

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ⁵²⁴ OF 1999
(521/99)

BETWEEN:

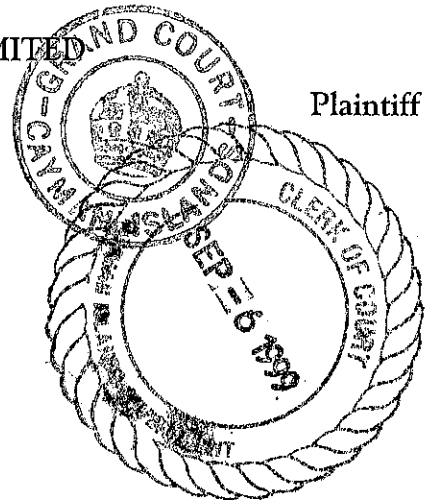
KOZAILY DEVELOPMENT (CAYMAN) LIMITED

Plaintiff

AND

- (1) RAINBOW REALTY LIMITED
- (2) ANGI ARSCOTT (NEE WALL)
- (3) STACEY STEWART GREEN

Defendants



WRIT OF SUMMONS

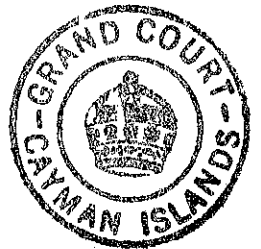
- TO:
- (1) Rainbow Realty Limited
Wedgwood Building
Cardinal Avenue
George Town
Grand Cayman
 - (2) Angi Arscott (nee Wall)
P.O. Box 2871 GT
Grand Cayman
 - (3) Stacey Stewart-Green
P.O. Box 1792 GT
Grand Cayman

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 495 GT, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement 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.

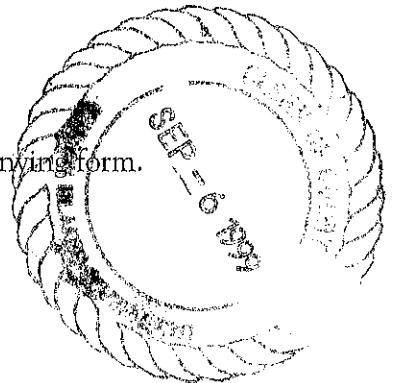
Issued this 6th day of September 1999



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 Acknowledgement of Service are given with the accompanying form.



STATEMENT OF CLAIM

1. The Plaintiff was and is the owner of property at Fountain Court in South Sound Registration Section Block 15B Parcel 206 ("the Development"). The Plaintiff intended to develop and is developing the site and, having developed the same, to sell developed units ("Units") to third parties for profit.
2. The First Defendant is a Real Estate Broker and member of the Cayman Islands Real Estate Brokers Association.
3. The Second and Third Defendants are or were at all material times employees of the First Defendant, for whose acts and omissions the First Defendant is vicariously liable.
4. By an agreement made on or about 20 April 1997, the Second and Third Defendants on their own account or as agents for the First Defendant entered into an agreement with the Plaintiff to act as real estate brokers in relation to the Development. There were terms, inter alia, of the said agreement, and/or the Defendants and each of them owed to the Plaintiff duties at common law, and/or the Defendants and each of them owed to the Plaintiff fiduciary duties that (inter alia):
 - (a) The Defendants would act bona fide on behalf of the Plaintiff as real estate brokers;
 - (b) The Defendants would advise the Plaintiff on the value and accordingly the appropriate selling price of each Unit from time to time, and, in due course, agree appropriate marketing and selling prices for the Units;
 - (c) The Defendants would not bind the Plaintiff to any contracts for sale of the Units unless and until such sales had been authorised by the Plaintiff, nor would they hold out the Units for sale in such a way that a sale could be forced by a potential purchaser if the Plaintiff did not wish for whatever reason to authorise a sale;
 - (d) The Defendants would take all reasonable steps to protect the Plaintiff from being bound into contracts for the sale of Units at times when the value of the Units might increase;
 - (e) The Defendants would advise the Plaintiff on all material issues surrounding the marketing and sale of Units competently and honestly;
 - (f) In complying with the obligations set out above, the Defendants would act with the reasonable skill and care to be expected of reasonably competent real estate brokers acting as aforesaid;
 - (g) The Defendants would not put themselves in a position where their duties to the Plaintiff and their own or their associates' interests conflicted, or might conflict;

- (h) If the Defendants found themselves in a position where their duties and interests did so conflict, they would notify the Plaintiff and resolve such conflicts entirely in favour of the Plaintiff;
- (i) The Defendants would not make a profit by virtue of their relationship with the Plaintiff (save by way of receipt of commission income in accordance with the agreement between the parties), nor would they or their associates deal with or profit from the subject matter of the agreement between the parties, namely the Development and the Units;
- (j) The Defendants would account to the Plaintiff for any profits so made, alternatively, and at the Plaintiff's option, would rescind any arrangements whereby the Defendants or their associates had dealt with or profited from the subject matter of the agreement between the parties.
5. Pursuant to the agreement between the parties, the Defendants purported to market the Units, by advertising their existence and probable prices. The probable prices were not agreed with the Plaintiff.
6. The Defendants reported to the Plaintiff that there was considerable interest in the Units, and in late April 1997, the Defendants presented the Plaintiff with a form of Reservation Agreement ("the Reservation Agreement"). The Reservation Agreement stated:
- "I/We _____ hereby reserve unit # _____ at Fountain Court at the preconstruction price of _____ pending planning approval for the complex.
- *This price is subject to change due to any increases in stamp duty fees, impact fees and any other government dues.
- Initial deposit due on signing of this agreement C\$1,000.
- All reservation deposits will be refunded should planning approval not be obtained to proceed with this project as proposed, otherwise I/we acknowledge that this reservation allows me first right of refusal to purchase the subject unit by executing a sales contract within 10 days of the Vendor's notification that the project will proceed."
7. The Defendants, acting through the Second Defendant, informed the Plaintiff that the Defendants proposed asking prospective purchasers to sign such Reservation Agreements to be countersigned by the Defendants as agents for the Plaintiff, to demonstrate their interest in the Unit in question, but stated ("the Statement") that the Reservation Agreements did not have the effect of binding the Plaintiff to sell any Unit which was the subject-matter of a Reservation Agreement to the person entering the Reservation Agreement or at the price referred to in the Reservation Agreement.
8. By reason of the Statement, the Plaintiff did not oppose the use of the Reservation

Agreements by the Defendants.

9. In fact, the Statement was false, in that the effect of the Reservation Agreement was to bind the Plaintiff to sell to any purchaser named therein at the price set out therein, at the option of the person named therein.
10. The Defendants proceeded to accept Reservation Agreements from potential purchasers on behalf of the Plaintiff thereby binding the Plaintiff to the said Reservation Agreements as follows:

Unit Number	Reservation by	Reservation Date	Reservation Amount
9	Angi Wall & Ronald Arscott	01.05.97	162,000
27	Kent & Stacey Stewart-Green	05.05.97	160,000
17	Larry Leonard	05.05.97	162,000
16	Gordon McRae	05.05.97	172,000
21	Debbie Musson	06.05.97	150,500
11	Clive Musson	08.05.97	150,500
31	Wayne Foster	09.05.97	150,500
29	Wayne Foster	09.05.97	162,000
22	Steven Roy	16.05.97	150,500
26	Paul Macey	16.05.97	187,500
20	?	26.05.97	162,000
24	Shelley Hunter	26.05.97	162,000
30	Brian Crichlow	27.05.97	162,000
5	Ciara Shiel	12.06.97	150,500
13	Brian & Aloma Cunha	18.06.97	162,000

23	Kipling & Leslie Douglas	19.06.97	172,000
5	Maureen & Oswald Young	24.06.97	167,000
15	Maureen & Oswald Young	24.06.97	188,200
12	Peter Lyn	30.06.97	156,000
1	Ronald & Margaret Tompkins	23.07.97	188,200

11. The Statement and the entry into Reservation Agreements was a breach of the duties owed by the Defendants to the Plaintiff as set out above in that (inter alia):
- (a) The Statement was made dishonestly with a view to inducing the Plaintiff to purport to authorise the use of the Reservation Agreement by the Defendants, with the effect that (unbeknownst to the Plaintiff) the Defendants could bind the Plaintiff to enter into contracts with potential purchasers. The Defendants' dishonest motives were:
- (i) To allow the Defendants rapidly to bind the Plaintiff to sales of the Units at prices below their value, thus swiftly earning commission on such sales; and/or
 - (ii) To allow the Second and Third Defendants and/or their associates to enter into legally binding Reservation Agreements with the Plaintiff at substantial undervalues; and/or
 - (iii) To disguise the substantial undervalues at which the Second and Third Defendants and/or their associates entered into legally binding Reservation Agreements with the Plaintiff; and/or
 - (iv) To allow the Defendants to gain further commissions on resales (which were likely to be rapid given the undervaluing; indeed, at least 2 of the Units which were sold by the Plaintiff are currently listed for resale through the agency of the Defendants).
- (b) Further or alternatively the Statement was made negligently and in breach of the duty of skill and care in that the Defendants could not reasonably have believed

that the effect of the Reservation Agreements was as the Second Defendant said it was in the Statement;

(c) Further or alternatively, the effect of the Statement and of producing and using the Reservation Agreements was to breach the duty of the Defendants not to bind the Plaintiff to sales without the Plaintiff's express authorisation.

12. Further or alternatively, the Statement was a fraudulent alternatively negligent misrepresentation or misstatement entitling the Plaintiff to damages for the same.

13. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage in that, had the Plaintiff been informed that the Reservation Agreements had the effect of binding the Plaintiff to sales to the persons and at the prices named therein, it would not have authorised their use by the Defendants on behalf of the Plaintiff. In the premises:

(a) The Plaintiff would have received details of the purchaser and the price of each and every proposed sale, and would have considered the same on its merits, and having regard to advice as to the value of the Unit proposed to be sold. The Plaintiff will say that, having sought advice (which advice should have been properly given by the Defendants), it would not have entered into sale agreements for the following Units for the following prices which it was, instead, forced to enter. Instead, it would have sold the following Units for their true value, the best evidence of which, subject to the Court's determination, is as follows:

Unit Number	Sale Price	Proper Sale Value (CI\$)	Present Value (CI\$)
1, 3 bd, Phase 1	188,200	210,000	255,000
2, 3 bd, Phase 2	188,200	210,000	255,000
3, 2+bd, Phase 1	167,000	175,000	210,000
5, 2 bd, Phase 1	160,000	162,500	195,000
7, 2+bd, Phase 1	167,000	175,000	210,000
10, 2+bd, Phase 2	167,000	175,000	210,000
11, 2 bd, Phase 1	150,500	162,500	195,000
12, 2 bd, Phase 2	156,000	162,500	195,000
13, 2+bd, Phase 1	162,000	175,000	210,000

14, 2+bd, Phase 2	167,000	175,000	210,000
15, 3 bd, Phase 1	188,200	210,000	255,000
16, 3 bd, Phase 2	172,000	210,000	255,000
17, 3 bd, Phase 3	172,000	240,000	255,000
18, 3 bd, Phase 3	199,950	240,000	255,000
19, 2+bd, Phase 3	177,300	200,000	210,000
21, 2 bd, Phase 3	150,500	185,000	195,000
23, 2+bd, Phase 3	172,000	200,000	210,000
25, 3 bd, Phase 3	199,950	240,000	255,000
26, 3 bd, Phase 3	198,200	240,000	255,000
27, 3 bd, Phase 4	172,000	240,000	255,000
28, 3 bd, Phase 4	230,000	240,000	255,000
29, 2+bd, Phase 4	162,000	200,000	210,000
30, 2+bd, Phase 4	162,000	200,000	210,000
31, 2 bd, Phase 4	150,500	185,000	195,000
TOTALS	4,179,500	4,812,500	5,415,000

(b) Further or alternatively, the Plaintiff would have received details of the following proposed sales to the Second and Third Defendants and their associates, and would not have entered into sale agreements for the same. Instead, it would have sold the following Units for their true value, the best evidence of which, subject to the Court's determination, is as follows:

Purchaser	Connection with Defendants	Unit Number	Sale Price	True Value at date of agreement (CI\$)	Present Value (CI\$)
Larry Leonard	Brother-in-law of Third Defendant	17	172,000	210,000	255,000
Third Defendant and Kent Stewart-Green	Third Defendant and husband	27	172,000	210,000	255,000

14. Further or alternatively, and regardless of the circumstances surrounding the making of the Statement, the entry into Reservation Agreements and/or the decision of the Defendants to accept and/or recommend to the Plaintiff sales at the prices set out above to the Second and Third Defendants and associates of the Defendants was a breach of duty in that (inter alia):
- (a) It placed the Defendants in a position whereby their duty to the Plaintiff (to obtain a reasonable price) conflicted with their self-interest (in obtaining Units for themselves or their associates at the lowest price);
 - (b) The Defendants dishonestly alternatively negligently entered into and/or recommended to the Plaintiff binding agreements at prices which were below the true value of the Units in question;
 - (c) The Defendants unlawfully dealt themselves with the subject matter of their fiduciary duty, namely the Units;
 - (d) The Defendants unlawfully profited from their connection with the subject matter of their fiduciary duty in that the value of the Units purchased by them and/or their associates has increased;
 - (e) The Defendants did not make proper disclosure to the Plaintiff of the true position or value of the Units.

17, 3 bd, Phase 3	172,000	240,000	255,000
18, 3 bd, Phase 3	199,950	240,000	255,000
19, 2+bd, Phase 3	177,300	200,000	210,000
21, 2 bd, Phase 3	150,500	185,000	195,000
23, 2+bd, Phase 3	172,000	200,000	210,000
25, 3 bd, Phase 3	199,950	240,000	255,000
26, 3 bd, Phase 3	198,200	240,000	255,000
27, 3 bd, Phase 4	172,000	240,000	255,000
28, 3 bd, Phase 4	230,000	240,000	255,000
29, 2+bd, Phase 4	162,000	200,000	210,000
30, 2+bd, Phase 4	162,000	200,000	210,000
31, 2 bd, Phase 4	150,500	185,000	195,000
TOTALS	4,179,500	4,812,500	5,415,000

17. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage. Without admission of any liability, the Plaintiff is entitled to and will set off against its damages any sum (by way of commission payment or otherwise) found due to the Defendants, but it is averred that no sum is due to the Defendants by reason of the misconduct pleaded aforesaid and/or their unjust enrichment and the Plaintiff is entitled to repayment of all such sums paid to date.
18. By letter dated 31 May 1999 attorneys acting for the Second Defendant claimed a contractual interest in Unit 24. There is no writing which complies with section 37(2) of the Registered Land Law (1995 Revision) upon which the Second Defendant can rely for such contractual interest. Alternatively, and in any event, any "interest" the Second Defendant had in this connection was in Unit 9, and such "interest" was terminated and/or abandoned and/or otherwise given up by the Second Defendant by May 1998 when the Second Defendant arranged for Unit 9 to be sold to a third party. Alternatively, any such "interest" was wrongfully obtained for the same reasons as those pleaded for the other Units aforesaid, which are repeated mutatis mutandis, with the consequences (mutatis mutandis) as also pleaded aforesaid.

19. Further the Plaintiff seeks interest pursuant to the Judgment Debts (Rates of Interest) Rules 1999 at the rate of 7% per annum and/or pursuant to the equitable jurisdiction of the Court at such rate and for such period as to the Court seems just, on all sums found due.

AND THE PLAINTIFF CLAIMS:

- (1) Damages and repayment of all sums paid to the Defendants by way of commission;
- (2) Further or alternatively, equitable compensation;
- (3) Further or alternatively rescission of the said contracts and/or arrangements entered into with the Defendants and/or their associates (limited, at the Plaintiff's election, to Unit 27 only);
- (4) Further or alternatively an account of all profits made by the Defendants and/or their associates;
- (5) A declaration that the Defendants and/or their associates are not entitled to any Unit in the Development;
- (6) The aforementioned interest pursuant to pursuant to the Judgment Debts (Rates of Interest) Rules 1999 and/or pursuant to the equitable jurisdiction of the Court;
- (7) Costs;
- (8) Further or other relief.

Hunter & Hunter
HUNTER & HUNTER

THIS WRIT was issued by Hunter & Hunter, Attorneys-at Law for the Plaintiff whose address for service is that of its said Attorneys, namely The West Wind Building, 2nd Floor, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref. JW/07553.001)