

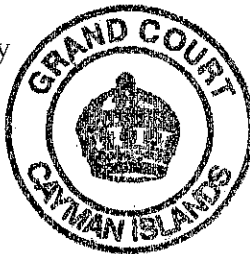
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 875 OF 2000

BETWEEN: ALISON BURNS PLAINTIFF
AND: (1) SEAN BRADY
(2) VERA BRADY DEFENDANTS

WRIT OF SUMMONS

To: Sean Brady and Vera Brady
4373 South Texas Avenue
Apartment 104, Orlando
Florida USA



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, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 28th day of November 2000.

NOTE – This Writ may not be served later than 4 calendar months (of, 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 is an Australian citizen who has been a resident of the Cayman Islands since 26th February 1995.
2. The First and Second Defendants are Caymanians who reside at 4373 South Texas Avenue, Apartment 104, Orlando in the State of Florida in the United States of America. They are the registered proprietors of the house situated at 545 Crewe Road, George Town, Grand Cayman (“the Property”).
3. On the 24th February 1998 the Plaintiff entered into a written lease of the Property for a period of 24 months commencing on 1st March 1998 at the rate of CI\$2,250.00 per month (“the Lease”). Pursuant to Clause 3 of the Lease, the Plaintiff paid the Defendants a security deposit of CI\$3,000.00.
4. On or about April 1998 one, Mark Green (“Mr. Green”) moved into the Property with the Plaintiff. The Defendants were advised that Mr. Green was also occupying the Property and raised no objection thereto. The Defendants thereafter accepted rent from both the Plaintiff and Mr. Green. The Defendants regularly dealt with Mr. Green in respect of matters affecting the Property. The Defendants by their conduct waived any right to object to Mr. Green’s presence on the Property.

5. On or about March 1999 Mr. Green advised the Defendants that he and the Plaintiff proposed to purchase a property of their own and did not wish to continue with the Lease for a further 12 months. Mr. Green advised that at that stage they had not yet purchased a property. The First Defendant on his own behalf and as agent for the Second Defendant orally agreed to a variation of the Lease by allowing the Plaintiff to continue to rent the Property on a month to month basis until she and Mr. Green had found a suitable property to purchase.
6. On 18th May 1999 the Plaintiff gave notice to the Defendants of her intention to terminate the Lease on 30th June 1999. On 24th May 1999 Mr. Green as agent on behalf of the Plaintiff and the First Defendant on behalf of himself and as agent for the Second Defendant entered into a written agreement in which it was acknowledged that the Defendants had agreed in March 1999 to vary the terms of the Lease and allow the Plaintiff to rent the Property on a month-to-month basis (the “Deed of Variation and Acknowledgement”). It was further agreed that the Defendants would return the Plaintiff’s security deposit within 30 days after 30th June 1999 upon a satisfactory inspection and inventory.
7. On 30th June 1999 Mr. Frank Brennan, as agent for the Defendants, carried out an inspection of the property and confirmed that all was in order and that he would advise the Defendants to return the Plaintiff’s security deposit. Several days later the Defendants’ agent orally confirmed that the Defendants had agreed to return the Plaintiff’s deposit and that they would receive a cheque from them within the next 14 days.
8. The Defendants thereafter wrongfully failed or refused to repay the security deposit of CI\$3,000.00 despite having been requested to do so by the Plaintiff by faxed letters dated 7th, 12th, and 14th July, and 31st August 1999.

9. Alternatively, if the First Defendant had no authority to agree to vary the terms of the Lease between the Plaintiff and the Defendants, the Plaintiff says by reason of the matters set out in paragraphs 5 and 6 herein, the First Defendant impliedly warranted his said authority as agent and thereby induced the Plaintiff to breach the Lease.
10. By reason of the First Defendant's breach of implied warranty, the Plaintiff has been unable to enforce the Deed of Variation and Acknowledgment against the Second Defendant and has thereby suffered loss and damage.


AND THE PLAINTIFF CLAIMS:

1. Payment by the Defendants of the sum of CI\$3,000.00 together with interest at the rate of 7 3/8% per annum from the date of judgment until payment.
2. Payment by the Defendants of the costs of the action.

Alternatively;

3. Damages by the First Defendant in the sum of CI\$3,000.00 for breach of warranty of authority together with interest at the rate of 7 3/8% per annum from the date of judgment until payment.
4. Payment by the First Defendant of the costs of the action.

Dated this th28 day of November 2000.



C.S. Gill & CO.
Attorneys-at-Law
for the Plaintiff

This Writ of Summons was filed by C.S. GILL & CO. Attorneys-at-Law 4th Floor Genesis Building, PO Box 945 GT, Grand Cayman, Cayman Islands, BWI.

BETWEEN: ALISON BURNS PLAINTIFF

AND: (1) SEAN BRADY
(2) VERA BRADY 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 Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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

3. 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

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

Address for service:

Please complete overleaf

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, PO Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 endorsed 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 the 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 Acknowledgement, 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