

IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO: 114 OF 2019

BETWEEN:

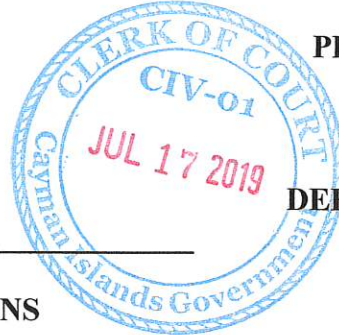
GOODCHILD LTD

PLAINTIFF

and

DENVIL CLARKE

DEFENDANT



WRIT OF SUMMONS

TO: DENVIL CLARKE of 135 and 139 Courts Road, George Town, Grand Cayman, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of P.O Box 2075, Grand Cayman KY1-1105, Cayman Islands in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 17th day of July 2019.

NOTE this Writ may not be served later than 4 calendar 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

Introduction

1. The Plaintiff is company incorporated in the Cayman Islands under incorporation number 6912.
2. The Defendant is a resident in the Cayman Islands and a former Director of the Plaintiff.
3. The Plaintiff was at all material times the owner and title holder of property known as 135 Courts Road, George Town, Grand Cayman, Cayman Islands, block 13D, parcel 214, George Town Central (the "**Apartments**") and a six-bedroom house known as 139 Courts Road, George Town, Cayman Islands block 13D, parcel 214, George Town Central (the "**House**") (the House and Apartments together are the "**Property**").

The Agreement

4. In or around June 2015 the Defendant took occupation of the Property. The Plaintiff permitted the Defendant to occupy the Property on the following terms:
 - i. the Defendant was to pay the market value for the Property (the "**Rent**") (CI\$2,500 pcm as at the date of first occupation);
 - ii. the Rent was to be paid one month in advance before the 1st day of each month;
 - iii. interest was payable on any overdue Rent;
 - iv. the Defendant was to repair and maintain the Property's interior;
 - v. the Defendant was to pay any rates falling due;
 - vi. the Defendant was to use the Property in a tenant-like manner; and
 - vii. the Defendant was to notify the Plaintiff of any required repairs or maintenance which are the Plaintiff's responsibility.

5. The terms set out at (i) and (ii) were initially agreed by conduct, the Defendant having assumed occupation of the Property once the Plaintiff's paying tenants, occupying on the same or similar terms, had vacated the Property. The terms set out at (iii) to (vii) are implied terms.
6. The Defendant's occupation of the Property created a monthly periodic tenancy in accordance with section 45 of the Registered Land Law (2018 Revision) (the "**Tenancy**").
7. Although the agreement that the Defendant would pay Rent on a monthly basis was initially agreed by conduct, it was repeatedly affirmed both orally and in writing by the Defendant's promises to the Directors of the Plaintiff that he would pay the Rent for the duration of his occupancy. This includes a promise by the Plaintiff that he would pay the then overdue Rent in full by March 2018. The period for payment was extended by the Plaintiff at the Defendant's request to April 2018.
8. In breach of the terms of the Tenancy no Rent has ever been received by the Plaintiff from the Defendant for either the Apartments or the House.
9. In breach of the terms of the Tenancy the Defendant has not been using the Property in a tenant-like manner in that he has left dilapidated auto parts which are unsightly and potentially hazardous in the outside areas.
10. On 1 May 2019 the Defendant was served with a notice of termination of the Tenancy (the "**Notice**") and instructed to vacate the premises by 31 May. The Notice also instructed the Defendant to remove the auto parts visible in the outside areas within 14 days. The Notice was sent by email to denvilclarke@gmail.com, an email address the Defendant uses to communicate with the Plaintiff, and also delivered to the Defendant's place of work. On 9 May the Notice was re-sent to the Defendant by email.
11. It was understood by the Plaintiff that the Defendant may have been outside the Cayman Islands at the time the Notice was delivered. Although the Defendant did receive the Notice, the Plaintiff amended the Notice to give the Defendant a final opportunity to pay the outstanding Rent upon his return to the Cayman Islands. On 31 May the Notice was therefore amended instructing the Defendant to vacate the House and the Apartments by 30 June and permitting seven days for the removal of the auto parts. This was served personally on the Defendant on 31 May.
12. No response was received from the Defendant to any of the above correspondence. The auto parts have not been removed and no Rent has been paid.

13. The Defendant therefore owes the Plaintiff:

- a. CI\$125,000 in Rent¹; and
- b. CI\$7,517.91² in interest.

The Plaintiff therefore claims against the Defendant:

- (1) A declaration or Order that;
 - (a) the Tenancy was terminated with effect from 30 June;
 - (b) the Plaintiff has the right of re-possession of the Property with the immediate right of re-entry into the Property;
 - (c) the Defendant does deliver up the Property forthwith, or alternatively, the Plaintiff has leave to issue a Writ of Possession pursuant to Order 55, rule 3 of the Grand Court Rules 1995 (Revised Edition);
 - (d) the Plaintiff can remove and dispose of any residual property of the Defendant, including any auto parts, that are left behind at the Property 48 hours after the Declaration or Order has been served on the Defendant that he must deliver up the Property forthwith; and
 - (e) the Plaintiff can recover the expense of any such removal from the Defendant, subject to the Plaintiff first of all obtaining three quotes for the removal and proceeding with the cheapest quote;
- (2) the sum of CI\$125,000 in overdue Rent or such higher sum as may be calculated in accordance with paragraphs 4 and 13, above;
- (3) damages for continued occupation since the termination of the Tenancy and/or Rent at a rate of CI\$2,500 pcm, or as may be calculated in accordance with paragraphs 4 and 13, above, from the date of issue of this Writ to the date the Defendant delivers up the Property;
- (4) Pre-and post-judgment interest in accordance with section 34 of the Judicature Law (2017 Revision);
- (5) Damages against the Defendant for breach of contract;
- (6) Damages for any devaluation or damage to the Property or the contents;
- (7) Costs; and

1 Calculated according to market value at June 2015. The Plaintiff reserves the right to claim the updated market value for the duration of the Tenancy.

2 Interest calculated in accordance with section 34 of the Judicature Law (2017 Revision).

(8) Such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 17th day of July 2019

Nelson & Co.

Nelson & Co.

Attorneys for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiffs, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

TO: The Clerk of the Grand Court

AND TO: The Defendant

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2019

BETWEEN:

GOODCHILD LTD

PLAINTIFF

and

DENVIL CLARKE

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 intend 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 No

Service of the Writ is acknowledged accordingly

Signed

Attorney for the Defendant

Address for service:

Please complete overleaf

Notes on address for service

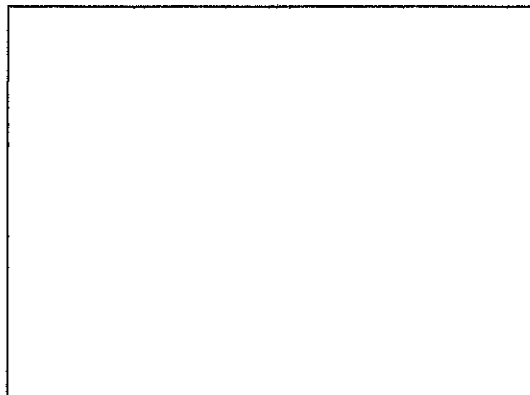
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

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.

Nelson & Company
Attorneys at Law
PO Box 2075
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1105
Attn: A. Carver

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



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 495, 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.