

NOTE:- This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 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.

INDORSEMENT

The Plaintiff's claim is for CI\$145,000.00 plus interest calculated at the rate of 18% per day from 2nd day of March, 1997 to date, against the Defendant, being the balance due under a contract for sale of the property registered as George Town Central, Block 14C, Parcel 69.



**CHARLES ADAMS, RITCHIE & DUCKWORTH
ATTORNEYS-AT-LAW FOR THE PLAINTIFF**

This Writ was issued by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is P.O. Box 709, Zephyr House, Mary Street, George Town, Grand Cayman, British West Indies

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 748 OF 1998

BETWEEN: ELFORD LEVI DILBERT PLAINTIFF

AND: DR. BRIAN DONOHUE DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is a resident of the Cayman Islands and a building contractor by occupation.

2. The Defendant is a practising veterinarian at the Bliss Animal Hospital at 5674 Horatio Street, Utica, New York 13502, United States of America and was at all material times licensed to practice veterinary medicine in the Cayman Islands.

3. By an Agreement dated the 21st January, 1992 and made in the Cayman Islands, the Plaintiff, and his now deceased wife, Veronica Dilbert, agreed to sell and the Defendant agreed to purchase the property registered as George Town Central, Block 14C, Parcel 69 to the Defendant for the sum of CI\$245,000.00 ("the Agreement"). At the time of the Agreement, the Plaintiff was the sole registered proprietor of George Town Central, Block 14C, Parcel 69 ("the Property").

4. By virtue of Clause 3 of the Agreement, the purchase price of the Property was to be paid as follows:
 - (i) a deposit of CI\$100.00 upon execution and exchange thereof;

- (ii) upon completion, a term defined in the Agreement, a further instalment of CI\$99,900.00;
 - (iii) the balance due on the principal sum, i.e., CI\$145,000.00, on the 1st March, 1997.
- 5. The balance due on the principal sum of CI\$145,000.00 would be secured by way of a 2nd charge over the Property with interest thereon calculated at the rate of 10% per annum payable monthly in arrears commencing within one month of execution of the Agreement. It was agreed that between the completion date and the 1st March, 1997, interest alone would be payable at the calculated sum of CI\$1,208.00 per month.
- 6. Barclays Bank, PLC had previously taken a 1st charge over the Property to secure the sum of CI\$168,375.00 which was collateral to a charge taken over land registered as George Town Central, Block 14C, Parcel 237. This charge was subsequently varied on 2 occasions so as to increase the amount of the charge to CI\$240,000.00.
- 7. By virtue of Clause 16 of the Agreement, the parties agreed that in the event the Defendant delayed in making payment of any instalment payable thereunder or the final balance of the purchase price on the 1st March, 1997, the Plaintiff was entitled to charge interest on late instalment or the balance of the purchase price which remained unpaid, as the case may be until the date of payment at the rate of 18% per annum calculated on a daily basis.
- 8. The amounts as set out at paragraph 3(i) and (ii) hereof have been paid by the Defendant. In February of 1992 the 1st interest payment of CI\$1,208.00 was made by the Defendant to the Plaintiff and thereafter, regular payments were made until August, 1995. The Defendant has, since that time, failed to make any further payment on the interest or on the purchase price to the Plaintiff.

9. In September, 1995 the Defendant defaulted in making the monthly interest payments of CI\$1,208.00 as agreed, and as a result thereof, my late wife and I instituted proceedings against him in the Grand Court in Cause No. 400 of 1996 for breach of contract and a claim made thereunder for the sum of CI\$13,288.00 being the amount of interest due under the Agreement, interest thereon at the statutory rate, further and/or other relief and costs to be assessed by the Court or taxed ("the Proceedings").
10. On the 16th December, 1996 a Judgment in Default was obtained against the Defendant in the amount claimed in the Writ and Post-Judgment interest thereon of CI\$1,077.00 ("the Judgment Debt").
11. The balance of the purchase price became due and payable on the 1st March, 1997. The Defendant has failed and/or refused to pay this amount of any part thereof to the Plaintiff.
12. On the 30th May, 1997, the 1st Chargee over the Property, Barclays Bank, PLC, in pursuance of the rights conferred by 1st Charge and the Registered Land Law, exercised a power of sale and transferred the Property to The Cayman Humane Society in consideration of CI\$210,000.00. This transfer was registered on the 18th July, 1997. At the time of this transfer, the amount secured by the 1st Charge was CI\$240,000.00.
13. The amount realized on the said sale was insufficient to satisfy the Defendant's indebtedness to Barclays Bank, PLC and there was, therefore, no amount available to satisfy the 2nd Charge.
14. The principal sum became due and payable, pursuant to the Agreement, on the 2nd March, 1997. The Defendant has failed and/or refused to pay this amount or any part thereof.

15. The Plaintiff subsequently learned that the Defendant owned an interest in the land registered as High Rock, Block 68A, Parcel 74, ("the High Rock Land") and an application was made to this honourable Court for a Charging Order to secure the Judgment Debt. The registered proprietors of the High Rock Land are the Defendant, who owns a ½ share therein and Mr. Gilbert McLean and Mrs. Dorit McLean, each of whom owns ¼ share.
16. On the 23rd January, 1998 a Charging Order Absolute was made by a Judge of the Grand Court whereby it was ordered that the interest of the Defendant in the High Rock Land stand charged with the payment of the amount set out in the Default Judgment.
17. On the 2nd September, 1998 Barclays Bank caused a caution to be registered against the Defendant's ½ share interest in the High Rock Land.
18. The Defendant has, since June, 1995, left the Cayman Islands and it is not known whether he intends to return to these Islands.
19. As a result thereof, the Plaintiff has been unable to realize the security held on the Property for the balance of the Purchase Price owed to the Plaintiff by the Defendant or to be paid the principal sum and interest due pursuant to the Agreement.

AND THE PLAINTIFF CLAIMS FROM THE DEFENDANT:-

- (1) The sum of CI\$145,000.00.
- (2) PRE-JUDGMENT interest at the rate of 18% percent per annum to be calculated on a daily basis by virtue of Clause 16 of the Agreement from the 2nd day of March, 1997 to the date of issue of the Writ being CI\$45,408.85.

- (3) POST-JUDGMENT interest at the rate of 18% percent per annum to be calculated on a daily basis, in accordance with the Agreement.
- (4) AN INJUNCTION restraining the Defendant whether by himself or through an agent or representative from disposing of his ½ interest in the land registered as High Rock, Block 68A, Parcel 74 without the leave of the Court.
- (5) AN INHIBITION preventing the registration of any dealing with the land until further order.
- (4) FURTHER and/or other relief.
- (5) COSTS.

STATEMENT REGARDING INTEREST:

- (i) The rate of interest claimed is 18% per annum.
- (ii) The date from which interest is calculated is 2nd March, 1997.
- (iii) The amount of interest accruing each day thereafter is CI\$71.51.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of CI\$145,000.00 (plus interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or his attorney.

Dated this 26th day of November, 1998.



**CHARLES ADAMS, RITCHIE & DUCKWORTH
ATTORNEYS-AT-LAW FOR THE PLAINTIFF**

This Statement of Claim was issued by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is P.O. Box 709, Zephyr House, Mary Street, George Town, Grand Cayman, British West Indies.

Address for Service:

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 is suing in person) of his name, address and reference, if any, in the box below.

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

Filed by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is that of its said Attorneys-at-Law, P.O. Box 709, Zephyr House, Mary Street, George Town, Grand Cayman, B.W.I. (Ref: RWM/lcs/003-124)

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.