

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 393 of 2001

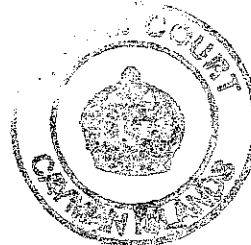
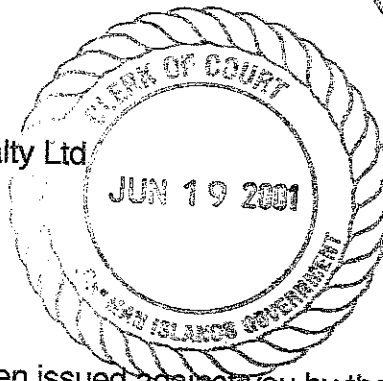
BETWEEN: TINA SCHILLER PLAINTIFF

AND: (1) KATHRYN HARPER
(2) ERA CAYMAN PARADISE REALTY LTD. DEFENDANTS

WRIT OF SUMMONS

TO: Ms Kathryn Harper
ERA Coralie Properties Ltd
Turks & Caicos Islands
Turks & Caicos Islands
West Indies

AND TO: ERA Cayman Paradise Realty Ltd
c/o A Steve McField & Associates
P O Box 680 GT
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 495 G, 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 Judgement may be entered against you forthwith without further notice.

Issued this day of June, 2001

NOTE: This Writ may not be served later than 4 calendar months beginning with the date of the 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 individual who is a resident of the Cayman Islands.

2 The First Defendant is a Real Estate Agent who operates a business known as ERA Coralie Properties Ltd. in the Turks & Caicos Islands. She is also a former employee of the Second Defendant and at the material time she was and still is a joint proprietor of a property known as No. 277 Raleigh Quay which is registered at the Land Registry as: Registration Section: West Bay Beach North, Block 11C Parcel 155 together with her estranged husband, Dr Brad Harper.

3 The Second Defendant is a company duly incorporated in the Cayman Islands to inter alia carry on the business of real estate agents and brokers with a Registered Office at A Steve McField & Associates, Attorneys At Law, P OBox 680 GT, Grand Cayman. At the material time the Second Defendant acted as agents for the First Defendant.

4 On or about 22nd February, 2001 the Plaintiff entered into and executed a written Rental Agreement with the First Defendant whereby she was to rent the premises known as No. 277 Raleigh Quay (Registration Section: West Bay Beach North, Block 11C Parcel 155) for a period of one year commencing on 1st day of March, 2001 and ending on 28th day of February, 2002. Implicit in the terms of the said Rental Agreement was the fact that the First Defendant was the sole owner of the said premises and as such had authorisation to rent the premises on the terms and conditions contained in the said Rental Agreement to the Plaintiff.

5 The Plaintiff in obtaining and negotiating the said Rental Agreement relating to the said property dealt exclusively with the Second Defendant who acted throughout as agents for the First Defendant. It was an expressed term of the said Rental Agreement that all rental cheques would be paid at the Second Defendant to Elizabeth M Ross, an employee of the Second Defendant, on the First day of each month, which employee also witnessed the signature of the Plaintiff on the said Rental Agreement. At the bottom of the rental agreement it stated that all cheques were to be paid to "Kathryn Harper".

6 It was also an expressed term of the said Rental Agreement that "if any legal action brought by either party to enforce the terms hereof or relating to the demised premises the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee." The Plaintiff will rely on the terms of the said Rental Agreement for its full terms and legal effect.

7 At the time of negotiating and up to the execution of the said Rental Agreement, the Plaintiff was led by the Second Defendant to believe that the First Defendant was the sole owner of the said premises and that she had authority to sign the said Agreement and to rent the said premises. At no time was she informed prior to entering into the said Agreement that the First Defendant was a joint proprietor of the property with her estranged husband and that the Second Defendant had no authority to act on behalf of the joint proprietor. This misrepresentation by the Second Defendant was deliberate and/or reckless as sometime prior to the execution of the Rental Agreement the First and Second Defendants had had a problem in renting the said premises to other tenants because they had purported to act on behalf of the First Defendant alone and after the rental agreement had been signed with the then tenants, the joint proprietor, Dr Harper, indicated that he would not be renting the premises to them.

The First and Second Defendants were therefore aware of the fact that they needed authority from Dr Brad Harper in order to rent the said premises.

8 In reliance on the representation of the Second Defendants that they had the property listed for rent by the registered proprietor and as such had authority to rent the said premises, the Plaintiff executed the said Rental Agreement and paid the various deposits which were required of her under the terms of the said Rental Agreement and she also paid the first month's rent. The Plaintiff will rely on the Listing Agreement between the First and the Second Defendants for its full terms and legal effect.

9 In breach of the terms of the said Rental Agreement the Plaintiff was unable to move into the said premises because the First Defendant's estranged husband, the joint proprietor, moved back into the premises prior to the Plaintiff taking possession and occupying the said premises. As a result of the fraudulent and/or reckless misrepresentation of the Second Defendant the Plaintiff had to find alternative accommodation and she has suffered loss and damage. Further and in the alternative as a result of the breach of the said Rental Agreement by the First Defendant, the Plaintiff has had to find alternative accommodation and has suffered loss and damage.

10 On or about 22nd February, 2001 the Plaintiff paid a sum of US\$4,600.00 to the Second Defendant being the security deposit and pet deposit necessary to be paid under the terms of the 'Rental Agreement. These sums were paid directly to the Second Defendant who issued a receipt therefor. The Plaintiff will rely on the said receipt for its full terms and legal effect. On 27th February, 2001, the Plaintiff paid to the Second Defendant a further sum of US\$4,000.00 plus CI\$300.00 (US\$368.03) being the amount payable for the first month's rent and the electricity deposit, making a total sum paid of US\$8,968.03. The Second Defendant issued a receipt to the Plaintiff in the name of the First Defendant for the latter amount. The Plaintiff will rely on the said receipt for its full legal terms and effect.

11 The Plaintiff has made various requests to the Defendants to have the funds paid by her in reliance on the terms of the Rental Agreement, reimbursed to her but to date she has been paid only CI\$4,000.00 (US\$ 4,878.05). The First and Second Defendants do not dispute that the Plaintiff paid the sums referred to herein and that she has been reimbursed only CI\$4,000.00 (US\$4,878.05) of that sum, leaving a balance outstanding of US\$4,089.98. The CI\$4,000.00 which was refunded to the Plaintiff was refunded by the Second Defendants apparently on behalf of the First Defendant.

11 On 11th June, 2001 the Plaintiff sent a letter to the First Defendant recinding the said Agreement on the basis of the fraudulent and/or reckless misrepresentation.

WHEREFORE THE PLAINTIFF CLAIMS

((a) Payment of the amount outstanding of US\$ 4,089.98 (CI\$3,353.78) which represents the balance of funds not paid to the Plaintiff from the sums paid by her.

(d) Damages in the amount of CI\$2000.00 or such sum as is assessed by this Honourable Court.

(c) Interest in the amount of CI\$64.50 representing 117 days from 22nd February, 2001 to date accruing @ CI\$. 55c per day at the statutory rate of 6% per annum until payment in full of the outstanding amount.

(c) Such further or other relief as this Honourable Court shall deem appropriate.

(d) Costs and Attorneys fees to be taxed if not agreed

Dated this 19th day of June, 2001

Brooks & Brooks
BROOKS & BROOKS
Attorneys At Law for the Plaintiff

THIS WRIT OF SUMMONS was filed by Brooks & Brooks Attorneys At Law for and on behalf of the Plaintiff herein whose address for service is that of her said Attorneys At Law One, Artillery Court , P O Box 1355GT GRAND CAYMAN

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BETWEEN: TINA SCHILLER PLAINTIFF

AND; (1) KATHRYN HARPER
(2) ERA CAYMAN PARADISE REALTY LTD DEFENDANTS

ACKNOWLEDGEMENT OF SERVICE
OF AMENDED 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 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

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 (Please tick box)

Yes

No

Service of Writ is acknowledged accordingly

Signed _____

Please complete oveleaf

(Attorney) for

(Defendant in Person)

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

**Brooks & Brooks
Attorneys At Law
P O Box 1355 GT
GRAND CAYMAN**

(One, Artillery Court, George Town, Grand Cayman)

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