

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 445 of 1996

BETWEEN: JOHN D. BURKE PLAINTIFF
AND: GRACE ALICIA HYDES FIRST DEFENDANT
AND: GEORGE A. HYDES SECOND DEFENDANT
AND: MARILYN RIVERS THIRD DEFENDANT
AND: OWEN FARRINGTON FOURTH DEFENDANT

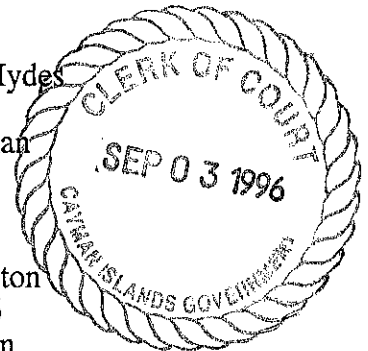
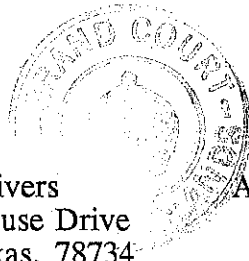
WRIT OF SUMMONS

TO: Grace Alicia Hydes
P.O. Box 250 GT
Grand Cayman
B.W.I.

AND TO: George A. Hydes
West Bay
Grand Cayman
B.W.I.

AND TO: Marilyn Rivers
213 Clubhouse Drive
Austin, Texas, 78734
USA

AND TO: Owen Farrington
P.O. Box 646
Grand Cayman
B.W.I.



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 2nd day of September, 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

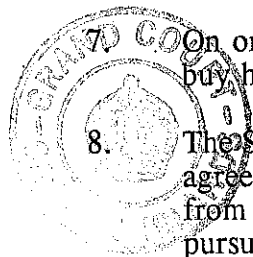
1. By an agreement in writing dated the 30th January 1992 and made between the Plaintiff of the one part and the Second Defendant George A. Hydes of the other part it was agreed that the Second Defendant should sell and the Plaintiff should buy certain land in West Bay forming part of the land registered at West Bay North East Registration Section, Block 9A, Parcel 94 at the price of US\$350,000.00.
2. It was further provided by the said agreement that as soon as the land was partitioned and the Registered Land Certificate was available for the part it was agreed the Plaintiff should buy, title would be transferred from the Second Defendant to the Plaintiff.
3. It was further provided by the said agreement and understood by both the Plaintiff and the First and Second Defendant that the Plaintiff would be given immediate possession of that part of the land he had agreed to buy for development.
4. At some date which, save that it was prior to 21st October 1992, is unknown the Plaintiff, the Second and Fourth Defendant and one Ernest L. Rivers as registered proprietors transferred the whole of the land registered at the West Bay North East Registration, Block 9A, Parcel 94 to the First Defendant, Grace Alicia Hydes the wife of the Second Defendant, the Third Defendant, Marilyn Rivers the wife of the said Ernest L. Rivers and the Fourth Defendant, Owen Farrington, as proprietors in common.
5. To the knowledge of the First Defendant the Plaintiff continued to make payments towards the purchase price of US\$350,000.00 to the Second Defendant as provided by the said agreement and to develop the land in his possession.
6. On the 16th September 1993 Ernest L. Rivers and the Second and Fourth Defendant applied for the land at West Bay North East Registration Section, Block 9A, Parcel 94 to be partitioned into three plots of twenty five acres each to go to the First, Third and Fourth Defendants. The plot to be allocated to the First Defendant being the land the Plaintiff agreed to buy from the Second Defendant under the said agreement.

On or about the 11th July 1996 the Plaintiff discovered that the land he had agreed to buy had been transferred as set out in paragraph 4 above.

8. The Second Defendant is estopped from alleging that the title to the land the Plaintiff has agreed to buy has been transferred by the transfer referred to in paragraph 4 above and from denying that the Plaintiff is entitled to acquire title to the land in his possession pursuant to the said agreement.

PARTICULARS OF CONDUCT RAISING ESTOPPEL

(1) The First and Second Defendant have stood by and watched the Plaintiff continue to make payments under the said agreement and have persuaded him to make further payments before the due date to the Second Defendant, without ever informing the Plaintiff of the transfer referred to in paragraph 4 above. In total the Plaintiff has paid US\$ 232,747.79 to the Second Defendant.



- (2) The First and Second Defendant has stood by and watched the Plaintiff develop the land in his possession expending over CI\$500,000.00 on major filling work, demarcating and fencing, etc. in the belief that title would be transferred to him once the land was partitioned and the land certificate became available.
9. Until the date stated in paragraph 7 above the Plaintiff did not know that the land was owned by he First, Third and Fourth Defendants and the First and Second Defendant had a duty to disclose this fact and the existence of the transfer referred to in paragraph 4 above to the Plaintiff, but failed to do so.
10. The First and Second Defendant's failure to disclose the transfer amounts to a representation by conduct which the Plaintiff has relied and acted upon to his detriment.
11. The Plaintiff has at all material times fulfilled his obligations under the agreement.

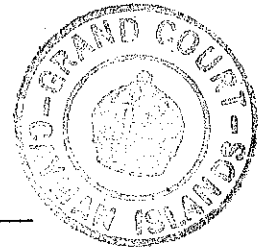
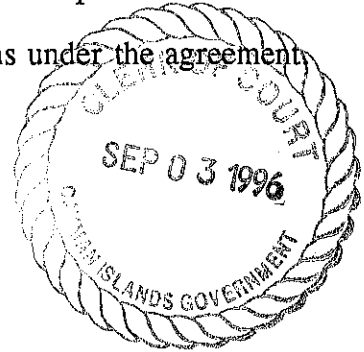
AND THE PLAINTIFF CLAIMS:-

As against the Second Defendant:-

- (1). Specific performance of the said agreement;

As against the First, Second, Third and Fourth Defendants:-

- (2). A declaration that the Second Defendant is bound to transfer the land purchased by the Plaintiff under the said agreement in accordance with the terms of the said agreement.
- (3) if necessary, a vesting order
- (4). further or other relief;
- (5). costs.



Orren Merren & Company

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.

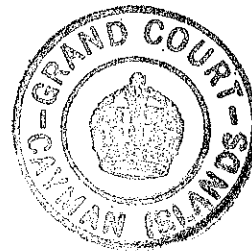
If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

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 instalments or otherwise.

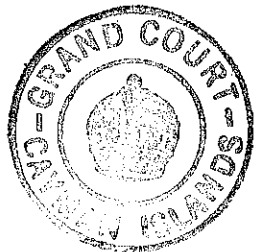
See over for notes for guidance

Please complete overleaf



Notes for Guidance

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



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁴⁴⁵ OF 1996

BETWEEN:	JOHN D. BURKE	PLAINTIFF
AND:	GRACE ALICIA HYDES	FIRST DEFENDANT
AND:	GEORGE A. HYDES	SECOND DEFENDANT
AND:	MARILN RIVERS	THIRD DEFENDANT
AND:	OWEN FARRINGTON	FOURTH DEFENDANT

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.
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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

<input type="checkbox"/> yes	<input type="checkbox"/> no
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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*)

<input type="checkbox"/> yes

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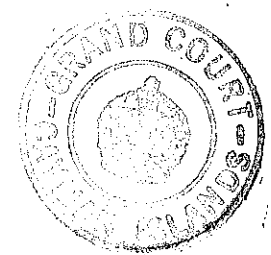
Service of the Writ is acknowledged accordingly

(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
Kirk House Third Floor
Albert Panton Street
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 attorney indorsement]

