

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 695 OF 2003

B E T W E E N:

INTERNATIONAL FINANCIAL CENTURY WORLD
CORP. LTD.

Plaintiff

AND

LAND LTD

Defendant



WRIT OF SUMMONS

TO: Land Ltd of K Corporate Services Ltd, 4th Floor, Genesis Building, Jennet Street,
P.O. Box 1371 GT, Grand Cayman, Cayman Islands

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 495 GT, George Town,
Grand Cayman, the accompanying Acknowledgement of Service stating therein whether
you intend to contest these proceedings.

If you fail to satisfy the claim or to return the 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 29th day of October 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

1. The Plaintiff is a company incorporated in the Cayman Islands on 19 January 1994 and having its registered office at Apartment 711, Britannia, West Bay Road, P.O. Box 30491 SMB, Grand Cayman, Cayman Islands.
2. At all material times, the directing mind and will and sole beneficial shareholder of the Plaintiff was and is Michael Ford (previously known by the name of Alexander O), a British Dependent Territories Citizen and holder of a British Dependent Territories Citizen Cayman Islands passport.
3. The Defendant is a company incorporated in the Cayman Islands on 7 November 1993 and having its registered office at K Corporate Services Ltd, 4th Floor, Genesis Building, Jennet Street, P.O. Box 1371 GT, Grand Cayman, Cayman Islands. At all material times, Rex Crighton was and is a director and principal of the Defendant, with authority to make statements and warranties and to conclude contracts on its behalf.
4. On a date unknown but prior to 1990, the Defendant became the registered proprietor of lands situated in the West Bay Beach North Registration section and registered as Block 11C Parcel 238 and Block 17A Parcel 3 (the latter subsequently being subdivided and registered as Parcels 11 to 14), and began their development into a subdivision containing mainly residential house lots known as 'Crystal Harbour' (the "Crystal Harbour Development" or "CHD").
5. By letters dated 22 August and 6 December 1990 and 19 July 1991, the Central Planning Authority granted the Defendant planning permission in relation to (inter alia) the CHD ("the Planning Permission"), subject to (inter alia) the conditions that:

- 5.1 the access road(s) abutting the lots in the CHD would have a 30 foot demarcated road reserve and would be constructed to the road standards as laid down by the public Works Department and approved by the Director of Planning; and
 - 5.2 the lots in the CHD would be filled to a minimum of 4 feet above mean sea level.
6. On 25 March 1995, Mr O (as he was then known) met Rex Crighton at the latter's office on the CHD site. At that meeting, Mr O expressed an interest in purchasing (through one or more companies under his direction and control) a number of CHD lots and inquired about the possibility of a bulk purchase discount. In response to a question by Mr O as to what the prices of unfilled lots were, Mr Crighton told Mr O that he had sold an unfilled lot of 30 acres to Captain Foster at a price of US\$2.50 per square foot. Mr O said that he wanted to purchase lots which had been cleared and filled, with underground services and asphalted roads. Mr Crighton stated that a higher price was applicable to such lots. Mr Crighton went on to state that the 3 acre lot at Block 17A Parcel 13 had been fully cleared and filled, while the Defendant was still in the process of excavating other lots in the CHD. He gave Mr O a sales brochure for the saleable lots in the CHD, which contained a pricing schedule which he said was put together on the basis of the lots being cleared and filled ("the CHD Lots"). Mr Crighton warranted on behalf of the Defendant as the developer of the CHD that the Defendant would remove the peat, mangrove and similar matter in the CHD Lots down to the bedrock and then would fill the CHD Lots with marl or similar matter to a minimum of 4 feet above sea level. The said warranty was given by Mr Crighton in order to induce Mr O (through any one or more of the companies under his direction and control) to purchase lots in the CHD at a price of US\$6.20 per square foot.

7. On 26 March 1995, Mr O met Mr Crighton again, at the latter's request, in order to continue negotiations for a purchase of CHD Lots at a mutually-agreeable price. At that meeting, Mr O and Mr Crighton signed a confidentiality agreement pursuant to which the Defendant would make available to Mr O certain information for the purposes of assessing the acquisition of CHD Lots owned by the Defendant. In order to induce Mr O (through any one or more of the companies under his direction and control) to purchase some or all of the CHD Lots at a price of US\$6.20 per square foot, on the basis that such a price represented a significant discount on the value of saleable land in the CHD which had been cleared, grubbed and filled, Mr Crighton then provided Mr O with copies of the following documents:

- 7.1 A copy of an agreement for the sale of part of Block 17A Parcel 3 (subsequently registered as Parcel 14) by the Defendant to Soundland Ltd at a price of US\$2.50 per square foot, on the basis that the land sold was not cleared or filled, without underground services or asphalted roads;
- 7.2 A copy of an appraisal done by Cayman Islands Realty and Development Ltd dated 31 August 1994 for Naul Bodden (a partner of Ernst & Young and Mr Crighton's son-in-law), which advised that the CHD Lots had been "cleared, grubbed and approximately 93% of the saleable land area filled to the required level of 4 feet above datum sea level" and valued them at US\$12 and US\$15 per square foot, for respectively inland and oceanfront land, whereas other areas of unfilled land in Block 17A Parcel 3 were valued at US\$3 per square foot;
- 7.3 A copy of the Defendant's financial statements as at 31 August 1994 (prepared by Ernst & Young and based in part on the said appraisal), which stated that the CHD Lots had been cleared and filled and gave a value for them at US\$12 and US\$15 per square foot, for respectively inland and oceanfront land; and

- 7.4 A list of the size and price of the CHD Lots being sold by the Defendant, in which their price was not less than US\$15 per square foot.
8. By providing the foregoing documents to Mr O, Mr Crighton represented on behalf of the Defendant that some or all of the CHD Lots had been cleared, grubbed and filled, and further alternatively he warranted that the remaining CHD Lots would be cleared, grubbed and filled. The said representation and/or warranty was made by Mr Crighton with the intention that it should be acted upon by Mr O by causing him (through any one or more of the companies under his direction and control) to purchase lots in the CHD at a price of US\$6.20 per square foot.
 9. After the said representation was made, Mr O wrote to Mr Crighton on three (3) occasions between 26 and 30 March 1995, in which he expressed his reliance on the documents referred to in paragraph 7 above and on the representation and/or warranty referred to in paragraph 8 above, namely that the CHD Lots would be cleared, grubbed and filled to the required elevation of 4 feet above datums sea level.
 10. By a written agreement entered into between the Plaintiff and the Defendant on 12 April 1995 ("the Agreement"), it was agreed (inter alia) that the Plaintiff would purchase from the Defendant a lot ("the Lot") forming part of the CHD and registered as West Bay Beach North Block 17A, Parcel 13 at a price of US\$6.20 per square foot, amounting to US\$810,216.00 (subject to addition, or subtraction if applicable, to take account of an adjustment in the purchase price after a precise survey for the Lot to be delivered on completion).
 11. Mr O caused and procured the Plaintiff to enter into the Agreement in reliance upon and induced by the warranty referred to in paragraph 6 above. In the premises, the said warranty amounted to a collateral contract between the Plaintiff, consideration for which was provided by the Plaintiff entering into the Agreement.

12. Further or alternatively, Mr O caused and procured the Plaintiff to enter into the 1995 Agreement in reliance upon and induced by the representation and/or warranty referred to in paragraph 8 above.
13. Further or alternatively, by virtue of the continuing representation referred to in paragraphs 8 and 9 above, it was an implied term of the Agreement that the Lot to be conveyed to the Plaintiff were to be cleared, grubbed and filled.
14. In fact, to the extent that the facts and matters pleaded at paragraph 7 above amounted to a representation of present fact, the said representation was false, in that the CHD Lots had not been cleared, grubbed and filled; and to the extent that the facts and matters pleaded at paragraph 7 above amounted to a warranty, the said warranty was breached, in that the Defendant did not intend to and has not cleared, grubbed and filled the CHD Lots.
15. The said representation was made fraudulently, in that Mr Crighton knew that the representation was false or made it recklessly not caring whether it was true or false.

PARTICULARS OF KNOWLEDGE

- 15.1 As a director and principal of the Defendant, and as the developer of the CHD, Mr Crighton well knew to what degree (if any) the CHD Lots had been cleared, grubbed and filled by or on behalf of the Defendant.
- 15.2 Mr Crighton, and through him the Defendant, knew that to the extent that any clearing and filling of the CHD Lots had been or was being undertaken by or on behalf of the Defendant, this did not include the removal of peat, mangrove and similar matter in the lots and their filling with marl or similar matter.
- 15.3 Mr Crighton, and through him the Defendant, knew that any clearing and filling of the CHD Lots consisted of merely bulldozing cleared vegetation

above the soil line and ploughing it into the soil by way of fill, notwithstanding that such method of filling was liable to cause the land subsequently to subside.

16. Further or alternatively, upon receipt of the correspondence referred to in paragraph 9 above, it became the duty of the Defendant to convey the knowledge referred to in paragraph 15 above and to appraise Mr O of the true facts. By reason of the Defendant's failure to do so, the Defendant was guilty of a continuing representation which was false.

17. By the special terms and conditions contained in the Fifth Schedule of the Agreement, the Defendant covenanted and warranted (inter alia) that:

17.1 The CHD would be completed in accordance with the requirements of the Central Planning Authority within 60 months from the date of execution of the Agreement, that is on or before 12 April 2000. In particular, the Defendant covenanted and warranted that "the canals and areas of Mitchells Creek will be bulkheaded, roads asphalted, underground services completed, landscaping in place along the roads with Sable Palms, Pindo Palms, Royal Palms and a myriad of suitable tropical foliage. The entrance gates to the East and West will be heavily landscaped. The main gates will have gate houses which are capable of being manned and be of such design as to enhance the [CHD]";

17.2 the Lot would be filled prior to completion to a level required by the Central Planning Authority which level should not be less than 4 feet above sea level;

17.3 within 48 months of completion, that is on or before 10 May 1999, electricity, telephone, water from main supply, sewer would all be available at the Lot and all such services would be provided as part of the CHD and be underground services;

- 17.4 the roads leading to the Lot would be completed within a reasonable period of time not exceeding 48 months from the date of completion of the Agreement, that is on or before 10 May 1999, and such roads would be asphalted to standards approved by the Public Works Department and the Central Planning Authority;
- 17.5 The CHD would have a boat ramp with parking facilities and a park of no less than 6.25 as shown on the plan of the CHD attached to the Agreement.
18. In the premises, further or alternatively pursuant to the warranty referred to in paragraph 6 above, it was an express alternatively an implied term of the Agreement that the Defendant would remove the peat, mangrove and similar matter in the Lot down to the bedrock and then would fill the Lot with marl or similar matter to an elevation of 4 feet above mean sea level.
19. At all material times it was understood and acknowledged by the Defendant (through Mr Crighton, acting on its behalf) that the Plaintiff was purchasing the Lot as an investment with a view to selling the same to purchasers once the CHD and/or the Lot were complete (within the meaning of the Agreement), by virtue of (inter alia) the special terms and conditions contained in the Fifth Schedule of the Agreement (and in particular clause 6 thereof).
20. Pursuant to the Agreement, title to the Lot was transferred to the Plaintiff on or about 10 May 1995.
21. In breach of the Agreement:
- 21.1 the Defendant has failed to complete the CHD (of which the Lot formed part) whether within the meaning of the Agreement (that is within 60 months from the date of execution of the Agreement, that is on or before 12 April 2000) or at all;

- 21.2 the Defendant has failed to comply with the requirements of the Central Planning Authority whether within the meaning of the Agreement (that is within 60 months from the date of execution of the Agreement, that is on or before 12 April 2000) or at all;
- 21.3 the Defendant has failed to construct asphalt access roads in accordance with the standards required by the Central Planning Department and the Public Works Department;
- 21.4 the Defendant has failed to fill the Lot to an elevation of 4 feet above mean sea level;
- 21.5 the Defendant has failed to fill the Lot in accordance with the warranty referred to in paragraph 6 above; and
- 21.6 the Defendant has failed to provide the CHD with a park of no less than 6.25 acres as shown on the plan attached to the Agreement.
22. By reason of the aforesaid, the Plaintiff has sustained and continues to suffer loss and damage.

Particulars of Damage

- 22.1 But for the continuing misrepresentation referred to in paragraphs 8 and 9 above, the Plaintiff would have purchased the Lot at a price of not more than US\$3.00 per square foot. In the event the true value of the Lot as at the date of the Plaintiff's purchase was reduced from US\$810,216.00 to US\$392,040.00 and the Plaintiff has suffered loss of US\$418,176.00.
- 22.2 Because of the manner in which the Lot has been filled (resulting in an underlying layer of soft peat below a layer of fill, which has compacted and will continue to compact over time), the Lot has suffered and will continue to suffer from significant subsidence (such that the mean elevation of the Lot is currently 3.4 feet above sea level). As a result, any house or other

building constructed on the Lot will experience significant subsidence and will suffer serious structural cracking and instability.

- 22.3 It will not be possible to build on the Lot unless and until pilings have been inserted into the ground to support any construction, and hence the Plaintiff is unable to sell the Lot to purchasers as understood and acknowledged by the Defendant. The cost of inserting such pilings is presently estimated at \$300,000.
- 22.4 By reason of the Defendant's failure to complete the Parcel and to fill the Lot as aforesaid and to construct the perimeter road properly, the Plaintiff has not been able to market the Lot for sale properly or at all. By reason of the disruption and inconvenience caused by the Defendant's ongoing work on the CHD, potential purchasers are discouraged from considering a purchase of the Lot until such time as the CHD is completed. The Plaintiff has accordingly lost the opportunity to achieve a sale of the Lot from April 2000 to date.
- 22.5 The Plaintiff has lost profits on the sale of the Lot. If the Lot had been properly cleared, grubbed and filled, the Plaintiff would have been able to sell the Lot at a price of US\$22.50 per square foot, amounting to US\$2,940,300.00 and resulting in US\$2,130,084.00 in lost profits.
- 22.6 The Plaintiff has lost the use and enjoyment of the proceeds of sale of the Lot and the opportunity to earn interest on the same.
23. Further, the Plaintiff is entitled to and claims interest on all sums found due to it, pursuant to section 34 of the Judicature Law (1995 Revision) alternatively pursuant to the equitable jurisdiction of the Court, at the rate of 4½ per cent per annum from the date hereof until judgment alternatively at such rates and for such periods as the Court shall think fit.

AND THE PLAINTIFF claims:

1. Damages for breach of contract.
2. Further or alternatively, damages for misrepresentation.
3. Interest pursuant to section 34 of the Judicature Law (1995 Revision) alternatively pursuant to the equitable jurisdiction of the Court, at the rate of 4½ per cent per annum from the date hereof until judgment alternatively at such rates and for such periods as the Court shall think fit.
4. Its costs of this action.
5. Such further or other relief as the Court shall think fit.

Dated the 29th day of October 2003

RAMON ALBERGA QC



HUNTER & HUNTER

THIS WRIT was issued by Hunter & Hunter of The Huntlaw Building, 75 Fort Street, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref. JW/09574.001), Attorneys-at Law for the Plaintiff, whose registered office address is Apartment 711, Britannia, West Bay Road, P.O. Box 30491 SMB, Grand Cayman, Cayman Islands.