



**IN THE SUMMARY COURT OF THE CAYMAN ISLANDS**

**CAUSE NO. SC                      OF 2023**

**BETWEEN:**

**THE PROPRIETORS, STRATA PLAN NO. 376**

**PLAINTIFF**

**AND:**

**VINEL V. MALCOLM**

**FIRST DEFENDANT**

**AND:**

**MERVYLYN M. ROACHE**

**SECOND DEFENDANT**

**PLAINT**

**TO THE DEFENDANTS:**

**Vinel Malcolm and Mervylyn Roache of PO Box 1421 GT, Grand Cayman, Cayman Islands**

**THIS PLAINT** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

**Within fourteen (14) days** after the service of this **Plaint** on you, counting the day of service, you must either satisfy the claim, or return to the Court Office, P.O. Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest this action. If you intend to defend this action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the Acknowledgement of Service form.

**If you fail** to satisfy the claim or to return the Acknowledgement of Service form containing full particulars of your defence, the Plaintiff may apply for a **default judgment** without further notice to you.

**Issued** this 7<sup>th</sup> day of July 2023.

**IMPORTANT**

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

This **PLAINT** was filed by Nelsons whose address for service is The Grand Pavilion, 802 West Bay Road, Grand Cayman, Cayman Islands. (Ref: CF/5664-00008)

**PARTICULARS OF CLAIM**

1. The Plaintiff is a body corporate established pursuant to section 5 of the Strata Titles Registration Act (2013 Revision) (the "Act") and is made up of the proprietors, at any given time, of the strata lots comprising strata plan no 376 (the "Strata Plan"), being the condominium development known as Smith Road Villas.
2. At all material times, the Defendants were and are the registered proprietors of one of the Strata lots forming part of the Strata Plan, namely Block 14D, Parcel 98H58, known as Lot 57 Smith Road Villas (the "Property").
3. The control, management, administration, use and enjoyment of the Strata lots and common property that form part of the Strata Plan, including the Property, is regulated by its the bye-laws registered against the Strata Plan (the "Bye-Laws").
4. Pursuant to the Bye-Laws:
  - a. clause 5(2), the Defendants are required to pay to the Plaintiff all rates, taxes, charges, outgoings and assessments levied by the Plaintiff in respect to the Property within 14 days of demand;
  - b. clause 5(3)(a) and (b), the Defendants are required to pay the Plaintiff their due proportion of all other costs and expenses incurred by the Plaintiff in connection with the performance of its duties under the Act and the Bye-Laws within 14 days of demand;
  - c. clause 5(3)(a)(a), the Defendants are required, in the event of payment not being made within 14 days of demand, to pay interest at the rate of 12% per annum, accruing on a daily basis.
5. The Plaintiff levies the contributions that the Defendants are required to pay the Plaintiff by issuing monthly invoices to the Defendants that record the amount payable that month and any amounts that the Defendants might be in arrears.

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6. Each invoice sent to the Defendants constitutes demand for payment of the amounts due pursuant to that invoice.
7. As at the date of filing this Plaint, being 7 July 2023, the Defendants are in arrears to the Plaintiff in the sum of CI\$6,543.65, including interest due under Bye-Law 5(3)(a)(a) (the "Debt"). The Debt is comprised as follows:
  - a. Principle: CI\$6,027.00
  - b. Interest: CI\$516.65
8. The Defendants have breached the Bye-Laws by failing or refusing to pay the Debt.
9. By reason of the Defendants' breach of the Bye-Laws the Plaintiff has suffered loss and damage and seeks to enforce its rights against the Defendant in accordance with the said Bye-Laws.

### **Particulars of Loss**

#### **Strata Fees**

The Plaintiff has suffered in the amount of the Debt being CI\$6,530.77 as at 1 July 2023.

The Plaintiff is entitled to the payment of the Debt and contributions that it levies together with interest up to the date of trial. Such loss is expected to continue to date of trial. Full and further particulars of which will be provided in advance of trial.

#### **Legal Expenses**

By reason of the Defendants' breach of the Bye-Laws the Plaintiff has incurred legal expenses for which the Defendants are, in accordance with Clause 5(2) required to pay on a full indemnity basis.

As at the date of issue of the Plaint the Plaintiff has incurred the following reasonable expenses:

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Professional fees and disbursements – Nelsons Attorneys-at-Law - CI\$1,000.00

Such loss is expected to continue to date of trial. Full and further particulars of which will be provided in advance of trial.

- 10. Further, the Plaintiff seeks and is entitled to interest from the date of filing this Plaint until the date of judgment and post-judgment interest in accordance with clause 34(3)(a)(a) of the Bye-Laws the particulars are set out in the table below and continuing at the daily rate of CI\$2.15 until judgment or sooner payment calculated as follows:

		Rate	No of Days	Daily Rate
Statement Amount	CI\$6,530.77	12%	6	CI\$2.15
Interest since last statement	CI\$12.88			
Start Date	1 July 2023			
End Date	7 July 2023			

- 11. Alternatively, the Plaintiff seeks and is entitled to interest pursuant to section 34(1) of the Judicature Act (2021 Revision) from and to such dates, and in such amounts, and at such rates, as this honourable Court thinks just.

**AND THE PLAINTIFF CLAIMS:**

- 1. CI\$6,027.00;
- 2. Interest on the following terms:
  - a. CI\$516.65 to the date of the Plaint;
  - b. CI\$2.15 per day from the date of the Plaint to the date Judgment is entered;
  - c. Post-Judgment interest from the date of judgment until the date payment of the judgment debt in full.

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3. Interest continuing at the daily rate of CI\$2.15, as set out in paragraph 10 above, alternatively at such rate from such date and on such amount as this honourable Court thinks just.
4. Costs on an indemnity basis pursuant to clause 5(3)(a) and (b) of the Bye-Laws.
5. Such further and/or other relief as this honourable Court deems appropriate.

If, within the time for returning the Acknowledgment of Service, the Defendants pay the total amount claimed of **CI\$6,543.65** together with costs and interest, further proceedings will be stayed. The money must be paid to the Plaintiff or their Attorney.

Nelsons

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**Nelsons**  
**Attorneys for the Plaintiff**

Plaintiff's address for service:

Nelsons, The Grand Pavilion, 802 West Bay Road, Grand Cayman, Cayman Islands.

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**SECOND DEFENDANT**

**ACKNOWLEDGEMENT OF SERVICE**

1. State Defendant's name and Address:

\_\_\_\_\_

2. State whether the Defendant intends to contest the action (tick box)

YES

NO

\_\_\_\_\_

3. If you do not intend to contest the action, do you want time in which to pay the claim? (tick box)

YES

NO

\_\_\_\_\_

4. If you intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

**Service of the Plaintiff is acknowledged accordingly.**

\_\_\_\_\_

**Defendant's Signature**

**Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2023**

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**PARTICULARS OF DEFENCE**

Here set out in numbered paragraphs the grounds upon which the Defendant says that they are not liable to the Plaintiff or is not liable for the full amount claimed.

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Defendant's Signature

**REMINDER** – This form must be delivered or sent to the Courts Office, P.O. Box 495GT, George Town, Grand Cayman, within fourteen (14) days of receipt, otherwise a default judgment may be entered against you.

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**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, 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.*

Nelsons  
The Grand Pavilion  
802 West Bay Road  
Grand Cayman  
Ref: CF/5664-00008

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

[Empty box for defendant's attorney indorsement]

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**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE**

1. The accompanying form of **Acknowledgement 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, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 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 installments or otherwise.

**See over for notes for guidance**

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**NOTES FOR GUIDANCE**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Court's 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 authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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.

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