

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 585 OF 2001

BETWEEN:

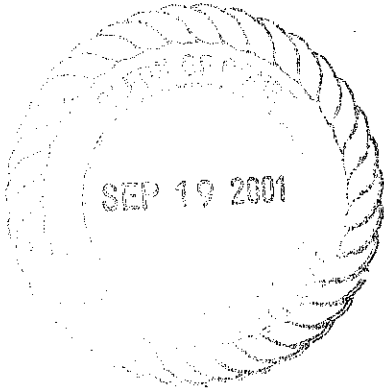
- (1) SHARLEEN DUVAL
- (2) STEPHEN DUVAL

Plaintiffs

- and -

- (1) RUDOLPH EVANS
- (2) ROSEDEAN EVANS

Defendants



WRIT OF SUMMONS

TO: Rudolph Evans and Rosedean Evans of c/o R & R Marine, North Sound Road, George Town, Grand Cayman, Cayman Islands

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, PO Box 495 GT, 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 19th day of September, 2001.

NOTE – This Writ may not be served later than 4 calendar months or, 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 Acknowledgment of Service are given with the accompanying form.

*Duval v Evans***STATEMENT OF CLAIM**

1. The Defendants, who are husband and wife, are and have been at all material times the registered proprietors of Parcel 115, Block 20E of the George Town East, Registration Section of Grand Cayman (the "Property").
2. The Plaintiffs, who are husband and wife, are the owners of and are entitled to possession of the following chattels which they purchased for the following prices:

One	25.2 Cubic Ft White Refrigerator	CIS\$1,980.00	
One	27" White Built-in Micro Oven Combo	CIS\$1,550.00	
One	24" Dishwasher	CIS\$ 460.00	
One	Maytag Intelli Dry Atlantis Dryer	CIS\$ 725.00	
One	Maytag Atlantis Washer	CIS\$ 975.00	
Two	Front Entrance Lights (purchased from Home Depot Expo)	CIS\$ 411.60	US\$490.00
One	Front Porch Light Hanging (purchased from Home Depot Expo)	CIS\$ 268.80	US\$320.00
48	Kitchen cabinet handles (purchased from Home Depot Expo)	CIS\$ 159.50	US\$190.00
Two	Glass panel for kitchen door	CIS\$ 22.00	
Two	Light fixtures for outside fans	CIS\$ 30.00	
Two	Bathroom Light Fixtures in master bath (purchased at Home Depot)	CIS\$ 58.80	US\$ 70.00
One	Wall Sconce light fixture for ½ bath	CIS\$ 46.20	US\$ 55.00
One	Wall Sconce light fixture for 2 nd Bath	<u>CIS\$ 29.40</u>	US\$ 35.00
TOTAL		<u>CIS\$6,716.40</u>	

3. In or about early March 2001 the Defendants were in the process of completing the construction of a house on the property and they advertised it for sale on 7th March 2001. The said advertisement that appeared in the Caymanian *Compass* on 7th March 2001 represented that the property with

Duval v Evans

7. On 10th March 2001 the First Defendant asked the Plaintiffs to purchase appliances, fixtures and fittings that she would like installed in the house so that cabinets could be installed and electrical inspections undertaken. The Plaintiffs subsequently purchased the items set out in paragraph 2 above and delivered them to the property and into the custody of the Defendants as Bailees.
8. On or about 18th April 2001 the First Defendant asked the First Plaintiff to sign a written "Sale Agreement" and in order to induce her to sign represented to the First Plaintiff that the written agreement accurately recorded the aforesaid oral agreements and that if the First Plaintiff signed the written agreement that the First Defendant would provide to her a copy of the said agreement. The First Plaintiff in reliance upon the said representations signed the written agreement.
9. Over the months of April and May 2001 the Plaintiffs discovered and the facts are that each of the said representations was untrue and the said warranties were broken in that:
 - (a) The appraised value of the house on completion even including the Plaintiffs chattels as set out in paragraph 2 above was not C\$500,000 but no more than C\$325,000.
 - (b) The size of the house was not 3,500 square feet but only 3,100 square feet including the garage, front porch and rear patio.
 - (c) The First Defendant did not complete the finishing touches by mid-April or at all.
 - (d) The First Defendant did not use the C\$15,000 to complete the finishing touches at the house but instead took those monies and invested them in another project.
 - (e) The house was not capable of human habitation as it did not at any material time have a Certificate of Occupancy because of breaches of planning laws regarding the septic tank committed by the First Defendant of which he was well aware.
 - (f) The written agreement did not accurately record the oral agreements made by the parties and in particular falsely stated that the parties had agreed that the C\$15,000 were "none [sic.] refundable monies deposited against the above mentioned property..." when the said monies had been paid over for the express purposes aforesaid.

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- (g) The First Defendant despite numerous demands refused to provide the First Plaintiff with a copy of the written sale agreement.
10. The First Defendant made the said representations either well knowing that they were false and untrue or recklessly not caring whether they were true or false.
11. So soon as the Plaintiffs discovered that the said representations were untrue (save for that set out in paragraph 9(e) which was only discovered when a copy of the written sale agreement was finally provided on 2nd August 2001) the Second Plaintiff on 11th June 2001 telephoned the First Defendant to inform him that:
- (a) The Plaintiffs were entitled to and did repudiate the said contract because of the misrepresentations and breaches aforesaid;
- (b) That in any event the Plaintiffs were not in funds to complete even had they not repudiated the contract.
12. Further or in the alternative in the premises aforesaid the First Defendant accepted that the Plaintiffs' complaints (save for 9(e)) as set out in paragraph 9 above were justified and agreed with the Second Defendant to rescind the contract(s) for the purchase of the property.
13. In the premises, the consideration for the payment of the said sum of CI\$15,000 has wholly failed, and the said sum became payable to the Plaintiffs as money had and received.
14. By reason of the matters aforesaid the Plaintiffs have lost the value of improvements that they made to the property alternatively the Defendants have been unjustly enriched by the value of the said improvements and the Plaintiffs have thereby suffered loss and damage.

Particulars

- | | | |
|-----|--|--------------|
| (a) | Interior painting to the house | CI\$3,634.00 |
| (b) | Landscaping and garden improvements | CI\$ 535.00 |
| (c) | If which is denied any of the chattels set out in paragraph 2 above have become fixed to the property and become part of | |

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the land, the value thereof.

15. On or about 19th July, 2001 the First Plaintiff by telephone requested the First Defendant to deliver up the chattels set out in paragraph 2 above and the First Defendant agreed that the First Defendant could collect the chattels at 11:00 am on 20th July 2001, but in breach of this agreement neither the First Defendant nor his servant or agent attended the property at the said time, when the First plaintiff did so attend, to permit access to the property to collect the chattels. Further by letter and fax of 27th July 2001 from the Plaintiffs' attorneys to the Defendants and their attorneys further demand for delivery up of the said chattels by 3rd August 2001 was made. The Defendants have refused to deliver up the chattels and subsequently have asserted that they are the owners of them by advertising the house for sale including the Plaintiffs' said chattels.

16. In the premises the Defendants have converted the said chattels to their own use.

17. By reason of the conversion the Plaintiffs have suffered loss and damage being their value of CI\$6,716.40.

18. The Plaintiffs are entitled to and claim interest pursuant to section 34(1) of the Judicature Law (1995 Revision):

- (a) On CI\$15,000 at 8% per annum (daily rate CI\$3.29) from 8th March 2001 until judgment or sooner payment.
- (b) On CI\$6,716.40 at 8% per annum (daily rate CI\$1.47) from 20th July 2001 until judgment or sooner payment.
- (c) On further damages as the court may determine

AND THE PLAINTIFFS CLAIM:-

1. A declaration that the said contract was validly rescinded by agreement or otherwise on 11th June 2001;

Or alternatively

2. Rescission of the said contract

And

Duval v Evans

3. Damages;
4. Return of the said sum of CI\$15,000.00 with interest as aforesaid.;
5. Delivery up of the chattels;
6. Alternatively delivery up of the chattels or payment of CI\$6,716.40, their value;
7. Damages for conversion;
8. Interest as aforesaid;
9. Further or other relief;
10. Costs.

Dated 19th day of September 2001



Boxalls

Attorneys for the Plaintiffs

IN THE GRAND COURT OF THE CAYMAN ISLANDS

S&S
CAUSE NO. OF 2001

BETWEEN:

- (1) SHARLEEN DUVAL
- (2) STEPHEN DUVAL

Plaintiffs

- and -

- (1) RUDOLPH EVANS
- (2) ROSEDEAN EVANS

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 of Summons is being acknowledged.

RUDOLPH EVANS

-
2. State whether the Defendant intends to contest or otherwise participate in 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

**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, P.O. Box 495G, 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 if 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 Acknowledgment 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.

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ROSEDEAN EVANS

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2. State whether the Defendant intends to contest or otherwise participate in the proceedings (*tick appropriate box*).

yes

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