

IN THE GRAND COURT OF THE CAYMAN ISLANDS

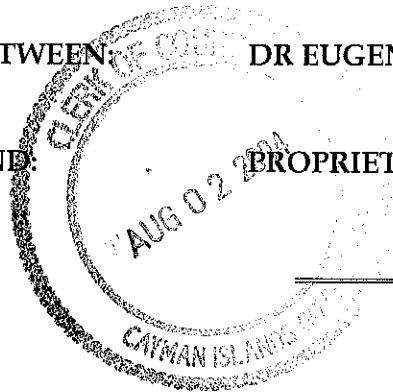
353
CAUSE NO OF 2004

BETWEEN: DR EUGENE FOLEY

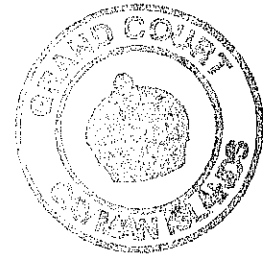
✓ PLAINTIFF

AND: PROPRIETORS, STRATA PLAN NO. 58

DEFENDANT



WRIT OF SUMMONS



TO: PROPRIETORS, STRATA PLAN NO. 58
George Town Villas
George Town
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 Fourteen days [14] 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, 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 2nd day of August, 2004

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 re-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 is the registered proprietor and occupier of premises known as Apartment No. 113 George Town Villas comprised in the Cayman Islands Land Register as Property Section West Bay Beach South Block 13B Parcel 15H 40 ("the Plaintiff's apartment).
2. The Plaintiff's apartment is a single storey, ground floor unit located at the eastern end of Block No. 5 on the southern side of the development known as George Town Villas which is registered as Strata Titles Registration Law (1996 Revision) ("the Law").
3. The Defendant is the corporation comprising all the registered proprietors of Strata Plan No. 58 and registered pursuant to section 5 of the Law. The Plaintiff is a member of the Defendant.
4. The Defendant owes to its individual members the duties set out under section 6(1) of the Law and clause 36 of the Defendant's By-Laws.
5. Under Section 6(1) of the Law, the Defendant owes the Plaintiff, in common with all the other registered properties comprising the Defendant, *inter alia*, the following duty:
 - "(f) to keep in a state of good and serviceable repair and properly maintain the common property."
6. Under Section 36 of the Defendant's By-Laws the Defendant owes to the Plaintiff, in common with all the other registered proprietors comprising the Defendant, *inter alia*, the following duties, that is to say to:
 - (a) "control, manage and administer the common property as far as reasonably possible for the benefit of all proprietors;
 - (b) keep in a state of good and serviceable repair and properly maintained the fixtures and fittings used in connection with the common property;

...

(d) maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts for the time being existing in the parcel and capable of being of being used in connection with the enjoyment of more than one Strata lot or common property.”

7. In breach of its statutory duty under section 6(1) of the Law and in breach of its duties under clause 36 of the Defendant’s By-Laws, the Defendant failed to maintain and keep clear the main sewer main taking sewage from more than one of apartments in the development and from through the common property. The main sewer main constitutes part of the common property.
8. As a consequence of the failure of the Defendant to maintain and keep clear the main sewer main, the said main sewer main became blocked and on three occasions, namely, 7 February 2003, 8 February 2003, and 21 March 2003 the sewage blocked up the main sewer main and overflowed into the Plaintiff’s apartment as a result of which the Plaintiff suffered loss and damage.

PARTICULARS

| | CIS\$ |
|---|----------|
| To replace sheetrock partitions damaged by sewage | 3,350.00 |
| To replace interior door damaged by sewage | 1,050.00 |
| Wall finishes including tiling and painting | 4,000.00 |
| Floor finishes | 1,500.00 |
| To replace cabinets damaged by sewage | 3,900.00 |
| Contractor profits and overheads | 1,380.00 |
| Master bedroom furniture | 1,500.00 |
| Second bedroom furniture | 1,200.00 |
| Cameras | 900.00 |
| Books | 285.00 |
| Clothing | 400.00 |
| Rug | 100.00 |
| Original and decorating paintings | 350.00 |

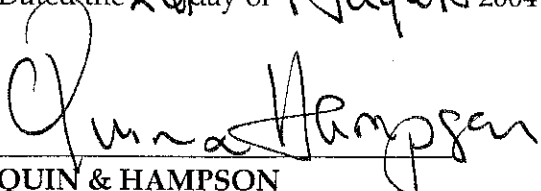
| | |
|---|------------------|
| MP3 player | 150.00 |
| Alarm clock | 30.00 |
| Clean up (material and personal time, say 15 hours) | 450.00 |
| Alternative accommodation for 30 days | <u>3,000.00</u> |
| TOTAL: | 23,545.00 |

9. In accordance with clause 36(h)(ii) of the Defendant's By-Laws, the Plaintiff, by letter from his attorneys-at-law, Woodward Terry and Company dated 16 May 2003, gave notice to the Defendant of the damage to the Plaintiff's apartment and required the Defendant to remedy the damage. The Defendant failed or refused to take any, or any meaningful steps to remedy the damage.

WHEREFORE the Plaintiff claims against the Defendant:

1. The sum of C\$23,545.00 being the cost of remedying the damage to the Plaintiff's apartment.
2. Damages for breach of statutory duty and for breach of the Defendant's By-Laws.
3. Interest in accordance with section 34 of the Judicature Law (1995 Revision) at such rate and for such period as to this Honourable Court seems just.
4. Costs.
5. Such for or other relief as to this Honourable Court seems just.

Dated the 2nd day of August 2004


 QUIN & HAMPSON
 Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And To: Proprietors Strata Plan No. 58
George Town
Grand Cayman

THIS WRIT was issued by Messrs. Quin & Hampson, Attorneys-at-Law for the Plaintiff whose address for service and correspondence is P.O. Box 1348, Third Floor, Harbour Centre, George Town, Grand Cayman, B.W.I.

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

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 his 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: DR EUGENE FOLEY PLAINTIFF

AND: PROPRIETORS, STRATA PLAN NO. 58 DEFENDANT

ACKNOWLEDGMENT OF SERVICE

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.

Messrs. Quin & Hampson
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
GRAND CAYMAN

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 attorney indorsement]