

GRAND COURT OF THE CAYMAN ISLANDS

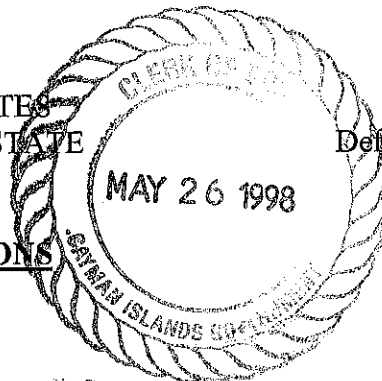
CAUSE NO. 339 OF 1998

BETWEEN: MARY K. BROADHURST Plaintiff

AND: SUMMIT HOLDINGS LTD  
t/a JIL FOSTER & ASSOCIATES  
INTERNATIONAL REAL ESTATE Defendant

WRIT OF SUMMONS

TO: SUMMIT HOLDINGS LTD  
t/a JIL FOSTER & ASSOCIATES INTERNATIONAL REAL ESTATE  
PO Box 30369 SMB  
George Town  
Grand Cayman  
BWI



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claims set out on the next pages.

Within fourteen (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 495, George Town, Grand Cayman, 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 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 26<sup>th</sup> day of May, 1998.

NOTE - This Writ may not be served later than four (4) calendar 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 is a Canadian citizen who resides in Grand Cayman.
2. The defendant is a company formed under the laws of the Cayman Islands for the purpose of carrying on the business of estate agent and has its registered office at PO Box 30369 SMB, George Town, in Grand Cayman.
3. The plaintiff and the defendant entered into a service agreement on 22nd December, 1996 ("the service contract").
4. It was an oral term of the service contract that the plaintiff would be employed by the defendant as an estate agent.
5. The Immigration Board issued, *inter alia*, a work permit with respect to the plaintiff's employment with the defendant on 5th March, 1997 ("the work permit"). Such work permit was valid until 12th March, 1998.

6. It was a written term of the service contract that the plaintiff would be remunerated by the defendant on the following basis:

"After 2% fee to CIREBA is paid on the gross commission, 80% of all commissions earned as a result of closed sales consummated by (the plaintiff), from either or both the listing and buying sides (50% of sub-gross each side), will be paid to (the plaintiff by the defendant) during (the plaintiff's) permit, or renewal thereof, ..."

The plaintiff will refer, at the trial of the action, to the written part of the service contract for its full terms and legal effect.

7. The plaintiff says that the words "permit, or renewal thereof" in the service contract means the work permit.
8. Classic Homes Ltd ("the vendor") was, on 10th October, 1997, the proprietor of the land described as Registration Section West Bay Beach North, Block 10A, Parcel 86 ("the land"). It had, by that date, entered into a multiple listing agreement ("the multiple listing agreement") with RE/MAX First Realty ("RE/MAX"), an estate broker, whereby, *inter alia*, the latter would offer the land for sale. The plaintiff will refer, at the trial of the action, to the multiple listing agreement for its full terms and legal effect.

9. It was an express term of the multiple listing agreement that, should any contracted purchaser default under an agreement for sale and purchase of the land and should the purchaser's deposit be forfeited, RE/MAX would be entitled to one-third of the said forfeited deposit, provided such amount did not exceed the commission agreed upon between Classic Homes Ltd and RE/MAX. Such amount was to be deducted by the latter from such forfeited deposit in full satisfaction of all commission claims.
10. Under an agreement for sale and purchase entered into on or about 10th October, 1997 ("the sale and purchase agreement"), the vendor agreed to sell to Monterey Holdings Inc ("the purchaser"), and the latter agreed to purchase from the former, the land for a price of US\$1,275,000. The plaintiff will refer, at the trial of the action, to the sale and purchase agreement for its full terms and legal effect.
11. The purchaser was the plaintiff's customer and had been introduced to the defendant by the plaintiff.
12. It was an express term of the sale and purchase agreement that the purchaser would pay a deposit of US\$127,500.

13. It was an express term of the sale and purchase agreement that the vendor would be entitled to keep absolutely the deposit referred to in paragraph 12 hereof as liquidated damages in the event that the purchaser did not pay the balance of the purchase price within fourteen (14) days after the date of service upon the purchaser of a written notice to that effect from, *inter alia*, the vendor's attorneys-at-law.
14. It was an express term of the sale and purchase agreement that the vendor would pay a total commission of five percent (5%) of the purchase price, one-half of which would be paid to RE/MAX and one-half thereof to the defendant as the purchaser's broker, to the attention of the plaintiff, upon completion.
15. The purchaser paid a deposit of US\$100,000 ("the deposit") pursuant to the sale and purchase agreement. It failed to pay the balance thereof.
16. The purchaser defaulted in the payment of the balance of the deposit and of the balance of the purchase price and the attorneys-at-law for the vendor gave the purchaser, on 3rd November, 1997, a notice wherein they required the purchaser to make payment of the total sum of US\$1,175,000 by 17th November, 1997 and wherein time was made of the essence with respect to the payment of the said

sum. The plaintiff will refer, at the trial of the action, to the said notice for its full terms and legal effect.

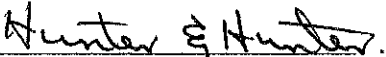
17. The purchaser did not comply with the said notice and never paid any further sum to the vendor or to its attorney-at-law.
18. The plaintiff says that the purchaser made default under the sale and purchase agreement and that the deposit was forfeited on or about 17th November, 1997.
19. The vendor thereafter paid, or directed its attorney-at-law to pay, to RE/MAX the sum of US\$33,333.33 out of the deposit pursuant to the terms of the multiple listing agreement.
20. RE/MAX paid the defendant, on or about 9th January, 1998, a sum of US\$16,666.66, representing one-half of the above commission of US\$33,333.33, pursuant, *inter alia*, to the terms of the sale and purchase agreement.
21. The defendant paid to CIREBA, out of the said sum of US\$16,666.66, a sum of US\$333.33, as provided, *inter alia*, in the service contract.

22. The plaintiff says that the purchaser was, at all relevant times, the plaintiff's and the defendant's principal and that the vendor was, with respect to them, a third party. Their principal having defaulted under the sale and purchase agreement, the plaintiff and the defendant became entitled to their respective commissions on or about 17th November, 1997.
23. The plaintiff claimed from the defendant, on 13th January, 1998, eighty percent (80%) of the net commission remaining in the defendant's hands (i.e. US\$16,333.33), being a sum of US\$13,066.66.
24. The defendant refused to pay the said sum of US\$13,066.66 to the plaintiff and, instead, offered to pay her an amount equivalent to ten percent (10%) of the commission which it had received, i.e. US\$1,666.67. The plaintiff refused that offer and insisted on payment of the full sum due to her.
25. The plaintiff says that the defendant owes her the sum of US\$13,066.66, which it refuses to pay her.

AND THE PLAINTIFF CLAIMS FROM THE DEFENDANT:-

- (a) THE SUM of US\$13,066.66.
- (b) PRE-JUDGEMENT interest in accordance with sec. 34 of The Judicature Law (1995 Revision).
- (c) POST-JUDGEMENT interest in accordance with sec. 34 of The Judicature Law (1995 Revision).
- (d) FURTHER and/or other relief.
- (e) COSTS.

Dated this 26 day of May, 1998

  
Hunter & Hunter  
Attorneys-at-law for the plaintiff

To: The Clerk of the Court

And to: The defendant

STATEMENT REGARDING INTEREST

- (i) The prescribed rates of interest during the relevant period were 7 3/8 % per annum until 31st January, 1998 and 7 7/8% thereafter.
- (ii) The date from which interest is calculated is 15th January, 1998.
- (iii) The total amount of interest claimed as at the date of the issue of the writ of summons is US\$335.30.
- (iv) The total amount of interest accruing each day thereafter is US\$2.82.

INDORSEMENT

The amount claimed in respect of the debt or demand is US\$13,066.66 as principal and US\$335.30 as interest until the issue of the writ of summons for a total amount of US\$13,401.96. The amount of the fixed costs is CI\$500.00 and the costs of issuing the writ of summons is CI\$130.67. If, within the time for returning the acknowledgement of service, the defendant pays the plaintiff or her attorney-at-law the total amount claimed in principal and interest, the fixed costs and the costs of issuing the writ of summons,

further proceedings will be stayed. The money must be paid to the plaintiff or to her attorney-at-law.

INDORSEMENT AS TO CURRENCY

The currency of the debt or liquidated demand and of the interest claimed is United States dollars.

THIS WRIT OF SUMMONS was issued by Hunter & Hunter, the attorneys-at-law for the plaintiff, whose address for service is P.O. Box 190, The West Wind Building, second floor, George Town, Grand Cayman, Cayman Islands, B.W.I.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 339 OF 1998

BETWEEN:

MARY K. BROADHURST

Plaintiff

AND

SUMMIT HOLDINGS LTD.  
T/A JIL FOSTER & ASSOCIATES  
INTERNATIONAL REAL ESTATE

Defendant

ACKNOWLEDGEMENT OF SERVICE

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.

*Please complete overleaf*

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

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for[            ] [Defendant in person]

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

Hunter & Hunter P.O. Box 190 2 <sup>nd</sup> Floor, West Wind Buiding George Town, Grand Cayman Phone: (345) 949-4900 Ref: (MJ)
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Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

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**DIRECTIONS FOR ACKNOWLEDGEMENT 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 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 Acknowledgement 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.