



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 543 OF 2002

**BETWEEN:** Proprietors Strata Plan # 62

**PLAINTIFF**

**AND:** (1) Betty Wood

(2) Ormann Wood

**DEFENDANTS**

**WRIT OF SUMMONS**

**TO:** Betty Wood and Ormann Wood, both of 61 Glen Eden Road, South Sound, 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 judgment may be entered against you forthwith without further notice.

Issued this 19 day of July, 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 Plaintiff is a strata corporation as defined in section 5 of the Strata Titles Registration Law.
2. The Plaintiff is the strata corporation (the "Strata Corporation") for condominium units known as Lacovia ("Lacovia").
3. The powers, responsibilities and obligations of the Plaintiff are set out in its bye laws (the "Bye Laws") as amended from to time. The Bye Laws provide that inter alia:
  - i. "2 (a). The Strata Corporation shall control, manage and administer the common property for the benefit of all proprietors to the intent that at all times hereafter "Lacovia" shall be kept up and maintained as a first class private residential apartment development;"
  - ii. "2 (b). keep in a state of good and serviceable repair and properly maintain the fixtures and fittings (including elevators) used in connection with the common property;"
  - iii. "2 (c) where practicable establish and maintain suitable lawns and gardens on the common property;"
  - iv. "2 (d). "maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one strata lot or common property;"
  - v. "13. There shall be an executive committee of every corporation which shall, subject to any restriction imposed or direction given at a general meeting, exercise the powers and perform the duties of the corporation."

vi. "21. The executive committee may:

(a) employ for and on behalf of the corporation such agents and servants as it thinks fit in connection with the control, management and administration of the common property and the exercise and performance of the powers and duties of the corporation;".

4. In order for the Plaintiff to be in a position to exercise its powers and discharge its responsibilities and obligations to the owners of condominium units (the "Proprietors") pursuant to the Bye Laws, Betty Wood and her husband Ormann Wood ("Mrs Wood" and "Mr Wood" respectively) were employed by the developer of Lacovia, Cayman Coves Ltd as Sales Representative and General Manager respectively.

5. The terms of the agreement between Mrs Wood and Cayman Coves Limited dated 31<sup>st</sup> March 1982 (the "Cayman Coves/Mrs Wood Agreement") included:

- i. Mrs Woods was employed as "sales representative of the condominium development knows as "Lacovia"";
- ii. Her appointment was effective from 1<sup>st</sup> April 1982 and was to terminate upon the coming into existence of the "Lacovia" Strata Corporation;
- iii. Her duties would be those commonly performed by a sales representative, including promotion of sales of units and promotion of the rental of units (whether owned by Cayman Covers Limited) or third parties and making arrangements in preparation for the rental of units;

- iv. Her remuneration was
- (a). a monthly salary of CI\$1,666.66 payable on the last day in every month;
  - (b). a commission of 2 ½ % of the sale price of any condominium unit sold by her provided that no real estate agent was involved.

No other remuneration was to be paid without express approval.

- v. Upon the coming into existence of the "Lacovia" Strata Corporation, Cayman Coves Limited was to procure that such a corporation employed Mrs Wood as its Reservation Manager and upon being so appointed, she was to perform the duties commonly performed by the Residential Manager of a residential and tourist orientated condominium development and in particular:

- (a). bookings and promotion of rentals;
- (b). maid services and housekeeping;
- (c). stores and linen;
- (d). keeping of accounts;

such other matters as the Executive Committee shall reasonably require.

- vi. Her remuneration was then to be as set out in paragraph (iv) above along with a commission of 1% of all short term rentals (over 90 days) of units in the development except where the rental was arranged directly by the owner of the unit.

6. The terms of the agreement between Mr Wood and Cayman Coves Limited dated 31<sup>st</sup> March 1982 (the "Cayman Coves/Mr Wood Agreement") included:

- i. Mr. Wood was employed as "general manager of the condominium development known as "Lacovia";
- ii. His appointment was effective from 1<sup>st</sup> April 1982 and was to terminate upon the coming into existence of the "Lacovia" Strata Corporation;
- iii. His duties would be those commonly performed by a general manager, including supervision of common areas, testing of appliances and equipment in condominium units, assisting with sales of units and such related and additional duties as may be conveniently performed therewith.
- iv. His remuneration was
  - (a). a monthly salary of CI\$2,500 payable on the last day in every month;
  - (b). a commission of 2 ½ % of the sale price of any condominium unit sold by him provided that no real estate agent was involved.No other remuneration was to be paid without express approval.
- v. For as long as Mr Wood's employment continued as General Manager he was entitled to live free of charge in the Manager's apartment at Lacovia with utilities paid for by Lacovia and was to be entitled to free use of a motor vehicle
- vi. Upon the coming into existence of the "Lacovia" Strata Corporation, Cayman Coves Limited was to procure that such a corporation employed Mr Wood as its General Manager and upon being so appointed, he was to perform the duties commonly performed by the General Manager of a residential and tourist orientated condominium development and in particular:
  - (a). ensuring that the statutory duties of the such Corporation are carried out and performed;

- (b). maintenance of all common areas and equipment;
  - (c). general supervision of the requirements of all occupiers of the units in the development;
  - (d). supervision of the repainting of the common property, the maintenance and repairs necessary to keep the common property including the gardens and the fixtures and fittings therein in a first class condition;
  - (e). preparation of annual estimates of expenditure on the basis of which the Strata Corporation may make levies;
  - (f). supervision of all payments for which the Strata Corporation is or may become liable.
- vii. His remuneration was then to be as set out in paragraph (iv) above along with a commission of 1% of all short term rentals (over 90 days) of units in the development except where the rental was arranged directly by the owner of the unit.

7. The Plaintiff will aver that although the Defendants did become employees of the Plaintiff, no new contracts of employment were signed by the Plaintiff and Defendants and as at the date of their ceasing to be employees of the Plaintiff (see paragraphs 9 to 16 below) the employee titles Mrs and Mr Wood held had changed to Manager and Property Manager respectively and their day to day responsibilities varied from those as set out in the Cayman Coves/Mrs Wood Agreement and the Cayman Coves/Mr Wood Agreement..

8. As at the date the Defendants ceased to be employees of the Plaintiff and prior thereto, the express terms and conditions of the Defendants' employment were evidenced in writing by

employment agreements (the "Employment Agreements") which they were asked but refused to sign in February 2000. Those terms and conditions include the following in relation to Mrs Wood as Manager of the Plaintiff:

- i. devoting her time and best efforts to the discharge of her duties and their performance in a diligent and faithful and manner, acting on the instruction of the Strata Committee;
- ii. keeping records in respect of the rental units so as to allow complete financial statements to be prepared on a weekly basis;
- iii. processing requests for repairs by owners of condominium units and ensuring that the work was performed by an approved contractor or appropriate handyman;
- iv. processing emergency repairs of the rental units and other minor repairs;
- v. properly receiving and lodging into the Plaintiff's appropriate bank accounts all money paid to the Plaintiff or otherwise deliver such money to a person or the Plaintiff in accordance with the instructions of the Strata Committee;
- vi. preparing and recording guests' (those renting condominium units) bills and forward those records with the appropriate funds in a timely manner to the Plaintiff;
- vii. calculating salaries and gratuities;
- viii. monitoring closely all bills from suppliers with which the Plaintiff had charge accounts to ensure that only persons authorised by the Strata Committee incurred charges;
- ix. obtaining approval from the Strata Committee for any major repairs on the common property that are outside of the budget for such works;
- x. obtaining appraisal and seek approval from the Strata Committee for any contemplated structural alternations on the common property;

- xi. maintaining confidentiality any correspondence between the Strata Committee, owners, residents and management; and,
- xii. maintaining confidentiality in relation to any confidential information concerning the business or finances of the Strata Corporation, the condominium units or the Strata Committee or any of their dealings, transactions or affairs.

and included the following in relation to Mr Wood as Property Manager for the Plaintiff:

- xiii. devoting his time and best efforts to the discharge of his duties and their performance in a diligent and faithful and manner, acting on the instruction of the Strata Committee;
- xiv. supervising the performance of any other employee or independent contractor employed by Lacovia (any of whom may be selected by the Property Manager with the approval of the Strata Committee) to perform various services required from time to time;
- xv. arranging for any necessary repairs and maintenance of buildings and common property which were not covered by contract (i.e. electrical repairs to lights) but which had been budgeted by the Strata Committee and ensuring that the work is completed to the necessary standard by an approved contractor or appropriate maintenance staff.

9. In so far as the aforementioned terms and conditions were not express terms or conditions of the employment of the Defendant and Mr Wood, they were implied.

10. As evidenced in the Employment Agreements for the Defendant and Mr Wood, their remuneration was as follows:

- i. Mrs Wood was to receive a monthly wage, which at the date of her dismissal from the employment of the Plaintiff was US\$3414.64;
- ii. Mr Wood was to receive a monthly wage, which at the date of his departure from the employment of the Plaintiff was US\$4849.88;
- iii. Mrs Wood was to receive 2% of the gross income from condominium units rented out or such higher percentage as may be decided by the owners of the rental units from time to time, payable monthly in arrears;
- iv. Mrs Wood was to receive ½% of the net income from condominium units rented out after taking account of the commission referred to in paragraph (iii). above or such higher percentage as may be decided by the Strata Committee from time to time, payable monthly in arrears;
- v. it was a requirement that Mr & Mrs Wood resided at Lacovia in a condominium unit provided by the Strata Committee which also was responsible for their utility costs;
- vi. Mr and Mrs Wood received the free use of a vehicle; and,
- vii. Mr and Mrs Wood were entitled to a contributory pension plan.

11. In so far as not express terms or conditions of the employment of the Defendants, the following were implied terms or conditions of their employment:

- i. at all times to act in good faith and honestly;
- ii. a duty of trust and confidence;

- iii. not to benefit personally either directly or indirectly from their position as Manager and Property Manager other than in accordance with their agreed remuneration or to make a secret profit;
- iv. a duty to disclose any interest in companies bidding for maintenance or repair work;
- v. a duty not to cause or allow the Strata Corporation to enter into a contractual relationship with such companies without first seek prior approval of Strata Committee;
- vi. a duty to ensure that independent estimates were obtained for work to be done for the benefit of the Strata Corporation so as to ensure that the cost of the work was reasonable;
- vii. a duty to ensure that work done for the benefit of the Strata Corporation was of a reasonable quality.

12. As a result of the matters set out below in paragraphs 13 to 14, on 8<sup>th</sup> February 2002, the Executive Committee resolved to suspend the Defendants from their positions as Manager and Property Manager of the Strata Corporation;

13. On 11<sup>th</sup> February 2002, upon discovering the decision of the Plaintiff to initiate a forensic audit of the Strata Corporation's financial records, the Defendants locked themselves in the Plaintiff's Office, and destroyed an unknown quantity of documents and records.

14. On the same date, the Defendants removed from the Plaintiff's office and the premises of the Strata Corporation, two boxes of documents.

15. Immediately thereafter, on the same date, as a consequence of their conduct that morning, the Defendants were informed that they had been suspended from their employment for a period of three weeks on full pay. Mrs Wood was subsequently dismissed on 4th March 2002. On 5<sup>th</sup> March 2002, Mr Wood indicated via his attorneys that he would not be returning to work as required on 5<sup>th</sup> March 2002.

16. By way of a letter to her attorneys dated 26<sup>th</sup> February 2002, Mrs Wood was invited to meet with the Plaintiff on 26<sup>th</sup> February 2002 to discuss the findings of the initial forensic audit that indicated, amongst other things, that Mrs Wood has falsified accounting records of the Plaintiff. Mrs Wood declined to attend such a meeting and offered no explanation for those findings.

17. As a result of the fraud and dishonesty of and/or breaches of contract by the Defendants the Plaintiff has suffered loss and damage, the best particulars of which the Plaintiff is able to give prior to discovery are set out below.

17.1 Mrs and/or Mr Wood caused or permitted the Strata Corporation to contract with companies or entities of which one or other or both were either the sole or joint owners or in which they held a beneficial interest or which were legally or beneficially owned by members of their family or relations (the "Related Companies") for the provision by the Related Companies to the Strata Corporation of maintenance and repair services. In doing so, the Mrs and/or Mr Wood deliberately or recklessly failed to ensure that estimates were obtained from independent companies so as to ensure that the proposed cost of the services to be provided was reasonable, thus causing the Plaintiff loss and

damage being the difference between what would have been a reasonable cost and the actual cost incurred.

### PARTICULARS

Pending discovery, the best particulars that are available are that, by way of example, in 2001, the First and/or Second Defendant caused the Strata Corporation to contract with Related Companies, Caribbean Cleaning Services Ltd and "Do It All" (both of P.O. Box 1998GT, the same PO Box as that used by Lacovia) for the provision of the following services:

| <u>Related Company</u>          | <u>Summary of services provided</u>                                   | <u>Cost C1\$</u> |
|---------------------------------|---|------------------|
| Caribbean Cleaning Services Ltd | Tree cutting, Painting of rails, bulldozer and associated landscaping | 10,150           |
| Do It All                       | Roofing repairs, drywall, miscellaneous                               | 88,620           |

17.2 The First and/or Second Defendant caused the Plaintiff to enter into contracts with the Related Companies with the intention of earning a secret profit for themselves either individually or jointly and/or for their family members and relatives.

17.3 The First and/or Second Defendant caused the Plaintiff to enter into contracts with the Related Companies in the knowledge or recklessly as to whether the cost of the work done by the Related Companies was deliberately inflated over above what would be a reasonable cost for such work, thus causing the Plaintiff loss being the amount by which such cost exceeded a reasonable price for the work actually done.

**PARTICULARS**

Pending discovery, the best particulars that are available are that, by way of example, in the period from February 2001 to January 2002, of the work carried out by Do It All (having a total value of CI\$112,432.95) the following work was over priced:

| <u>Related Company</u> | <u>Summary of work invoiced</u> | <u>Actual work done</u>             |
|------------------------|---------------------------------|-------------------------------------|
| Do It All              | Repair work to roof valley      | Very minimal cosmetic work          |
|                        | Drywall repairs                 | Minor compared to the invoice value |
|                        | Recreation room roof repair     | Minor compared to the invoice value |

17.4 The First and/or Second Defendant failed to supervise and manage the work done in respect of the maintenance and repair of Lacovia properly or at all and ensure that it was done, either at all, or, if done, done to a reasonable standard thus causing loss and

damage to the Plaintiff being the amount overpaid in relation to the value of the work actually done.

**PARTICULARS**

Pending discovery, the best particulars that are available are that, examples of work that was either not done or was not completed to a reasonable standard are as follows:

| <u>Related Company</u> | <u>Summary of work invoiced</u> | <u>Cost</u> |
|------------------------|---------------------------------|-------------|
| Do It All              | Repair work to roof valley      | 4,950       |
|                        | Drywall repairs                 | 3,823.17    |
|                        | Recreation room roof repair     | 10,325      |


17.5 The First Defendant deliberately falsified records in relation to the renting of condominium units in the Rental Pool so as to create an apparent difference between the amount of rent shown on receipts as being by those renting condominium units and the amount of rent for which Mrs Wood as agent of the Strata Corporation accounted to the Strata Corporation. The difference between the gross rent paid to Mrs Wood as agent for the Strata Corporation and the net rent accounted for was withheld by Mrs Wood for her own use and benefit. As a result, the Plaintiff has suffered loss and damage being the difference between the gross and the net rental receipts.

18. As a consequence of the fraud and/or breach of contract by the First and/or Second Defendant the Plaintiff has suffered loss and damage as aforesaid. Prior to discovery and an account and enquiry, the Plaintiff is unable to particularise its loss further but it is contended by the Plaintiff that the fraud and/or breaches of contract on the part of the First and/or Second Defendant are likely to have been committed over a substantial period of time and on a systematic basis.
19. The Plaintiff seeks a Declaration that all assets held by or on behalf of the First and/or Second Defendant, whether legally or beneficially, representing or derived from their fraud are held on constructive trust for the Plaintiff.
20. The Plaintiff seeks a Declaration that in respect of the proceeds of the aforementioned fraud by the First and/or Second Defendants, the Plaintiff is entitled to trace such money and/or the proceeds thereof and/or any assets which have derived from the said sums into the hands of the First and/or Second Defendant and/or any other party found to be in possession of them.
21. The Plaintiff claims interest on the sums claimed pursuant to Section 34, Judicature Law at such sums and for such periods as to the court shall seem just.
22. The Plaintiff claims costs.

#### AND THE PLAINTIFF CLAIMS

1. Damages for fraud and/or breach of contract,

2. Damages
3. A Declaration that such sums as may have been obtained by First and/or Second Defendant as a result of fraud on the Plaintiff are held by the Defendants on constructive trust for the Plaintiff.
4. A Declaration that it may trace into the hands of the First and Second Defendants and any other party found to be in possession of sums held to have been obtained as a result of the fraud of the First and/or Second Defendants
5. An account of all the sums received by the First and/or Second Defendants either from the Plaintiff or directly or indirectly from their breaches of contract.
6. Interest pursuant to Section 34 Judicature Law
7. Costs.

  
\_\_\_\_\_  
**CAMPBELLS**  
**Attorneys-at-Law for the Plaintiff**

**This Writ of Summons is filed by Campbells, of 4th Floor, Scotiabank Building, George Town, Grand Cayman, Attorneys for the Plaintiff whose address is P.O. Box 1998 GT, Seven Mile Beach, Grand Cayman, Cayman Islands**

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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2002

BETWEEN: Proprietors Strata Plan # 62

PLAINTIFF

AND: (1) Betty Wood

(2) Ormann Wood

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 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,  
Bank of Nova Scotia 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.*

[Empty box for defendant's attorney indorsement]

