

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE No. G 212 OF 2021

BETWEEN:

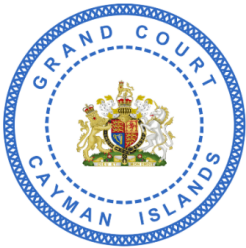
TUNISIA BARNES

Plaintiff

-and-

THE PROPRIETORS, STRATA PLAN NUMBER 384

Defendant



WRIT OF SUMMONS

TO: THE PROPRIETORS, STRATA PLAN NUMBER 384, 75 John Greer Blvd, George Town, Grand Cayman.

THIS WRIT OF SUMMONS has been issued against you by the above-named plaintiffs 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 plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 4th day of October, 2021

NOTE - This Writ may not be served later than 4 calendar months beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
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CAUSE No.

BETWEEN:

TUNISIA BARNES

Plaintiff

-and-

THE PROPRIETORS, STRATA PLAN NUMBER 384

Defendant

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times the owner of Unit 33 (the 'Unit') situated within the development colloquially known as Coco Retreat, but legally described as Strata Plan Number 384, Denham Thompson Way, Grand Cayman, Cayman Islands (the 'Strata').
2. At all material times, the amended bye-laws of the Strata (the 'Bye-Laws') provided, insofar as is material, as follows:
 - a. Clause 3.2: *'The Corporation shall: maintain, repair and renew all portions of the Common Property contributing to the support of any buildings comprising the Development including but not limited to outside walls and load bearing columns in a Strata lot and between Strata lots... and the foundations... therefore [sic]';*
 - b. Clause 3.6: *'The Corporation shall maintain insurance as follows: to insure the Development (which, for the avoidance of doubt, shall for this purposes include each and every Strata lot for the time being contain herein together with the Common Property and all erections, buildings... standing or installed thereon...) and keep it insured against loss or damage by... storm, hurricane... flooding... with such insurance company of repute as it may decide to an amount or amounts equal to the full insurable value thereof, plus surveyors', architects' and lawyers' fees'.*

3. On or about 7 November 2020, the Unit sustained damage from water seepage that appeared to occur during the course of or otherwise arise from Tropical Storm Eta, which seepage in turn caused further damage to the Plaintiff's property. The Plaintiff notified the Defendant of the above mentioned water seepage and damage at or about the time that it occurred.
4. The Plaintiff obtained expert engineering evidence to the effect that water was seeping into the Unit from outside as a result of the following:
 - a. Ground water rising through the foundations of the building in which the Unit is located, under hydrostatic pressure, whether because no waterproof membrane was present or because any such membrane that was present had failed;
 - b. Lack of adequate ground drains sloping away from the Unit;
 - c. The existence of downspouts around the Unit that failed to take water away from the Unit.
5. The foundations of the building through which the water in question seeped were Common Property within the meaning of the Bye-Laws and fell within the Defendant's maintenance and insurance obligations pursuant to clauses 3.2 and / or 3.6(a), whether that seepage was caused by lack of maintenance and/or a failure to renew the same or arose as the result of a storm or flooding.
6. It was recommended by the engineering experts that the above mentioned faults should be rectified by:
 - a. The installation of a waterproof membrane uncoupling membrane on the floor slab of the Unit or replacement of any membrane that may there exist;
 - b. Re-direction of downspouts away from the Unit; and
 - c. Installation of ground drains or the sloping of the surrounding land so as to cause rain and/or standing water to move away from the location of the Unit.
7. The Plaintiff provided the above mentioned engineering evidence to the Defendant and made demand for the remediation work recommended and/or the costs of the above mentioned costs of the engineering experts and/or her losses associated with and arising from water seepage and/or that the Defendant notify its insurers of her claim.
8. The Defendant has failed, in breach of the Bye-Laws or at all, to:
 - a. Keep the foundations or the building in which the Unit is located, generally, in proper repair or properly maintained so that water would not seep into the Unit;

- b. Take any or any adequate steps to ensure that water would not seep through the foundations or otherwise into the Unit;
 - c. Take any or adequate steps to prevent downspout water from being directed towards the Unit or otherwise failing to see that such downspouts would be directed away from the Unit;
 - d. Take any or any adequate steps to provide ground spouts to remove falling or standing water or to grade the surrounding land so as to provide run-off;
 - e. Confirm that the required remediation works will be carried out;
 - f. Arrange for the required remediation works to be carried out;
 - g. Pay or otherwise provide funding for the required remediation work to be carried out;
 - h. Carry out the remediation work;
 - i. Cause any or any adequate claim to be made against its insurance provide for funds to undertake the necessary remediation work and/or to compensate the Plaintiff for her losses and the damage to the Unit;
 - j. Pay or cause the Plaintiff to be paid for her losses associated with or arising from water seepage into the Unit.
9. By reason of the Defendant's breaches of the Bye-Laws, the Plaintiff has sustained and/or continues to sustain loss and damage.

PARTICULARS OF SPECIAL DAMAGE

The Plaintiff will rely upon a Schedule of Special Damages to be served in due course.

10. The Plaintiff claims interest upon such awards as may be made to her, pursuant to s.34 of the Judicature Act (2021 Revision) at such rate and for such period as the Court finds fit.

AND the Plaintiff Claims:

1. Damages;
2. A mandatory injunction to the effect that the Defendant should carry out or cause to be carried out the required remediation works within a reasonable time;
3. Alternatively, a declaration that the Defendant should carry out or cause to be carried out the required remediation works within a reasonable time;
4. Interest;
5. Costs;
6. Such other further or alternative relief as the Court finds fit.

DATED this 4th day of October 2021

A handwritten signature in blue ink that reads "Dentons". The signature is stylized and cursive.

DENTONS

Attorneys at Law for the Plaintiff

THIS Writ and Statement of Claim is filed by Dentons, attorneys for the Plaintiff, whose address for service is that of her said attorneys, namely Dentons of 3rd Floor, One Capital Place, Shedden Road, P.O. Box 10190, Grand Cayman KY1-1002 Cayman Islands.

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CAUSE No.

BETWEEN:

TUNISIA BARNES

Plaintiff

-and-

THE PROPRIETORS, STRATA PLAN NUMBER 384

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 intends 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 Defendant

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.

Dentons
3rd Floor, One Capital Place
Shedden Road, PO Box 10190
George Town
Grand Cayman
Cayman Islands, KY1-1002

Attn: Michael Wingrave

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