

IN THE GRAND COURT OF THE CAYMAN ISLANDS

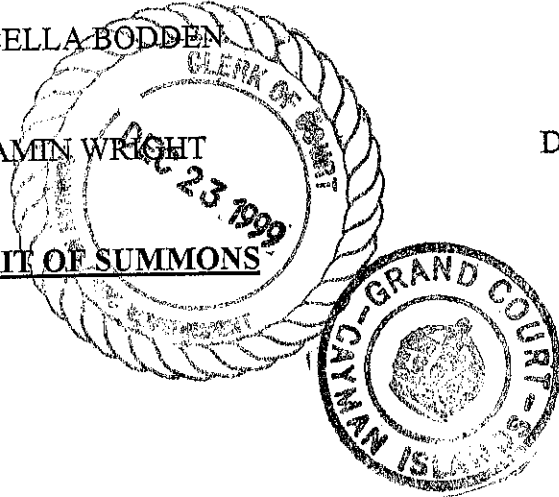
CAUSE NO 811 OF 1999

BETWEEN: MARCELLA BODDEN Plaintiff

AND: BENJAMIN WRIGHT Defendant

WRIT OF SUMMONS

TO: Benjamin Wright
Confite
La Cieba
Honduras



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claims set out on the next pages.

Within fourteen (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, 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 23rd day of December, 1999.

NOTE - This Writ may not be served later than six (6) calendar months beginning with the date of issue thereof, leave being required to serve it out of the jurisdiction of the Court, unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

DIRECTIONS FOR ACKNOWLEDGEMENT 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 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

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 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.

STATEMENT OF CLAIM

1. The plaintiff is a Caymanian who resides in Grand Cayman, where her address is P. O. Box 1427 GT.
2. The defendant is a Caymanian who is ordinarily resident in Confite, La Cieba, Honduras.
3. The plaintiff purchased the land then described as Registration Section George Town Central, Block 13E, Parcel 42 ("Parcel 13E/42") on 24th January, 1977, for which she paid CI\$4,000.00. Parcel 13E/42 had an approximate area of 7 acres.
4. The parties decided, in or about 1978, to develop Parcel 13E/42 together by erecting an apartment building thereon. They later borrowed funds from Cayman National Bank & Trust Co Ltd for that purpose and granted it a charge on the said land to secure that indebtedness ("the CNB charge").
5. In order to make the development referred to in paragraph 4 hereof possible, the plaintiff transferred Parcel 13E/42 to the defendant and herself jointly, on 26th January, 1979, for and in the apparent consideration of a price of CI\$2,000.00 which, in fact, the defendant never paid.

6. The parties became domestic partners in 1980. They had four children at that time.

7. The parties purchased a one-half share each, as proprietors in common, of the land described as Registration Section George Town Central, Block 13E, Parcel 57 ("Parcel 13E/57") on 9th September, 1981 for and in consideration of a price of CI\$14,500.00. Parcel 13E/57 is in the same area of George Town as was Parcel 13E/42 and it has an approximate area of 0.15 acre. The CNB charge was registered against Parcel 13E/57 at the time. The plaintiff has resided in a house erected on Parcel 13E/57 since 1992.

8. At the same time as the parties purchased Parcel 13E/57 as proprietors in common, they also acquired from the same proprietor a one-half share each, as proprietors in common, of the land described as Registration Section George Town Central, Block 13E, Parcel 58 ("Parcel 13E/58") for and in consideration of a price of CI\$14,600.00. The CNB charge was also registered against Parcel 13E/58 at that time. That land is in the same area as was Parcel 13E/42 and it has an approximate area of 0.15 acre.

9. At the same time as the parties purchased Parcels 13E/57 and 13E/58 as proprietors in common, they also purchased, from the same proprietor, a one-half share each, as proprietors in common, of the land described as Registration Section George Town, Block 13E, Parcel 61 ("Parcel 13E/61") for and in consideration of a price of CI\$25,000.00. Parcel 13E/61 is in the same area of George Town as was Parcel 13E/42 and it has an approximate area of 0.05 acre. The CNB charge was also registered against Parcel 13E/61 at the time.

10. In 1979 the parties subdivided Parcel 13E/42 into two new parcels described respectively as Registration Section George Town Central, Block 13E, Parcel 42REM1 ("Parcel 13E/42REM1") and Parcel 136 ("Parcel 13E/136"). They sold Parcel 13E/136 to Shirley Cridland for and in consideration of a price of CI\$10,000.00 and remained as joint proprietors of Parcel 13E/42REM1. The CNB charge was registered against Parcel 13E/42REM1 upon such sub-division. That land had an approximate area of 6.5 acres.

11. The parties decided, in 1988, to further develop the land which was then Parcel 13E/42REM1. They arranged for financing by Washington International Bank and Trust Ltd. That bank acquired the CNB charge, the outstanding amount whereof was, at the relevant time, US\$140,257.86, on 29th April, 1988. The

- parties borrowed a total amount of US\$475,000.00 from the said Washington International Bank and Trust Ltd, secured by a charge on Parcels 13E/42REM1, 13E/57, 13E/58 and 13E/61 ("the WIBT charge"), on or about that date.
12. The parties purchased, as joint proprietors, the land described as Registration Section George Town Central, Block 13E, Parcel 107 ("Parcel 13E/107"), for and in consideration of a price of C\$25,000.00, on 24th February, 1989. Parcel 13E/107 adjoined Parcel 13E/42REM1 and it has approximate area of 0.16 acre.
 13. The WITB charge was varied by increasing the principal amount thereof, on 9th June, 1989, to US\$572,000.00.
 14. The parties transferred Parcel 13E/107 to their daughter, Heather Wright McLaughlin, on 11th January, 1990 and she transferred that land back to them as joint proprietors on 1st February, 1993, all in consideration of natural love and affection.
 15. The said Heather Wright McLaughlin granted a charge on Parcel 13E/107 to Cayman National Bank & Trust Co Ltd in the amount of C\$45,000.00 at the time when she became the proprietor thereof. That charge was discharged through the

parties granting that bank a fresh charge in a similar amount on 1st February, 1993 ("the fresh CNB charge").

16. On 14th October, 1994, the parties sub-divided Parcel 13E/42REM1 into two new parcels, the land described as Registration Section George Town Central, Block 13E, Parcel 162 ("Parcel 13E/162"), which they sold to H O Merren & Co Ltd on 24th November, 1994 for and in consideration of a price of CI\$275,000.00, of which the plaintiff only received CI\$5,000.00 to enable her to purchase an automobile, and the land described as Registration Section George Town Central, Block 13E, Parcel 42REM2, of which they remained the joint proprietors. The WIBT charge was registered against Parcel 13E/42REM2 upon such sub-division. The approximate area of Parcel 13E/42REM2 is 6 acres.
17. The WITB charge was transferred, in 1989, to Bank of Butterfield International (Cayman) Ltd ("BOB") as part of the latter's acquisition of some or all of the former's loan portfolio.
18. The plaintiff and the defendant are therefore the sole joint proprietors of Parcels 13E/42REM2 and 13E/107 and the sole proprietors in common, as to one-half each, of Parcels 13E/57, 13E/58 and 13E/61.

19. The WIBT charge (which now belongs to BOB) is registered, *inter alia*, against the said Parcels 13E/42REM2, 13E/57, 13E/58 and 13E/61.

20. The fresh CNB charge is registered against Parcel 13E/107.

21. The following buildings stand on Parcels 13E/42REM2, 57, 58, 61 and 107, of which the plaintiff and the defendant are either the sole joint proprietors (Parcels 13E/42REM2 and 13E/107) or the sole proprietors in common as to one-half share each (Parcels 13E/57, 13E/58 and 13E/61):
 - (a) A building containing twelve one-bedroom apartments on Parcel 13E/42REM2 which are leased to tenants in consideration of a monthly rental of CI\$750.00, for a total rental revenue of CI\$9,000.00 per month.

 - (b) Three townhouses on Parcel 13E/42REM2 which are leased for a monthly rent of CI\$850.00 each, or a total revenue per month of CI\$2,250.00.

 - (c) A single family house on Parcel 13E/42REM2 which is leased for a monthly rent of CI\$850.00.

 - (d) A small house on Parcel 13E/57 which the plaintiff occupies.

- (e) Two buildings on Parcel 13E/58. One of them contains two one-bedroom apartments which are leased for a monthly rent of CI\$650.00 each, or a total revenue per month of CI\$1,300.00. The second building contains four studio apartments which are leased for CI\$500.00 per month each, or a total monthly revenue of CI\$2,000.00.
 - (f) A four-bedroom house on Parcel 13E/61. Each bedroom is leased for CI\$375.00 per month, or a total monthly revenue of CI\$1,500.00.
 - (g) A three-bedroom house on Parcel 13E/107 which is leased for CI\$1,200.00 per month.
22. The plaintiff and the defendant began to operate a specialised concrete objects business in partnership on Parcel 13E/42 in 1975. They manufactured and sold such objects under the name of Cayman Ornamental Concrete. That business generated an appreciable income, although the plaintiff is not, and never was, aware of the precise amount thereof.
23. The parties leased Cayman Ornamental Concrete to one Hector Garcia and one Ricardo Forbes in 1996. The lessees did not pay the parties all the agreed rent

and, when the plaintiff and the defendant separated in 1997, the former still had in their possession a number of objects which the parties had manufactured.

24. The parties also operated a launderette business ("the launderette") in partnership in a building situated on Parcel 13E/42REM2, which produced a substantial income, although the plaintiff is not, and never was, aware of the precise amount thereof. The building and the launderette equipment are still there.
25. The rental of the properties referred to in paragraph 21 hereof ("the properties") and the operation of the launderette were done as one single business, at least until 1997, under the name of City Lake Apartments.
26. THAT at the time when the parties operated Cayman Ornamental Concrete, that business, City Lake Apartments and the launderette were run as a single business and only one set of books was kept for them until the concrete objects business was leased as set out in paragraph 23 hereof. The parties each received fixed weekly wages from the combined businesses from at least 1991 until September, 1997, when they separated. The defendant's salary was CI\$400.00 per week and the plaintiff's was CI\$300.00 per week in 1996.

27. The parties kept a joint account at BOB on which they were both signatories. The plaintiff ceased to have authority to sign on that account in September or October, 1997.
28. The parties first separated in February, 1992. They still continued, however, to see each other and to operate their above businesses. All personal ties between them were finally cut in September, 1997, although they speak from time to time.
29. The defendant has received since September 1997, and continues to receive, the whole of the proceeds from the rental of the properties and from the launderette. These proceeds are collected for him by his agent, one Woodward DaCosta, who is employed by Century 21 Thompson Realty, an estate brokerage.
30. The plaintiff has not received any income from the properties or from the launderette or from Cayman Ornamental Concrete since September 1997.
31. The parties owed US\$166,988 to BOB under the WIBT charge and C\$77,380 to Cayman National Bank Ltd under the fresh CNB charge as at 30th September, 1999.

32. The defendant has not given the plaintiff, or anyone on her behalf, any accounting of the rents and profits which he has derived from the properties of which the parties are co-owners, from the launderette or from Cayman Ornamental Concrete since September 1997.

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT:

- A. A DECLARATION that the plaintiff is entitled to one-half of the rents, profits and income of the lands described as Registration Section George Town Central, Block 13E, Parcels 42REM2, 57, 58, 61 and 107, of the buildings erected thereon, of the launderette business operated in a building situated on Parcel 42REM2 and of a specialised concrete objects business operated under the name of Cayman Ornamental Concrete received by the defendant since 1st September, 1997.
- B. AN ACCOUNT of all such rents, profits and income received by the defendant or by any other person or persons by his order or for his use since 1st September, 1997 and of any outgoings or charges arising in respect of the properties or businesses described in paragraph A hereof.
- C. ALL NECESSARY enquiries and taking of accounts pursuant to the order sought in paragraph B hereof.

- D. PAYMENT TO the plaintiff of all sums found to be due to her pursuant to the declaration and orders sought in paragraphs A, B and C hereof.

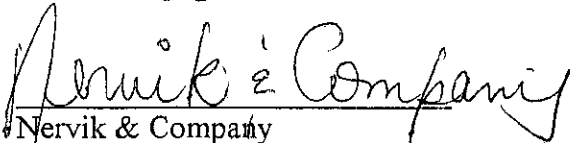
- E. PRE-JUDGMENT interest pursuant to statute upon all sums found to be due to the plaintiff.

- F. POST-JUDGMENT interest pursuant to statute upon all sums found to be due to the plaintiff.

- G. FURTHER and/or other relief and/or orders.

- H. PAYMENT of the plaintiff's costs of this action.

Dated this 22nd day of December, 1999.



Nervik & Company
Attorneys-at-law for the plaintiff

STATEMENT AS TO INTEREST

- (i) The prescribed rates of interest are $7 \frac{3}{8}$ % from 1st September, 1997 until 31st January, 1998, $7 \frac{7}{8}$ % from 1st February, 1998 until 31st December, 1998 and 7% from 1st January, 1999.

- (ii) The dates from which interest is claimed is the first day of each month for which rents, profits and income is claimed in the action.

To: The Clerk of the Court

And to: The defendant

THIS WRIT OF SUMMONS was issued by Nervik & Company, the attorneys-at-law for the plaintiff, whose address for service is Elizabethan Square, P.O. Box 31488 SMB, George Town, Grand Cayman, Cayman Islands, B.W.I.

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 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.

NERVIK & COMPANY
Attorneys-at-Law

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