

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL

CAUSE NO: 76 OF 2020

BETWEEN:



KC PARKER

PLAINTIFF

and

ALVIN KWONG



FIRST DEFENDANT

WEIJIA ZHAO

SECOND DEFENDANT



WRIT OF SUMMONS

TO: ALVIN KWONG and WEIJIA ZHAO of Six Cricket Square, P.O. Box 493, George Town, Grand Cayman KY1-1106, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, of 31 The Strand, P.O BOX 30069, George Town, Grand Cayman KY1-1201, Cayman Islands 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 27th day of April 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 that date of original issuance unless renewed by order of the Court

IMPORTANT

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

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Nelsons Attorneys at Law t/a Nelsons, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 30069, and Grand Cayman KY1-1201 Cayman Islands.

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STATEMENT OF CLAIM

The Parties

1. KC Parker is an individual and a Canadian national residing in Canada. The First Defendant is an individual residing at all material times in the Cayman Islands. The Second Defendant is an individual residing at all material times in the Cayman Islands.
2. The Plaintiff owns, and did own at all material times, a property known as Apartment 103 Sunset Cove, 269 West Bay Road, Grand Cayman, Cayman Islands Block 13B, Parcel 125H, registration section West Bay Beach South (the “Premises”).
3. REM Services Ltd. is a Cayman resident company incorporated under registration number 165134. REM Services Ltd. was appointed by the Plaintiff as his authorised agent to manage the Premises on his behalf in accordance with his instructions.

The Leases

4. On or around 24 January 2017 the Plaintiff, as Landlord, entered into a lease with the First Defendant and the Second Defendant, as Tenants (“Lease 1”).
5. Lease 1 provided (*inter alia*) that:
 - 5.1 The liabilities, responsibilities and obligations of the Defendants under Lease 1 shall be joint and several;
 - 5.2 The period of Lease 1 shall be for a period of 12 months, commencing on 1 February 2017 and ending on 31 January 2018;
 - 5.3 The rental amount shall be CI\$2,250.00 payable monthly in advance on or before the first day of each month;
 - 5.4 The Defendants shall pay to the Plaintiff a security deposit of CI\$2,250.00 (the “**Security Deposit**”) and a water deposit of CI\$150.00 to be held by the Plaintiff as security for the due performance of the Defendants of their obligations under Lease 1;
 - 5.5 The Security Deposit shall be returned to the Defendants at the end of Lease 1 provided there are no outstanding debts or damage relating to the Premises, without interest thereon, and that the Premises is handed over with the fixture, fittings/furniture and contents and additions thereto in good and tenantable condition save for normal wear and tear;
 - 5.6 The Premises shall be used exclusively as a private residence for no more than two (2) people as agreed by both parties;
 - 5.7 The Defendants shall not charge, encumber, assign, underlet or part with the possession of the Premises or any part thereof;
 - 5.8 Guests staying more than twenty-one (21) days must be cleared by the Plaintiff prior to their arrival;
 - 5.9 If the Defendants must leave the Premises for more than seven (7) days they must notify the Plaintiff in writing or via electronic mail;
 - 5.10 There shall be no lodgers;

- 5.11 The Defendants must not do or permit or suffer anything in or upon the Premises or any part thereof to be done which may be or become a nuisance, annoyance or cause damage to the Plaintiff or occupiers of other property in the neighbourhood;
 - 5.12 The Defendants shall not make any alterations inside or outside the Premises, including but not limited to not painting, papering or otherwise re-decorating or making alterations to the Premises without the written prior consent of the Plaintiff;
 - 5.13 In any legal action brought by either party to enforce the terms hereof or relating to the Premises, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee;
 - 5.14 The Defendants agree to obey and comply with the terms and conditions of Lease 1, the Rules of Occupancy at Addendum 2, and any property By-Laws set out for the subdivision on which the Premises is located; and
 - 5.15 The Defendants, upon vacating the Premises, would deep clean the Premises, wash linens including mattress pads and professionally clean comforters, and upholstery, including couches and carpets, failing which the cost of such would be deducted from the Security Deposit.
6. On or around 11 January 2018 the Plaintiff and the Defendants signed a new lease in the same terms save that it was for a period of twelve (12) months commencing on 1 February 2018 ("**Lease 2**").
 7. On or around 20 December 2018 the Plaintiff and the Defendants signed a new lease in the same terms as Lease 1 and Lease 2 save that it was for a period of twenty-four (24) months commencing on 1 February 2019, the monthly rent was increased to CI\$2,400 and the Security Deposit was increased by CI\$150.00. Lease 1, Lease 2 and Lease 3 are herein together referred to as the "**Leases**".

Breaches of the Leases

8. On or before 25 February 2020 it came to the Plaintiff's attention that the Defendants had been underletting the Premises through Airbnb and potentially other websites/companies. Airbnb is an online platform which connects people who want to rent out their homes with people who are looking for accommodation in that area, particularly short term holiday lets.
9. At 25 February 2019, when the Plaintiff last checked, there were 31 reviews on Airbnb from persons who appeared to have underlet the Premises from the Defendants during the period of the Leases.
10. The Defendants repeatedly breached the Leases in the following way:
 - 10.1 Using the Premises for commercial purposes in the form of short term rentals and not exclusively as a private residence;
 - 10.2 Permitting persons to stay at the Premises other than the two (2) persons agreed upon between the parties, namely the First Defendant and the Second Defendant;
 - 10.3 Underletting and parting with possession of the Premises or any party thereof;
 - 10.4 Leaving the Premises for more than seven (7) days without notifying the Plaintiff in writing or via electronic mail;
 - 10.5 Causing or permitting short term rentals of the Premises (and other breaches) which was, or could have become, a nuisance, annoyance or did cause or could have caused damage to the Plaintiff or occupiers of other property in the neighbourhood; and
 - 10.6 Failing to deep clean the Premises, or wash linens including mattress pads and failing to have professionally cleaned the comforters, and upholstery, including couches and carpets (together the "**Breaches**").

11. The Plaintiff is entitled to retain the Defendants' Security Deposit, and/or to payment of damages by the Defendants, to pay for a deep clean of the Premises, washing linens and professionally cleaning the comforters and upholstery.
12. The Defendants' Breaches exposed the Premises to increased wear and tear. The Plaintiff is entitled to retain the Defendants' Security Deposit, and/or to payment of damages by the Defendants, to remedy any loss suffered as a result.
13. The Plaintiff is entitled to retain the Defendants' Security Deposit, and/or to payment of damages by the Defendants, for any other loss or damage caused to the Premises, or otherwise sustained by the Plaintiff, as a result of the Breaches or any other conduct by the Defendants not herein particularised.

Forfeiture of Lease 3

14. The Defendants' breaches of the Leases were deliberate and dishonest and were not capable of remedy. The Plaintiff was therefore entitled to recover immediate possession of the Premises.
15. On 25 February 2020, REM Services Ltd., on behalf of the Plaintiff, served a notice before forfeiture on the Defendants in accordance with section 56 of the Registered Land Law (2018 Revision). The Defendants were given 24 hours to notice to vacate the Premises. On 25 February 2020 the Second Defendant phoned REM Services Ltd. and confirmed that both Defendants would give up occupation of the Premises on 25 February 2020 and would remove all of their property from the Premises, which they did.

Taking an Account

16. The Defendants profited from Breaches of the Leases by charging persons money to stay at the Premises. The proceeds from this were for the benefit of the Defendants. Such profit having been made by the Defendants from unlawful Breaches of the Leases, the

Defendants are now under a duty to account to the Plaintiff for the proceeds obtained as a result of the Breaches.

17. By way of a phone call on 4 March 2020 the Plaintiff requested the Defendants render an account detailing all persons who have stayed at the Premises together with how much such persons had paid to the Defendants, or to such persons as the Defendants directed, for each stay for the duration of the Leases. Further requests were made on behalf of the Plaintiff by his attorneys on 23 March and 3 April 2020.
18. Notwithstanding such requests, the Defendants failed, and continue to fail, to render the account requested (or any account).

AND THE PLAINTIFF THEREFORE CLAIMS

- (1) An order that an account be taken of all monies received by the Defendants for underletting or parting with possession of the Premises, or from any other Breaches, for the duration of the Leases.
- (2) An order for the payment by the Defendants to the Plaintiff of such sum as found due to the Plaintiff after the taking of such an account.
- (3) A declaration that the Plaintiff is entitled to retain the Defendants' Security Deposit in accordance with paragraphs 11 to 13 of this Statement of Claim.
- (4) Damages in accordance with paragraphs 11 to 13 of this Statement of Claim.
- (5) Interest at the rate of $2\frac{3}{8}\%$ per annum or such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time;

- (6) Costs in accordance with clause 21 of the Leases (as pleaded at 5.13 of this Statement of Claim); and
- (7) In the alternative, costs.

DATED at Grand Cayman this 27th day of April 2020

Nelsons

Nelsons

Attorneys for the Plaintiff

TO: The Clerk of the Grand Court

AND TO: The Defendants

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PLAINTIFF

and

ALVIN KWONG

FIRST DEFENDANT

WEIJIA ZHAO

SECOND 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 Defendants 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 Plaintiffs (tick box)
 Yes No

Service of the Writ is acknowledged accordingly

Signed
Attorney for

Address for service:

Please complete overleaf

Notes on address for service

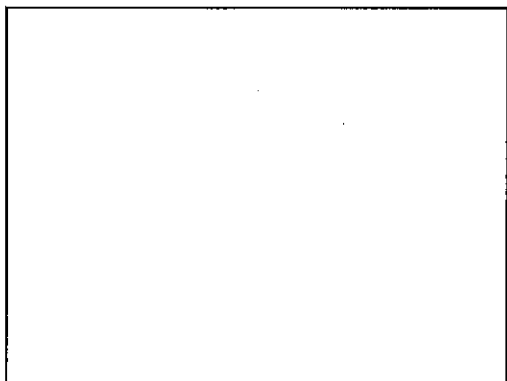
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

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.

Nelsons Attorneys at Law
P.O. Box 30069
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1201
CAYMAN ISLANDS
Attn: C Flanagan/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

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 (or 28 days in the case of a writ served outside the jurisdiction pursuant to an order of the Court), 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.