

IN THE GRAND COURT OF THE CAYMAN ISLANDS

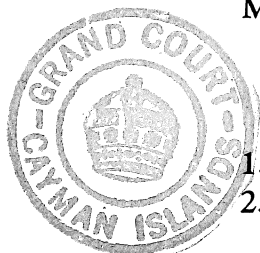
CAUSE NO: 526 OF 2003

B E T W E E N:

MAHOGANY ESTATE LTD.

AND

1. RUDOLFO E. MARTINEZ
2. GINA E. MARTINEZ



Plaintiff

Defendants

WRIT OF SUMMONS

TO: Gina & Rudulfo Mertinez
C/O P.O. Box 2307 GT
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: 30 July 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 Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

THE PARTIES

1. The Plaintiff, Mahogany Estate Ltd. is an incorporation incorporated pursuant to the laws of the Cayman Islands. It was at all material times, a land developer and vendor, whose business address is West Wind Building, P.O. Box 80 BT, Grand Cayman, Cayman Islands. Its address for service in this proceeding is in care of its attorneys-at-law, Hunter & Hunter of P.O. Box 190 GT, 75 Fort Street, George Town, Grand Cayman.
2. The Defendants, were at all material times individuals residing on Grand Cayman, Cayman Islands and have a mailing address of c/o P.O. Box 2307 GT, Grand Cayman, Cayman Islands.

THE AGREEMENT

3. The Plaintiff is a developer of a tract of land, Registration Section, Lower valley, Block 38E which has been laid out as a sub division with a view to selling parcels of land as residential house lots.
4. By a conveyance dated 12th September 2001 and made between Mahogany Estate Ltd. as vendor, and Gina and Rudulfo Martinez as purchasers, the property described as Block 38E Parcel 147, ("the Property") was conveyed to Gina & Rudulfo Martinez, subject to the covenants contained in that agreement.
5. By the said conveyance ("the Agreement"), the Defendants, covenanted with the Plaintiff for the benefit and protection of the other owners purchasing lots from the Plaintiff, to comply with the restrictions set out in the Agreement and 2nd Schedule thereto, namely:

Part B Restrictions hereby imposed on the Purchaser (for the benefit of all owners of lots purchased from the vendor)

1. Not to erect or maintain on the Lot any building other than a single private dwelling house with a minimum floor area of 1,800 square feet (not including garage), together with any incidental outbuildings and garage.
2. Not to erect on the Lot any building with a zinc roof, nor to erect, place or alter any building on the lot unless the quality of workmanship and material and harmony of external design conform in the opinion of the Review Committee with the majority of other private dwelling house in the Sub-division.

THE BREACH

6. In breach of the said restrictions the Defendants in or about March of 2003 proceeded to construct a dwelling with an estimated area of approx 825 square feet. The Defendants commenced and continued to build the offending structure despite knowing of the restrictive covenants and being advised by the Plaintiff that the structure was not approved.
8. By reason of the Defendants' said breach, the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

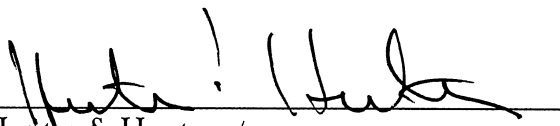
9. The said Restrictive agreements are for the benefit of all purchasers and prospective purchasers of the 159 lots in the Plaintiff's sub division. As of the date of the commencement of this proceeding approximately 67 lots have been sold and 92 remain to be sold. Purchasers of those lots that have 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 1,800 square feet.
10. The Plaintiffs actively promote and advertise the sale of their sub division plots to the public. It is likely that sales or prices would be affected, once the public generally were aware that purchasers were able to ignore the restrictions in the sales agreement, and build a property of less than 1800 square feet. A property consisting only of approx 800 square feet of living area may suggest to the public at large, that the development was a low-income housing development, and that they should continue to look for a more suitable development.
11. The Plaintiff's loss arising from loss of reputation, loss of sales and costs and expenses in dealing with disgruntled purchasers. These losses are virtually impossible to determine.

AND THE PLAINTIFF CLAIMS

- (1) A declaration that the Plaintiff is entitled to enforce against the Defendants the Restrictive covenants (agreements) contained in the 2nd Schedule to a conveyance dated 12th September 2001.
- (2) An interlocutory and permanent restrictive injunction prohibiting the continued construction of the presently designed residence by the Defendants on their property, or there successors in title to the Property.

- (3) An interlocutory and permanent restrictive injunction prohibiting the Defendants from building a dwelling less than 1,800 square feet on their property (or their successors in title).
- (4) An interlocutory and permanent mandatory injunction requiring the Defendants to immediately bring the structure into compliance with the restrictive covenants;
- (5) An interlocutory and permanent mandatory injunction requiring the Defendants to remove the offending structure;
- (6) Further and alternatively, damages;
- (7) Prejudgment and post judgment interest in accordance with the Judicature Law on damages if such are awarded;
- (8) Costs on an indemnity or, alternatively, standard basis and
- (9) Such further and other relief as to this Honourable Court may seem just.

Dated: 30 July 2003



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.

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.

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MAHOGANY ESTATE LTD.

Plaintiff

AND

- 1. RUDOLFO E. MARTINEZ
- 2. GINA E. MARTINEZ

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 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/09003.001
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.