

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 23 OF 2020

BETWEEN:



LOOKOUT HOLDINGS LTD



PLAINTIFF

AND:

SAMMY MOHAN

DEFENDANT

WRIT OF SUMMONS



TO: SAMMY MOHAN of, PO Box 30625, Grand Cayman, KY1-1203

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, of P.O. Box 290, Grand Cayman, Cayman Islands, KY1-1104 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 5th February 2020.

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, Lookout Holdings, ("**Lookout**") is a company duly incorporated in the Cayman Islands whose registered office is at 45 Anton Bodden, Bodden Town, Grand Cayman
2. Lookout is the owner and title holder of property known as Registration Section Bodden Town, Block 43E, Parcel 185 ("**the Premises**")

The Agreement

3. By a contract in writing made between the Plaintiff and the Defendant on 1 October 2018 ("**the Agreement**") the Plaintiff agreed to sell, and the Defendant agreed buy the Premises for a price of CI\$ 85,854.00 ("**the Purchase Price**").
4. The terms of the Agreement provided that CI\$ 8,585.40 was to be paid as a Deposit ("**the Deposit**") and thereafter the balance of the Purchase Price (being CI\$74,854.00) was to be paid to Lookout in equal monthly payments of CI\$989.20 representing both principal and interest ("**the Instalments**"), to be paid on 1 October 2018 and thereafter on the first day of every consecutive month until 1 September 2028 when the Defendant was to pay the balance of the Purchase Price together with all other monies owing to Lookout.

5. Upon payment of the Deposit, Lookout granted the Defendant a license to use Premises ("**the Licence**") pending completion of the Agreement subject always to the express and implied terms, conditions, covenants, stipulations and restrictions as to use and enjoyment of the Premises contained within the Agreement ("**the Covenants**").
6. It was an express term of the Agreement that the Defendant would perform and observe the Covenants (*Clauses 18 and 20*).
7. It was an implied term of the Agreement that no structure or improvement to the Premises should be made until such time as the Agreement was completed and all sums due had been paid to Lookout.
8. Further it was an implied term of the Agreement that the Defendant would take any step inconsistent with the proprietary rights of Lookout or which would interfere with its rights of possession and control of the Premises.
9. Pursuant to the terms of the Agreement, the Licence was terminable upon breach of any of the terms and conditions of the Agreement (*Clauses 18 and 19*).
10. Further, it was an express term of the Agreement that the Defendant would pay the Instalments at the times provided for (time being of the essence) and that in default of such timely payments and upon 14 days' notice being provided by Lookout it was entitled, without prejudice to any other remedy to forfeit and keep as liquidated damages the Deposit and any interest paid at the date of the said notice and that the Agreement would be deemed to have automatically terminated entitling Lookout to possession of the Premises (*Clause 2*).
11. In addition, it was an express term of the Agreement that if the Defendant failed to perform or observe any of its terms and conditions after having been given 30 days' notice by Lookout to cure any breach of the Agreement Lookout was entitled, without prejudice to any other remedy to forfeit and keep as liquidated damages the Deposit and any interest paid under the Agreement at the date of the said notice and that the Agreement would be deemed to have automatically terminated entitling Lookout to immediate possession of the Premises (*Clause 18*).

Breach of Covenants

12. On or around 3 April 2019, it came to the attention of Lookout that the Defendant had erected a small building/structure on the Premises and was keeping vehicles thereon. This was contrary to the terms of the Licence and the Agreement.
13. By letter of 3 April 2019, Lookout provided notice to the Defendant of his breach of the Agreement and required him to demolish the said building. Notwithstanding the terms the notice the Defendant failed to demolish the building or take any steps to cure his breaches of the Agreement.
14. In the circumstances, pursuant to the terms of the Agreement it was deemed (along with the Licence) to have terminated on 4 May 2019.

Installment Arrears

15. As of 15 July 2019, the Defendant had paid a total of CI\$ 13,000.00 to Lookout. At the said date, in breach of the Agreement, he had failed to pay the Installments as provided for in a timely manner and was in arrears of CI\$5,892.00 ("***the Arrears***").
16. On 30 July 2019, the Defendant unilaterally made a payment to Lookout's bank account in the amount of the Arrears. Lookout has always made it clear it did not accept this payment which was made after the termination of the Agreement.

Termination of the Agreement and the Licence

17. For the avoidance of any doubt, by a letter sent by Lookout's attorneys-at-law dated 17 July 2019 Lookout gave further notice of the immediate termination the Licence and the Agreement.
18. Thereafter, the Defendant has wrongfully continued to use the Premises and wrongfully continues to use the same.
19. By reason of the matters set out above, Lookout has been deprived of the use of the Premises and has suffered damage as a result.

20. Pursuant to Clause 18 of the Agreement, Lookout claims it is entitled to retain the Deposit and any interest paid to it by the Defendant being the sum of CI\$ 18,757.81.

21. By reason of the Defendant's breaches of the Agreement Lookout has suffered loss in the form of legal expenses which at the date of issue of the Writ stand at CI\$ 6,750.00 in legal fees and disbursements.

THE PLAINTIFF THEREFORE CLAIMS AGAINST THE DEFENDANT:

- (1) An injunction to restrain the Defendant, whether by himself or by his employees or agents or otherwise howsoever, from using the Premises;
- (2) Damages;
- (3) Pre and Post Judgment interest interested calculated pursuant to the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules, as amended from time to time;
- (4) Further or alternatively, Declarations or Orders;
 - (a) that the Agreement and Licence is terminated;
 - (b) that the Plaintiff has the right to forfeit and keep as liquidated damages the sum of CI\$ 18,757.81 paid to date by the Defendant pursuant to Clause 18 of the Agreement;
 - (c) that the Defendant pay the sum of CI\$ 6,750.00 being the legal expenses incurred by Lookout as at the date of issue of the Writ;
 - (d) that the Plaintiff has the right to remove any Caution placed upon the Property by the Defendants in the Land Registry;
 - (e) that the Plaintiff has the right of re-possession of the Property with the immediate right of re-entry into the Property;
 - (f) that the Defendant do deliver up the Property forthwith, or alternatively, the Plaintiff has leave to issue a Writ of Possession pursuant to Order 45, rule 3 of the Grand Court Rules 1995 (Revised Edition).
- (5) Costs

(6) Such further and other relief as this Honourable Court may seem just; and

DATED at Grand Cayman this 5th day of February 2020

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 Plaintiff, 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:

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LOOKOUT HOLDINGS LTD

AND:

SAMMY MOHAN

PLAINTIFF

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: C Flanagan

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.