

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 222 OF 2001

BETWEEN: **NIKE REAL ESTATES LTD.** PLAINTIFF

AND: (1) **LUC DE BRUYNE**
(2) **CLAUDINE DE CUYPER**
(3) **INTERNATIONAL RELOCATION GROUP LTD.** DEFENDANTS

WRIT OF SUMMONS

TO: Luc De Bruyne and Claudine De Cuyper of Tamarind Bay Condos 12, West Bay Road, P.O. Box 31533 SMB, Grand Cayman and International Relocation Group Ltd. of One Artillery Court, Shedden Road, P.O. Box 2390 G.T., 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 495G. George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

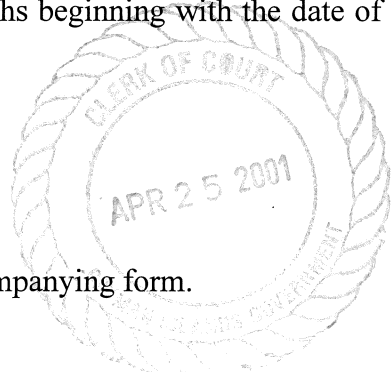
If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this day of April 2001.

NOTE: This Writ may not be served later than 4 calendar 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.

STATEMENT OF CLAIM

1. This action is concerned with property known as the Sage Building and which is registered as George Town Central Block 13EH, Parcel No. 140.
2. In the first half of 2000, Mr Johannes Langer Schroll, an Austrian national, was looking to invest in commercial property in Grand Cayman with a view to moving to the Island permanently. He intended to effect any such investment through a corporate vehicle of which he would be the main beneficial owner.
3. Mr Langer Schroll expressed an interest in the Sage Building which was owned by the First and Second Defendants, hereinafter referred to as "the Vendors". At all material times the Third Defendant (hereinafter referred to as "IRG") acted as agent for the Vendors and acted primarily through Mr Rob Jamieson.
4. The Vendors ran a sandwich/delicatessen business from premises at the ground floor of the Sage Building and known as the Gourmet Food Shop. There was a restaurant business carried on at the first floor of the Sage Building known as The Sage Restaurant by a company called Sage South Limited.
5. Sage South Limited had possession of the first floor premises pursuant to a lease dated 20th April 1998 granted by the Vendors and to which reference will be made at the trial hereof for its full terms true meaning and effect. The term of the said lease ran for a 5 year period commencing on 20th April 1998 and expiring on 19th April 2003.
6. The rent payable by Sage South Limited under the lease was CI\$6,500.00 per month until 19th April 2001 and thereafter the rent might be increased but in any event would not be less than the original rent of CI\$6,500 per month.
7. While the Vendors wished to sell the Sage Building, they also wished to continue to run the Gourmet Food Shop from the ground floor premises and sought to sell the said

property subject to the Sage South Limited lease referred to above and a new lease to be granted to the Vendors or their nominee company.

8. By a written agreement made on or about 8th August 2000 hereinafter referred to as “the Purchase Agreement”, Mr Langer Schroll, acting as agent for a company to be formed, agreed to buy the Sage Building from the Vendors for a price of CI\$1,100,000. IRG is named in the said agreement as being the Vendors’ agent. The agreement, to which reference will be made at trial for its full terms, true meaning and effect, provides *inter alia*:

“9. Completion will take place on or before November 15th 2000 ...

10. State of the Property and the Chattels

The Property and the Chattels shall be deemed to be purchased with full notice of the present state and condition subject to normal wear and tear occurring after the date hereof and prior to the Completion (unless otherwise stipulated in this agreement). On Completion, the Property shall be vacant and free of all tenancies except as may be stated herein....

Addendum “B”

... Addendum C contains the lease between [the Vendors] as Landlords and Sage South Ltd as Tenant also the “draft” lease between the Landlords and Caybel Ltd. Vendor and Purchaser acknowledge receipt of both leases.”

9. The reference to the lease between the Vendors and Sage South Ltd is to the lease dated 20th April 1998 and referred to above.
10. Prior to the making of the Purchase Agreement a copy of the Sage South Ltd lease had been provided by the Vendors and/or by IRG to Mr Langer Schroll and the rent provisions set out above had also been represented to Mr Langer Schroll by Mr Rob Jamieson of IRG, including in a fax dated 27th July 2000.
11. The sale was completed by the Plaintiff and the Vendors on or about 15th December 2000 and the full purchase price of CI\$1,100,000 was paid.

12. In fact and contrary to the representations made to Mr Langer Schroll and the terms of the written agreement made on or about 8th August 2000, IRG had prepared a rent reduction agreement as between the Vendors and Sage South Ltd in June 2000 to reflect the agreement which had been reached by the parties thereto. Under the rent reduction agreement the monthly rent was reduced from CI\$6,500 to CI\$4,500 per month for the period from 16th July 2000 and 15th January 2001.
13. Sage South Ltd acting through its agent Mr Arthur Screamon had been seeking to negotiate a rent reduction since about the end of April 2000 through discussions with the First Defendant and to the knowledge of Mr Rob Jamieson of IRG. Mr Screamon was of the view that the rent of CI\$6,500 was considerably above the market rent for the restaurant and in any event was too high for the turnover of the restaurant which had been and was continuing to trade at a loss.
14. The rent reduction agreement was not disclosed by either the Vendors or IRG to the Plaintiff and/or to Mr Langer Schroll either before the contract was entered into on or about 8th August 2000 or before completion took place on or about 15th December 2000.
15. In the premises:
 - (a) The provision of a copy of the lease between the Vendors and Sage South Ltd but without the rent reduction agreement of June 2000 constituted a misrepresentation by the Vendors and/or by IRG.
 - (b) The representations made by Mr Rob Jamieson that the rent payable under the said lease was CI\$6,500 were false and constituted a misrepresentation on the part of the Vendors and/or on the part of IRG.
16. The misrepresentations referred to above were made fraudulently in that the Vendors and/or IRG knew that they were false or were reckless as to the truth thereof. Alternatively, the said misrepresentations were made negligently.
17. Mr Langer Schroll in his capacity as agent for the Plaintiff was induced to enter into the contract on or about 8th August 2000 by the said misrepresentations and the Plaintiff

completed the purchase on or about 15th December 2000 believing that the representations which had been made were in fact and continued to be true.

18. By reason of the misrepresentations, the Plaintiff was entitled to rescind the purchase agreement and did so by a letter dated 15th March 2001.
19. Further or alternatively, the Plaintiff is entitled to damages from the Defendants. Sage South Ltd has not paid any rent since completion in December 2000. The restaurant closed for renovations in August 2000. Those renovations were never in fact undertaken. The restaurant has not and will not re-open.
20. If, which is denied, the Plaintiff has not validly rescinded the purchase agreement or if the court orders that the Defendants pay the Plaintiff damages in lieu of rescission or if the Vendors fail to comply with any order of the court regarding the repayment of the purchase price and the re-transfer of title so that rescission be impossible, the Plaintiff claims damages for all and any losses suffered as a consequence of the misrepresentation and of entering into the contract.
21. Further, the Plaintiff claims interest pursuant to statute.

AND THE PLAINTIFF claims:

1. Rescission.
2. Damages
3. Interest pursuant to statute
4. Costs

Walkers

WALKERS

THIS WRIT was issued by Walkers, Attorneys-at-Law P. O. Box 265, Walker House, George Town, Grand Cayman, Attorneys-at-Law for the Plaintiff herein whose address is that of its said Attorneys-at-Law.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 222 OF 2001

BETWEEN: NIKE REAL ESTATES LTD. PLAINTIFF

AND: (1) LUC DE BRUYNE
(2) CLAUDINE DE CUYPER
(3) INTERNATIONAL RE-LOCATION 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.

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

2. State whether the Defendants intend to contest or otherwise participate in the proceedings (tick appropriate box).

yes checkbox

yes

no checkbox

no

Service of the Writ of Summons 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 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.

Walkers P.O. Box 265 Walker House Mary Street Grand Cayman Ref: DMc/ej – N0254-30412

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**

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 the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

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. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. 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.
4. 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 Originating Summons)".
5. 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.
6. 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.
7. 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 steps in the proceedings without an Attorney acting on its behalf.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.

9. A Defendant acting in person may obtain help in completing the form at the Courts Office.