

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 606 OF 1999

BETWEEN: **LANCE K. POULSEN** **PLAINTIFF**
AND: **BAREFOOT RESORTS, LTD.** **DEFENDANT**

TO: BAREFOOT RESORTS, LTD.
c/o IRONSHORE CORPORATE SERVICES LIMITED
CIBC FINANCIAL CENTRE
DR. ROY'S DRIVE
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, PO Box 495G, George Town, 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 ¹⁴ day of October 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.

ENDORSEMENT

FIRST CAUSE OF ACTION

Pursuant to an agreement between the Plaintiff and the Defendant, the Plaintiff claims that he has nominated to the Defendant, and is thus entitled to registered proprietorship of all that piece of land more particularly described as Registration Section North East Coast Block 65A Parcel 54H7, of which the Defendant is the current registered proprietor. Despite having agreed to transfer to the Plaintiff registered proprietorship of the said nominated property under the said agreement, in breach thereof, the Defendant has refused to transfer registered proprietorship to the Plaintiff.

SECOND CAUSE OF ACTION

Pursuant to an agreement between the Plaintiff and the Defendant, the Plaintiff claims that he has nominated to the Defendant, and is thus entitled to registered proprietorship of a certain lot of land entitled Lot F8 being one piece of land in Phase II of a sub-division more particularly described as Registration Section North East Coast Block 65 Parcel 57, known as Phase II, Barefoot Beach Gardens. The Plaintiff seeks, inter alia, declaratory relief as to his aforesaid entitlement to Lot F8 under the agreement.

THIRD CAUSE OF ACTION

Pursuant to a written agreement between the Plaintiff and the Defendant dated 7th November 1996, the Plaintiff claims that he is entitled, inter alia, to 3% of the sale proceeds of all individual lots of land sold, transferred or otherwise disposed of by the Defendant which is land owned or formerly owned by the Defendant and comprising and forming a sub-division more particularly described as Registration Section North East Coast Block 65 Parcels 54H1 to H30 (inclusive) known as Phase I Barefoot Beach Gardens and also Parcel 54 known as Phase II Barefoot Beach Gardens.

WHEREFORE the Plaintiff claims:-

1. As to the first cause of action a declaration that on the true construction of the agreement and in the events which have happened, the Defendant holds upon trust for the benefit of the Plaintiff absolutely, one lot of land entitled Lot B1 more particularly described as Registration Section North East Coast Block 65A Parcel 54H7 located in Phase I of the sub-division, known as Barefoot Beach Gardens.
2. As to the first cause of action an order that the Defendant deliver up to the Plaintiff's attorneys-at-law forthwith a valid and registerable Transfer of Land form duly signed by the Defendant transferring registered proprietorship from the Defendant to the Plaintiff free and clear of all or any charges.
3. As to the first cause of action, alternatively, a declaration that the Plaintiff is entitled to the

proceeds of sale in the event of Registration Section North East Coast Block 65A Parcel 54H7 being sold, subject to payment of the reasonable costs of such sale.

4. As to the second cause of action a declaration that on the true construction of the agreement and in the events which have happened, the Defendant holds upon trust for the benefit of the Plaintiff absolutely, one lot of land entitled Lot F8 in Phase II of the sub-division which is more particularly described as Registration Section North East Coast Block 65A Parcel 54 known as Phase II, Barefoot Beach Gardens.
5. As to the second cause of action, upon the Registrar of Lands allotting a block and parcel number to Lot F8, an order that the Defendant deliver up to the Plaintiff's attorneys-at-law forthwith a valid and registerable Transfer of Land form duly signed by the Defendant transferring registered proprietorship from the Defendant to the Plaintiff free and clear of all or any charges.
6. As to the second cause of action, alternatively, a declaration that the Plaintiff is entitled to the proceeds of sale in the event of the said Lot F8 Phase II, Barefoot Beach Gardens being sold, subject to payment of the reasonable costs of such sale.
7. As to the third cause of action, a declaration that 3% of the sale proceeds of the sale of any lot in Barefoot Beach Gardens has been and/or are held on trust by the Defendant for the Plaintiff.
8. As to the third cause of action an account of all lot sales in Barefoot Beach Gardens by the Defendant and the sale proceeds thereof received by the Defendant.
9. As to the third cause of action all necessary consequential accounts, directions and enquiries.
10. As to the third cause of action, upon the taking of the said accounts, payment of an amount equal to the Plaintiff's 3% interest therein together with interest thereon.
11. Alternatively, damages.
12. Interest pursuant to statute.
13. Such further or other relief as the Court thinks fit.
14. Costs.

Dated: October 1999

Bruce Campbell & Co
BRUCE CAMPBELL & CO.
Attorneys-at-Law
for the Plaintiff

- 7, 8, 9 and 10 below.
7. Insofar as it was made in writing, the agreement was contained in and/or is to be inferred from the following documents or some or one of them:-
- (a) Buy Out Agreement between the Plaintiff and the Defendant dated 7th November 1996 (“the Buy Out Agreement”).
 - (b) Facsimile letter from the Defendant to the Plaintiff dated 18th June 1997.
 - (c) Letter from the Defendant to the Plaintiff dated 25th July 1997.
 - (d) Facsimile letter from the Plaintiff’s Ohio based attorneys, Purcell & Scott, Co to Mr. Wood on behalf of the Defendant dated 24th June 1998.
 - (e) Facsimile letter from the Defendant to the Plaintiff’s said attorneys Purcell & Scott, Co., dated 2nd July 1998.
8. Insofar as it was made orally, the said agreement was made in a series of telephone conversations between:-
- (a) The Plaintiff and Mr. Wood on behalf of the Defendant between 21st October 1996 and 30th June 1998; and
 - (b) Between Mr. Cary Purcell of the said law firm Purcell & Scott, Co. on behalf of the Plaintiff and Mr. Wood on behalf of the Defendant between 21st October 1996 and 30th June 1998.
9. Insofar as it was made by conduct, the conduct consisted of, or is to be inferred from, the following:-
- (a) At all material times the Defendant and/or Mr. Wood on behalf of the Defendant well knew from the course of dealing between the parties as particularised below, that the Plaintiff was entitled to and did nominate Lot B1 as his lot entitlement and by the course of dealing between the parties the Defendant and/or Mr. Wood on behalf of the Defendant accepted or alternatively signified acceptance of the Plaintiff’s entitlement to Lot B1 to which he was entitled.
 - (b) Further and in the alternative, by the course of dealing between the parties as particularised below, it was agreed between them, or alternatively the Plaintiff signified to the Defendant and/or Mr. Wood on behalf of the Defendant, that the Defendant’s acceptance of the Plaintiff’s entitlement and his nomination of Lot B1 need not be communicated to the Plaintiff, or alternatively would be signified if the Defendant did not communicate to the Plaintiff its non-acceptance of the same within a reasonable time of receiving such nomination. The Defendant and/or Mr. Wood on behalf of the Defendant did not communicate non-acceptance to the Plaintiff within a reasonable time or at all.

PARTICULARS

The Plaintiff will rely upon the following course of dealings:-

- (i) The documents referred to in paragraph 7 herein.

- (ii) The series of telephone conversations referred to in paragraph 8 herein.
10. Further, the Defendant with full knowledge of the documents referred to in paragraph 7 herein did not on or about the dates referred to in paragraph 7 herein and has not subsequently refuted, rebutted, dissented from, or objected to any of the said documents within a reasonable time of seeing the same or at all. In the premises, the Defendant thereby agreed to and accepted the Plaintiff's entitlement to Lot B1 and/or signified its acceptance of the same to the Plaintiff.

Alternatively, by its silence and conduct, and with full knowledge that the Plaintiff would seek to become the registered proprietor of Lot B1, the Defendant and/or Mr. Wood on behalf of the Defendant permitted and induced the Plaintiff to believe that it had agreed to and accepted the Plaintiff's entitlement to Lot B1. In reliance upon the same, the Plaintiff has requested the Defendant to transfer registered ownership of Lot B1 to the Plaintiff.

11. In breach of the agreement, the Defendant subsequently denied that the Plaintiff is entitled to Lot B1 and in so doing has refused to deliver to the Plaintiff a valid and registerable Transfer of Land form duly executed by the Defendant thereby transferring registered proprietorship of Lot B1 to the Plaintiff.

PARTICULARS

On 29th March 1999, the Plaintiff's Cayman Islands attorneys-at-law wrote to the Defendant's Cayman Islands attorneys-at-law and requested, inter alia, that the Defendant's attorneys-at-law arrange for a Transfer of Land form to be signed by the Defendant and delivered to the Plaintiff's attorneys-at-law for execution by the Plaintiff and thereafter filing in the Land Registry. On 20th April 1999, the Defendant's attorneys-at-law wrote to the Plaintiff's attorneys-at-law notifying, inter alia, that the Plaintiff had lost his entitlement to Lot B1.

SECOND CAUSE OF ACTION

12. The Plaintiff repeats paragraphs 1 and 2 herein.
13. By an agreement made between the Plaintiff and the Defendant, the Plaintiff became entitled to one lot of land entitled Lot F8 ("Lot F8") in Phase II of a residential sub-division which would be comprised of sub-divided lots of land which is, inter alia, part of Barefoot Beach Gardens and the Plaintiff repeats paragraph 4 herein.
14. The agreement between the Plaintiff and the Defendant was made partly in writing, partly orally, and partly by conduct and/or as a result of a course of dealing between the Plaintiff and the Defendant in the circumstances set out in paragraphs 15 and 16 below.
15. Insofar as it was made in writing, the agreement was contained in and/or is to be inferred from the following documents or one of them:-

- (a) Buy Out Agreement.
 - (b) Facsimile letter from the Defendant to the Plaintiff dated 18th June 1997.
 - (c) Letter from the Defendant to the Plaintiff dated 25th July 1997.
 - (d) Facsimile letter from the Plaintiff's Ohio based attorneys Purcell & Scott, Co to Mr. Wood on behalf of the Defendant dated 24th June 1998.
 - (e) Facsimile letter from the Defendant to the Plaintiff's said attorneys Purcell & Scott, Co dated 2nd July 1998.
 - (f) Letter from the Plaintiff's said attorneys Purcell & Scott, Co sent to the Defendant's Cayman Islands attorneys and to Mr. Wood on behalf of the Defendant dated 20th May 1999.
16. The Defendant with full knowledge of the documents referred to in paragraph 15 herein did not on or about the dates referred to in paragraph 16 herein and has not subsequently refuted, rebutted, dissented from, or objected to any of the said documents within a reasonable time of seeing the same or at all. In the premises the Defendant thereby agreed to and accepted the Plaintiff's entitlement to Lot F8 and/or signified its acceptance of the same to the Plaintiff.

Alternatively, by its silence and conduct, and with full knowledge that the Plaintiff would seek to become the registered proprietor of Lot F8, the Defendant permitted and induced the Plaintiff to believe that it has agreed to and accepted the Plaintiff's entitlement to Lot F8.

THIRD CAUSE OF ACTION

17. The Plaintiff repeats paragraph 1 herein.
18. The Defendant was at all material times the registered owner of all that piece of land formerly described as Registered Section North East Coast Block 65A Parcel 23, 25, 27 and 28 known as Anchor Point Development.
19. The Plaintiff repeats paragraph 4 herein.
20. Pursuant to paragraph 3.1 of the Buy Out Agreement the Plaintiff is entitled to be paid by the Defendant 3% of the sale proceeds received from the sale of each lot in Barefoot Beach Gardens on terms, inter alia, that:-
- (i) The aggregate amount paid to the Plaintiff shall not exceed US\$400,000.00.
 - (ii) All payments shall be paid to the Plaintiff by the Defendant within 30 days of receipt of the said sale proceeds by the Defendant.
21. As at the date hereof, the Defendant has sold an undetermined number of lots in Barefoot Beach Gardens to third party purchasers and in doing so is, or was, in receipt of sale proceeds in relation thereto.

22. In breach of paragraph 3.1 of the said Buy Out Agreement the Defendant has failed and /or neglected to pay the Plaintiff his entitlement to 3% of the sale proceeds already received by the Defendant.
23. The Plaintiff claims interest pursuant to Section 34 of the Judicature Law (1995 Revision) at such rate and for such period as the Court may determine.

WHEREFORE the Plaintiff claims:-

1. As to the first cause of action a declaration that on the true construction of the agreement and in the events which have happened, the Defendant holds upon trust for the benefit of the Plaintiff absolutely, one lot of land entitled Lot B1 more particularly described as Registration Section North East Coast Block 65A Parcel 54H7 located in Phase I of the sub-division, known as Barefoot Beach Gardens.
2. As to the first cause of action an order that the Defendant deliver up to the Plaintiff's attorneys-at-law forthwith a valid and registerable Transfer of Land form duly signed by the Defendant transferring registered proprietorship from the Defendant to the Plaintiff free and clear of all or any charges.
3. As to the first cause of action, alternatively, a declaration that the Plaintiff is entitled to the proceeds of sale in the event of Registration Section North East Coast Block 65A Parcel 54H7 being sold, subject to payment of the reasonable costs of such sale.
4. As to the second cause of action a declaration that on the true construction of the agreement and in the events which have happened, the Defendant holds upon trust for the benefit of the Plaintiff absolutely, one lot of land entitled Lot F8 in Phase II of the sub-division which is more particularly described as Registration Section North East Coast Block 65A Parcel 54 known as Phase II, Barefoot Beach Gardens.
5. As to the second cause of action, upon the Registrar of Lands allotting a block and parcel number to Lot F8, an order that the Defendant deliver up to the Plaintiff's attorneys-at-law forthwith a valid and registerable Transfer of Land form duly signed by the Defendant transferring registered proprietorship from the Defendant to the Plaintiff free and clear of all or any charges.
6. As to the second cause of action, alternatively, a declaration that the Plaintiff is entitled to the proceeds of sale in the event of the said Lot F8 Phase II, Barefoot Beach Gardens being sold, subject to payment of the reasonable costs of such sale.
7. As to the third cause of action, a declaration that 3% of the sale proceeds of the sale of any lot in Barefoot Beach Gardens has been and/or are held on trust by the Defendant for the Plaintiff.
8. As to the third cause of action an account of all lot sales in Barefoot Beach Gardens by the Defendant and the sale proceeds thereof received by the Defendant.

9. As to the third cause of action all necessary consequential accounts, directions and enquiries.
10. As to the third cause of action, upon the taking of the said accounts, payment of an amount equal to the Plaintiff's 3% interest therein together with interest thereon.
11. Alternatively, damages.
12. Interest pursuant to statute.
13. Such further or other relief as the Court thinks fit.
14. Costs.

Dated: 4TH October 1999

Bruce Campbell & Co

BRUCE CAMPBELL & CO.

**Attorneys-at-Law
for the Plaintiff**

IN THE GRAND COURT OF THE CAYMAN ISLANDS

606
CAUSE NO. OF 1999

BETWEEN: LALNCE K. POULSON

PLAINTIFF

AND: BAREFOOT RESORTS, LTD

DEFENDANT

ACKNOWLEDGEMENT 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.

2. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged -

3. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)
[] yes [] no

4. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)
[] yes [] no

Service of the Writ is acknowledged accordingly

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.

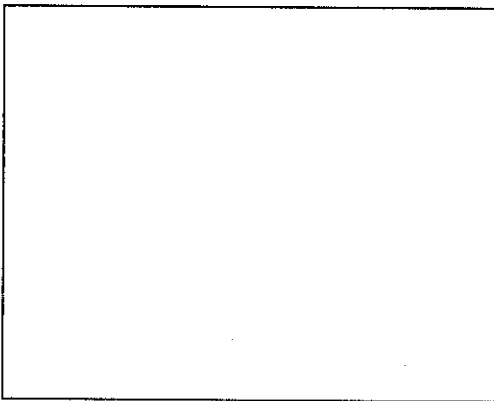
Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

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

Bruce Campbell & Co. (Ref: STM)
P O Box 884 G.T.
George Town
Grand Cayman

Tel: 949 2648
Fax: 949 8613

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



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 495, 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 installments or otherwise.

See over for notes for guidance

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 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.