

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: <sup>319</sup> OF 2003

B E T W E E N:

- (1) DURK BANKS
- (2) CLYDE BANKS

Plaintiff

AND

PATRICIA DEANNE BRYAN

Defendant

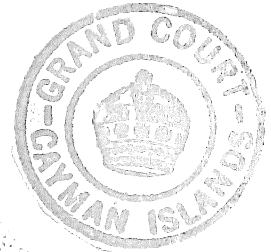



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WRIT OF SUMMONS

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TO: Patricia Deanne Bryan  
 C/O P.O. Box 31814 SMB  
 Grand Cayman, Cayman Islands  
 BWI



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued: <sup>u</sup> 14 May 2003.

**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

### THE PARTIES

1. The Plaintiffs, Durk Banks, and his father Clyde Banks, were at all material times land developers and vendors, whose business address is P.O. Box 31088 SMB, Grand Cayman, Cayman Islands.
2. The Defendant is at all material times an individual residing on Grand Cayman, Cayman Islands, and has a mailing address of c/o P.O. Box 31814 SMB, Grand Cayman, Cayman Islands.

### THE RESTRICTIVE COVENANT

3. The Plaintiffs developed a tract of land, Registration Section: Spotts, Block 25C, which they laid out as a subdivision with a view to selling parcels of land as residential house lots, and registered a suitable plan to this effect with the Cayman Islands Land Registry.
4. By Transfer made from the Plaintiffs, as transferors, to the Defendant as transferee, the property described as Parcel 235, Spotts Registration Section, Block 25C, Grand Cayman, ("the Property") was conveyed to Patricia Deanne Bryan on 11<sup>th</sup> July 2002 with absolute title, but subject to certain rights and restrictive agreements as detailed on the filed registry instrument, 4678/02.
5. By the said transfer and registered restrictive agreement ("the Restrictive Agreement"), the Defendant covenanted with the Plaintiff for the benefit and protection of the Defendant and other plot owners, and potential plot owners, on the said plot plan ("the Plan"), so as to bind as far as possible the said Property no matter into whose hands the same might be conveyed, in order that the Defendant and all persons deriving title under her, would at all times observe and perform the following restriction as set out in the said Restrictive Agreement, in particular:

*"RESTRICTIVE AGREEMENTS: 1 GENERAL (1) Not to erect or maintain on the lot any building other than a dwelling house with a minimum floor area of one thousand five hundred (1,500) square feet with necessary outbuildings and garage accommodation".*

### THE BREACH

6. In breach of the said restriction the Defendant, commencing on or about February 2003, has admitted to constructing a dwelling with an estimated area of approximately 1,037 square feet, or approximately 33% less than the minimum called for.

7. The 1<sup>st</sup> Plaintiff promptly spoke to the Defendant and advised her that the structure being built was in violation of the registered Restrictive Agreement.
8. By way of letter dated 8 May 2003, the attorneys for the Plaintiffs wrote to the Defendant requesting immediate advice of her intentions to comply with the registered restrictive agreement.
9. The Defendant refused to immediately comply with the building restriction and as of the date of the commencement of this proceeding continues to be in breach of the restrictions.
10. By reason of the Defendant's said breach, the Plaintiffs have suffered loss and damage.

### **PARTICULARS OF LOSS AND DAMAGE**


11. The said Restrictive Agreement was and is for the benefit of all purchasers and prospective purchasers of the lots in the Plaintiffs' subdivision, totalling 20 lots in all of which 10 have been sold. It is possible that the purchasers of those lots that have been sold, but have not as yet constructed a dwelling on their property, may seek rescission of their respective agreements with the plaintiff once they find that the restrictive agreement which they had also agreed to is being ignored by another purchaser, and that the Plaintiffs are not attempting to enforce the agreement. Further, the price paid for their land reflects a mid- to upper-income level type purchaser, which is reflected by the agreement not to build a dwelling less than 1,500 square feet.
12. The Plaintiffs actively promote the sale of their subdivision plots to the public. It is likely that sales would decline at the present price of approximately C\$35,000 once the public generally becomes aware that purchasers and owners were able to ignore the restrictions set out in the registered restrictive agreement, by constructing a structure of less than the required minimum of 1,500 square feet. A structure of less than the required minimum of 1,500 square feet of living area may connote to the public at large that the development was a low-income housing development.
10. The economic consequences to the Plaintiffs and the damage to their reputation as developers is likely to be dramatic in the event that the registered restrictive agreement is permitted to be ignored by lot owners. It is unlikely that damages can adequately compensate the Plaintiffs for the loss.
11. As a result of the above, the Plaintiffs state that they are entitled to the relief claimed below.

### **AND THE PLAINTIFFS CLAIM**

- A. A declaration that the Defendant is in breach of the Restrictive Agreement contained in the filed registry instrument 4678/02;

- B. An interlocutory injunction prohibiting the continued construction of the presently designed residence by the Defendant on her property, or her successors in title to the Property;
- C. A permanent injunction prohibiting the Defendant from building a dwelling less than 1,500 square feet on her property (or her successors in title);
- D. Further and alternatively, damages;
- E. Attorney's costs and fees of this action; and
- F. Such further and other relief as to this Honourable Court may seem just.

Dated: 14<sup>th</sup> May 2003

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Hunter & Hunter  
Attorneys at Law for the Plaintiffs

This Writ of Summons was issued by Hunter & Hunter whose address for service is Hunter & Hunter, Attorney-at-Law, P.O. Box 190, 75 Fort Street, George Town, Grand Cayman, Cayman Islands, British West Indies, Attorneys for the Plaintiff WAS/IB 09771.001)

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 each Defendant or by each Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If A Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

*See over for notes for guidance*  
*Please complete overleaf*

### Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No. 319 of 2003

BETWEEN: (1) DURK BANKS (2) CLYDE BANKS PLAINTIFFS'

AND: PATRICIA DEANNE BRYAN 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 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

[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 communication 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.

Hunter & Hunter  
Attorneys-at-Law  
75 Fort Street  
P.O. Box 190  
George Town  
Grand Cayman  
  
Ref: WAS/IB/09771.001  
Attention: Ward Sykes

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]