

CAUSE NO. *498* OF 2005

IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN:

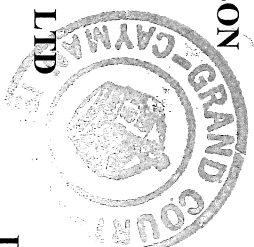
STEVEN HENDERSON

PLAINTIFF

AND

RALEIGH GARDENS LTD

DEFENDANT



WRIT OF SUMMONS

TO: Raleigh Gardens Ltd of and whose registered office is at Q & H Corporate Services Ltd, PO Box 1348 GT, 3rd Floor, Harbour Centre, 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 14 days after 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 Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement 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 *28th* day of *October* 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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. By an agreement in writing executed by the Defendant on 27th May 2005 and by the Plaintiff on 10th June 2005 ("the Agreement"), the Defendant agreed to sell and the Plaintiff agreed to purchase certain freehold property situate at George Town South, Block 14D, Parcel 435 and known as apartment 39 Mystic Retreat, Grand Cayman at a price of CI\$175,000.00.

2. The following were the express terms of the Agreement:

"1. The Vendor [the Defendant] hereby agrees to sell and the Purchaser [the Plaintiff] hereby agrees to purchase the Apartment for a Purchase Price of CI\$175,000.00 ("the Purchase Price"), of which CI\$10,000.00 (Ten Thousand Cayman Islands Dollars) relates to the Chattels.

2. The Purchaser shall pay the Purchase Price to the Vendor as follows:

(a) Upon the execution of this Agreement, the sum of CI\$5,000.00 shall be paid (hereinafter referred to as the "Deposit"), receipt of which is hereby acknowledged by the Vendor.

(b) The balance for the Purchase Price, being CI\$170,000.00 shall be paid by bank draft on the Completion Date (as hereinafter defined)

- 3.(a) Save as hereinafter provided, completion shall take place on or before the 14 July 2006 or at the option of the Vendor not less than 7 days after the Vendor shall notify the Purchaser that a Certificate of Fitness for Occupancy has been issued for the Apartment by the Central Planning Authority of the Cayman Islands in respect whereof time shall be of the essence (the "Completion Date"). In the event that the Vendor has not by the 14 July 2006:

(i) completed construction of the Apartment and/or;

(ii) completed the registration of a Strata Plan in connection with the Development and/or;

(iii) received from the Registrar of Lands notification that a register has been opened for the Apartment and/or;

(iv) received a Certificate of Fitness for Occupancy for the Apartment from the Central Planning Authority of the Cayman Islands.

then the Purchaser may by notice in writing to the Vendor, rescind this Agreement, whereupon the Purchaser shall be entitled to the return of

monies paid hereunder, subject to Clause 11 herein, and the Purchaser shall accept the monies received in full satisfaction of all claims under this Agreement, and this Agreement shall thereupon be terminated and neither party shall have any further rights of action or claim of any nature against the other in respect hereof.

(b) Unless the Purchaser shall be otherwise notified by the Vendor or the Vendor's Attorney-at-Law, Completion shall take place at the offices of the Vendor's Attorney-at-Law, *Quin & Hampson, Harbour Chambers, Third Floor, Harbour Centre, George Town, Grand Cayman.*

(c) At Completion, in exchange for payment of the final balance of the Purchase Price and of all monies payable pursuant to the terms hereof to the Vendor, the Vendor shall deliver to the Purchaser or the Purchaser's Attorneys-at-Law, a duly executed Transfer of Land (in duplicate) of absolute unencumbered title to the Apartment in registrable form, subject to the terms and conditions of this Agreement, and any other documents necessary to vest title to the Purchaser under the terms of this Agreement.

(d) Notwithstanding any rule of law, equity or practice to the contrary, risk in the Apartment shall pass to the Purchaser on Completion.

(e) Vacant possession of the Apartment shall be given to the Purchaser on completion ...

15. Time shall in all respects be of the essence of this Agreement and each and every part hereof ...

3. By its letter dated 28th June 2005 the Defendant wrote to the Plaintiff and indicated that:

"The economic hurdles we face in the post Ivan economy inevitably resulted in many companies having to make significant changes in their business models. Raleigh Gardens Ltd is no exception, and after extensive consultations with our bankers and other professional advisors we have identified the following changes which are required to guarantee the successful development of Mystic Retreat.

1) *All the necessary approvals were requested twelve months ago, but with central planning records destroyed during the hurricane there have been delays in issuing final clearance to start production. As a consequence, occupancy dates will slip by between three and four weeks from those previously advised.*

2) *Costs have increased significantly necessitating the need to review sales prices. A recent survey by DDL shows that prices have increased by at least 20% post Ivan. The direct result of this means that Raleigh Gardens*

Ltd cannot fulfil its obligations on previously agreed prices and as such existing agreements are being terminated.

3) *The extended timeframe at Mystic Retreat, due to uncontrollable events, has put a severe financial pressure on Raleigh Gardens Ltd cash flow which as you know was based on minimal deposits and major cash upon completion. We need to change to 10% on all new contracts. Additionally, for existing contracts we need to move to 10% deposits with 50% of the difference between a 10% and the original of C\$5,000.00/10,000.00 payable by September 30, 2005 and the balance by December 31, 2005.*

... you should be reassured that Raleigh Gardens Ltd, is deeply committed to ensuring that Mystic Retreat is completed successfully as a high quality development."

4. Notwithstanding requests by the Plaintiff, the Defendant has neglected and refused and continues to neglect and refuse to take any steps towards the completion of the said Agreement.

PARTICULARS OF REQUEST

1. In response to the letter from Raleigh Gardens Ltd dated 28th June 2005 and which is referred to above, Messrs. Rich & Conolly, attorneys for the Plaintiff, wrote to Raleigh Gardens Ltd on 19th August 2005 indicating that,

"The fact that performance of your contractual obligations may now be more difficult, or less profitable, does not allow you to unilaterally alter the terms of the contract that has been made between you and our client, much less terminate any such contract.

In the circumstances, our client expects you to perform your obligations pursuant to the terms of the Agreement of Purchase and Sale referred to above and our client does not accept the changes you have proposed, particularly but not limited to, the changes to the purchase price of apartment #39 or the changes to the provisions concerning deposits."

2. Messrs. Rich & Conolly received a reply to that letter from Messrs. Quin & Hampson, the attorneys acting for the Defendant. That reply was in terms that,

"Please note that our client made it absolutely clear that they were unable to carry out the terms of the Contract and to meet the completion date of 14th July 2006.

As your client does not wish to take up the new terms of a new contract then we will have your clients deposit returned within 7 days of the date hereof. Please

advise if the cheque should be made payable to your firm or if it should be delivered to your clients personally."

3. By their reply dated 6th September 2005, Messrs. Ritch & Conolly indicated to Messrs. Quin & Hampson that,

"Whilst it is correct that our client does not wish to take up the terms of the new contract suggested by your client, our client does expect your client to abide by the terms of the Agreement of Purchase and Sale executed by the parties

If your client's position is that there is some provision in the Agreement of Purchase and Sale, which allows it to avoid the obligations imposed by that Agreement, then we will be grateful if you would identify those provisions.

In the meantime, our client's position is that the Agreement of Purchase and Sale is binding on the parties and so there is no question of your client being required to return the deposit that has been paid."

4. By their reply dated 9th September 2005 Messrs. Quin & Hampson stated,

"Our client will not be able to meet completion. Adequate notice has been given to your client. We consider the matter closed."

5. In response, on 22nd September 2005 Messrs. Ritch & Conolly wrote,

"Our client does not consider this matter closed and unless we receive confirmation from you that your client accepts the Agreement of Purchase and Sale signed by the parties is still binding, we have instructions to issue proceedings."

6. By their reply dated 26th September 2005 Messrs. Quin & Hampson wrote,

"We have stated our client's position clearly. It is impossible for our client to proceed on the terms of the contract entered in April 2004. Our client will defend its position. Please also find enclosed your client's deposit of C1\$5,000.00."

7. The Plaintiff has at all material times been and is now ready and willing to fulfill all his obligations under the said Agreement.

8. By reason of the Defendant's aforesaid breach the Plaintiff has suffered loss and damage, further particulars of which will be given when and if damages fall to be assessed.

9. Further the Plaintiff is entitled to and hereby claims interest pursuant to Section 34 of the Judicature Law (2004 Revision) or under the equitable jurisdiction of

the Court on any amounts found to be due and at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF CLAIMS:-

1. Specific performance of the said Agreement.
2. Further, or alternatively, damages for breach of contract.
3. A declaration that the Plaintiff is entitled to a lien on the said property for his deposit (together with interest thereon) and any damages and costs awarded in this action.
4. Interest pursuant to Section 34 of the Judicature Law (2004 Revision) or under the equitable jurisdiction of the Court on any sum found due at such rate and for such period as the Court shall think fit.
5. Further or other relief.
6. Costs.

Dated the 27th day of October 2005


MARK E. CONOLLY
Attorneys at Law for the Plaintiff

If, within the time limited for returning the Acknowledgement of Service the Defendant pays the amount claimed to the Plaintiff or its attorneys further proceedings will be stayed.

TO: The Clerk of the Court

AND TO: The Defendant, Q & H Corporate Services Ltd, PO Box 1348 GT, 3rd
Floor, Harbour Centre, Grand Cayman

IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN:

STEVEN HENDERSON

PLAINTIFF

AND

RALEIGH GARDENS 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

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.

Endorsement by plaintiffs Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Ritch & Conolly
PO Box 1994 GT
Grand Cayman
RHI/9827/Henderson

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

**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 495 GT 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 endorsed 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.