

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 332 OF 2001

BETWEEN: WERNUTS LDC

Plaintiff

AND: CONDOCO GRAND CAYMAN RESORT LTD

Defendant



WRIT OF SUMMONS

To: Condoco Grand Cayman Resort Ltd  
c/o Caylaw Corporate Services Ltd  
Kirk House, Third Floor  
PO Box 481 GT  
George Town  
Grand Cayman, BWI

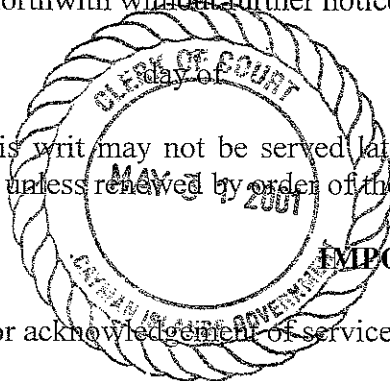
THIS WRIT OF SUMMONS has been issued against you by the above-named plaintiff in respect of the claim set out in the next pages.

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 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 \_\_\_\_\_ day of \_\_\_\_\_, 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 acknowledgement of service are given with the accompanying form.

**STATEMENT OF CLAIM**

1. The plaintiff is a company formed on 25th February, 2000 under the laws of the Cayman Islands. It has its registered office at the offices of Trulaw Corporate Services Ltd, Anderson Square, PO Box 866 GT, George Town, Grand Cayman, BWI.
2. The defendant is a company formed under the laws of the Cayman Islands. It has its registered office at the offices of Caylaw Corporate Services Ltd, Kirk House, PO Box 481 GT, George Town, Grand Cayman, BWI.
3. In February 2000, Ms Calma A Berman (“Ms Berman”), on behalf of the plaintiff that was yet to be formed, and the defendant entered into an agreement of purchase and sale (“the agreement”) of a future strata lot (“the strata lot”) to be contained in a building (“the building”) to be constructed on the north part of the land described as Registration Section West Bay Beach South, Block 12C, Parcel 11 (“the land”) whereby the plaintiff would purchase the strata lot from the defendant for a price of US\$3,500,000 (“the purchase price”). The plaintiff will refer to the agreement, at the trial of the action, for its full terms and legal effect.
4. The land was, at all relevant times, and still is Crown land. The plaintiff will refer to the relevant land register, at the trial of the action, for its full terms and legal effect.
5. The Crown leased, *inter alia*, the whole of the land, on or about 11th April, 1950, to a head lessee for a term of ninety-nine (99) years for and in consideration of a rent of £100 per year.

6. There was, at all relevant times, a lease register wherein the leased land is described as Registration Section West Bay Beach South, Block12C, Parcel 11/1. The plaintiff will refer to all relevant editions of that register, at the trial of the action, for their full terms and legal effect.
7. The lease referred to in paragraph 5 hereof ("the lease") was transferred, on or about 12th June, 1989, to Ms Wilda M Humphreys.
8. The head lessee at the relevant time sub-leased the whole of the land to Humphreys (Cayman) Limited as sub-lessee thereof on or about 1st January, 1971 for a term of thirty-three (33) years for and in consideration of a rent of US\$60,000 per year.
9. There was, at all relevant times, a sub-lease register wherein the sub-leased land is described as Registration Section West Bay Beach South, Block12C, Parcel 11/1/1. The plaintiff will refer to all relevant editions of that register, at the trial of the action, for their full terms and legal effect.
10. The head lessee at the relevant time transferred and/or assigned the benefits of the lease, on or about 4th December, 2000, to the said Humphreys (Cayman) Limited as the new head lessee of the whole of the land.
11. It was an express term of the agreement that the purchase price would be paid as follows:
  - (a) A deposit of US\$525,000 payable concurrently with the signing of the agreement.

- (b) A first instalment of US\$525,000 payable within thirty (30) days from the date of the signing of the agreement by the plaintiff.
  - (c) The balance of US\$2,450,000 payable in full on the date of completion.
12. It was an express term of the agreement that completion would only take place after the registration of a strata plan, after the construction of the building, after a certificate of occupancy was issued with respect thereto and after certain other conditions were fulfilled.
  13. On 24th January, 2000, Stephen Berman and Ms Berman offered to purchase the strata lot from the defendant for an amount equal to the purchase price. The plaintiff will refer to that offer to purchase, at the trial of the action, for its full terms and legal effect.
  14. It was an express term of the offer to purchase referred to in paragraph 13 hereof that the said Stephen Berman and Ms Berman would pay the defendant a refundable deposit of US\$50,000.
  15. It was an express term of an addendum of 24th January, 2000 to the offer to purchase referred to in paragraph 13 hereof that the latter was null and void until the defendant received the deposit referred to in paragraph 14 hereof. The plaintiff will refer to that addendum, at the trial of the action, for its full terms and legal effect.
  16. Ms Berman accordingly transferred a sum of US\$50,000, being the deposit referred to in paragraph 14 hereof, to the US dollar escrow account of Orren Merren & Company, the attorneys-at-law for the defendant, on 28th January,

2000 pursuant to the terms of the offer to purchase referred to in paragraphs 13 and 14 hereof and of the addendum referred to in paragraph 15 hereof.

17. The offer to purchase and the addendum thereto ceased to have any affect upon the execution of the agreement.
18. Ms Berman caused a sum of US\$475,000, being US\$525,000 less the deposit of US\$50,000 paid in the circumstances set out in paragraphs 13 to 16 hereof, to be transferred to the account of the defendant in Grand Cayman on 9th February, 2000 pursuant to the provision of the agreement set out in paragraph 11(a) hereof.
19. Brian Goldstone signed the agreement on behalf of the defendant on 8th February, 2000.
20. Ms Berman signed the agreement on behalf of the plaintiff, which was not formed yet, shortly thereafter.
21. The plaintiff transferred a sum of US\$525,000 to Orren Merren & Company, the attorneys-at-law for the defendant, on 10th March, 2000 pursuant to the provision of the agreement referred to in paragraph 11(b) hereof.
22. Ms Berman on behalf of the plaintiff, which was not formed yet, and the defendant also entered into an addendum to the agreement ("the addendum") at the same time as they executed the agreement. The plaintiff will refer to the addendum, at the trial of the action, for its full terms and legal effect.
23. It was an express term of the addendum that, in the event that the defendant did not become the registered leasehold proprietor of "the Property" on or before the date which was twelve (12) months after the date of the payment in full of "the

- Deposit” by “the Purchaser”, then the latter, by notice in writing to the defendant given within thirty (30) days from such date, could rescind the agreement and demand from the defendant the return of all moneys paid thereunder up to that date by “the Purchaser” to the defendant.
24. “The Property” is defined in the agreement as the leasehold title to that part of the land on which the building is to be constructed, i.e. the north part thereof.
  25. “The Deposit” is defined in the agreement as the sum of US\$525,000 referred to in paragraph 11(a) hereof (“the deposit”).
  26. It was an express term of the addendum that the words “the Property” and “the Deposit” have the same meaning therein as in the agreement.
  27. It was an express term of the addendum that the words “the Purchaser” therein mean the plaintiff and its members. Ms Berman is, and was at all relevant times, one of the plaintiff’s members.
  28. The plaintiff, or one of its members on its behalf, had therefore paid a total sum of US\$1,050,000 to the defendant, under the provisions of the agreement referred to in paragraph 11 hereof, by 10th March, 2000.
  29. The plaintiff ratified the agreement and the addendum on 25th May, 2001 pursuant to the provisions of section 81(3) of The Companies Law (2001 Second Revision). It was and is accordingly bound by, and entitled to the benefit of, the agreement and the addendum from the date of its registration.
  30. The date which was twelve (12) months after the date of the payment in full of the deposit by the plaintiff or on its behalf and for its benefit was 9th February, 2001.

The defendant did not become the registered leasehold proprietor of the leasehold title to that part of the land on which the building is to be constructed or of any part of any title to the land on or before that date.

31. The plaintiff gave notice in writing to the defendant and to Orren Merren & Company, the latter's attorneys-at-law, on 8th March, 2001, that it rescinded the agreement and demanded the return of all moneys paid up to then to the defendant, pursuant to the provisions of the addendum set out in paragraph 23 hereof. The plaintiff will refer to that notice, at the trial of the action, for its full terms and legal effect.
32. The defendant was accordingly, as of 8th March, 2001, and still is under a duty to return to the plaintiff the sum of US\$1,050,000, being all moneys paid by the plaintiff or on its behalf to the defendant up to then.
33. The defendant has refused to return the said sum of US\$1,050,000 to the plaintiff and still refuses to do so.
34. The defendant is accordingly in breach of the provisions of the addendum set out in paragraph 23 hereof, as a result of which the plaintiff has suffered loss and damage in the amount of US\$1,050,000 plus interest thereon since 8th March, 2001.

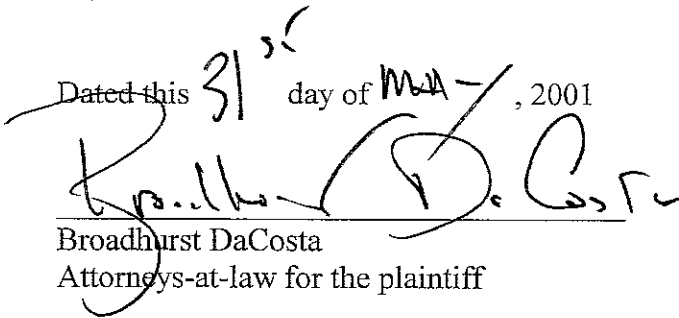
AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT:

- (A) THE SUM of US\$1,050,000.
- (B) PRE-JUDGMENT INTEREST from 8th March, 2001 pursuant to statute.

(C) POST-JUDGMENT INTEREST pursuant to statute.

(D) ITS COSTS of the action.

Dated this 31<sup>st</sup> day of May, 2001

  
Broadhurst DaCosta  
Attorneys-at-law for the plaintiff

TO: The clerk of the court

AND TO: The defendant

STATEMENT REGARDING INTEREST

- (i) The prescribed rate of interest, throughout the relevant period, was 8% per annum.
- (ii) The date from which interest is calculated is 8th March, 2001.
- (iii) The total amount of interest claimed as at 31st May, 2001 is US\$19,331.50.
- (iv) The amount of interest accruing each day thereafter is US\$230.14.

INDORSEMENT

The amount claimed in respect of the debt or demand is US\$1,050,000.00 as principal and US\$19,331.50 as interest until 31st May, 2001 for a total amount of US\$1,069,331.50. The amount of the fixed costs is CI\$500.00 and the costs of issuing the writ of summons was CI\$5,670.00. If, within the time for returning the acknowledgement of service, the defendant pays the plaintiff or its attorneys-at-law the total amount claimed in principal and interest, the fixed costs and the costs of issuing the writ of summons, further proceedings will be stayed. The money must be paid to the plaintiff or to its attorneys-at-law.

INDORSEMENT AS TO CURRENCY

The currency of the debt or liquidated demand and of the interest is United States dollars.

THIS WRIT OF SUMMONS was issued by Broadhurst DaCosta, the attorneys-at-law for the plaintiff, whose address for service is 40 Linwood Street, PO Box 2503, George Town, Grand Cayman, Cayman Islands, British West Indies.

**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 instalments 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS <sup>337</sup>  
CAUSE NO of 2001

BETWEEN:

WERNUTS LDC

Plaintiff

AND:

CONDOCO GRAND CAYMAN RESORT 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 judgement being entered against a Defendant where 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 the 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 judgement entered by the Plaintiff (*tick box*)

Yes [ ]

Service of the Writ is acknowledged accordingly.

(Signed)

\_\_\_\_\_

[Attorney] for

**Notes on address for service**

Attorney: where 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 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.*

Broadhurst DaCosta  
40 Linwood Street  
P.O. Box 2503  
George Town, Grand Cayman  
  
per: Peter A. Broadhurst

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

[Empty box for Defendant's Attorney indorsement]