



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

**CAUSE NO. SC OF 2023**

**BETWEEN:**

**THE LAKES AT SOUTH SOUND HOME OWNERS ASSOCIATION LTD  
PLAINTIFF**

**AND:**

**DARLENE CORKISH  
FIRST DEFENDANT**

**AND:**

**ALAN CORKISH  
SECOND DEFENDANT**

**PLAINT**

**TO THE DEFENDANTS:**

**Darlene Corkish and Alan Corkish of PO Box 11772, Grand Cayman, KY1-1009, 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 13<sup>th</sup> day of September 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/6768-00001)

**PARTICULARS OF CLAIM**

1. The Lakes at South Sound Home Owners Association Ltd (the "Plaintiff") is a company limited by guarantee incorporated in the Cayman Islands.

2. The objects for which the Plaintiff is established are set out in the Memorandum of Association and include:

*"(a) To secure and promote the privacy of all residents of The Lakes at South Sound ("the Development");*

*(b) To identify and uphold the common interests of all registered proprietors of land within the Development;*

*(c) On behalf of the members, to enforce all covenants pertaining to the Development."*

3. As set out in the Articles of Association (the "Articles"):

*"Development means the residential development known as "The Lakes at South Sound", being the subject of South Sound 15E Parcel 220, Parcels 248 to 276, Parcels 278 to 284, Parcels 287 to 312, Parcels 320 to 322 and Parcels 327 to 339.*

...

*"Lot means any one of the self-contained housing lots sold by the Developer in the Development and shown in that plan as a Lot."*

4. At all material times, the Defendants were and are the registered proprietors of one of the Lots forming part of the Development Plan, namely Block 15E, Parcel 263 (the "Property").

5. The control, management, administration, use and enjoyment of the lots and common property that form part of the Development, including the Property, is regulated by its Articles and the Schedule of Covenants.

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6. The Defendants purchased the Property on 9 February 2017 and the Transfer of Land stipulates the transfer is “*subject to the Restrictive Covenants in the Schedule attached hereto*”. The Restrictive Covenants are attached to the Transfer of Land which was registered at Lands and Survey on 20 February 2017.

7. Pursuant to the Articles:

*“57.2 Pay to the Home Owners Association on a quarterly basis in advance (unless otherwise stipulated by the Home Owners Association),*

*57.2.1 all fees for the costs of maintaining the Common Property and any amenities of the Development in accordance with the Home Owners Association Operating Budget, any amounts assessed pursuant to the Reserve Fund Budget and his contribution to all other costs and expenses incurred by the Home Owners Association in connection with the performance of its duties under the Law and under these Articles, such fees to be calculated by reference to the square footage of his lot.*

*57.3 In the event of any such payments not being made on a quarterly basis as required by the Home Owners Association then:*

*57.3.1 Within thirty (30) days of such demand, then a late fee of US\$25.00 shall be payable and*

*57.3.2 After 60 days of such demand if the fees have not been paid in full, interest shall accrue on the amount of the outstanding fees at the rate of 3% above the prime rate for US Dollars.*

*5.7.3. A Proprietor who has an outstanding balance of fees over thirty days shall not be permitted to use the Lake(s) located on the Common Property or any other amenities until such balance is settled in full.”*

8. Pursuant to the Covenants:

*“The Purchaser with intent and so as to bind the Lot into whosoever hands the same may come and to benefit and protect the estate of the Vendor or any part thereof in the development known as The Lakes at South Sound hereby covenants with the Vendor that the Purchaser and his successors in title will at all times hereafter observe and perform the stipulations, restrictions and protective covenants following in relation to the Lot to be transferred pursuant to the Agreement:*

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...

17. *Maintenance assessment*

*The Purchaser and any other Parcel owner shall not be entitled to use any of the Communal Land (including the lake) unless their contributions to the Association have been paid up.*

*The Association shall be responsible of maintaining the Communal Land and any amenities of the Development and shall raise a budget of these costs annually. These costs shall be charged to the Parcel owners quarterly in advance. The Parcel owners shall pay all such assessments within 30 days of the assessment being notified to the Parcel owners.*

*In the event of any default in making payment of the assessment, the Association may recover outstanding assessments by instituting proceedings against any Parcel owner in arrears.”*

9. The Plaintiff levies the contributions that the Defendants are required to pay the Plaintiff by issuing yearly statements to the Defendants that record the amount payable that year and any amounts that the Defendants might be in arrears.
10. Each statement sent to the Defendants constitute demand for payment of the amounts due pursuant to that invoice.
11. As at the date of filing this Plaintiff, being 17 July 2023, the Defendants are in arrears to the Plaintiff in the sum of CI\$11,441.95 (the “Debt”), including interest due under Article 57.3.2. The Debt is comprised as follows:
  - a. Principle: CI\$8,900.00
  - b. Interest: CI\$2,541.95
12. The Defendant has breached the Articles and Covenants by failing or refusing to pay the Debt.

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13. By reason of the Defendants' breach of the Articles and Covenants the Plaintiff has suffered loss and damage and seeks to enforce its rights against the Defendants in accordance with the said Articles.

### **Particulars of Loss**

#### **Annual Fees**

The Plaintiff has suffered in the amount of the Debt being CI\$11,441.95 as at 13 September 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 Defendant's breach of the Articles and Covenants the Plaintiff has incurred legal expenses for which the Defendants are, in accordance with Clause 17 in the Schedule of Covenants, 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:

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.

14. 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 57.3.2 of the Articles the particulars are set out in the table below and continuing at the daily rate of CI\$3.32 until judgment or sooner payment calculated as follows:

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Year	Opening Balance	HOA Fee	Balance subject to interest	USD Prime Rate	add 3%	Interest
2018	\$0.00	\$1,700.00	\$1,700.00	5.50%	8.50%	\$144.50
2019	\$1,844.50	\$1,200.00	\$3,044.50	4.75%	7.75%	\$235.95
2020	\$3,280.45	\$1,200.00	\$4,480.45	3.25%	6.25%	\$280.03
2021	\$4,760.48	\$1,200.00	\$5,960.48	3.25%	6.25%	\$372.53
2022	\$6,333.01	\$1,800.00	\$8,133.01	7.50%	10.50%	\$853.97
2023	\$8,986.97	\$1,800.00	\$10,786.97	8.25%	11.25%	\$654.98
		\$8,900.00				\$2,541.95

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\$8,900.00;
2. Interest on the following terms:
  - a. CI\$2,541.95 to the date of the Plaintiff;
  - b. CI\$3.32 per day from the date of the Plaintiff 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.
3. Interest continuing at the daily rate of CI\$3.32, 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 Clause 17 in the Schedule of Covenants.
5. Such further and/or other relief as this honourable Court deems appropriate.

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If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of **CI\$11,441.95** 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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FIRST DEFENDANT**

**AND:**

**ALAN CORKISH  
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/6768-00001

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

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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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