

IN THE GRAND COURT OF THE CAYMAN ISLANDS

374

CAUSE NO. OF 2005
L.A. Ref. No. 53/05

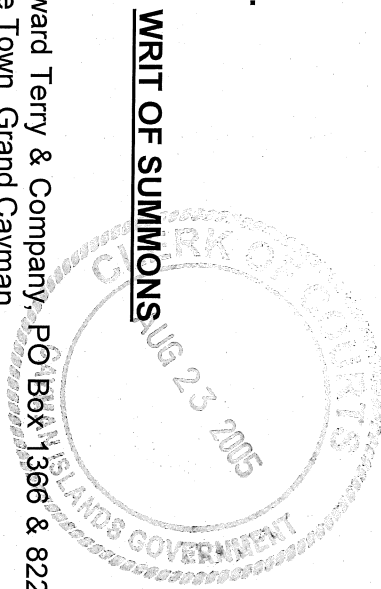
IN THE MATTER of the Fraudulent Disposition Law (1996 Revision)

BETWEEN: JOY EBANKS

Plaintiff

AND: PHASE III LTD.

Defendant



WRIT OF SUMMONS

TO: PHASE III LTD., c/o Woodward Terry & Company, PO Box 1366 & 822GT, Jack & Jill Building, Fort Street, George Town, Grand Cayman.

THIS WRIT OF SUMMONS has been issued against you by the above-named Defendant 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, PO Box 495 GT, 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 23rd day of August 2005.

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.

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BETWEEN: JOY EBANKS

Plaintiff

AND: PHASE III LTD.

Defendant

STATEMENT OF CLAIM

1. The Plaintiff is a Caymanian who was previously the owner of the property at No. 18 Xrystal Village II, Prospect Block 22E Parcel 247H8 (the "Property"). She currently is of no fixed abode and homeless.
2. The Defendant is an exempted (?) company incorporated pursuant to the laws of the Cayman Islands and having its registered office at Woodward Terry & Company, PO Box 822 GT, Grand Cayman.
3. On or about 1st May 2003 the Plaintiff purchased the Property from the Defendant for the sum of CI\$150,000 and title was registered in her name in the Cayman Islands Land Register on 2 July 2003. On the same date as the Plaintiff purchased the Property she entered into a Bill of Sale for the sum of CI\$16,250 in respect of the chattels contained within the Property.
4. In exchange for the Transfer of Land in respect of the Property, the Plaintiff granted a Charge dated 1st May 2003 in favour of the Defendant in order to secure the sum of CI\$161, 250 (the "Charge").
5. On the same date as the Charge was executed, the Plaintiff executed a Power of Attorney in favour of the Defendant in order to secure the Plaintiff's obligation to the Defendant (the "Power of Attorney") pursuant to the Charge.

6. The Power of Attorney was prepared by the Defendant's Attorneys-at-Law, Woodward Terry & Company. At no time was the legal effect of the Power of Attorney explained to the Plaintiff, nor was she advised to seek independent legal advice with regard to it.
7. On or about July 2004 the Plaintiff fell into arrears in respect of her mortgage payments to the Defendant and contacted the Defendant's attorneys. The Defendant's attorneys advised the Plaintiff to make no further payments until she heard further from them.
8. On 1st March 2005 the Defendant, by its attorneys, advised the Plaintiff that the total amount of her arrears in respect of her obligations under the Charge were C\$13,291.17 and requested she vacate the Property by 12 noon on 31st March 2005.
9. By letter dated 3rd March 2005, the Plaintiffs then attorneys wrote the Defendant's attorneys offering to pay the sum of C\$8,000 prior to 28th March 2005 in respect of the arrears and to investigate the possibility of bank financing in respect of the balance. By letter dated 3rd March 2005 the Defendant, by its attorneys, rejected said offer.
10. On or about 11th April 2005 the Defendant pursuant to the Power of Attorney executed, without the Plaintiff's knowledge or consent, a Transfer of Land in respect of the Property in its favour.
11. On 21st April 2005 title to the Plaintiff's Property was transferred to the Defendant for a purported consideration of C\$150,000.00. On 22nd April 2005 the Defendant changed the locks on the Property and had the water and electricity disconnected. The Defendant left a number of the Plaintiff's personal possessions outside on the rear patio.
12. The Power of Attorney in favour of the Defendant was granted pursuant to clause 24 of the Third Schedule of the Charge as security in order to enable the Chargee to do all acts, deeds and things to perfect his security and to preserve and protect his rights and privileges by the Charge or by operation of law.
13. The Charge does not grant a right of foreclosure to the Defendant. The Defendant's rights were limited to a power of sale or the appointment of a receiver. The purported

transfer of the Property by the Defendant into its own name was a fraud on the power granted pursuant to the Power of Attorney.

14. The Defendant currently has the Property listed for sale on the open market for US\$281,250.00 with ERA Kirkconnell Realty Cayman Islands Ltd.

15. In the premises the disposition of the Plaintiff's Property by the Defendant in its favour was made with the interest to defraud and at undervalue within the meaning of the Fraudulent Disposition Law (1996 Revision) and by reason of the foregoing the disposition of the Plaintiff's Property is voidable and should be set aside at the instance of the Plaintiff as a creditor thereby prejudicial.

16. The Bill of Sale granted by the Plaintiff in favour of the Defendant for the sum of C\$16,250.00 in respect of the chattels within the Property and dated 30th April 2003 was never recorded pursuant to Section 3 of the Bills of Sale Law (2000 Revision). The Bill of Sale was prepared by the Defendant's attorneys-at-law and does not contain a list or schedule defining the chattels in respect of which the Bill of Sale was granted. The said Bill of Sale is either void for lack of registration or voidable for want of certainty.

17. The Defendant has, in addition to the furniture within the Property, retained the chattels listed in the Schedule hereto which belongs to the Plaintiff and the Plaintiff accordingly seeks an order for delivery up of the furniture and those items contained within the Schedule or alternatively an accounting in respect of their value.


And the Plaintiff Claims:

1. An order setting aside the Defendant's execution of the Transfer of Land in respect of the Property in favour of itself dated 11th April 2005 pursuant to the Fraudulent Disposition Law (1996 Revision) or at common law;

2. Alternatively, an order for an accounting or damages to be assessed in respect of the value of the Property unlawfully transferred by the Defendant into its own name on 11th April 2005;

3. An order declaring that the Bill of Sale dated 30th April 2003 is voidable due to want of certainty in respect of its provisions;
4. An order for delivery up to the Plaintiff by the Defendant of the furniture and chattels unlawfully retained by the Defendant in the Property and or alternatively an accounting by the Defendant to the Plaintiff in respect of the value of the said furniture and chattels.
5. Such further and other relief as the Court thinks fit.
6. Taxed costs of the action.

Dated this 23rd day of August 2005.


Nelson & Company
Attorneys at Law for the Plaintiff

This Writ of Summons and Statement of Claim was issued by Nelson & Company, Attorneys at Law for the Plaintiff whose address for service is 4th Floor West Wind Building, PO Box 2075GT, George Town, Grand Cayman, Cayman Islands.

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.

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BETWEEN: JOY EBANKS

Plaintiff

AND: PHASE III LTD.

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.

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 No

Service of the Writ is acknowledged accordingly

Signed

Attorney for

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.

Nelson & Company
PO Box 2075GT
4th Floor West Wind Building
George Town
Grand Cayman
Attn: Steven J. Barrie

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.