



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE 002 OF 2020

BETWEEN:

ROPER ENTERPRISES LTD

PLAINTIFF

AND:

ANDY'S PROPERTIES LTD

DEFENDANT



WRIT OF SUMMONS

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 5th day of January 2020

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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

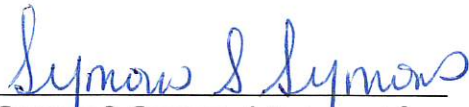
1. The Plaintiff was at all material times a company incorporated in the Cayman Islands.
2. The Defendant was at all material times a company in the business of land development and the developer of Andy's Airport Park Development.
3. On or around August of 2012, Mr. Andy Parson, a Director of the Defendant, entered the place of business of the Plaintiff, along with an associate, and sought to meet with Mr. Raglan Roper, the Director of the Plaintiff, and offered lots for sale in the Andy's Airport Park Development (hereinafter referred to as the "**Development**"). Mr. Parsons did not have an appointment with Mr. Roper, but as he was well known to Mr. Roper he was allowed to attend without notice to meet with Mr. Roper (hereinafter referred to as the "**Meeting**").
4. At the Meeting, Mr. Parsons indicated to Mr. Roper that the Defendant had properties available for sale in the Development. Mr. Parsons offered for sale to the Plaintiff lots 6,7 and 8 (hereinafter referred to as the "**Lots**") measuring approximately 84,360 square feet at a purchase price of CI 1,360,000.00. Mr. Parsons indicated to Mr. Roper that the matter was urgent and asked that Mr. Roper immediately sign documents Mr. Parsons had with him as he was running straight to the bank with them after the meeting. Mr. Roper agreed to the purchase of the Lots on behalf of the Plaintiff and Mr. Roper signed the documents on reliance on the representations made by Mr. Parsons.
5. The Plaintiff agreed to a deposit of CI\$ 50,000.00 payable in instalments. The first instalment of CI\$15,000.00 payable on 27 August 2012, the second instalment of CI\$ 15,000.00 payable upon signing a written agreement, and the third instalment of CI\$ 20,000.00 payable on 9 October 2012. In addition the Plaintiff agreed to pay a further sum in the amount of CI\$ 100,000.00 in instalment payments, paid in monthly instalments of CI\$ 10,000.00, on the purchase price of the property. Mr. Roper signed a written agreement sometime after, which was dated 10 September 2012, on behalf of the Plaintiff for the purchase of the property. The Plaintiff was at no time of the view that any monies paid to the Defendant was at risk and reliance was placed on Mr. Parsons and his relationship with Mr. Roper.
6. The Defendant was to remain registered owner of the Properties until the time of completion, at which time the land would be filled to the requisite level. The Plaintiff did not occupy nor put to use any part of the property.
7. Sometime later, the Plaintiff informed the Defendant that it did not obtain financing from its banker, the Plaintiff however continued making the monthly deposit payments in earnest to meet completion. Despite the news from the Plaintiff's banker, the Plaintiff was still keen on completion and both the Plaintiff and the Defendant sought to make arrangements to allow for completion to take place despite the delays, as the property was by this time open at the land registry sometime after mid 2013. The Plaintiff paid a total of CI 155,000.00 to the Defendant.
8. On 7 January 2014, without notice, Mr. Parsons of the Defendant again attended the office of the Plaintiff and attended Mr. Roper and served a letter on the Plaintiff. The letter provided that the Plaintiff must complete within fourteen (14) days, of service of the notice failing which, all monies paid by the Plaintiff shall be kept by the Defendant as liquidated damages. Despite delivering this letter Mr. Parsons made assurances to Mr. Roper that although the contract had "fallen through", that the monies paid under the agreement were

not lost and that the money could be applied to the purchase of another property in the development at a later date. The Plaintiff was at no time of the view that the monies paid were lost.

9. Assurances were made to Mr. Roper by Mr. Parsons over the years that the monies were not lost and that they could be applied by the Plaintiff to another property in the Development. On the basis of these assurances the Plaintiff did forbear and did not take any further action to recover the sums paid.
10. Over the years Mr. Roper saw Mr. Parsons and expressed the Plaintiff's interest in acquiring one of the lots in the development. Mr. Parsons represented to Mr. Roper on each and every occasion that the CI\$ 155,000.00 was not lost and the Plaintiff could use the same towards the purchase, on which the Plaintiff relied.
11. Around mid 2017 Mr. Roper set up an appointment and attended Mr. Parsons to move forward with the Plaintiff purchasing a property in the development. He was told that the deposit and instalments paid in the amount of CI\$ 155,000.00 paid over to the Defendant was forfeit despite over the years being assured by Mr. Parsons that this was not the case.
12. On 15 December 2017, the Plaintiff served a letter of demand on the Defendant, and the Defendant's response was that the monies paid under the agreement was forfeited, this is despite the Plaintiff being assured over the years that the monies paid were not lost and the Plaintiff detrimentally relying upon the same.
13. The Plaintiff seeks return of the CI\$ 155,000.00 paid under the Agreement on the basis that:
 - (a) the Defendant has retained CI\$ 155,000.00 as a penalty, to which the Defendant is not entitled as it is not a genuine pre-estimate of the Defendants loss, if any; and/or
 - (b) in the premises, the consideration for the payment of CI\$ 155,000.00 has wholly failed, and the Defendant has had and received this sum to the use of the Plaintiff; and/or
 - (c) the Defendants conduct and retention of the CI\$ 155,000.00 paid under the Agreement was unconscionable and/or unconscionable receipt.

AND THE PLAINTIFF SEEKS:

- (a) The sum of CI\$ 155,000.00; and/or
- (b) Relief from forfeiture of the CI\$ 155,000.00;
- (c) Interest pursuant to section 34 of the Judicature Law (2017 Revision); and
- (d) Costs.



Symons & Symons, Attorneys-at-law
Attorneys at Law for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is filed by Symons & Symons, on behalf of the Plaintiff, whose address for service is that of their said attorneys, namely: 4 Tropic Centre, 18 Earth Close, PO Box 30783 SMB, Grand Cayman KY1-1204 Cayman Islands [Our ref: 4924-0003]

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.

Symons & Symons
Attorneys-at-Law
4 Tropic Centre, 18 Earth Close,
PO Box 30783 SMB, Grand
Cayman KY1-1204
Cayman Islands
Tel: (345) 745 7529

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