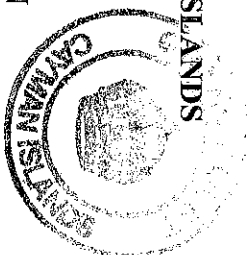


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 302 OF 2002 ✓



BETWEEN: PETER THOMPSON

FIRST PLAINTIFF

MARGARET THOMPSON

SECOND PLAINTIFF

AND: GRAND CAYMAN GOLF RESORTS LTD.

DEFENDANT

WRIT OF SUMMONS

TO: Grand Cayman Golf Resorts Ltd.  
c/o International Corporate Management Services Ltd.  
P.O. Box 1320 GT,  
Suite D-2,  
Cayman Business Park,  
Elgin Avenue,  
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, PO Box 495G, 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 April, 2002.

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 Acknowledgement of Service are given with the accompanying form.

## STATEMENT OF CLAIM

1. The First and Second Plaintiffs entered into a contract with the Defendant dated 12 April, 1996 the "Purchase Contract" under which the Plaintiffs agreed to the purchase from the Defendant land known as Block 24D Parcel 410 (the "Land").
2. The material terms of the Purchase Contract were:
  - (i) the purchase price for the Land to be paid was C1\$60,000.00 (subsequently revised by letter dated 5 March, 1998 to \$72,935.38) (the "Purchase Price") with a deposit of C1\$720.10;
  - (ii) the Purchase Price was be paid in 180 monthly installments composed of principal and interest, at the rate of 12% per annum, amounting to C1\$720.10 per month and increasing to C1\$1,012.72 on 5 March, 1998;
  - (iii) the first installment to be paid towards the Purchase Price was paid on 15 May, 1996;
  - (iv) clause 9 of the Purchase Contract provided as follows:

*"If the Purchaser is arrears with the payment of two (2) monthly instalments in the aggregate, the Vendor shall serve written notice on the Purchaser that this agreement will be completed within twenty-one (21) days after the services of the notice; failing compliance with the said notice to complete, all monies paid on account of the purchase price shall be forfeited to the Vendor. It is hereby expressly agreed that time shall be of the essence with regard to this clause. This clause shall only be of any effect where the Purchaser has opted to pay the balance of the purchase price by installment";*
  - (v) clause 10 of the Purchase Contract provided as follows:

*"Any notice, demand or other communication under this Agreement shall be in writing and may be delivered personally or by letter, telex or facsimile transmission dispatched by the Purchaser to the Vendor or the vendor to the Purchaser to the address specified in the Fourth Schedule hereto"; and,*
  - (vi) clause 11 of the Purchase Contract provided as follows:

*"Every notice, demand or other communication shall be deemed to have been received seven (7) days after being posted and if delivered personally or dispatched by telex or*

*facsimile transmission at the time of delivery or dispatch if during normal office business hours on a working day in the place of intended receipt and otherwise at the opening of business in that place on the next succeeding such working day. ”*

3. The Purchase Contract was in a standard form and was not open to negotiation by the Plaintiffs prior to it being signed.
4. From the date of the first payment under the terms of the Purchase Contract until May, 2000, the Plaintiffs paid the monthly installments due under the terms of the Purchase Contract, paying in total the sum of C1\$41,042.33 towards the cost of the Land agreed to be purchased under the terms of the Purchase Contract. The sum paid amounted to over half of the cost of the Land.
5. On 9 January, 2001, the Defendant allegedly wrote a letter to the Plaintiffs sending the same by ordinary post purporting to give notice under the aforementioned clause 9 of the Purchase Contract and giving 21 days notice to complete the purchase of the Land. The Defendant threatened that in the event the Plaintiffs failed to complete within 21 days of the date of that letter, all monies paid by the Plaintiffs towards the cost of purchasing the aforementioned land would be forfeited.
6. The aforementioned letter of 9 January, 2001 did not constitute proper or any notice under the terms of the Purchase Contract. In accordance with clause 9 of the Purchase Contract, the Defendant was required to give 21 days notice, to expire after service of the notice. In accordance with clause 11 of the Purchase Contract, notices, demands, communications sent by ordinary post were deemed to have been received 7 days after being posted.
7. On the basis of the aforementioned provisions of the Purchase Contract, the notice given by the Defendant pursuant to clause 10 of the Purchase Contract was not served in accordance with its terms as it required that the Plaintiffs complete the purchase of the land within “21 days” of today’s date”. No account was taken of the required period allowed for service.

8. As such, the Defendant's notice was invalid of no effect and in breach of contract and did not entitle the Defendant to forfeit the payments of the Purchase Price made by the Plaintiffs as aforesaid. As a consequence of such breach the Plaintiffs have suffered loss and damage being the sum allegedly forfeited and the loss in value of the Land (see paragraph 10 below).
9. Further, or in the alternative, clause 9 of the Purchase Contract amounted to a penalty clause, which had neither been negotiated between the parties, nor was it intended to compensate the Defendant for any loss it may suffer as a result of any breach of contract on the part of the Plaintiffs and was void and/or unenforceable.
10. Indeed, the Plaintiffs will rely on the fact that if the Defendant had served notice correctly in accordance clause 9 of the Purchase Contract, the earliest date upon which the Plaintiffs could have been required to complete the purchase of the Land, assuming the aforementioned provisions of clause 9 were valid and enforceable, was 6 February, 2001. As evidence of the penal nature of clause 9 and the lack of good faith on the part of the Defendant, the Plaintiffs will rely on the fact that as early as 6 March, 2001 the Defendant completed the sale of the Land to Patrick Gorham and Carol Sue Gorham for the sum of CI\$95,000.00. As a result of this sale, which the Plaintiffs aver which took place in breach in terms of the Purchase Contract. The Defendant not only realised an increased sale price of the Land of CI\$22,065.00 (the difference between the Purchase Price as revised on 5 March, 1998 CI\$72,935.38 and the new price), but the Defendant also, unconscionably and inequitably retained the aforementioned sum of CI\$41,042.33 paid by the Plaintiffs towards the purchase of the Land under the terms of the Purchase Contract.
11. On the basis of the above, Plaintiffs further aver that the Defendant's notice pursuant to clause 9 of the Purchase Contract was invalid. The Plaintiffs further aver that clause 9 of the Purchase Contract is void and/or unreasonable, and therefore unenforceable. The Plaintiffs further aver that the Defendant's conduct in attempting to rely on clause 9 was unconscionable, and as such, the Defendant's claim relief from the alleged forfeiture.

12. The Plaintiffs claim interest on the sum of CI\$41,042.33 and their loss of bargain under the terms of the Purchase Contract, being the difference in the value of the Land of CI\$22,065.00 at such rate as the Court shall think fit.

**AND THE PLAINTIFFS CLAIMS:-**

1. A declaration that the Defendant's notice dated 9 January, 2001 is invalid;
2. A declaration that clause 9 of the Purchase Contract is unenforceable and/or void or voidable;
3. Damages for breach of contract, the sum of CI\$41,042.33;
4. Damages for breach of contract being the cost value of the Land;
5. Further or in the alternative, relief from the alleged forfeiture of the aforementioned sum;
6. Interest at such rate on the as the Court shall think fit.

Dated this 3<sup>rd</sup> day of April, 2002



**CAMPBELLS**  
**Attorneys-at-Law for the Plaintiffs**

To: The Clerk of the Court

And to: Grand Cayman Golf Resorts Ltd,  
c/o International Corporate Management Services Ltd.,  
P. O. Box 1320 GT,  
Suite D-2,  
Cayman Business Park,  
Elgin Avenue,  
Grand Cayman.

**THIS WRIT OF SUMMONS** is filed by Messrs. Campbells attorneys-at-law for the Plaintiffs whose address for service is of Fourth Floor, Bank of Nova Scotia Building, George Town, Grand Cayman.

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 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 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 installments or otherwise.

*See over for notes for guidance*

### 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 his 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.

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CAUSE NO.

OF 2002

BETWEEN: PETER THOMPSON

FIRST PLAINTIFF

MARGARET THOMPSON

SECOND PLAINTIFF

AND: GRAND CAYMAN GOLF RESORTS LTD.

DEFENDANT

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 the Defendants whereby they 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*

**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 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.*

Messrs. Campbells  
Attorneys-at-Law  
Fourth Floor,  
Scotiabank Building,  
P. O. Box 884,  
George Town,  
GRAND CAYMAN

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