defendant's predecessor in title, Thomas Sofield, nor the Defendant have taken any steps to rectify or correct the encroachment upon the Plaintiff's Parcel, despite repeated written requests to do so by or on behalf of the Plaintiff.
10. In or about October 2015 the Plaintiff engaged Roland Bodden & Co Ltd, Licensed Land and Engineering Surveyors, to conduct a survey of the Plaintiff's Parcel in order to determine the boundary between the two parcels and the extent of the encroachment upon the Plaintiff's Parcel by the block wall, the pool equipment slab and the pool equipment. The extent of the encroachment upon the Plaintiff's Parcel as determined by Roland Bodden & Co Ltd is some 186 square feet, as more particularly described in the Encroachment Diagram prepared by Orsino Pick of Roland Bodden & Co Ltd appended to this Statement of Claim.
11. By email of 2 May 2019, the Defendant, by his attorneys, agreed that the boundaries and the encroachment upon the Plaintiff's Parcel are accurately shown in the Encroachment Diagram, and that the boundaries and the encroachment are not disputed by the Defendant.
12. The encroachment by the block wall, the pool equipment slab and the pool equipment on the Plaintiff's Parcel constitutes a material interference with the Plaintiff's use and enjoyment of the Plaintiff's property, in that it:
 - a. Materially reduces the total usable area of the Plaintiff's Parcel;
 - b. Interferes with the Plaintiff's ability to have unfettered right of construction of a dwelling house on the Plaintiff's Parcel, subject to the building and planning control laws and regulations in force from time to time in the Cayman Islands;
 - c. Fails to respect the boundary “set-back” requirements applicable to these structures on the Defendant's Parcel imposed by the Planning Department's regulations.
13. In the premises, the encroachment by the block wall, the pool equipment slab and the pool equipment constitute:
 - a. An ongoing and actionable nuisance; and
 - b. An ongoing trespass to the Plaintiff's Parcel.

14. By virtue of the matters pleaded in paragraphs 12 and 13 above, the Plaintiff has suffered and continues to suffer economic loss and damage.
15. The Plaintiff pleads and relies on s.34 of the Judicature Law (2013 Revision) and the Judgment Debts (Rates of Interest) Rules 2010 as amended and claims interest on his damages and costs as follows:
 - (a) Pre-judgment (simple) interest on his damages awarded, from the date the Plaintiff's cause of action arose to the date of trial at the rate of 2 $\frac{3}{8}$ % per annum.
 - (b) Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the rate of 2 $\frac{3}{8}$ % per annum or such other rate then prevailing in accordance with the Judgment Debts (Rates of Interest) Rules 2010; and
 - (c) Interest on all fixed or assessed costs and orders running from the date of service of the orders or certificates of taxation respectively and at the rate of 2 $\frac{3}{8}$ % per annum or such other rate prevailing in accordance with the Judgment Debts (Rates of Interest) Rules 2010.

AND the Plaintiff therefore claims:

- a) A mandatory injunction, directing the immediate removal by the Defendant of the block wall, the pool equipment slab and the pool equipment, and compliance with the applicable set back requirements imposed by the Planning Department;
- b) Alternatively, the Plaintiff's costs of retaining contractors to rectify and correct the encroachment and compliance with set-back requirements;
- c) Damages for trespass, and/or for nuisance to be assessed;
- d) Pre and post-judgment interest as more specifically pleaded above;
- e) The Plaintiff's costs of this action; and
- f) Such further and other relief as to this Honourable Court may seem just.

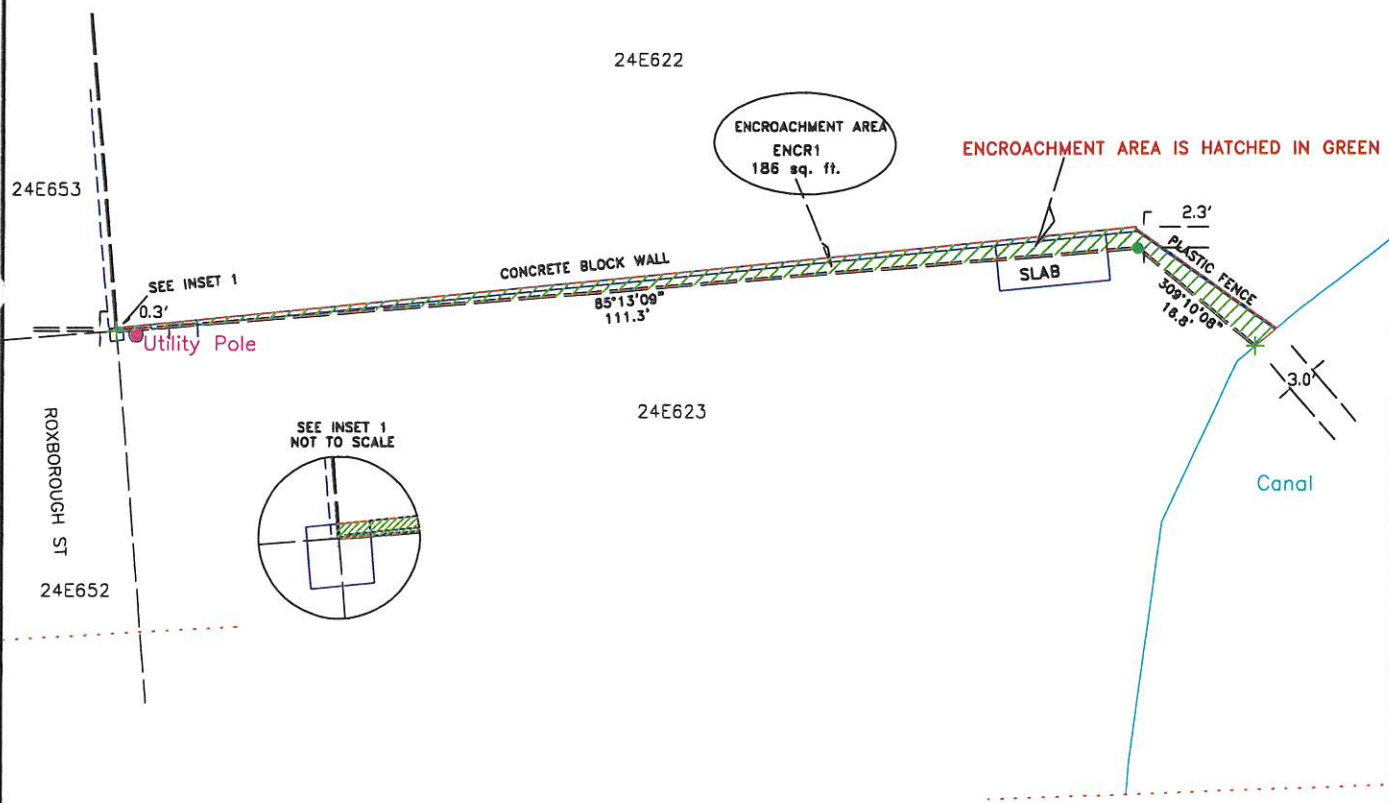
DATED at Grand Cayman this 28th day of June 2019.



Hampson and Company
Attorney for the Plaintiff

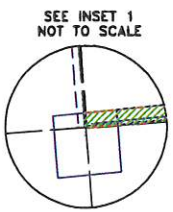
THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM are filed by Hampson and Company, attorneys whose address is Apollo House East, 87 Mary Street, 4th Floor, George Town, P.O. Box 698, Grand Cayman KY1-1107, Cayman Islands.

ENCROACHMENT DIAGRAM OF
 BLOCK 24E PARCEL 622
 GRAND CAYMAN
 BRITISH WEST INDIES
 ROLAND BODDEN & CO. LTD.
 SCALE: 1"=20'



ENCROACHMENT AREA
 ENCR1
 186 sq. ft.

ENCROACHMENT AREA IS HATCHED IN GREEN



Legend

	Iron Pin in Concrete
	Nail in Wall
	Boundary
	Right of Way

ROLAND BODDEN & CO. LTD.
 LICENSED LAND & ENGINEERING SURVEYORS
 P.O. BOX 2313, GRAND CAYMAN
 KY1-1106, CAYMAN ISLANDS
 TEL: 949-5177
 EMAIL: rjb1@candw.ky
 DRAWN BY: ORSINO PINK
 DATE DRAWN: _____

THIS PLAN WAS PREPARED EXCLUSIVELY FOR ERIC AND TRACEY KLINE AND NO PERSON MAY COPY, REPRODUCE OR ALTER THIS PLAN WITHOUT THE WRITTEN PERMISSION OF ROLAND BODDEN & CO. LTD.

DRAWING #: 24E622ENCR.dwg JOB #: _____

NOTE
 BOUNDARIES SHOWN ON THIS PLAN ARE IN ACCORDANCE TO PLAN 51/338
 ALL AREAS AND DIMENSIONS OF ENCROACHMENT ARE APPROXIMATE.

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DEFENDANT

ACKNOWLEDGMENT OF SERVICE OF AMENDED 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.

Ivan John Sutlic

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)3.

Yes

No

Service of the Writ is acknowledged accordingly

Signed

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

Hampson and Company
Attorneys-at-Law
Citrus Grove, 5th Floor, Goring Avenue
P.O. Box 698
Grand Cayman KY1-1107
Cayman Islands

Indorsement by the Defendants 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]