

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 292 OF 2003

BETWEEN:

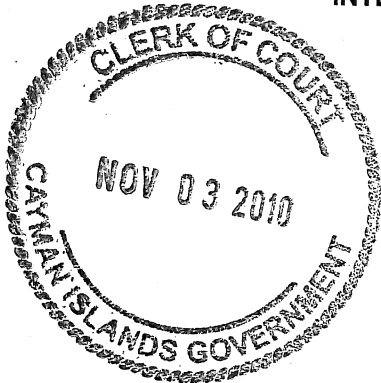
INTERNATIONAL FIDELITY CENTURY CORP. LTD

Plaintiff

AND

LAND LTD

Defendant



RE-AMENDED 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 Acknowledgment of Service stating therein whether you intend to contest the proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time state, 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 April 2009

~~Amended this 29th day of October 2003~~

Re-Issued this . day of *November* 2010

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 reviewed by order of the Court.

IMPORTANT

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

RE-AMENDED STATEMENT OF CLAIM

- 1 The Plaintiff is a company incorporated in the Cayman Islands on 12 April 1996 and having its registered office at Apartment 125 Treasure Island 711, Britannia, West Bay Road, P.O. Box 30491 SMB, Grand Cayman, Cayman Islands.
- 2 At all material times, ~~the sole director-directing mind and will and sole beneficial~~ shareholder of the Plaintiff and of National Financial Corp. Ltd, National Business Corp. Ltd. Prudential Financial Corp. Ltd. and International Financial Century World Corp Ltd, 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 In ~~On or around late~~ 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 (lithe 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 anyone 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, ~~notwithstanding that the prevailing price for similar lots in that area was significantly lower.~~

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 anyone 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.
- ~~7~~ 10 By a written agreement entered into between National Financial Corp. Ltd and the Defendant on 28 April 1995 (lithe 1995 Agreement"), it was agreed (inter alia) that National Financial Corp. Ltd would purchase from the Defendant 34 lots forming part of the CHD and registered as West Bay Beach North Block 11C Parcel 238, and West Bay Beach North Block 17A Parcels 11 and 12 (lithe Parcels") at a price of US\$6.20 per square foot, amounting to US\$3,999,713.00 (subject to adjustment as more particularly described in paragraph 23.4 below).

- 11 The 1995 Agreement superseded an agreement in identical terms (save for the addition of certain further terms and conditions which are not material to the Plaintiff's claim) executed between the same parties on 12 April 1995.
- 12 Also executed on 12 April 1995 was a written agreement entered into between International Financial Century World Corp Ltd and the Defendant for the purchase from the Defendant of a 3 acre lot in the CHD and registered as West Bay Beach North Block 17A, Parcel 13 at a price of US\$6.20 per square foot (subject to adjustment as more particularly described in paragraph 23.4 below).
- ~~13~~ 13 Mr O caused and procured National Financial Corp. Ltd to enter into the 1995 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 National Financial Corp. Ltd and the Defendant, consideration for which was provided by National Financial Corp. Ltd entering into the 1995 Agreement.
- 14 Further or alternatively, Mr O caused and procured National Financial Corp. Ltd to enter into the 1995 Agreement in reliance upon and induced by the representation and/or warranty referred to in paragraph 8 above.
- 15 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.
- 16 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

- 16.1 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.
- 16.2 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.

- 16.3 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.
- 17 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 16 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.
- 18 By an agreement made between the Defendant and National Business Corp. Ltd on 5 May 1995, National Business Corp. Ltd agreed to lend the Defendant a principal sum of US\$1,998,857.00 on terms (inter alia) that the Defendant would repay the said principal sum on 5 May 1997. As security for the said loan, the Defendant granted National Business Corp. Ltd a charge over Block 11C Parcel 238 and Block 17A Parcel 11.
- 19 By letter dated 13 January 1997, National Business Corp. Ltd gave the Defendant formal notice that it required the principal sum of US\$1,998,857.00 to be repaid on the date specified in the said charge, namely 5 May 1997.
- 20 By an assignment agreement dated 8 January 1997, notice whereof was given to the Defendant, National Financial Corp. Ltd assigned to Prudential Financial Corp. Ltd its right and obligations with respect to 17 of the CHD Lots that were the subject of the 1995 Agreement.
- 21 On 3 March 1997, National Financial Corp. Ltd and Prudential Financial Corp. Ltd served a Notice to Complete on the Defendant, pursuant to the Defendant's obligation to complete the transfers of the CHD Lots that were the subject of the 1995 Agreement on or before 28 April 1997.
- 22 Disputes subsequently arose between the parties with regard (inter alia) to performance of the 1995 Agreement, because the Defendant was unable or unwilling to complete the transfers of the CHD Lots pursuant to the Notice to Complete and was unable or unwilling to pay the sums due and outstanding to National Business Corp. Ltd.

~~9~~ 23 ~~Subsequent to disputes arising between the parties with regard (inter alia) to performance of the 1995 Agreement~~ Further to a resolution of the said disputes, by two written agreements entered into between (inter alios) the Plaintiff and the Defendant on 2 May 1997 ("the 1997 Agreement"), it was agreed (inter alia) that:

- 23.1 the Plaintiff would complete a purchase from the Defendant of 15 lots and on no other lots in the CHD ("the Lots");
- 23.2 the Defendant would execute a new agreement transferring the Lots directly to the Plaintiff;
- 23.3 the Defendant would sell and the Plaintiff would purchase the Lots, as more particularly described in the Fifth Schedule thereto, subject to the conditions set out in the Fifth Schedule thereto;
- 23.4 the purchase price for the Lots would be US\$6.20 per square foot, amounting to US\$1,872,152.00 (subject to additions, or subtractions if applicable. to take account of an adjustment in the purchase price after a precise survey for each lot to be delivered on completion), which amount would be set off against any amount of principal and interest owing to National Business Corp. Ltd. by the Defendant on the completion date and any balance would be paid by the Defendant to National Business Corp. Ltd.;
- 23.5 the purchase price would include the cost of filling the Lots to an elevation of 4 feet above sea level or such greater elevation as might be required by the Central Planning Authority; and
- 23.6 the Defendant undertook to undertake the necessary surveys, governmental approvals, and registration applications to create and obtain separate parcel numbers for each Lot.

~~10~~ 24 By the special terms and conditions contained in the Fifth Schedule of the 1997 Agreement, the Defendant covenanted and warranted (inter alia) that:

- 24.1 the 56 lots contained and comprised in the CHD (of which the Lots formed part) would be completed on or before 1 May 1998, of which date time would be of the essence;

24.2 the Defendant would complete the Parcels on or before 48 months from the date of execution of the 1997 Agreement, that is on or before 1 May 2001; and

24.3 completion of the Parcels for the purpose of the 1997 Agreement meant (inter alia) that:

24.3.1 the roads would be asphalt in accordance with the standards required by the Central Planning Department and the Public Works Department;

24.3.2 the Central Planning Authority had confirmed that all planning requirements have been complied with;

24.3.3 an area of land of approximately 5.8 acres had been set aside as a park for use by the residents and owners and the public; and

24.3.4 title was capable of being transferred to the Lot purchasers who had entered into a contract for the same.

14 25 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 1997 Agreement that the Defendant would remove the peat, mangrove and similar matter in the Lots down to the bedrock and then would fill the Lots with marl or similar matter to an elevation of 4 feet above mean sea level.

12 26 Further or alternatively, Mr O caused and procured the Plaintiff to enter into the 1997 Agreement with the Defendant 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 and the Defendant, consideration for which was provided by the Plaintiff entering into the 1997 Agreement.

27 Further or alternatively, Mr O caused and procured the Plaintiff to enter into the 1997 Agreement in reliance upon and induced by the continuing representation and/or warranty referred to in paragraphs 8 and 17 above.

28 Further or alternatively, by virtue of the continuing representation referred to in paragraphs 8 and 17 above, it was an implied term of the 1997 Agreement that the Lots to be conveyed to the Plaintiff were to be cleared, grubbed and filled.

- 29 Further disputes arose between the parties with regard (inter alia) to performance of the 1997 Agreement, because the Defendant had not completed the Lots by 1 May 1998, was unable or unwilling to transfer the Lots to the Plaintiff on that date, and was unable or unwilling to pay the balance of principal owing to National Business Corp. Ltd. as at that date pursuant to the Defendant's obligation referred to in paragraph 23.4 above.
- ~~43~~ 30 ~~Subsequent to further disputes arising between the parties with regard (inter alia) to performance of the 1997 Agreement~~ Further to a resolution of the said disputes, by two written agreements entered into between (inter alios) the Plaintiff and the Defendant on 9 January 1998 ("the 1998 Agreement"), it was agreed (inter alia) that the Defendant would transfer to the Plaintiff an additional 2 pieces of land registered as West Bay Beach North Block 17A Parcels 24 and 25 ("the Additional Lots").
- 44 31 It was an implied term of the 1998 Agreement that the transfer of the Additional Lots would be subject to the same special terms and conditions as those contained in the 1997 Agreement.
- 45 32 In the premises, further or alternatively pursuant to the warranty referred to in paragraph 6 above, it was an implied term of the 1998 Agreement that the Defendant would fill the Additional Lots to an elevation of 4 feet above mean sea level.
- 46 33 Further or alternatively, it was an implied term of the 1998 Agreement that the collateral warranty referred to in paragraph 6 above was extended to and included the Additional Lots.
- 47 34 Further or alternatively, Mr O caused and procured the Plaintiff to ~~enter~~ enter into the 1998 Agreement with the Defendant 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 and the Defendant, consideration for which was provided by the Plaintiff entering into the 1998 Agreement.
- 35 Further or alternatively, Mr O caused and procured the Plaintiff to enter into the 1998 Agreement in reliance upon and induced by the continuing representation and/or warranty referred to in paragraphs 8 and 17 above.
- 36 Further or alternatively, by virtue of the continuing representation referred to in paragraphs 8 and 17 above, it was an implied term of the 1998 Agreement that the Lots to be conveyed to the Plaintiff were to be cleared, grubbed and filled.