

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 477 OF 2005

BETWEEN: (1) MAYNARD TIBBETTS
(2) EILEEN TIBBETTS

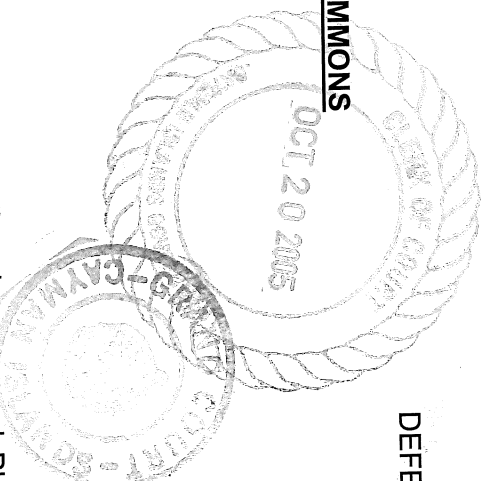
PLAINTIFFS

AND: YVROSE SEYMOUR

DEFENDANT

WRIT OF SUMMONS

TO: Yvrose Seymour
P.O. Box 111465 APO
Or P.O. Box 1294 GT
Or P.O. Box 1290 GT
Grand Cayman
Cayman Islands



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out hereafter.

Within 14 days after service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Courts Office, P. O. Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service form 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 20th day of October 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.

STATEMENT OF CLAIM

1. The Plaintiffs are and were at all material times the registered proprietors of Spotts, Block 24E, Parcel 214 (the "Property").

2. The Defendant was at all material times the lessee of the Property with an option to purchase on terms set out in the documents more fully particularised below.

The Lease Purchase Arrangement

3. In an e-mail dated 23 July 2003 from Tortuga Realty on behalf of the Plaintiffs to Toni Paolini on behalf of the vendor, Tortuga Realty set out a letter of intent (the "Letter of Intent") subject to contract, by which the Defendant agreed to "Lease Purchase" the Property. On 25 July 2003 the Defendant noted and signed a copy of the e-mail embodying the Letter of Intent thereby agreeing to the terms set out therein, except to the extent that those terms were varied by the Defendant's notation. The First Plaintiff also signed the copy of the e-mail on 25 July 2003 on behalf of himself and the Second Plaintiff.

4. The Letter of Intent provided, inter alia, that the Defendant was required to make monthly payments of "at least C1\$2,200.00" in respect of the Property, C1\$1,000.00 of each payment being applied towards the principal cost of the Property.

5. The Plaintiffs and the Defendant entered into an Option Agreement dated 31 July 2003 (the "Option Agreement") wherein the Plaintiffs (referred to collectively in the Option Agreement as the "Grantor") and the Defendant (referred to in the Option Agreement as the "Grantee") agreed that in consideration of the Plaintiffs entering into the Lease, the Plaintiffs would grant the Defendant an option to purchase the Property on the terms set out therein.

6. Under the terms of the Option Agreement, the Defendant was obliged to pay to the Plaintiffs:

- (a) An "Initial Non Refundable Option Fee" of C1\$14,000.00 payable on the Defendant executing the Option Agreement;
- (b) An "Additional Non Refundable Option Fee" up to a maximum of C1\$23,000.00 payable in monthly payments of C1\$1,000.00, which

monthly payments were to be applied from the rent payable under the Lease; and

(c) The balance of the purchase price on the completion date.

7. The Defendant entered into occupation of the Property under the terms of a Lease dated in or around August 2003 (the "Lease"). The term of the Lease expired on 31 August 2005.

8. Under the terms of the Option Agreement the Defendant agreed, inter alia, to:-

Clause 2.2 *PROVIDED ALWAYS that the Grantee shall have made all payments due under this Option Agreement, and has made all payments due under the Lease up to the time of exercising the Option, the Option shall be exercisable at any time during the Option Period by notice in writing to the Grantor and the Grantee shall be entitled to set off the Initial Non Refundable Option Fee, and any portion of the Additional Non Refundable Option Fee actually paid against the total of the balance of the Purchase Price.*

Clause 2.4 *During the Option Period the Grantee shall be responsible for maintaining all risk insurance for replacement value on the Property.*

Clause 5 of the Schedule *...Should the Premises be destroyed or damaged so as to the render the same or any part thereof unfit for use and occupation, or in the event of total destruction of the Premises either party shall be at liberty to determine the Agreement hereby created by giving to the other party one month's notice in writing to that effect, and all moneys paid to the Grantor under this Option Agreement, including the Initial Non Refundable Option Fee, the Additional Non Refundable Option Fee and the Refundable Option Fee, shall be refunded in full by the Grantor to the Grantee.*

Clause 11 of the Schedule *...The Grantee shall be entitled to lodge a Caution in the Register relating to the Property as Grantee of this Option but the Grantee hereby authorises and directs the Registrar of Lands to remove such Caution from the Register in the event of rescission or other termination of this Agreement pursuant to the terms hereof or otherwise.*

Clause 17 of the Schedule ...The Grantor and the Grantee hereby agree that this Agreement constitutes the entire and complete agreement between them and may be varied only by express agreement in writing.

Clause 18 of the Schedule ...Any notice or communication under or in connection with this Agreement shall be in writing and shall be delivered personally, or by registered post, telex, telecopy or cable:

to the Grantor at: P.O. Box 413GT, George Town, Grand Cayman
to the Grantee at: P.O. Box 1290, Grand Cayman
Walkers, Attorneys-at-Law
with a copy to : P.O. Box 265, George Town, Grand Cayman

Fax: 345-814-8210

Attn: J. Frank Banks

Clause 19 of the Schedule ...In the absence of an express written agreement to the contrary no neglect omission or forbearance on the part of the Grantor to take advantage of or enforce any right or remedy arising out of any breach or non-observance of any of the terms and conditions contained or implied herein shall be deemed to be or operate as a general waiver of such term or condition or the right to enforce or take advantage of any breach or non-observance thereof either original or recurring.

The Defendant's Breaches

(1) Failure to Insure

10. Clause 2.4 of the Option Agreement required the Defendant to maintain all risk insurance for replacement value on the Property for the period of two years commencing on 1 September 2003 and ending and including 31 August 2005.
11. The Letter of Intent provided for "property hazard insurance to be paid by the Purchaser", the Purchaser being the Defendant.
12. In breach of these obligations, the Defendant failed to insure and/or maintain the requisite or any insurance in respect of the Property as from 1 August 2004.

13. As a consequence of the said breach pleaded at paragraph 12 above, the Plaintiffs have suffered loss and damage.

PARTICULARS OF LOSS

- (a) On or about 12 September 2004, the Property was severely damaged and rendered uninhabitable by Hurricane Ivan.
- (b) The cost of reinstating the Property has been estimated at a sum not less than C1\$165,000.00.
- (c) But for the breach by the Defendant of the obligation to insure the Property, the damage suffered as pleaded above would have been an insured risk.
- (d) The Plaintiffs have suffered loss to the extent that there was no insurance cover in respect of the Property.

(II) Registering the Caution

14. On 28 January 2005 the Defendant registered a caution against the Property in respect of the Option Agreement (the "Caution"). At the time of registering the Caution the Defendant was in breach of the Option Agreement in that she was C1\$15,400.00 (C1\$2,200 x 7 months) in arrears in making the required payments to the Plaintiffs under the Option Agreement and the Lease, or alternatively the License, as more fully particularised in paragraphs 17 to 24 below.
15. Further, clause 11 of the Option Agreement provides that in the event of rescission or other termination of the Option Agreement pursuant to its terms or otherwise, the Defendant "authorises and directs the Registrar of Lands to remove such Caution from the Register".
16. The Option Agreement was terminated pursuant to its terms on 15 June 2005 as set out in paragraphs 30 to 32. In spite of the said termination, the Caution has not been removed. By a letter from her attorneys dated 7 June 2005, the Defendant had indicated that she had no intention of removing the Caution in breach of the Option Agreement. The Plaintiffs seek an order that the Caution shall be removed from the Register in respect of the Property.

(III) Failure to pay the Rent under the Lease or alternatively the License and the Additional Non Refundable Option Fee under the Option Agreement

17. Under the terms of the Option Agreement, unless the Defendant has abandoned the option to purchase contained therein by giving notice to that effect to the Plaintiffs, the Defendant is obliged to pay the Additional Non Refundable Option Fee as set out in paragraph 6(b) above.
18. At no time did the Defendant give the Plaintiffs written notice of an intention to abandon the said option.
19. For the months of August 2004, September 2004, October 2004, November 2004, December 2004, January 2005, and February 2005, the Defendant failed to pay the monthly rent of C1\$2,200.00 due under the Lease, or alternatively the License, C1\$1,000.00 of which comprised the Additional Non Refundable Option Fee.
20. By a letter dated 19 February 2005, the Plaintiffs issued a default notice to the Defendant notifying the Defendant that she was in "serious default" in respect of the Property and requiring the Defendant to pay all sums due under the Option Agreement and the Lease, or alternatively the License, which at that date stood at C1\$19,800.00 "plus late fees of 10%".
21. On or about 29 March 2005 the Defendant remitted two cheques amounting to C1\$2,200.00 to the Plaintiffs in respect of the monthly sum owed for August 2004.
22. The Defendant has also failed to pay all or any part of the monthly rent of C1\$2,200.00 due for the months of March 2005, April 2005, May 2005, June 2005 and July 2005.
23. The Defendant is therefore now indebted to the Plaintiffs in the total amount of C1\$24,200.00 consisting of C1\$11,000.00 (C1\$1,000.00 x 11 months) in Additional Non Refundable Option Fees and C1\$13,200.00 (C1\$1,200.00 x 11 months) in rent.
24. The Defendant has failed to pay all or any part of the outstanding Additional Non Refundable Option Fees as set out in paragraph 23 above. The Defendant has also failed to pay all or any part of the outstanding rent as set out in paragraph 23 above.

(IV) Breach of the Lease, by sub-letting and/or granting licenses to occupy the Property

25. In breach of the Lease and without the Plaintiffs' permission, or alternatively the Defendant sublet the Property and/or granted license(s) to individuals unknown to the Plaintiffs to occupy the Property.
26. In further breach of the Lease the Defendant caused and/or allowed the aforementioned individuals to bring to, and store on the Property vehicles, boats and/or other chattels.
27. As a result of the breach set out in paragraph 25 above, the Plaintiffs have suffered loss and damage.

PARTICULARS OF LOSS

- (a) As a result of the Defendant having sublet and/or granted license(s) to occupy the Property, there are individuals occupying the Property without the Plaintiffs' permission.
- (b) The Defendant's licensee(s) and/or sub-lessee(s) have stored and/or abandoned vehicles, boats and other chattels on the Property.
- (c) But for the breach by the Defendant, the Plaintiffs would not incur the costs of removing those individuals nor costs of removing the vehicles, boats and other chattels belonging to such individuals from the Property.

The Plaintiffs' Termination of the Option Agreement

28. As pleaded in paragraph 13(a) above, on or about 12 September 2004, the Property was severely damaged and rendered uninhabitable by Hurricane Ivan.
29. Clause 5 of the Schedule to the Option Agreement provides that if the Property is totally destroyed or is "*destroyed or damaged so as to the render the same or any part thereof unfit for use and occupation, or in the event of total destruction of the Premises either party shall be at liberty to determine the Agreement hereby created by giving to the other party one month's notice in writing to that effect*".
30. By a letter dated 15 June 2005, the Plaintiffs, by their Attorneys, gave the Defendant one month's notice of termination of the Option Agreement expiring on 22 July 2005 (the "Notice"), pursuant to clause 5 of the Schedule to the Option Agreement.

31. The Notice was given directly to the Defendant in accordance with clause 18 of the Schedule to the Option Agreement and was therefore deemed given 7 days after delivery to the address for the Defendant stated therein. A copy of the Notice was also served on her attorneys, Brook & Brooks.
32. As the Option Agreement has been terminated, the Defendant no longer has the option to purchase the Property and the Plaintiffs are entitled to take possession of the Property at the expiry of the Lease or earlier termination.
33. The Plaintiffs therefore claim a declaration that the Option Agreement has been terminated as set out above.
34. Alternatively, as a result of the matters set out in paragraphs 10 to 27 above, the Defendant is in repudiatory breach of the Option Agreement which repudiation has been accepted by the Plaintiffs as a result of which the Plaintiffs are entitled to damages.
- Termination or Expiry of the Lease
35. As pleaded in paragraph 7 above, the Lease expired on 31 August 2005. On expiry of the Lease the Plaintiffs are entitled to take possession of the Property.

AND THE PLAINTIFF CLAIMS:

- (a) A Declaration that the Option Agreement has been terminated by the Plaintiffs as set out in paragraphs 28 to 33 above;
- (b) Possession of the Property;
- (c) Order directing the Registrar of Lands to remove the Caution registered against the Property;
- (d) The sum of CI\$1,000.00 of arrears in Additional Non Refundable Option Fees;
- (e) The sum of CI\$13,200.00 of arrears in rent;
- (f) Damages;
- (g) Alternatively, judicial interest;

- (h) Payment of ad valorem Court fees of C1\$142.00;
- (i) Further and other relief;
- (j) Costs to be taxed if not agreed.

DATED this 20th day of October 2005.



WALKERS
Attorneys at Law for the Plaintiffs

This Writ and Statement of Claim is filed by Walkers, Attorneys-at-Law, P.O. Box 265 GT, Walker House, Mary Street, George Town, Grand Cayman, for the Plaintiffs whose address for service is care of their said Attorneys-at-Law.