
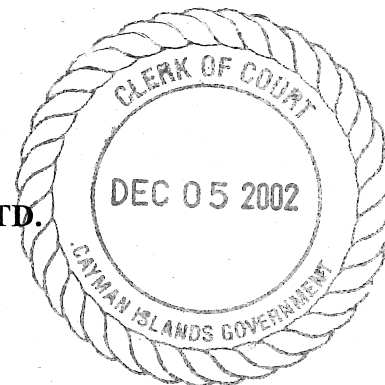


IN THE GRAND COURT OF THE CAYMAN ISLANDS

888
CAUSE NO. OF 2002

BETWEEN:

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- (1) THE PROPRIETORS, STRATA
PLAN NO. 236
 - (2) PELICAN REEF LTD.
 - (3) SILVERHILL LTD.
 - (4) GENREX LTD.
 - (5) WINDSONG PROPERTIES LTD.
 - (6) BATES INVESTMENTS LTD.
 - (7) HYMAN BONO
 - (8) ROANE-DOMINIC
INTERNATIONAL LTD.
 - (9) LEON EZRA
 - (10) ARBUTUS INVESTMENTS LTD.
 - (11) RITECHEM INDUSTRIES LTD.
 - (12) HARRIET HUNTER
 - (13) GLOBAL TECHNOLOGIES INC.
 - (14) STEVEN HENDERSON



PLAINTIFFS

AND:

GRAND CAY INVESTMENTS LTD.

DEFENDANT

WRIT OF SUMMONS

TO: Campbell Corporate Services
P.O. Box 268 GT
Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs 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 495G, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this _____ day of December, 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 the order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

THE PARTIES

1. The First Plaintiff, The Proprietors, Strata Plan No. 236 (hereafter "The Strata"), is a body corporate formed February 4, 1998 and existing pursuant to the *Strata Titles Registration Law*, in relation to the 30 unit strata development known as Southampton Gardens located on the land legally described as West Bay Beach South Block 12C Parcel 352 ("the Land"). At material times the Strata was entitled to be the owner and occupier of the common property of the development known as Southampton Gardens located on the Land.

2. The Second Plaintiff, Pelican Reef Ltd. (hereafter "Pelican") is a Cayman Islands company with registered office at Box 10506 APO, Grand Cayman, B.W.I. and at material times the owner of units number 27 and 30 in Southampton Gardens.
3. The Third Plaintiff, Silverhill Limited (hereafter "Silverhill") is a Cayman Islands company and at material times the owner of unit numbers 14, 15, 16, 17, 18 and 19 in Southampton Gardens.
4. The Fourth Plaintiff, Genrex Ltd. (hereafter "Genrex") is a Cayman Islands company with a registered office at P.O. Box 822 G.T., Grand Cayman, British West Indies and at material times the owner of units numbered 10 and 11 in Southampton Gardens.
5. The Fifth Plaintiff, Windsong Properties Ltd. (hereafter "Windsong") is a Cayman Islands company with a registered office at P.O. Box 10335 A.P.O., Grand Cayman, British West Indies and at material times the owner of units numbered 2 and 5 in Southampton Gardens.
6. The Sixth Plaintiff, Bates Investments Ltd. (hereafter "Bates") is a Cayman Islands company with a registered office at P.O. Box 10335 A.P.O., Grand Cayman, British West Indies and at material times the owner of units numbered 3 and 4 in Southampton Gardens.

7. The Seventh Plaintiff, Hyman Bono (hereafter "Bono") is an individual resident in Switzerland and at material times the owner of unit number 31 in Southampton Gardens.
8. The Eighth Plaintiff, Roane-Dominic International Ltd. (hereafter "Roane-Dominic") is a Cayman Islands company with a registered office at P.O. Box 481 G.T., Grand Cayman, British West Indies and at material times the owner of unit number 12 in Southampton Gardens.
9. The Ninth Plaintiff, Leon Ezra (hereafter "Ezra") is an individual resident in Atlantic Beach, New York, U.S.A. and at material times the owner of unit number 29 in Southampton Gardens.
10. The Tenth Plaintiff, Arbutus Investments Ltd. (hereafter "Arbutus") is a Cayman Islands company with a registered office at 75 Fort Street, P.O. Box 190GT, Grand Cayman, British West Indies and at material times the owner of unit number 7 in Southampton Gardens.
11. The Eleventh Plaintiff, Ritechem Industries Ltd. (hereafter "Ritechem") is a Cayman Islands company with registered office at Box 30496 SMB, Grand Cayman, B.W.I. and at material times the owner of units number 6 and 22 in Southampton Gardens.
12. The Twelfth Plaintiff, Harriet Hunter (hereafter "Hunter") is an individual resident at unit 24, Southampton Gardens, Box 694GT, Grand Cayman,

B.W.I. and at material times the owner of unit number 24 in Southampton Gardens.

13. The Thirteenth Plaintiff, Global Technologies Inc.. (hereafter "Global") is a Cayman Islands company with a registered office at P.O. Box 10551APO, Grand Cayman, British West Indies and at material times the owner of unit number 21 in Southampton Gardens.
14. The Fourteenth Plaintiff, Steven Henderson (hereafter "Henderson") is an individual resident in Grand Cayman, B.W.I. and at material times the owner of unit number 1 in Southampton Gardens.
15. The Defendant, Grand Cay Investments Ltd (hereafter "GCIL") is a Cayman Islands company with registered office at Campbell Corporate Services, Box 268GT Grand Cayman, B.W.I.. GCIL was at material times a property developer operating in the Cayman Islands. GCIL is the registered proprietor of West Bay Beach South Block 12C Parcel 352, upon which parcel of land GCIL constructed Southampton Gardens, currently comprised of five buildings each containing six units for a total of thirty units. Construction was substantially completed in or about December of the year 1997.
16. After the completion of construction of Southampton Gardens and registration of the strata plan, GCIL sold and transferred most of the units

to various parties, including all of the Plaintiffs other than the Strata. GCIL remains the owner of unit #20.

17. During the period from February of 1998 to the first week of December, 2000, the Defendant GCIL managed and controlled the Strata pursuant to the terms of the Strata's bye-laws.

SUMMARY OF CLAIM

18. After the construction of Southampton Gardens, it became apparent to the Plaintiffs (as well as to various other unit owners) that there were a number of design and/or construction defects affecting the buildings, the grounds and the common property comprising Southampton Gardens. Some of these defects affect only the common property, some problems affect only the individual units, and some problems overlap and affect both the common property and the individual units. Details of these defects and of the claims of the individual Plaintiffs arising therefrom will be outlined in detail below at paragraphs 21 to 104.
19. Further, after the Defendant GCIL relinquished management and control of the strata, it became apparent that the affairs and business of the Strata had been mismanaged by the Defendant GCIL. Details of this mismanagement

and of the claims of the Strata arising therefrom will be outlined in detail below at paragraphs 105 and 106.

20. Further, in the course of reviewing their rights and remedies as against GCIL, the Plaintiffs have ascertained that the common property that should have been included and transferred to the Strata upon registration of the phase strata plan remains registered in the name of GCIL. Details of this claim will also be outlined below paragraph 107.

NEGLIGENT AND DEFECTIVE DESIGN AND/OR CONSTRUCTION OF SOUTHAMPTON GARDENS

21. It became apparent to the Plaintiffs (as well as to the other unit owners) that a number of design and/or construction defects affected the buildings, the grounds and the common property of Southampton Gardens. The problems arising from these defects were also obvious to GCIL, who at the time managed and controlled the Strata. In the fall of the year 2000, GCIL, through Woody DaCosta of Facility Management Ltd., contracted with APEC Consulting Engineers Ltd. ("APEC") to investigate and advise on the problems and make recommendations for solutions. On February 21, 2001, APEC provided a preliminary report to Facility Management on the condition of the buildings and grounds of Southampton Gardens. By a full report dated September 27, 2001, APEC outlined the results of its

investigation and its recommendations. According to the preliminary and final reports, the following problems existed in relation to the buildings and common property:

(a) Settlement of exterior ground. It was noted in the report that while the buildings were constructed on top of piles that should extend into the bedrock, the surrounding areas consist of fill overburden on top of the existing ground that consisted of a "saturated and very compressible material called peat". The settling of the grounds around the buildings in relation to the buildings themselves caused a number of problems, including the following:

- (i) Problems and defects with the site services. These include the breaking of water mains and sewer lines, damage to air conditioning units from the stretching of condenser or electricity lines and the separation of electrical ducting serving the main electrical panels;
- (ii) movement and cracking of asphaltic concrete pavements and the creation of low spots resulting in ponding of rainwater, which was unsightly and also resulted in insect control problems and the need to purchase and spray insect killing chemicals;

- (iii) the creation of gaps between the bottoms of exterior walls and the adjacent grade;
 - (iv) the misalignment of fencing and other structures.
- (b) Cracking of walls due to foundation movement and understrength concrete. A number of cracks were observed by the APEC consultant, involving units 24, 25, 27, 28 and 31. The preliminary report stated that some preliminary testing on the site indicated concrete strength of between two thousand and three thousand psi, which does not conform with the design strength of four thousand psi as required. Other specific foundation problems noted were:
- (i) A concrete pile at the front corner of the common wall between units 27 and 28 was poorly constructed. The concrete appeared to be under strength and consultant was able to chip the concrete manually using a steel edge.
 - (ii) A concrete pile at unit number 15 was cast three to four inches below the bottom of the grade beam for the building, leaving bare reinforcing steel extending into the concrete grade beam and obviously providing little or no support for the grade beam at that location;

- (iii) the grade beam extending from the front corner of unit 31 toward unit 30 had been intentionally broken out and the reinforcing steel exposed in order to accommodate drainage pipes into the unit. This methodology was discovered at a number of locations in the complex and was likely done after the original construction in order to repair and maintain the drainage lines;
 - (iv) in addition to the external cracking observed, a number of internal problems were also noted. Unit 28 was experiencing some progressive cracking between a second floor ceiling and the walls, and similar cracking was observed in units 24, 25 and 30. The report noted that the owner of unit 28 indicated that the bathroom doors on the upper floor had to be shaved down a number of times in order to allow them to open and close freely.
- (c) Cracking of walls due to improper reinforcing. The APEC consultant performed an inspection of the walls to determine the presence of reinforcing steel with an instrument called an electronic cover meter. This instrument allows the inspection of the concrete walls without the need to break open the walls to do a visual inspection. In order to confirm the results from the cover meter, the consultants did open

up the walls in several locations. According to the consultant, the readings obtained electronically were confirmed.

The structural plans for the complex specified that vertical reinforcing steel was to be inserted at thirty-two inches on centre. The cover meter revealed that the walls actually contained steel on average at about thirty-six inches on centre, and that the spacing is irregular, with smaller and larger gaps present. Additionally, the reinforcing is not continuous from top to bottom of the walls. Additionally, the horizontal reinforcing steel is irregularly spaced and missing in some places.

- (d) Improper construction of building roofs. A number of items were noted on the roof areas that did not comply with the design specifications. These include the absence of timber blocking pieces required to prevent twisting of truss supports, the failure to fully nail hurricane straps and the absence of wall plates and blocking pieces between the masonry walls and the trusses. All of these items may compromise the stability of the roofs and the buildings in the event of hurricane activity.

- 22. Without opening up more of the walls and the grounds around the foundations, it is impossible to determine whether all or most of the defects

in the construction have already been identified by the APEC reports. It is probable, given the general negligent and defective nature of the workmanship, that more problems exist than have already been observed.

23. In addition to the defects and related problems noted in the APEC reports, the Plaintiffs have experienced and/or noticed the following which give rise to further damages:

- (a) Doors and windows not functioning properly. As a result of the negligent and improper design and/or construction of the building foundations and the related settling, a number of the doors and windows do not operate properly and have been or will need to be adjusted or replaced.
- (b) The irrigation system was improperly installed in that the water lines and sprinkler heads in some areas are too close to the surface. Also, due to the improper installation of the irrigation control system, some of its wiring was destroyed by lawnmowers or otherwise as a result of being too close to the surface.
- (c) As a result of the negligent design and/or construction and resulting settling of buildings and grounds, a number of underground water pipes experienced breakage, which caused large amounts of water to be lost into the ground and thus significant costs to the Plaintiffs to

pay for said water. The Defendant agreed that a retrofitting of the water pipes was required, to install flexible piping to allow for movement between ground and buildings. The Defendant represented that this retrofitting had been done, but it has become apparent that it was not done or was done negligently as there have since been more breaks requiring repairs and resulting in water loss. One of these breaks, in Unit #3, resulted in the loss of CI\$13,000.00 worth of water. The cost of another break, in Unit #29, has yet to be ascertained.

- (d) The sewage lift pumps originally installed by GCIL experienced frequent problems, resulting in excessive repair bills and bills for manual pump-outs. It was determined that the GCIL had installed undersized pumps which need to be replaced. As well, the sewage distribution system causes the Plaintiffs some concerns. The final portion of the system, which leads away from the development toward the municipal sewer system, at times, has standing water above it from which sewer odors emanate. The Plaintiffs suspect that this stage of the sewer system may have been designed or constructed improperly or negligently, but this will need to be investigated and evidence of damages and costs put forward at trial, if appropriate.

- (e) There are a number of problems with the recreation building as well. There have been two major water leaks in the kitchen area, leaks in the air conditioning units, and generally very poor quality workmanship throughout this building. The drywall work is substandard, and there were fans and lights which are missing. The strata and the unit owners have had to, and will have to in the future, spend significant sums to remedy the problems with this building.

Actions of the Developer

24. As the list of deficiencies and the concerns of the Plaintiffs grew, it became apparent that GCIL needed to take some steps to remedy the situation. Accordingly, in response to concerns raised by the executive committee of the Strata and the various individual unit owners, a list of outstanding deficiencies was presented to GCIL and by a Memorandum of Understanding dated December 11, 2000 and amended December 12, 2000 (the "MOU"), GCIL acknowledged most of the problems noted above, accepted legal responsibility and agreed to remedy almost all of the complaints raised by the Strata owners. By this MOU the Defendant intended to, and in fact did, create a legally binding obligation to carry out the remedial work referred to therein.

25. In the weeks and months following the execution of the Memorandum of Understanding, GCIL did in fact repair some of the deficiencies mentioned in the MOU. However, all of the major structural problems and settling problems were not addressed, and have not been remedied to date.
26. In addition to the MOU, it was represented in writing on behalf of the Defendant, in a letter dated October 29th, 2001 addressed to the Strata's insurer, that the Defendant would undertake and complete the remedial works prescribed by the APEC report.

Remedial Work

27. The Defendant GCIL having failed to undertake to remedy most of the serious deficiencies herein noted, in order to mitigate the damages caused by the Defendant's defective design and/or construction the Plaintiffs have undertaken a program of repair, in part pursuant to professional advice received from APEC. Preliminary estimates provided by APEC of the cost to carry out the remedial works are in the US\$300,000.00 – 500,000.00 range. This includes the problems noted by APEC, but does not include problems not noted by their reports. The remedial works are being conducted in a proper and workmanlike manner, and are ongoing as of this

date. Full details of such works and the cost thereof shall be introduced and proven at trial.

Basis of Liability and Damages Suffered by the Plaintiffs

The Strata

28. As rightful owners of all the common property of the complex known as Southampton Gardens, the Strata has suffered significant damages as a result of the actions of the Defendant, GCIL. The Defendant owed a duty of care to the Strata as it was reasonably foreseeable that the Defendant's negligent construction of the Strata complex, whether the said construction was performed by the Defendant, its agents, employees or contractors, would cause the damages that the Strata has in fact suffered.

29. The Defendant owed to the Strata a duty of care to act reasonably, responsibly and in good faith and to ensure that Southampton Gardens was constructed using quality materials fit for the purpose and that the construction was done in a proper and workmanlike manner. The Defendant knew or reasonably ought to have known that failure to ensure that Southampton Gardens was constructed with quality materials and in a proper and workmanlike manner would cause damages to the Strata and the individual unit owners. The Defendant knew or reasonably should have

know that failure to take reasonable care in the construction of Southampton Gardens would create defects that would cause physical damage to the buildings and pose a danger to the safety of the building occupants.

30. Damages suffered by the Strata are:

- (a) Serious and excessive cracking to the walls of the buildings as a result of the negligent and defective construction of the foundations of the buildings and the cost to repair and replace the improperly and negligently constructed pilings and footings in the complex, the amount of such costs to be proven at trial. The cracking of walls throughout the complex as a result of the negligent construction of said walls by failure to properly reinforce them, said costs to be proven at trial.
- (b) The cost of repairing the negligently constructed roofs on the buildings which may not withstand severe storms and in fact are or were in danger of blowing off and thus may pose a risk to the health and safety to the building occupants, such costs to be proven at trial.
- (c) The cost of repairing and replacing all broken and defective water and sewer lines and excess water use as a result thereof, electrical lines, pavement and landscaping as a result of settlement of the

exterior grounds due to the negligent preparation of the site, such costs to be proven at trial.

(d) The cost of excessive repairs and pump-outs due to failure of the undersized sewage lift pumps, and replacement of pumps with proper sized ones, such costs to be proven at trial. In addition, if investigation shows the sewage distribution system to be inadequate or improper, the cost of repairing or rebuilding such system, such costs to be proven at trial.

(e) The cost of repairing or replacing any doors and windows that will not function as a result of the negligent construction of the building foundations, such cost to be proven at trial.

(f) The increased cost of insurance. Because of the defective design and/or construction, the Strata's insurer has reduced coverage on the complex and increased premiums. The cost of said increased premiums and any repairs that should have been insured but for the reduction in coverage shall be proven at trial.

31. In the event and to the extent that the Defendant may not be liable to the Strata in tort as a result of its negligence, then the Strata states that the MOU constitutes a contract between the Defendant and the Strata and that by the terms of the said contract the Defendant agreed to repair or replace

the defective construction, at the Defendant's cost, so as to address all of the damages and costs referred to in paragraphs 30(a) to 30(f).

Individual Proprietors

Pelican Reef Ltd.

32. Pelican owns two units in Southampton Gardens, being units number 27 and 30, both of which are located in the same building. Pelican's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary, for negligence.
33. Pelican signed two identical agreements for the purchase of units numbered 27 and 30 with GCIL as vendor in or about July of 1999. The Plaintiff has attempted to obtain, but has had no response to its request for, executed copies of the agreements from the attorneys acting on its behalf on the purchase.
34. The Plaintiff Pelican states that it was an implied warranty of each of the agreements that the unit would be completed in a proper and workmanlike manner and would be reasonably fit for human habitation. Pelican states that the Defendant breached that warranty and is therefore liable to Pelican for damages for breach of contract.

35. In purchasing the strata units from the Defendant, Pelican also purchased a share in the common property of Southampton Gardens in accordance with its unit entitlements. Pelican states that the implied warranty given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, the Plaintiff Pelican claims against the Defendant for the damages referred to in paragraphs 27 to 30 above.
36. In addition to the damages to the common property, Pelican claims against the Defendant for breach of contract for the following damages specific to units 27 and 30:
- (a) With respect to unit number 27, the cost to repair numerous cracks in the unit as a result of the defective and negligent construction of the foundations of the building, and the cost of corrective action to prevent future cracking;
 - (b) With respect to unit number 27 the cost to complete and repair numerous drywall, paint and finishing deficiencies throughout the unit, and to correct and repair incorrectly installed kitchen counter tops and cabinets;
 - (c) With respect to unit 27, lost rental income while waiting for the Defendant to repair or replace deficiencies in the unit;

(d) With respect to unit number 30, the cost to correct, repair and prevent previous, current and future cracking in the ceilings in both bedrooms, movement of one of the walls, a sloping of the floors in the unit from back to front, all of which damages are as a result of the negligent and defective construction of the foundations of the building;

(e) The cost of repairing numerous drywall, paint and finishing deficiencies and repairing incorrect installed kitchen counter tops and cabinets.

37. All of the damages referred to above were the reasonably foreseeable result of the Defendant's actions in breaching its implied warranty.

38. In addition, Pelican seeks damages against the Defendant for direct economic loss caused by the Defendant's breach of its implied warranties. Pelican has suffered reduced rental income and a loss on the market value on the units. Even if the buildings are repaired to a state of structural and aesthetic soundness, realtors and potential buyers and tenants will always be wary of the reputation that Southampton Gardens has as a result of the Defendant's actions.

39. In the alternative, Pelican states that the Defendant owed a duty of care to Pelican as a purchaser of units in Southampton Gardens and therefore the

Defendant is liable to Pelican in negligence for its negligent design and/or construction of the complex, and all resulting losses and damages previously referred to in the four immediately preceding paragraphs.

Silverhill Limited

40. Silverhill owns six units in Southampton Gardens, being units numbered 14 to 19, all of which are located in the same building. Silverhill's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary, for negligence.
41. On or about January 7, 1997, Silverhill entered into six agreements of purchase and sale with both Grand Cay Investments Ltd. and Grand Cay Developments Limited as vendor. Each of the six agreements was identical on its relevant terms with respect to warranties of the vendor.
42. It was an express covenant by the vendor in each of the agreements that the unit would be constructed in a good and workmanlike manner. Each of the agreements had attached as schedules a draft strata plan and specifications for construction of the units. The vendor covenanted to construct the units in accordance with the those schedules. The vendor further gave a covenant to Silverhill that no major variations or modifications of the plans or the specifications would be made without the prior written consent of Silverhill.

43. In purchasing the strata units from the Defendant, Silverhill also purchased a share in the common property of Southampton Gardens in accordance with its unit entitlements. Silverhill states that the implied warranty given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, Silverhill claims against the Defendant for the damages referred to in paragraphs 28 to 31 above.

44. Silverhill states that the Defendant further breached its express warranties and covenants as follows:

- (a) Failure to construct the strata complex in accordance with the draft strata plan which was attached to the agreement, and which the Defendant had covenanted not to vary without written consent of Silverhill. The original plan called for the construction of a total of sixty units, but only thirty were ever constructed and the Defendant has stated that it will construct no further units in the complex. The complex and its amenities were designed and built with a sixty unit complex in mind, and as a result of the Defendant's failure to complete the complex in accordance with its plans, Silverhill has suffered damages by way of additional costs to maintain, service and repair the common property and amenities, all of such costs and the amount thereof to be proven at trial.

(b) Failure to establish and maintain an adequate reserve fund in accordance with the schedules attached to Silverhill purchase contracts. As a result of the Defendants failure to comply with its covenant to maintain and contribute to this fund, Silverhill's share of the assessments has been larger than it should have been, resulting in direct cost to Silverhill. The amount of such excessive assessments shall be proven at trial.

45. As a result of the Defendant's breach of its express and implied warranties, Silverhill will suffer further economic loss in that the market value of the units is reduced. Because of the unsightly cracking throughout the complex, sinking of the grounds surrounding the buildings, and the general knowledge in the community that the complex was poorly constructed, the rentability of the units is negatively affected. As a result the past and future rents received by Silverhill are lower than they would have been had the Defendant not breached its warranties. The amount of such past rental losses and estimated future losses shall be proven at trial. In addition, Silverhill seeks damages for losses to the overall market value of the units as a result of the Defendant's breach of contract.

GENREX LTD.

46. The Plaintiff Genrex owns two units in Southampton Gardens, being units numbered 10 and 11, both of which are located in the same building. Genrex's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary, for negligence.
47. Genrex purchased the two units pursuant to agreements entered into with GCIL as vendor.
48. The Plaintiff Genrex states that it was an express or an implied warranty of each of the agreements that the units would be completed in a proper workmanlike manner and would be reasonably fit for human habitation. Genrex states that the Defendant breached that warranty and is therefore liable to Genrex for damages for breach of contract.
49. In purchasing the strata units from Defendant, Genrex also purchased a share in the common property of Southampton Gardens in accordance with its unit entitlement. Genrex states that the warranty referred to in the immediately preceding paragraph which was given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, Genrex claims against the Defendant for the damages referred to in paragraphs 28 to 31 above.

50. All the damages referred to and suffered by Genrex were the reasonably foreseeable result of the Defendant's actions in breaching its warranty.

WINDSONG PROPERTIES LTD.

51. The Plaintiff Windsong owns two units in Southampton Gardens, being units numbered 2 and 5, both of which are located in the same building. Windsong's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary, for negligence.
52. Windsong purchased the two units pursuant to agreements entered into with GCIL as vendor.
53. Windsong states that it was an express or an implied warranty of each of the agreements that the units would be completed in a proper and workmanlike manner and would be reasonably fit for human habitation. Windsong states that the Defendant breached that warranty and is therefore liable to Windsong for damages for breach of contract.
54. In purchasing the strata units from the Defendant, Windsong also purchased a share in the common property of Southampton Gardens in accordance with its unit entitlement. Windsong states that the warranty referred to in the immediately preceding paragraph which was given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed

herein, Windsong claims against the Defendant for damages referred to in paragraphs 28 to 31 above.

55. All the damages referred to and suffered by Windsong were the reasonably foreseeable result of the Defendant's actions in breaching its warranty.

BATES INVESTMENTS LTD.

56. Bates owns two units in Southampton Gardens, being units numbered 3 and 4, both of which are located in the same building. Bates' claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary, for negligence.
57. Bates purchased the two units pursuant to agreements entered into with GCIL as vendor.
58. Bates states that it was an express or an implied warranty of each of the agreements that the units would be completed in a proper and workmanlike manner and would be reasonably fit for human habitation. Bates states that the Defendant breached that warranty and is therefore liable to Bates for damages for breach of contract.
59. In purchasing the strata units from the Defendant, Bates also purchased a share in the common property of Southampton Gardens in accordance with

its unit entitlement. Bates states that the warranty referred to in the immediately preceding paragraph which was given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, Bates claims against the Defendant for damages referred to in paragraphs 28 to 31 above.

60. All the damages referred to and suffered by Bates were the reasonably foreseeable result of the Defendant's actions in breaching its warranty.

HYMAN BONO

61. Bono owns one unit in Southampton Gardens, being unit number 31. Bono's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary for negligence.
62. Bono purchased the unit pursuant to an agreement entered into with GCIL as vendor.
63. Bono states that it was an express or an implied warranty of the agreement that the unit would be completed in a proper and workmanlike manner and would be reasonably fit for human habitation. Bono states that the Defendant breached that warranty and is therefore liable to Bono for damages of breach of contract.

64. In purchasing the strata units from Defendant, Bono also purchased a share in the common property of Southampton Gardens in accordance with his unit entitlement. Bono states that the warranty referred to in the immediately preceding paragraph which was given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, Bono claims against the Defendant for damages referred to in paragraphs 28 to 31 above.
65. All the damages referred to and suffered by Bono were the reasonably foreseeable result of the Defendant's actions in breaching its warranty.

ROANE-DOMINIC INTERNATIONAL LTD.

66. The Plaintiff Roane-Dominic owns one unit in Southampton Gardens, being unit number 12. Roane-Dominic's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary, for negligence.
67. Roane-Dominic purchased the unit pursuant to an agreement entered into with GCIL as vendor.
68. Roane-Dominic states that it was an express or an implied warranty of the agreement that the unit would be completed in a proper and workmanlike manner and would be reasonably fit for human habitation. Roane-Dominic

states that the Defendant breached that warranty and is therefore liable to Roane-Dominic for damages for breach of contract.

69. In purchasing the strata unit from Defendant, Roane-Dominic also purchased a share in the common property of Southampton Gardens in accordance with its unit entitlement. Roane-Dominic states that the warranty referred to in the immediately preceding paragraph which was given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, Roane-Dominic claims against the Defendant for damages referred to in paragraphs 28 to 31 above.

70. All the damages referred to and suffered by Roane-Dominic were the reasonably foreseeable result of the Defendant's actions in breaching its warranty.

LEON EZRA

71. Ezra owns one unit in Southampton Gardens, being unit number 29. Ezra's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary, for negligence.

72. Ezra purchased the unit pursuant to an agreement entered into with GCIL as vendor.

73. Ezra states that it was an express or an implied warranty of the agreement that the unit would be completed in a proper and workmanlike manner and would be reasonably fit for human habitation. Ezra states that the Defendant breached that warranty and is therefore liable to Ezra for damages for breach of contract.
74. In purchasing the strata unit from Defendant, Ezra also purchased a share in the common property of Southampton Gardens in accordance with his unit entitlement. Ezra states that the warranty referred to in the immediately preceding paragraph which was given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, Ezra claims against the Defendant for damages referred to in paragraphs 28 to 31 above.
75. All the damages referred to and suffered by Ezra were the reasonably foreseeable result of the Defendant's actions in breaching its warranty.

ARBUTUS INVESTMENTS LTD.

76. Arbutus owns a unit in Southampton Gardens, being unit number 7. Arbutus' claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary, for negligence.

77. On or about January 18, 1996 Arbutus entered into an agreement of purchase and sale with both Grand Cay Investments Ltd. and Grand Cay Developments Limited as vendor.
78. It was an express covenant by the vendor in the agreement that the unit would be constructed in a good and workmanlike manner. The agreement had attached as schedules a draft strata plan and specifications for construction of the units. The vendor covenanted to construct the unit in accordance with the those schedules. The vendor further gave a covenant to Arbutus that no major variations or modifications of the plans or the specifications would be made without the prior written consent of Arbutus.
79. In purchasing the strata unit from the Defendant, Arbutus also purchased a share in the common property of Southampton Gardens in accordance with its unit entitlement. Arbutus states that the implied warranty given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, Arbutus claims against the Defendant for the damages referred to in paragraphs 28 to 31 above.
80. Arbutus states that the Defendant further breached its express warranties and covenants as follows:

(a) Failure to construct the strata complex in accordance with the draft strata plan which was attached to the agreement, and which the Defendant had covenanted not to vary without written consent of Arbutus. The original plan called for the construction of a total of sixty units, but only thirty were ever constructed and the Defendant has stated that it will construct no further units in the complex. The complex and its amenities were designed and built with a sixty unit complex in mind, and as a result of the Defendant's failure to complete the complex in accordance with its plans, Arbutus has suffered damages by way of additional costs to maintain, service and repair the common property and amenities, all of such costs and the amount thereof to be proven at trial.

(b) Failure to establish and maintain an adequate reserve fund in accordance with the schedules attached to Arbutus purchase contracts. As a result of the Defendants failure to comply with its covenant to maintain and contribute to this fund, Arbutus' share of the assessments has been larger than it should have been, resulting in direct cost to Arbutus. The amount of such excessive assessments shall be proven at trial.

81. As a result of the Defendant's breach of its express and implied warranties, Arbutus will suffer further economic loss in that the market value of the

units is reduced. Because of the unsightly cracking throughout the complex, sinking of the grounds surrounding the buildings, and the general knowledge in the community that the complex was poorly constructed, the rentability of the units is negatively affected. As a result the past and future rents received by Arbutus are lower than they would have been had the Defendant not breached its warranties. The amount of such past rental losses and estimated future losses shall be proven at trial. In addition, Arbutus seeks damages for losses to the overall market value of the units as a result of the Defendant's breach of contract.

RITECHEM INDUSTRIES LTD.

82. The Plaintiff Ritechem owns two units in Southampton Gardens, being units number 6 and 22. Ritechem's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary, for negligence.
83. Ritechem signed an agreement for the purchase of unit 6 with GCIL as vendor on December 5, 1996. The agreement for the purchase of unit 22 is dated January 16, 1999.
84. The Plaintiff Ritechem states that it was an implied warranty of the agreement for unit 22 and an express warranty of the agreement for unit 6 that the unit would be completed in a proper and workmanlike manner and

would be reasonably fit for human habitation. Ritechem states that the Defendant breached that warranty and is therefore liable to Ritechem for damages for breach of contract.

85. In purchasing the strata units from the Defendant, Ritechem also purchased a share in the common property of Southampton Gardens in accordance with its unit entitlements. Ritechem states that the implied/express warranty given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, the Ritechem claims against the Defendant for the damages referred to in paragraphs 28 to 31 above.

86. In addition to the damages to the common property, Ritechem claims against the Defendant for breach of contract for the following damages specific to units 6 and 22:

(a) With respect to both units, the cost to repair cracks in the unit as a result of the defective and negligent construction of the foundations of the building, and the cost of corrective action to prevent future cracking;

87. All of the damages referred to above were the reasonably foreseeable result of the Defendant's actions in breaching its implied warranty.

88. In addition, Ritechem seeks damages against the Defendant for direct economic loss caused by the Defendant's breach of its implied/expressed warranties. Ritechem has suffered reduced rental income and a loss on the market value on the units. Even if the buildings are repaired to a state of structural and aesthetic soundness, realtors and potential buyers and tenants will always be wary of the reputation that Southampton Gardens has as a result of the Defendant's actions.
89. In the alternative, Ritechem states that the Defendant owed a duty of care to Ritechem as a purchaser of units in Southampton Gardens and therefore the Defendant is liable to Ritechem in negligence for its negligent design and/or construction of the complex, and all resulting losses and damages previously referred to in the four immediately preceding paragraphs.

Harriet Hunter

90. Hunter owns one unit in Southampton Gardens, being unit number 24. Hunter's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary for negligence.
91. Hunter purchased the unit pursuant to an agreement entered into with GCIL as vendor.
92. Hunter states that it was an express or an implied warranty of the agreement that the unit would be completed in a proper and workmanlike manner and

would be reasonably fit for human habitation. Hunter states that the Defendant breached that warranty and is therefore liable to Hunter for damages of breach of contract.

93. In purchasing the strata units from Defendant, Hunter also purchased a share in the common property of Southampton Gardens in accordance with his unit entitlement. Hunter states that the warranty referred to in the immediately preceding paragraph which was given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, Hunter claims against the Defendant for damages referred to in paragraphs 28 to 31 above.

94. All the damages referred to and suffered by Hunter were the reasonably foreseeable result of the Defendant's actions in breaching its warranty.

GLOBAL TECHNOLOGIES INC.

95. The Plaintiff Global owns one unit in Southampton Gardens, being unit number 21. Global's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary, for negligence.

96. Global purchased the unit pursuant to an agreement entered into with GCIL as vendor.

97. Global states that it was an express or an implied warranty of the agreement that the unit would be completed in a proper and workmanlike manner and would be reasonably fit for human habitation. Global states that the Defendant breached that warranty and is therefore liable to Global for damages for breach of contract.
98. In purchasing the strata unit from Defendant, Global also purchased a share in the common property of Southampton Gardens in accordance with its unit entitlement. Global states that the warranty referred to in the immediately preceding paragraph which was given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, Global claims against the Defendant for damages referred to in paragraphs 28 to 31 above.
99. All the damages referred to and suffered by Global were the reasonably foreseeable result of the Defendant's actions in breaching its warranty.

Steven Henderson

100. Henderson owns one unit in Southampton Gardens, being unit number 1. Henderson's claim against the Defendant is for breach of contract, or, in the alternative and to the extent necessary for negligence.

101. Henderson purchased the unit pursuant to an agreement entered into with GCIL as vendor.
102. Henderson states that it was an express or an implied warranty of the agreement that the unit would be completed in a proper and workmanlike manner and would be reasonably fit for human habitation. Henderson states that the Defendant breached that warranty and is therefore liable to Henderson for damages of breach of contract.
103. In purchasing the strata units from Defendant, Henderson also purchased a share in the common property of Southampton Gardens in accordance with his unit entitlement. Henderson states that the warranty referred to in the immediately preceding paragraph which was given by the Defendant extends to the common property, and that to the extent that the Defendant may not be liable to the Strata for its negligence as previously claimed herein, Henderson claims against the Defendant for damages referred to in paragraphs 28 to 31 above.
104. All the damages referred to and suffered by Henderson were the reasonably foreseeable result of the Defendant's actions in breaching its warranty.

CONTROL OF THE STRATA CORPORATION

105. As previously stated, GCIL controlled and managed the Strata until the first week of December, 2000. Upon management and control of the Strata

being relinquished by GCIL and taken up by the unit owners and their elected executive committee, it became apparent that a number of problems existed. Those problems include:

- (a) Failure by GCIL to adequately fund a reserve account in order to set aside money to pay for major structural replacement of doors, windows, shingles, gutters and other repairs that would arise from time to time.
- (b) Due to the negligent and defective construction, the resulting settlement and the resulting breakage of water lines, large amounts of water were lost into the ground and this water was paid for by the Strata, when properly it should have been paid for solely by GCIL as developer, pursuant to express or implied warranties. It is estimated that the water paid for by the Strata which should have been paid for by GCIL was in excess of C\$24,000.00 as of the end of September 2000.
- (c) In general, a failure to maintain adequate records and account to the executive committee after GCIL turned over control of the strata corporation. A complete audit is required in order to determine whether there was any further mismanagement that has resulted in damage to the Proprietors.

(d) Failure to pay assessments due for units owned by GCIL, the exact details of which are not available at this time, but will be presented at trial.

106. From the date of registration of Strata Plan No. 236 until the first week of December, 2000, the Defendant or its nominees acted as the executive committee of the strata corporation. The Defendant thus had a fiduciary duty to the strata corporation to act in good faith and in the best interests of the strata corporation. The Strata states that the Defendant breached its fiduciary duty by, *inter alia*, the following:

(a) Payment of bills for water usage when such usage was due to the breakage of water lines as a result of the negligent and defective design and/or construction of the complex. As directors of the strata corporation, it was the duty of the Defendants to pursue the party whose negligence was the direct cause of the breaking pipes and the ensuing water bills. That negligent party was also the Defendant. As a result of the Defendant's breach of fiduciary duty in this regard, the Strata paid excess water bills in a sum exceeding CI\$24,000.00. The exact amount will be proven at trial.

(b) Failure to establish and maintain a proper reserve fund. As directors of the strata corporation, the Defendants owed a duty to the strata

corporation to maintain an adequate reserve fund to provide for the payment of insurance, major repairs and other expenses arising from time to time. As the owner of a number of units throughout the time that it was in control the strata corporation, the Defendant would have been obligated to pay a portion of the assessment of the reserve fund. The Defendant breached its fiduciary duty to the strata corporation by failure to collect sufficient amounts for the reserve fund from itself and other unit owners, the exact amounts of such shortfalls to be proven at trial.

FAILURE TO TRANSFER THE COMMON PROPERTY TO THE STRATA CORPORATION

107. Prior to the construction of Southampton Gardens, it had originally been the intention of GCIL to construct a sixty unit strata complex. Had GCIL proceeded with that plan, the complex would have covered virtually all of the usable property on the Land. At some point, GCIL changed its plans and decided to construct only thirty units plus the pool and recreation area, which together use up somewhat more than half of the area of the Land. The Strata Titles Registration Law (1996 Revision) provides that a strata development may be completed in phases, and if it is proposed to proceed with a phased development, then the law requires the registration of a

"proposed strata development plan" which is to detail all of the proposed development, and a "phase strata plan" which is to include complete plans for strata units actually being constructed and also specify the common property that relates to the completed units. However, the phase plan submitted for Southampton Gardens does not delineate the common property. As a phase plan, the common property at this time remains registered in the name of the developer, GCIL. As it is now apparent that there will be no completion of the original development plan, a proper plan of survey must be prepared and the common property transferred to the Strata. Alternatively, the entire parcel that is the Land should be transferred to the Strata for use as the common property. Under either alternative, the transfer and any survey must be at GCIL's expense. Had the complete development been finished and registered, this transfer would have been automatic, at no further cost to the Strata or the other Plaintiffs or unit owners.

CLAIM

108. The Plaintiffs therefore claim from the Defendant:

The Strata

- (a) damages in negligence for the negligent and defective design and/or construction previously referred to herein, the amount of such damages to be proven at trial;
- (b) alternatively, damages in contract pursuant to the agreement contained in the MOU, for the negligent and defective design and/or construction previously referred to herein and the Defendants failure to remedy such deficiencies as agreed, the amount of such damages to be proven at trial;
- (c) damages for the Defendant's breach of fiduciary duty in its mismanagement of the strata corporation as previously referred to herein, such damages to be proven at trial;
- (d) an order that West Bay Beach South, Block 12C, Parcel 352 be transferred to the Strata, and that the Defendant bear all costs related to the said transfer;
- (e) pre-judgment and post-judgment interest pursuant to the Judicature Law (1995 Revision) and the Judgment Debt (Rate of Interest) Rules;

- (f) such further and other relief as this honourable Court may deem just;
and
- (g) costs of this action.

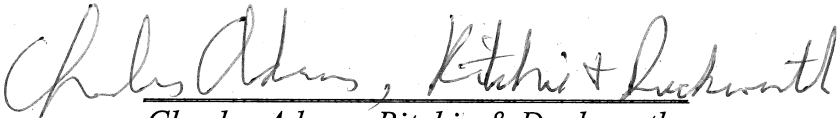
Pelican Reef Ltd., Silverhill Limited, Genrex Ltd., Windsong Properties Ltd., Bates Investments Ltd., Hyman Bono, Roane-Dominic International Ltd., Leon Ezra, Arbutus Investments Ltd., Ritechem Industries Ltd., Harriet Hunter, Global Technologies Inc., Steven Henderson (together, the "Unit Owner Plaintiffs" and individually a "Unit Owner Plaintiff")

Each Unit Owner Plaintiff claims:

- (h) damages for breach of contract for failure to construct the complex and the unit or units sold to the Unit Owner Plaintiff in a proper and workmanlike manner, including the costs of all repairs and remedial work required to prevent future damage, both to the units owned by the Unit Owner Plaintiff and for the Unit Owner Plaintiff's unit entitlement proportion of the common property;
- (i) in the alternative, damages in negligence for the Defendant's negligent and improper design and/or construction of the complex and the units sold to the Unit Owner Plaintiff, including cost of all repairs and all remedial work required to prevent future damages, both to the units owned by the Unit Owner Plaintiff and for the Unit

Owner Plaintiff's unit entitlement proportion of the common property;

- (j) damages for economic loss suffered by the Unit Owner Plaintiff by way of reduced rental income and market value of the units, either by way of the Defendant's breach of its implied warranties or alternatively in negligence;
- (k) pre-Judgment and post-judgment interest pursuant to the Judicature Law (1995 Revision) and the Judgment Debt (Rate of Interest) Rules;
- (l) such further and other relief as this honourable Court may allow; and
- (m) costs of this action.


Charles Adams, Ritchie & Duckworth

Attorneys-at-Law for the Plaintiffs

THIS WRIT was issued by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law, for and on behalf of the Plaintiffs herein, whose address for service is that of their said Attorneys-at-Law, P.O. Box 709G, Zephyr House, Mary Street, George Town, Grand Cayman, B.W.I.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

888

CAUSE NO. OF 2002

BETWEEN:

(1) THE PROPRIETORS, STRATA
PLAN NO. 236

(2) PELICAN REEF LTD.
(3) SILVERHILL LTD.
(4) GENREX LTD.
(5) WINDSONG PROPERTIES LTD.
(6) BATES INVESTMENTS LTD.
(7) HYMAN BONO
(8) ROANE-DOMINIC
INTERNATIONAL LTD.
(9) LEON EZRA
(10) ARBUTUS INVESTMENTS LTD.
(11) RITECHEM INDUSTRIES LTD.
(12) HARRIET HUNTER
(13) GLOBAL TECHNOLOGIES INC.
(14) STEVEN HENDERSON

PLAINTIFFS

AND: GRAND CAY INVESTMENTS LTD. DEFENDANT

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

Important. Read the accompanying direction 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 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

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 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 is suing in person) of his name, address and reference, if any, in the box below.

Charles Adams, Ritchie &
Duckworth
PO Box 709
Mary Street, Zephyr House
George Town,

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]

Filed by Charles Adams, Ritchie & Duckworth, Attorneys-at-Law for and on behalf of the Plaintiffs herein whose address for service is that of its said Attorneys-at-Law, P.O. Box 709, Zephyr House, Mary Street, George Town, Grand Cayman, B.W.I.

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 serve 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.