

IN THE GRAND COURT OF THE CAYMAN ISLANDS

325
CAUSE No. of 2003

BETWEEN:

BART INVESTMENTS LTD.

Plaintiff

AND:

BRISTOL (CAYMAN) LTD

Defendants

WRIT OF SUMMONS

TO: BRISTOL (CAYMAN) LTD whose registered office is situate at Suite D-2,
Cayman Business Park, Elgin Avenue, Thomas Russell Way, 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 495 GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 16th day of May, 2003

IMPORTANT

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

STATEMENT OF CLAIM

1. The Plaintiff and Defendant are companies incorporated under the laws of the Cayman Islands.
2. The Plaintiff is the registered proprietor of land registered at the Cayman Islands Land Registry as Block 7D Parcel 4, South Sound (the "Land").
3. On 2nd June 1999, the Plaintiff and defendant entered into a written agreement (the "Joint Venture Agreement") the terms of which provided that, inter alia:
 - i. The Defendant proposed to develop the Land by constructing unit a condominium development to be known as "Mediterranea" (the "Development").
 - ii. The Plaintiff allowed the Defendant a limited right of access on to the Land by way of a licence to erect signs and advertise the Development, allow prospective purchasers of condominium units to inspect the Land and to enable the Defendant to conduct surveys and test and lay water mains and pipes on the Land for the purposes of the Development. The licence was to expire 45 days after the signing of sales contracts for a minimum of 50% of the condominium units of the first phase of the Development (clauses 2 and 1.1 of the Joint Venture Agreement).
 - iii. The Defendant would make an interim payment, upon receipt of which the Plaintiff would vacate the Land to permit such contractors as the Defendant would notify to the Plaintiff to enter the Land for the purpose of undertaking the Development (clause 4 of the Joint Venture Agreement).
 - iv. The Defendant would use its best endeavours to market and sell the condominium units and diligently undertake the Development in a good and workmanlike manner until its completion and shall at its own expense supply all labour, expertise, materials, administrative skills and other services as may be necessary (clause 5 of the Joint Venture Agreement).
 - v. The Defendant would, if required, use as a source of financial support either private investors or a financial institution in commencing the Development and would use any funds or other support therefrom solely to meet the financial requirements and commitments of the Development (clause 12 of the Joint Venture Agreement).
 - vi. Both the Plaintiff and Defendant agreed to do all things reasonably within their power which were necessary or desirable to give effect to the spirit and intent of the Joint Venture Agreement (clause 15 of the Joint Venture Agreement).
 - vii. The Defendant agreed that it would perform its obligations under the Joint Venture Agreement promptly within seven days of such obligation arising, as to which, time was of the essence (clause 23 of the Joint Venture Agreement).

4. Since June 1999, although the Defendant carried out some preliminary marketing of the Development no steps have been taken to clear the Land or commence the Development in accordance with the terms of the Joint Venture Agreement.

5. By way of a letter dated 16th October 2000, the Plaintiff attorneys wrote to the Defendant's attorneys in the following terms:

"With reference to the above designated property and the agreement sated 2nd June 1999 signed between our above named clients, we understand from our clients that, to date, there has been no sales or construction activity whatsoever.

We are instructed to give your client thirty (30) days notice of termination of the contract.

Kindly acknowledge receipt of this letter by signing and returning one copy."

6. The Defendant took no action in relation to the Land other than making an offer to purchase it in 2001. The offer was rejected.

7. On 8th February 2002, the Plaintiff's attorneys again wrote to the attorneys of the Defendant in the following terms:

"You will be aware of the terms of the Joint Venture Agreement (the "Agreement") between Bart Investments Ltd. ("Bart") and Bristol (Cayman) Ltd. ("Bristol") dated 2nd June, 1999.

In fundamental breach of contract (which breach is continuing), your client has failed in accordance with Clause 5.2 to "...use his best endeavours to market and sell all the Strata Lots and diligently undertake the Development in a good and workman like manner...". Pursuant to Clause 23 of the Agreement it is stated that time is of the essence in respect of your client's obligations under the Agreement.

Your client has clearly no intention of performing its obligations under the Agreement and that is evidenced not only through its inactivity and failure to perform its obligations but also through its offers to purchase the aforementioned land from Bart in the circumstances where clearly it did not have available assets to do so.

We hereby give you notice that Bart accepts the repudiatory breach of the contract on the part of Bristol and the contract between the parties is at an end. This being the case, your client's licence to enter our client's land is revoked and any attempts by your client to gain such access will amount to unlawful trespass.

Our client reserves its rights generally in relation to the aforementioned breach of contract on the part of your client and remedies that may be open to it."

8. In paragraph 28 of an affidavit sworn by Mr Jerry Mach in February 2002, on behalf of the Defendant in Grand Court Cause no 116 of 220, Mr Mach stated that the Defendant

had "... arranged to commence clearing of the site and the building of walls and the sales office this month." No such steps were taken.

9. The entrance to the Land is gated. In March 2002, the Plaintiff changed the locks on the gate. The Defendant has been excluded from the Land since that date.
10. By its conduct, the Defendant has repudiated the Joint Venture Agreement and evinced an intention to be no longer bound by it.
11. The Plaintiff, as it was entitled to do, accepted the Defendant's repudiation by letter dated 8th February 2002.
12. The Plaintiff seeks a declaration that the Joint Venture Agreement has been repudiated.
13. By reason of the foregoing, the plaintiff has lost the benefit of the Joint Venture Agreement and lost the revenue it would have otherwise received under it and has thereby suffered loss and damage.

PARTICULARS

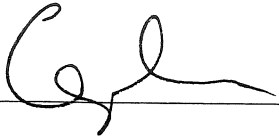
Pursuant to clause 8 of the Joint Venture Agreement, it was agreed that having first paid for all construction costs, construction loan costs and any real estate commissions associated with the Development, the Defendant would then pay to the Plaintiff the sum of US\$81,250 per strata lot sold until the Plaintiff had been reimbursed for US\$3,250,000, being the cost of the Land and half of the net profits from the development after all payments pertaining to the Development. Pending discovery and trial, the Plaintiff unable to quantify the total amount of its claim.

14. The Plaintiff is entitled to interest on such damages as it may be awarded for the Defendant's breach of contract pursuant to Section 34 Judicature Law.
15. The Plaintiff claims costs.

AND THE PLAINTGFI CLAIMS

1. A Declaration that the Joint Venture Agreement has been repudiated the Defendant.
2. Damages for breach for contract.
3. Interest.

4. Costs.



Dated this 16th day of May 2003

CAMPBELLS

Attorneys-at-Law for the Plaintiff

This Writ was issued by Campbells, attorneys for the Plaintiff, whose address for service is 4th Floor Scotiabank Building, P.O. Box 884, George Town, Grand Cayman (Ref AJW)