

BETWEEN: FIRST CAYMAN BANK LTD (In Liquidation) PLAINTIFF

- AND:
- (1) CAYMAN OVERSEAS (PINNACLE) LTD
 - (2) CAYMAN OVERSEAS (PARK PLACE) LTD
 - (3) CAYMAN OVERSEAS (DOWNTOWN) LTD
 - (4) CAYMAN OVERSEAS DEVELOPMENTS LTD
 - (5) CAYMAN OVERSEAS HOLDINGS LTD
 - (6) CAYMAN OVERSEAS INVESTMENTS LTD
 - (7) CAYMAN OVERSEAS PURCHASING SERVICES LTD
 - (8) CAYMAN OVERSEAS REALTORS LTD
 - (9) CAYMAN OVERSEAS REINSURANCE ASSOCIATION LTD
 - (10) THE CAYMAN OVERSEAS GROUP LTD

DEFENDANTS



WRIT OF SUMMONS

TO: Cayman Overseas (Pinnacle) Ltd
 Foreshore Corporate Services
 Royal Bank Building
 George Town, Grand Cayman

AND TO: Cayman Overseas (Park Place) Ltd
 Foreshore Corporate Services
 Royal Bank Building
 George Town, Grand Cayman

AND TO: Cayman Overseas (Downtown) Ltd
 Foreshore Corporate Services
 Royal Bank Building
 George Town, Grand Cayman



AND TO: Cayman Overseas Developments Ltd
Foreshore Corporate Services
Royal Bank Building
George Town, Grand Cayman

AND TO: Cayman Overseas Holdings Ltd
Foreshore Corporate Services
Royal Bank Building
George Town, Grand Cayman

AND TO: Cayman Overseas Investments Ltd
Foreshore Corporate Services
Royal Bank Building
George Town, Grand Cayman

AND TO: Cayman Overseas Purchasing Services Ltd
Cayman National Trust Co Ltd
Cayman National Building
Fourth Floor, Elgin Avenue
George Town, Grand Cayman

AND TO: Cayman Overseas Realtors Ltd
Cayman National Trust Co Ltd
Cayman National Building
Fourth Floor, Elgin Avenue
George Town, Grand Cayman

AND TO: Cayman Overseas Reinsurance Association Ltd
Maples and Calder
Ugland House
South Church Street
George Town, Grand Cayman

AND TO: The Cayman Overseas Group Ltd
Foreshore Corporate Services
Royal Bank Building
George Town, 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 next page.

Within 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 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 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 28th day of August, 1999.

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:

1. Damages for breach of the contract made on 16th November 1998 between the Plaintiff and the Defendants and interest on the amount found to be due to the Plaintiff for such period and at such rate as the Court deems appropriate.
2. If and in so far as necessary, rectification of the said contract.
3. Further or other relief.
4. Costs.

DATED the 25th day of August, 1999.



W. S. WALKER & COMPANY
Attorneys-at-Law for the Plaintiff

This Writ of Summons was issued by W. S. Walker & Company of P.O. Box 265, Walker House, George Town, Grand Cayman, Attorneys-at-Law for the Plaintiff whose address for service is that of its said Attorneys-at-Law.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 1999

BETWEEN: FIRST CAYMAN BANK LTD (In Liquidation) PLAINTIFF

AND: (1) CAYMAN OVERSEAS (PINNACLE) LTD
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 (10) THE CAYMAN OVERSEAS GROUP LTD

DEFENDANTS

STATEMENT OF CLAIM

The Parties

1. The Plaintiff is a Cayman Islands company in liquidation, having been ordered to be wound up by the Court on 4th December, 1997 pursuant to the Companies Law. Mr. Ian Wight and Mr. Michael Pilling of Deloitte & Touche, Chartered Accountants, Grand Cayman (“the Liquidators”) were appointed on the same date as Official Liquidators of the Plaintiff.
2. The Defendants are all Cayman Islands companies owned directly or indirectly and controlled by Mr. Fraser Wellon. The Defendants carry on business under the trading name “Cayman Overseas Group”.

The Contract

3. By an agreement in writing (“the Sale Contract”) constituted by an Offer to Purchase made by the Defendants acting by Mr. Wellon on 23rd August, 1998 which was accepted by the Plaintiff acting by the Liquidators on 16th November, 1998, the Plaintiff agreed to sell and the Defendants agreed to purchase the real property situated on West Bay Road, Grand Cayman, known as First Cayman Bank building (being registered as West Bay South, Block 13B, Parcel 59) (“the Property”) for the price of US\$2,125,000. The Plaintiff obtained authorisation from the Grand Court to accept the Defendants’ said offer by order made on 10th November, 1998.
4. At all material times there was a listing agreement between the Plaintiff and Coldwell Banker Cayman Islands Realty (“Coldwell Banker”) by which Coldwell Banker was authorised as broker to market the Property for sale on behalf of the Plaintiff.
5. At all material times the Plaintiff relied upon a reference dated 30th September 1998 provided by Scotiabank (Cayman Islands) Ltd. in relation to Mr. Wellon and the companies in the Cayman Overseas Group.

Express Terms

6. The Sale Contract contained, inter alia, the following express terms:
 - 6.1 An initial deposit of US\$100,000 was to be paid by the Defendants to the Plaintiff on the signing of the offer to purchase.
 - 6.2 The said deposit was to be held by the Plaintiff’s authorised agent/attorney as stakeholder and was to be held in trust until completion, at which time the same was to be paid over to the Plaintiff.
 - 6.3 An additional deposit of US\$112,500 was to be paid within 2 business days after special condition 5A was satisfied.
 - 6.4 Completion was to take place on or before 60 days from 16th November 1998, being 15th January 1999, at which time the Defendants were to pay the balance of the purchase price to the Plaintiff.

- 6.5 Special condition 5A stipulated that it was a condition precedent to the Defendants' performance of the agreement that the Defendants obtained a satisfactory structural survey and/or engineering report within 30 days of the Plaintiff's acceptance of the Defendants' offer on 16th November 1998.
- 6.6 The property was deemed to be purchased with full notice of the state and condition thereof as at 15th January 1999 subject to normal wear and tear occurring thereafter and prior to the completion date, unless otherwise stipulated in the agreement.
- 6.7 All requisitions and objections with respect to title to the property were to be made within 21 days from acceptance by the Plaintiff of the offer to purchase.
- 6.8 In the event of payment by cheque or other form of bill of exchange of any of the monies referred to in the agreement none of the rights and obligations therein credited (sic) would have any effect until the cheque or other form of bill of exchange had been cleared and honoured in the Cayman Islands.
- 6.9 In respect of each of the Defendants' payments time was to be of the essence.

Implied Terms

7. There were implied terms in the said agreement as follows:
 - 7.1 The Defendants would have the Property surveyed by a qualified structural surveyor within 30 days of 16th November 1998, or would have an engineering inspection held by a qualified civil engineer within the said period.
 - 7.2 The Defendants would produce to the Plaintiff within the said period a written structural survey and/or a written engineering report. Alternatively the Defendants would produce such written report within a reasonable time after the end of the 30 day period.
 - 7.3 The subject matter of a satisfactory structural survey and/or engineering report was to be limited to structural and/or engineering defects properly so called.

- 7.4 Alternatively, if, which is denied, the Defendants were bound only to obtain an oral report of a structural survey and/or engineering inspection under special condition 5A, the Plaintiff will contend that the Defendants were bound to convey to the Plaintiff the precise terms of any such oral report within the 30 day period or alternatively within a reasonable time thereafter.
8. On 12th December 1998 the Canadian attorney for the Defendants, Mr. Lawrence C. Caroe, wrote to the Plaintiff claiming that the condition in the Sale Contract had not been satisfied and asking for the return of the deposit.
9. By letters dated 14th and 16th December 1998 respectively the Plaintiff wrote to the Defendants asking for a copy of the survey/report (if any) in order that the Plaintiff could assess the same.
10. By letter dated 21st December 1998 the Defendants wrote to Coldwell Banker stating, inter alia, that:
- 10.1 the Defendants were not proceeding with the acquisition of the Property because the condition was not satisfied.
- 10.2 there was no written report.
- 10.3 an oral report had been sought and obtained from the Defendants' "construction professionals".
- 10.4 the Defendants required the return of the deposit of US\$100,000.
11. By letter dated 23rd December 1998 the Plaintiff's attorneys wrote to the Defendants and asked them, inter alia, to state the precise contents of the oral report allegedly received by them.
12. In response, on 30th December 1998, the Defendants wrote to Coldwell Banker, and asked for:
- 12.1 an extension of the 30 day period for the Defendants' inspection of the property;
and

- 12.2 an extension of the date for completion under the Sale Contract to 15th April 1999.
13. By letter dated 10th March 1999 the Plaintiff served a notice to complete the Sale Contract on or before Friday, 19th March 1999.

Breaches of Contract

14. In breach of the Sale Contract the Defendants:
- 14.1 failed to have the Property surveyed by a qualified structural surveyor and/or civil engineer within the 30 day period or at all.
- 14.2 failed to produce a written structural survey and/or engineering report within the 30 day period or at all.
- 14.3 failed to convey to the Plaintiff within the said 30 day period or within a reasonable time thereafter the contents of the alleged oral report of the structural survey/engineering inspection allegedly carried out on their behalf.
- 14.4 renounced the agreement by their aforesaid letters of 12th and 21st December 1998.
- 14.5 failed and neglected to complete the purchase of the Property on or before 15th January 1999 or at all.
15. By letter dated 29th March 1999 the Plaintiff accepted the Defendants' repudiatory breach of contract and thereby brought the Sale Contract to an end.

Loss and Damage

16. By reason of the aforesaid breaches of contract the Plaintiff has suffered loss and damage, the particulars of which are as follows:
- 16.1 The Plaintiff claims the difference between the contract price of US\$2,125,000 payable by the Defendants and the market value of the Property as at 15th January 1999, alternatively 19th March 1999. The Plaintiff is and has been at all material times since the 12th December 1998 taking steps to market the Property for sale in

order to mitigate its loss. The Plaintiff will rely upon the eventual sale price of the Property as indicating its market value as aforesaid.

- 16.2 The market value of the Property has diminished because of the Defendants' conduct in the period between the Defendants' offer to purchase and 15th January 1999.
 - 16.2.1 Prior to the date of the Sale Contract the Property was marketed by Coldwell Banker as aforesaid.
 - 16.2.2 Two serious bidders for the Property emerged. One was Western International Insurance Company. The other was the Defendant group of companies. Coldwell Banker initiated a sealed bidding process to obtain the best offer.
 - 16.2.3 On 20th August 1998 Western International Insurance Company made an unconditional offer of US\$2,102,000. On 23rd August 1998 the Defendants made the said offer of US\$2,125,000.
 - 16.2.4 The Defendants acting through Mr. Wellon approached Western International Insurance Company whose identity he had ascertained by means unknown to the Plaintiff and attempted to sell to Western International Insurance Company the Defendants' interest in the aforesaid contract for the sale of the Property for a price of US\$200,000.
 - 16.2.5 On 15th December 1998 after notification of the Defendants' refusal to complete, Coldwell Banker contacted Western International Insurance Company to determine if it would be interested in pursuing the purchase of the Property. Western International Insurance Company had been designated the official reserve bidder for the Property upon the advice of Coldwell Banker. Western International Insurance reported that as a result of the offer made to them by the Defendants (referred at paragraph 16.2.5) they had canvassed the business community and the market generally for possible tenants for the Property and had learned that the Defendants had offered their contract, in the words of Western International Insurance

Company, "to just about everyone on the island". As a result of the actions of the Defendants, Western International Insurance Company stated that it was no longer interested in the Property at the price of US\$2,102,000 but that it might be interested at the US\$1.6 to US\$1.8 million level. Western International Insurance justified this reduced price on the basis that the Property had been tainted and the market poisoned by the actions of the Defendants.

Rectification

17. By letter dated October 1st 1998 Coldwell Banker wrote to the Plaintiff and stated, inter alia:

17.1 That only two of the offers were worth considering, those being from Western International Insurance Company at US\$2,102,000 and from the Defendants at US\$2,125,000.

17.2 That the offer of Western International Insurance Company was unconditional, whereas that of the Defendants contained a condition.

17.3 That Coldwell Banker recommended that the conditional offer of the Defendants be accepted.

18. By the said letter of 1st October 1998 Coldwell Banker further stated:

"The offer by Cayman Overseas is the highest but is conditional on a structural and engineering survey. The customer is aware of and accepts the roof leaks. He simply wants to know the building has no serious structural flaws. It is unlikely after 24 years of existence that any new structural deficiencies will appear".

19. It is averred that the words set out at Paragraph 18 above accurately record what was said to Coldwell Banker by the Defendants.

20. Alternatively, it is averred that special condition 5A was drafted by Coldwell Banker at the request of and for the benefit of the Defendants. In so doing, and in conveying to the

Plaintiff what had been said by the Defendants about special condition 5A, Coldwell Banker were acting as the agents of the Defendants.

21. In the premises special condition 5A was drawn up so as to militate against the intention of both parties, in that both parties intended special condition 5A to apply only if there was discovered a serious structural defect in the Property, not to include the leaking roof. If and in so far as necessary the Plaintiff will seek rectification of special condition 5A accordingly, so that it accurately reflects the common intention of the parties.
22. Alternatively if it be alleged by the Defendants that special condition 5A does accurately reflect the Defendants' alleged intentions in entering into the Sale Contract, the Plaintiff will seek rectification of the same on the ground of unilateral mistake on the part of the Plaintiff, which mistake was known to and encouraged by the Defendants, their servants or agents who failed to draw it to the attention of the Plaintiff and thereby took advantage of the same.
23. Further the Plaintiff claims interest pursuant to Section 34(1) of the Judicature Law (1995 Revision) upon such sums as may be awarded at the rate of 8 3/8% until judgment or sooner payment.

AND THE PLAINTIFF CLAIMS:

- (1) Damages;
- (2) If and in so far as may be necessary, rectification of the written contract of 16th November, 1998;
- (3) Further or other relief;
- (4) Interest;
- (5) Costs.

DATED the 25th day of August, 1999.



W. S. WALKER & COMPANY
Attorneys-at-Law for the Plaintiff

FILED by W. S. Walker & Company of P.O. Box 265, Walker House, George Town, Grand Cayman, Attorneys-at-Law for the Plaintiff whose address for service is that of its said Attorneys-at-Law.

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PLAINTIFF

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 - (10) THE CAYMAN OVERSEAS GROUP LTD

DEFENDANTS

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

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.

1. State the full name of the Defendants by whom or on whose behalf the service of the Writ of Summons is being acknowledged.

2. State whether the Defendant intends to contest the proceedings *(tick where appropriate)*

yes no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceeding, 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 box number and the physical address of his residence or, if the 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 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.

W.S. Walker & Company P.O. Box 265 Walker House Mary Street Grand Cayman Ref: AJEF/D79-19232

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 ACKNOWLEDGMENT 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 495G, 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 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 Acknowledgment 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 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 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 Court's office.