

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *622* of 1998

BETWEEN:

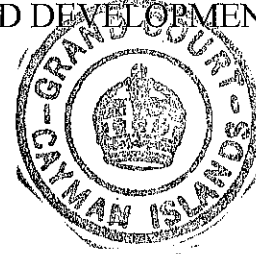
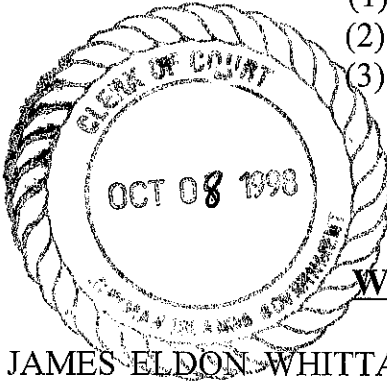
GLADWYN KLOSKING BUSH

Plaintiff

AND

(1) JAMES ELDON WHITTAKER
(2) RAYMOND WHITTAKER
(3) TRITAN REALTY AND DEVELOPMENT
COMPANY LIMITED

Defendants



WRIT OF SUMMONS

TO: JAMES ELDON WHITTAKER, c/o Northward Prison, P.O. Box 1807GT, Northward, Grand Cayman

TO: RAYMOND WHITTAKER

TO: TRITAN REALTY AND DEVELOPMENT COMPANY LIMITED, P.O. Box 1268 GT, Regency Court Building, Grand Cayman

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

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 Court Office, PO Box 495GT, 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 of Service within the time stated, or if you return the Acknowledgment 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 8th day of October 1998.

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.

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STATEMENT OF CLAIM

1. The Plaintiff was the owner of land known as Block 15E, Parcel No. 226 in the South Sound Registration Section (“the land”) until 14th October 1997.
2. The First Defendant was convicted of defrauding the Plaintiff and on 28th July 1998 was sentenced to a period of imprisonment for 2 years and 6 months. The Second Defendant is the brother of the First Defendant and at all material times was (together with the First Defendant), to the best of the Plaintiff’s knowledge and belief, the Secretary and only other director and shareholder of the Third Defendant. The Third Defendant is an ordinary resident Cayman Islands company, which aided and abetted the First Defendant in his fraud upon the Plaintiff.
3. In or about the spring of 1997 the Plaintiff decided to try and sell the land and personally placed upon it a sign saying it was for sale.
4. In or about July 1997 the Plaintiff was approached by the First Defendant who asked her how much she wanted for the land. The Plaintiff replied \$675,000.00. The First Defendant stated to the Plaintiff that he could “get that price for you [the Plaintiff] if you allow me [the First Defendant] to be your estate agent”. The First Defendant further represented to the Plaintiff that if he sold the property he would receive a commission of 5% of the sale proceeds, which he represented to the Plaintiff amounted to US\$50,000.00.
5. In reliance upon the aforesaid representations and induced thereby the Plaintiff by an oral agreement appointed the First Defendant to act as her agent for the sale of the land at US\$675,000.00.
6. At a date the Plaintiff cannot recall in August 1997 the First Defendant brought to her for signature an Offer to Purchase the land for US\$650,000 from Tyrone Ltd. purportedly dated 3rd July 1997. The First Defendant represented to the Plaintiff that that was the only price at which he could sell

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the land and that the Plaintiff should sign the said Offer to Purchase without reading same. The First Defendant did not inform the Plaintiff that the said Offer to Purchase contained a term that would allow the First Defendant a commission of 6%. In reliance upon the aforesaid representations and silence the Plaintiff signed the said Offer to Purchase.

7. By the terms of the said Offer to Purchase the Defendants received as stakeholders the sum of US\$6,500.00 on 3rd July 1997 and the further sum of US\$58,500.00 on or about 10th July 1997 and held such sums on trust at all material times for the Plaintiff.
8. On the 14th October 1997 the Plaintiff transferred the land to Tyrone Ltd and as at that date the Defendants had received from Tyrone Limited the full purchase price of US\$650,000.00.
9. In fraudulent breach of contract and their fiduciary duties to the Plaintiff the Defendants did not pay any monies to the Plaintiff until on or about 3rd November 1997 when the First Defendant deposited to the Plaintiff's bank account:
 - (a) a draft for US\$500,000.00 purchased and dated 31st October 1997;
 - (b) a cheque drawn by the First Defendant dated 31st October 1997 on account No. 65296 at Cayman National Bank Ltd. payable to the Plaintiff for US\$100,000.00.

The First Defendant at the time of drawing the said cheque knew that there were insufficient funds for the cheque to be paid and upon deposit on 3rd November 1997 it was dishonoured by the Plaintiff's Bank and marked "refer to drawer"

10. The Plaintiff gave the First Defendant Notice of Dishonour by a telephone call on 3rd or 4th November 1997. The Defendants were further given Notice of Dishonour by return to them of the said cheque by the Plaintiff's Bank.

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11. In further fraudulent breach of contract and his fiduciary duty the First Defendant never paid or attempted to pay to the Plaintiff any further sum and wrongfully sought to retain US\$50,000 which he had fraudulently misrepresented amounted to a 5% commission.
12. Further the First Defendant induced the Plaintiff to enter into the said contract appointing him her agent with the intent to defraud her and in the premises the said contract was void *ab initio*.

Particulars

When agreeing the terms of the contract and the payment of commission at the rate of 5% the First Defendant deceitfully represented to the Plaintiff who was then 83 years of age that 5% of the sale price amounted to US\$50,000.00.

13. Alternatively, so soon as the Plaintiff discovered that the First Defendant's said representations were untrue and made with the intent to defraud her she repudiated the said contract and communicated that to the First Defendant by telephone and by reporting him to the police. In the premises, the consideration for the said agreement has wholly failed, the agreement has been rescinded and the First Defendant has no claim to a commission of 5% or 6% or US\$32,500.00 or US\$50,000 or at all and he was and is obliged to pay the full sale price of US\$650,000 to the Plaintiff.
14. Further and/or in the alternative the First and/or Second and/or Third Defendants received the said US\$650,000.00 on trust for the Plaintiff and in breach of trust have failed to pay to her US\$150,000 of that sum and have failed to account to her for interest thereon.
15. Further and/or in the alternative the Plaintiff's claim is for US\$150,000, being money payable by the First and/or Second and/or Third Defendant(s) to the Plaintiff as money wrongfully had and received by the First and/or Second and/or Third Defendant(s) to the use of the Plaintiff as set out above.

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16. To the best of the Plaintiff's knowledge some or all of the said US\$650,000.00 was deposited by the First Defendant to bank account(s) of the Third Defendant which the Second Defendant knew or ought to have known. The Third Defendant was used at all material times by the First Defendant as a vehicle for fraud and the Plaintiff does not know exactly what the Third Defendant did with the missing US\$150,000. The Plaintiff claims the said sum in restitution from the Defendants, any of whom received any of the US\$150,000 at all material times on trust for the Plaintiff absolutely.
17. Further the First Defendant's attorney said in mitigation prior to the Defendant being sentenced that the Defendant or Defendants had used the US\$150,000 to pay back to relatives money that the First Defendant owed to them. In the circumstances any such relatives received such sums on trust for the Plaintiff and hold such sums on trust for the Plaintiff absolutely and the Plaintiff will seek leave to join those individuals as additional Defendants so soon as their identities are discovered at discovery or upon the administration of interrogatories herein.
18. Further the Plaintiff is entitled to and claims interest on the said sum of US\$150,000.00 under section 34 of the Judicature Law (1995 Revision) as set out below or at such rate and for such period as the Court may determine.

Particulars of Interest

1. Pre-Judgment Interest:

- (a) On the sum of US\$6,500 held by the First or Third Defendant from 3rd July 1997 as stakeholder until 14th October 1997 US\$135.27
- (b) On the sum of US\$58,500.00 held by the First or Third Defendant from 10th July

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	1997 as stakeholder until 14 th October 1997 at the then Court rate of 7.375%	US\$1,134.74
(c)	On the sum of US\$650,000.00 from 14 th October to 3 rd November 1997 at the then Court rate of 7.375%.	US\$2,626.60
(d)	The total debt as of 3rd November 1997 was US\$150,000.00. The Plaintiff claims interest on that sum:	
	(i) from 3 rd November 1997 until 1 st February 1998 at the then Court rate of 7.375%	US\$2,697.43
	(ii) from 1 st February 1998 until the date hereof at the Court rate of 7.875%	<u>US\$8,090.75</u>
	Total	<u>US\$14,684.79</u>

and continuing at the daily rate of US\$32.36 until Judgment or
sooner payment.

2. Post-Judgment Interest:

- (e) at the rate of US\$32.36 per day or at the daily rate calculated by
reference to the then-prevailing Court rate (if different from
7.875% per annum) on the principal sum of the judgment until
payment in full.

AND THE PLAINTIFF CLAIMS:

- (1) US\$150,000.00;
- (2) Interest as aforesaid;

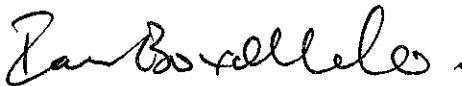
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- (3) Court fees paid to issue this Writ of US\$1,359.76 (CI\$1,115.00);
- (4) A declaration that any sums remaining from the said US\$150,000 in the hands of any of the Defendants are held on trust for the Plaintiff absolutely;
- (5) An Order that the sums declared to be held on trust aforesaid be paid to the Plaintiff's attorneys forthwith;
- (6) Further or other relief;
- (7) Costs.

If within the time for returning the Acknowledgment of Service, the Defendants pay

- (a) **the total amount claimed this day of US\$166,654.31** (being, interest to the date hereof of US\$14,684.79, fixed costs of US\$609.76 [CI\$500.00] and the issue fees of US\$1,359.76 [CI\$1,115.00]) plus
- (b) interest from the date hereof until the date payment is made at the daily rate of US\$32.36,

further proceedings will be stayed. The money must be paid to the Plaintiff's attorneys, Ian Boxall & Co.



Ian Boxall & Co.
Attorneys-at-Law for the Plaintiff

Dated this 8th day of October 1998.

This Writ and Statement of Claim is filed by Ian Boxall & Co., whose address for service is 3rd Floor, CIBC Financial Centre, P.O. Box 1234, George Town, Grand Cayman, Cayman Islands, B.W.I.