

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO: GC OF 2020**

**BETWEEN:**

**PROPRIETORS, STRATA PLAN NO. 619**

**PLAINTIFF**

**AND:**

**GREGLY GAYLE**

**FIRST DEFENDANT**

**GINA ARGENZIO**

**SECOND DEFENDANT**



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**WRIT OF SUMMONS**

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**TO: GREGLY GAYLE AND GINA ARGENZIO** OF 18 Coconut Village, Patricks Island, Grand Cayman, Cayman Islands.

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff, Coconut Village, Patricks Island, Grand Cayman, 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 20<sup>th</sup> day of November 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

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1. The Plaintiff is a strata corporation duly registered as Strata Plan 619 and known as “**Coconut Village**”. The First Defendant and Second Defendant (together the “**Defendants**”) are both individuals, resident in the Cayman Islands and together are joint proprietors of a strata lot (Block 25B Parcel 575H18) identified as unit 18 at Coconut Village (the “**Unit**”), having purchased the Unit on 5 March 2018.
2. On 25 September 2012 Amended Bye-Laws for Coconut Village (the “**Bye-Laws**”) were lodged with the Registrar of Lands. The Bye-Laws bind the Plaintiff and all proprietors of Coconut Village, including the Defendants.
3. The Unit is what is referred to in the first Bye-Law as an “**RL Unit**” which is defined as follows:

*“RL Units” shall be such buildings that may be constructed on a raw land strata lot and which are not joined to any other unit(s) and in respect to which the Proprietor is responsible for the maintenance and insurance related to said Strata Lot and the term RL Unit shall, if the context so requires, mean the raw land strata lot as shown on the Strata Plan or the raw land strata lot together with the building erected thereon.”*

4. The Bye-Laws include special provisions in respect of RL Units which are set out in the second Bye-Law and which include, *inter alia*, that:

*“[t]he Proprietor of each RL Unit shall have the right to erect a fence around his unit, subject to such fence in all respects matching the color, height and style of the fence at the entrance of the Development<sup>1</sup>. Where a Proprietor wishes to have a fence which fails to*

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<sup>1</sup> The Development means the residential apartment development the subject of the Strata Plan known as Coconut Village and comprised of apartments referenced by apartment numbers 1 through 8, 9, 11, 13, 15, 35 and 37 together with the common property and a number of raw land strata lots referred to as ‘RL Units’.

*meet the preceding criteria, the Proprietor shall request and obtain permission of the Executive Committee for such fence prior to commencement of construction”.*

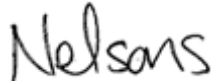
5. On 29 October 2012 the Executive Committee of Coconut Village (the “**ExCo**”) passed a resolution whereby it was resolved that, in respect of all RL Units, a suitable alternative to the fencing prescribed pursuant to the second Bye-Law would be limited to a white picket fence. Such a fence still required prior approval from the ExCo in accordance with the Bye-Laws.
6. On or around 5 July 2020 the First Defendant and the Second Defendant, erected, or caused to be erected, a chain-link fence around the Unit (the “**Chain-link Fence**”). The erection of the Chain-link Fence is in breach of the Bye-Laws.
7. On 11 August 2020 the ExCo wrote to the Defendants and notified them that the Chain-link Fence was in breach of the Bye-Laws and demanded that it be removed. By way of letter dated 14 October 2020, written by Nelsons, Attorneys-at-Law for the Plaintiff, this demand was repeated with the threat of legal action if the Chain-link Fence was not removed.
8. The Defendants did not respond and failed to remove the Chain-link Fence.
9. The Plaintiff therefore seeks an order from the Court that the First Defendant and the Second Defendant remove the Chain-link Fence with immediate effect, failing which the Plaintiff be granted permission to enter on to the land which forms part of the Unit and remove the Chain-link Fence. The Plaintiff further seeks an injunction prohibiting the First Defendant and/or the Second Defendant from erecting a fence which is not in accordance with the provisions of the Bye-Laws.
10. The Plaintiff seeks damages for any such loss as may be incurred as a result of the construction of the Chain-link Fence, including the cost of removal.
11. The Plaintiff claims interest on damages and on all costs, arising from and incidental to these proceedings in accordance with section 34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time such rate present being fixed at  $2^{3/8}$  %.

#### **AND THE PLAINTIFF CLAIMS**

- (i) An order mandating the Defendants to remove the Chain-link Fence with immediate effect;

- (ii) A permanent injunction prohibiting the Defendants by themselves, their servants or agents from erecting or having on their Unit, a fence which is not in accordance with the Bye-Laws of Coconut Village, as may be amended from time to time;
- (iii) An order that if the Defendants do not remove the Chain-link Fence within five (5) days of the date of such an order, the Plaintiff be granted permission to enter the land forming part of the Unit and remove the Chain-link Fence;
- (iv) Costs and/or damages for removing the Chain-link Fence from the Unit;
- (v) Costs of, and incidental, to these proceedings;
- (vi) Interest on all costs and/or damages in accordance with section 34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time such rate present being fixed at 2<sup>3/8</sup> %; and
- (vii) Such further or other relief as this Honourable Court deems just.

**DATED** at Grand Cayman this 20<sup>th</sup> day of November 2020.



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Nelsons  
Attorneys for the Plaintiff

**TO:** The Clerk of the Grand Court

**AND TO:** The First Defendant and the Second Defendant

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**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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intend to contest the proceedings (tick appropriate box)  
 Yes

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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

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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.

Nelsons  
Attorneys at Law  
PO Box 30069  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1201  
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.

[Empty box for Defendant's Attorney indorsement]

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.