

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 64 OF 2005

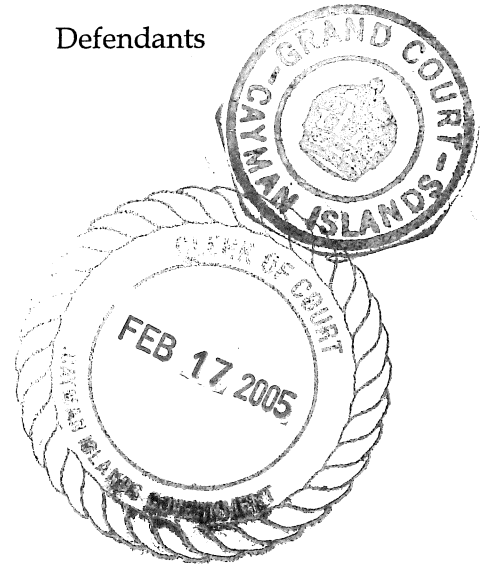
BETWEEN: (1) BRUCE E. HOUSEKNECHT
(2) DAWN M. HOUSEKNECHT Plaintiffs

AND: (1) ELENA KANNAS CARRASCO
(2) LAIMA VICTORIA GLISTA Defendants

WRIT OF SUMMONS

TO: (1) ELENA KANNAS CARRASCO
c/o Campbells
Scotiabank Building, George Town
Grand Cayman

(2) LAIMA VICTORIA GLISTA
c/o Campbells
Scotiabank Building, George Town
Grand Cayman



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs, Bruce E. Houseknecht and Dawn M. Houseknecht, in respect of the claim set out on the next page.

Within fourteen (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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 16th day of February 2005

NOTE - This Writ may not be served later than 4 calendar 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 Defendants are the registered proprietors of the property known as Unit No. 17 Discovery Point Club, comprised in the Cayman Islands Land Register as West Bay Beach South Block 5D Parcel 19H16 ("the property"). The property comprises part of Strata Plan No. 81, registered pursuant to the Strata Titles Registration Law (1996 Revision) and includes the strata lot known as Unit No. 17; a proportionate share in the common property included in Strata Plan No. 81; a proportionate a proportionate share in the strata corporation registered as Proprietors, Strata Plan No. 81.
2. By an Offer to Purchase made in writing by the Plaintiffs on 31 July 2004 and accepted by the Defendants on 7 August 2004, ("the agreement"), the Defendants agreed to sell and the Plaintiffs agreed to buy the property for a purchase price of US\$645,000.00, subject to the terms and conditions set out in the agreement.
3. Pursuant to the terms of the agreement, the Plaintiffs paid a deposit of US\$64,500.00 on the purchase price to Re/Max Cayman Islands, who, by the express terms of the agreement, held the deposit as stakeholder.
4. At the time of the agreement the Defendants and/or their agents Re/Max Cayman Islands knew that the Plaintiffs were purchasing the property with the intention of using it as rental property
5. By the express terms of the agreement,

"The deposit monies shall not be paid to the Vendor prior to completion unless agreed in writing by both purchaser and vendor."
6. Completion was scheduled for 1 November 2004.

7. The agreement expressly provides as follows:

“The Property and Chattels shall be deemed to be purchased with full notice of the present state and condition subject to normal wear and tear occurring after the date hereof and prior to the Completion (unless otherwise stipulated in this agreement) ...”

8. The agreement also contains the following express condition:

“16. Risk

Notwithstanding any rule of law risk in the Property and the Chattels shall pass to the Purchaser on Completion. All buildings and chattels included in the sale will remain at the risk of the Vendor until Completion, and all insurance policies and the proceeds thereof will be held in trust for the parties as their interests may appear.”

17. Right to Rescind

A. The Deposit shall forthwith be refunded if:

(1) The Offer to Purchase is not accepted, or

(2) A condition is not satisfied

neither party shall have any further rights of action or claim of any nature against the other in respect thereof.

B. If this Offer is accepted and all the conditions are satisfied:

- (1) Should the Vendor fail to perform, the Purchaser may at his option
 - (i) pursue any remedy available to him at law or in equity; or
 - (ii) demand a refund of the Deposit and any other monies paid by him hereunder and on receipt of the same, this Agreement shall forthwith be terminated and neither party hereto shall have any rights of action or claim against the other in respect hereof."

9. By virtue of the terms of the agreement the Plaintiffs were entitled upon completion to insist on receiving in the same condition as they existed as at the date of the agreement:
 - (a) the Unit No. 17 with all its fixtures fittings and chattels intact;
 - (b) their proportionate share in the common area unaffected by damage to the common area including the amenities, the swimming pool, the landscaping, the exterior walls and roof of all the buildings comprising Strata Plan 81;
 - (c) their proportionate interest in the strata corporation unaffected by any worsening in the financial or organisational state of the strata corporation including additional assessments due and unpaid by the proprietors or additional debt incurred by the strata corporation.
10. Between 11 and 13 September 2004, Hurricane Ivan passed over the Cayman Islands causing severe damage to the buildings and amenities at Discovery Point Club and property in the Cayman Islands in general.
11. By letter dated August 20, 2004 the Plaintiffs advised Re/Max Cayman Islands that they intended to proceed with completion on 1 November 2004.

12. By Addendum B to the Offer to Purchase signed by the Defendants on 27 November 2004 and by the Plaintiffs on 23 November 2004, ("Addendum B"), it was agreed as follows:

"Due to unforeseen circumstances of the recent hurricane, the purchasers would like to extend the date for closing of the above referenced property to January 14th, 2005 or before.

The purchasers are not responsible for any previously billed assessment or assessments, levied as a result of Hurricane Ivan.

If there are any items, appliances, fixtures and fitting damaged due the hurricane they are to be repaired at the expense of the vendors."

13. The effect of Addendum B was to postpone the date of completion. Addendum B reinforced the obligations of the Defendants to deliver the property in all aspects in the same condition as at the date of the agreement.
14. Prior to the date of completion it became clear that the Defendants would be unable to deliver the property on completion in the same condition as it existed on the date of the agreement. In particular, by an e-mail dated 15 December 2004 the Chairman of the Executive Committee of the Discovery Point Club wrote to the owners of Discovery Point Club advising, inter alia, that:
- (a) several items of repairs to amenities and the common areas of Discovery Point Club would not be completed earlier than March, 2005;
 - (b) the Strata Corporation was experiencing a negative cash flow;
 - (c) Two-thirds of the owners had failed to pay a special assessment of US\$5,000.00 per unit;

(d) That the Strata Corporation was likely to obtain a bank loan.

15. In light of the circumstances set out in paragraph 14, and in general, due to the substantial difference in the state of the property including the financial state of the Strata Corporation, the amenities and common areas at Discovery Point Club when compared to that which existed at the date of the agreement on 22 December, 2004 the Plaintiffs advised the Defendants' agents that the Plaintiffs no longer intended to complete the sale.
16. By letter dated 5 January 2005, the Defendants' attorneys-at-law wrote to Re/Max Cayman Islands advising that the Defendants were ready and willing to close the sale on 14 January 2005.
17. On 14 January 2005 the Plaintiff's attorneys-at-law wrote to the Vendors' attorneys-at-law advising that the Plaintiffs would not be completing the sale.
18. By letter dated 17 January 2005 the Defendants' attorneys-at-law wrote to the Plaintiffs purporting to give notice to complete within seven (7) days and making time of the essence and threatened that if the Plaintiffs failed to complete "the Contract shall be forfeited absolutely and the contract shall forthwith be terminated ..."
19. By letter dated 20 January 2005 the Plaintiffs' attorneys-at-law wrote to the Defendants' attorneys-at-law and formally requested a refund of the deposit by close of business on 21 January 2005. The Defendants have to date failed to refund the deposit to the Plaintiffs or their attorneys-at-law.
20. By an e-mail dated 27 January 2005, Dale Avery of Re/Max Cayman Islands wrote to the Plaintiffs as follows:

“The vendors [sic] lawyers have sent a fax requesting a cheque payable to ‘Campbells’ for the deposit less real estate commissions as provided for in the offer to purchase dated 31st July, 2004. Please be advised that the owner of Remax [sic] will respond to the vendors [sic] attorneys. If you disagree please contact the vendors [sic] lawyers directly, or have Mr Quinn [sic] do so, and make other arrangements.”

21. It is clear from
 - (a) the Defendants’ attorneys’ letter to the Plaintiffs dated 17 January 2005;
 - (b) the Defendants’ failure to refund the deposit in response to the Plaintiffs’ attorneys’ formal demand made on 20 January, 2005; and
 - (c) the contents of the Re/Max Cayman Islands e-mail to the Plaintiffs dated 27 January 2005that the Defendants have purported to forfeit the deposit. Such purported forfeiture is unlawful.

22. Under the terms of the agreement the Defendants were under an obligation to deliver the property to the Plaintiffs on the date of the completion in the same state and condition as at the date of the agreement. The agreement further expressly provides that the property was at the risk of the Defendants until the date of completion. That obligation was further confirmed by the terms of Addendum B.


23. The repairs to the property including the amenities and common areas of the Discovery Point Club were not completed on 14 January 2005, nor were they completed on 24 January, 2005, in respect of which, by the Defendants’ own stipulation, time was made of the essence. On those dates there remained substantial repairs to be done to put the property in the state it was on the date of the agreement. The financial problems of the Strata Corporation were on 14 January, 2005 and on 24 January, 2005 substantially unresolved. The Plaintiffs were not obliged to take delivery of the property in the state it existed on either 14 January, 2005, 17 January 2005 or 24 January, 2005.

24. The Defendants were therefore in breach of their obligations to deliver the property in the same state and condition as at the date of the agreement and on 14 January, 2005 the date of completion,; 17 January 2005 the date of the Notice to Complete and 24 January, 2005, the date fixed by the Notice to Complete the Defendants were not ready to complete the sale and were therefore not entitled to forfeit the deposit.

WHEREFORE THE PLAINTIFFS CLAIM:

1. The sum of US\$64,500.00;
2. Interest on the sum of US\$64,500 at commercial rates from the 21st day of January, 2005 to the date of judgment or sooner payment, or, alternatively, interest pursuant to section 34 of the Judicature Law (1995 Revision) at such rates and for such period as this Honourable Court deems appropriate;
3. Costs;
4. Such further or other relief as to this Honourable Court seems just.

Dated this 16 day of February 2005


QUIN & HAMPSON
Attorneys-at-Law for the Plaintiffs

This Writ of Summons was issued by Quin & Hampson, Attorneys-at-Law for and on behalf of the Plaintiffs herein whose address for service is Harbour Centre, Third Floor, P.O. Box 1348 George Town, Grand Cayman

**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: (1) BRUCE E. HOUSEKNECHT
(2) DAWN M. HOUSEKNECHT Plaintiffs

AND: (1) ELENA KANNAS CARRASCO
(2) LAIMA VICTORIA GLISTA 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.

Messrs. Quin & Hampson
Attorneys-at-Law
Third Floor, Harbour Centre
PO 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]