

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No. 418 of 1996

**BETWEEN: THE PROPRIETORS, STRATA PLAN NO. 35
(Trading as Grapetree Condominiums) PLAINTIFF**

**AND: BRUCE W. DISTEFANO, WALTER V. DISTEFANO, JEFFREY
L. DISTEFANO, KATHRYN A. DISTEFANO, RICHARD T.
DISTEFANO, MARK J. DISTEFANO, MARY E. DISTEFANO.**

DEFENDANTS

WRIT OF SUMMONS

**TO: Bruce W. Distefano
210 Delaware Turnpike
Delmar
New York 12054
U.S.A.**

**Walter V. Distefano Jr.
84 Font Grove Road
Slingerlands
New York
U.S.A.**

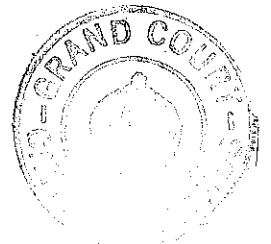
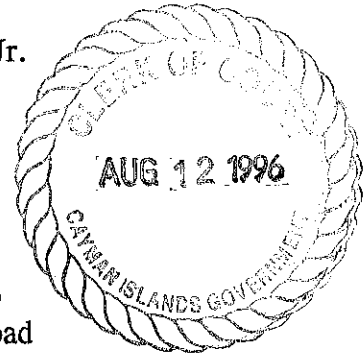
**Jeffrey L. Distefano
75 Old Niskayuna Road
Loudonville
New York 12211
U.S.A.**

**Kathryn A. Distefano
75 Old Niskayuna Road
Loudonville
New York 12211
U.S.A.**

**Richard T. Distefano
75 Old Niskayuna Road
Loudonville
New York 12211
U.S.A.**

**Mark J. Distefano
75 Old Niskayuna Road
Loudonville
New York 12211
U.S.A.**

**Mary E. Distefano
75 Old Niskayuna Road
Loudonville
New York 12211
U.S.A.**



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.

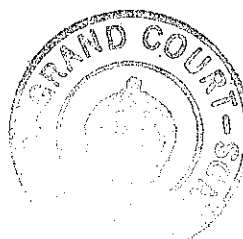
If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 9th day of August 1996.

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

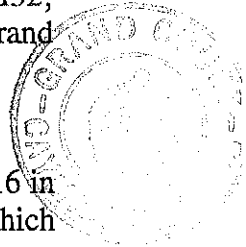
Directions for Acknowledgment of Service are given with the accompanying form.



STATEMENT OF CLAIM



1. The Plaintiff (sometimes referred to herein as the "Strata Corporation") is a body corporate created pursuant to section 5 of the Strata Titles Registration Law, (1996 Revision) (hereinafter the "Law").
2. The Defendants are the registered proprietors of Apartment Numbers 28, 30 and 31 in Grapetree pursuant to Transfers of Land registered 18 March 1986, 2 March 1994 and 24 June 1981 whereby title to Cayman Islands registered Parcels 103H30, 103H32, 103H33 of Block 13B in the West Bay Beach South Registration Section of Grand Cayman (hereinafter the "Strata Lots") were transferred to its name.
3. The Defendants are also the registered proprietors of Apartments Numbers 15 and 16 in The Proprietors, Strata Plan No. 41 (also known as Cocoplum Condominiums) which operates common management and administration facilities with the Plaintiff.
4. On the 4th day of November 1980, Notification of Amendment or Variation of By-Laws to Strata Plan Number 35 was registered under the Strata Titles Registration Law, 1973 (hereinafter referred to as the "By-Laws") wherein the by-laws prescribed by statute were replaced with the By-Laws.
5. The By-Laws bind the Strata Corporation and the proprietors thereof, including the Defendants. The By-Laws include covenants on the part of the Strata Corporation with each proprietor and on the part of the Defendant with every other proprietor of the Strata Corporation and with the Strata Corporation to observe and perform all the provisions of the By-Laws.
6. Under the By-Laws, a proprietor of a unit within Strata Plan No. 41 is required to pay to the Strata Corporation within 14 days of demand:
 - (a) all contributions to the fund for administrative expenses levied by the Strata Corporation pursuant to clause 6(2) of the Law; and
 - (b) a proportionate share based on unit entitlement of all and any costs and expenses incurred by the Strata Corporation in connection with the performance of its duties under the Law and under the By-Laws,



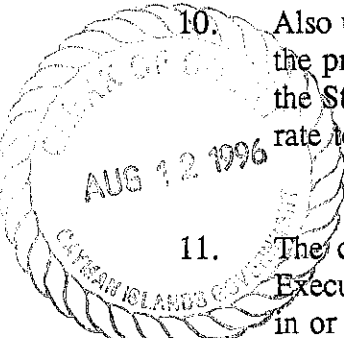
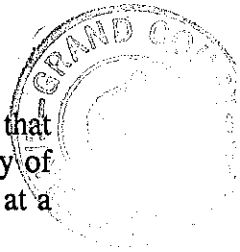
7. The Defendant's account with the Strata Corporation with respect to contributions to the fund for administrative expenses has been outstanding to various degrees in excess of one year. Several demands for payment from the Defendants have been made by and on behalf of the Plaintiff without satisfactory response. Only partial payments have ever been made periodically. Contributions in respect of maintenance, television, management fees and other assessments continue to accrue monthly.
8. Under the terms of the By-Laws, in the event any such payments are not made within 14 days of demand, the proprietor shall pay interest thereon (accrued daily) at the rate of 2% per annum above the Prime Rate prevailing in the United States of America at the time of default.
9. Also under the terms of the By-Laws in the event any payments, together with interest accrued, are not paid within 84 days of such demand or in the event of the proprietor becoming bankrupt or making composition with his creditors or being a corporation entering into liquidation then and in any of these events the proprietor irrevocably authorises and permits the Strata Corporation to enter into possession of its Strata Lot and further irrevocably appoints the Strata Corporation to be the receiver of the rents and profits of its Strata Lot until such time as the said payments, together with interest accrued, have been paid by it to the Strata Corporation.

10. Also under the terms of the By-Laws, in particular by-law 35 (xxxviii), in the event that the proprietor wishes to let out its Strata Lot it shall do so only through the agency of the Strata Corporation which shall be entitled to a commission on rentals received at a rate to be fixed by the Executive Committee from time to time.

11. The commission in respect of rentals of the Defendant's Strata Lots were set by the Executive Committee initially at 10%. The Executive Committee revised the rate to 8% in or about April 1995 and again revised the rate to 6% effective 1 April 1995.

12. The Defendants, in contravention of the By-Laws, and thereby in contravention of the Law, let its units out (and continues to do so) other than through the agency of the Strata Corporation. The Strata Corporation, not managing the rental of the units and without knowledge of the rental rates, could not properly calculate rental commissions.

13. The Defendants have been, and continue to be, properly invoiced an estimation of such management fees on a monthly basis as well as other contributions to the fund for administrative expenses.



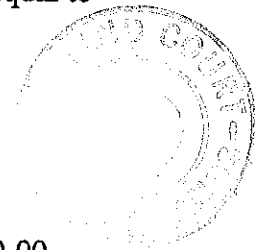
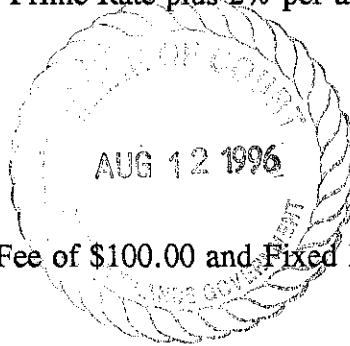
14. The Plaintiff's claim is against the Defendants for the sum of US\$14,238.67 being the outstanding balance due in respect of the Defendants' contributions levied and payable to the Plaintiff in respect of the fund for administrative expenses (including maintenance, television, management fees and other assessments), plus interest thereon as from 1 March 1996 at the rate of United States Dollar Prime Rate plus 2% per annum (10%) in accordance with the terms of the By-Laws governing ownership of any apartment unit within Grapetree Condominiums.

AND THE PLAINTIFF CLAIMS:-

1. AN INJUNCTION restraining the Defendants, its servants and/or agents from letting its Strata Lots out through an agency other than the agency of the Strata Corporation;
2. AN ORDER that the Plaintiff be granted possession of the Strata Lots and appointed the receiver of the rents and profits of the Strata Lots pursuant to the By-Laws until such time as the amount claimed, plus interest has been paid by the Defendants to the Plaintiff.
3. AN ORDER for the payment by the Defendant of the sum of US\$14,238.67.
4. INTEREST accrued to 31 July 1996 in accordance with the terms of the By-Laws at the rate of 10% (United States Dollar Prime Rate plus 2% per annum per annum), equal to US\$330.26, and continuing.
5. FURTHER and/or other relief.
6. COSTS of the Prescribed Filing Fee of \$100.00 and Fixed Legal Costs of \$250.00.

Total Amount as of 31 July 1996:

US\$14,568.93 and CI\$350.00



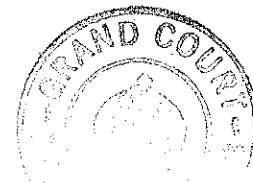
STATEMENT REGARDING INTEREST:

1. The rate of interest claimed is United States Dollar Prime Rate plus 2% per annum (10%).
2. The date(s) from which interest is calculated is 1 March 1996 as to US\$3,844.71, 1 April 1996 as to US\$5,611.45, 1 May as to US\$7,856.79, 1 June 1996 as to US\$10,062.50 and 1 July as to US\$12,257.49.
3. The total amount of interest claimed as at 31 July 1996, is US\$330.26
4. The amount of interest accruing each day thereafter is US\$9.04.

If, within the time for returning the Acknowledgment of Service, the Defendant(s) pays the total amount claimed of US\$14,568.93 and CI\$350.00 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff's Attorney.

Orren Merren & Co.

ORREN MERREN & COMPANY
Attorneys-at-Law for the Plaintiff



This Writ was issued by Messrs. Orren Merren & Company, the attorneys-at-law for the Plaintiff, whose address for service is Kirk House, Third Floor, Albert Panton Street, P.O. Box 481G, Grand Cayman, Cayman Islands, British West Indies.

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 the Defendant or by the 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 installments or otherwise.

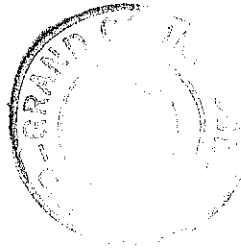
See over for notes for guidance

Please complete overleaf



Notes for Guidance

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



BETWEEN: THE PROPRIETORS, STRATA PLAN NO. 41
(Trading as Cocoplum Condominiums) **PLAINTIFF**

AND: BRUCE W. DISTEFANO, WALTER V. DISTEFANO, JEFFREY L. DISTEFANO, KATHRYN A. DISTEFANO, RICHARD T. DISTEFANO, MARK J. DISTEFANO, MARY E. DISTEFANO.
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 communications 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.

Orren Merren & Company
Attorneys-at-Law
P.O. Box 481G
House of Merren, West Bay Road
Grand Cayman, B.W.I.

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 indorsement]

