

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 511 OF 2005

BETWEEN:

CAYMAN HOMES LTD

PLAINTIFF

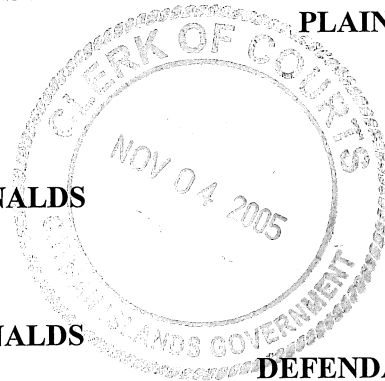
AND

KINGSLEY DONALDS

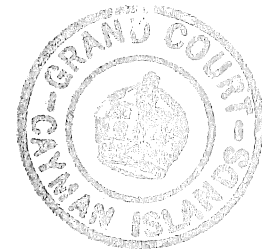
AND

PEARLINE DONALDS

DEFENDANTS



WRIT OF SUMMONS



TO: Kingsley Donalds of P.O. Box 97 GT, Grand Cayman
and to Pearlina Donalds of P.O. Box 10595 GT, 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 judgement may be entered against you forthwith without further notice.

ISSUED this day of November 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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff, Cayman Homes Ltd (hereinafter referred to as "the Plaintiff Company") is a Cayman Islands company which was incorporated under the relevant Companies Law of the Cayman Islands on 20th May 1965. The Plaintiff Company is a corporate body in good standing and has its registered office at P.O. Box 307 GT, Grand Cayman.
2. The Plaintiff Company was initially incorporated by James D. MacDonald (deceased) who died on 22nd August 1995. Up to the time of his death on 22nd August 1995 the said James MacDonald was the sole shareholder of the Plaintiff Company. His wife, Aileen M. MacDonald, was the sole beneficiary of the estate of the said James MacDonald and as such became entitled to the beneficial ownership of all the shares in the Plaintiff Company. She also became the sole director of the Plaintiff Company and from 1995 after her late husband's death she has remained as the sole shareholder in the Company and its sole director.
3. The first named Defendant is a businessman whose address is P.O. Box 97 GT, Grand Cayman and is the former husband of the second Defendant from whom he is divorced.
4. The second Defendant is the ex-wife of the first Defendant and resides at P.O. Box 10595 APO, Grand Cayman.

5. At all material times the Plaintiff Company was the registered proprietor of the abovesaid parcel of land registered at the Lands & Survey Department as George Town East, Block 20D, Parcel 229 ("Parcel 229").
6. By an agreement made between the Plaintiff Company and the Defendants, Kingsley Donalds and Pearline Donalds ("the Donalds"), dated 13th April 1977 ("the 1977 Agreement") it was agreed that the Plaintiff Company would sell and the Defendants would purchase the land and premises known as George Town East, Block 20D, Parcel 229.
7. The purchase price of Parcel 229 was CI\$19,500.00 and CI\$5,500.00 was to be paid by the Donalds to the Plaintiff Company on the execution of the 1977 Agreement. Thereafter the Donalds would pay CI\$164.02 on the first day of each month until the purchase was complete, that is to say, until the balance of the purchase price less the monthly payments together with interest had been paid. The payments were to be made on or before 13th April 1978. Pending completion, the Donalds were to have the right to occupy Parcel 229 and on or about 29th April 1977 the Donalds registered a Caution against Parcel 229 at the Lands & Survey Department to protect their interest as contracting purchasers. The Plaintiff Company will refer to the 1977 Agreement which was executed by the said James MacDonald on behalf of the Plaintiff Company and by both the Defendants and to the said Caution at the hearing of this action for their full terms and legal effect.

8. At some point of time between April 1977 and October 1985 the Donalds vacated Parcel 229 and by an agreement made between the Plaintiff Company and Nathan Bush dated 9th October 1985 ("the 1985 Agreement") it was agreed that the Plaintiff Company would sell and Mr. Bush would purchase Parcel 229.
9. The purchase price was CI\$60,000.00 and CI\$10,000.00 was paid by Mr. Bush to the Plaintiff Company on the execution of the 1985 Agreement. Thereafter, the 1985 Agreement provided that Mr. Bush was to pay the balance of the purchase price together with interest over a period of 15 years by equal monthly installments of CI\$699.80 on the 1st day of each month. Pending completion, Mr. Bush was to have the right to occupy Parcel 229. Mr. Bush pursuant to the said 1985 Agreement entered into possession of Parcel 229 without protest or objection to his so doing by the Defendants or either of them or by anyone else.
10. In or about December 2000 the balance of the purchase price of Parcel 229 had been paid by Mr. Bush and by a Transfer of Land executed by the said Aileen McDonald on behalf of the Plaintiff Company and Mr. Bush and Helen Bush dated 1st December 2000 the parties sought to register the transfer of Parcel 229.
11. When the said Transfer of Land form dated 1st December 2000 was presented at the Lands & Survey Department for registration such registration was not effected because the Caution against dealings with Parcel 229 registered by the Donalds was still registered against Parcel 229.

12. By letter dated 7th May 2001, the said Aileen Macdonald on behalf of the Plaintiff Company asked the Registrar of Lands what the Plaintiff Company should do to remove the Caution and the Registrar of Lands treated this request as an application to remove the Caution.
13. By notice dated 9th May 2001 the Registrar of Lands informed the Donalds that unless they objected to its removal by 31st May 2001 the Caution would be removed from the register of Parcel 229. The Defendants thereupon objected to the removal of the Caution by letter dated 31st May 2001 and as a consequence on 5th January 2002 the Registrar of Lands held a hearing at which the Plaintiff Company was represented by its sole director, the said Aileen Macdonald, and also by counsel and the Defendants appeared in person.
14. After the hearing, the Registrar of Lands issued a written decision in which he found that the 1977 Agreement was not at an end and thus the Defendants continued to possess an unregistrable interest in this land and were therefore entitled to maintain the Caution on the Title.
15. The Registrar of Lands also found that there was evidence that the Donalds had paid CI\$5,500.00 on the execution of the 1977 Agreement but that there was no evidence to show either that any further sum or sums were or were not paid. He also found that there was no evidence as to the reasons why the Donalds vacated Parcel 229 and there was no evidence as to whether any notices were ever served on the Donalds, either to complete the 1977 Agreement or to rescind the 1977 Agreement.

16. The Registrar of Lands also held that the sum of CI\$5,500.00 was not paid as a deposit but rather was a part payment and since this part payment was never repaid this meant that the contract as evidenced by the 1977 Agreement had not come to an end and so the Donalds continued to possess an unregisterable interest in the land and were therefore entitled to maintain the caution over Parcel 229.

17. The Plaintiff Company appealed the decision of the Registrar of Lands to the Grand Court as it was entitled to do and during the course of the hearing of the said appeal the learned Grand Court Judge gave the clear indication that the correct interpretation of the 1977 Agreement required the Plaintiff Company to give notice to the Donalds that the 1977 Agreement was determined and in the absence of such notice the 1977 Agreement would subsist.

18. In the circumstances, the parties compromised the appeal on terms that inter alia the Plaintiff Company would pay the Donalds CI\$30,000.00 in exchange for a duly executed Discharge of Caution form authorizing the Registrar of Lands to remove the caution registered against Parcel 229 and a Consent Order dated 13th January 2004 to this effect was entered into by the parties and approved by the learned Judge.

19. The Plaintiff Company will refer to the said Consent Order at the hearing of this action for its precise terms. Pursuant to the terms of the Consent Order the Plaintiff Company paid to the Defendants the sum of CI\$30,000.00.

20. Subsequent to making this payment it came to light that by a Deed made between the Defendants and the Plaintiff Company dated 30th April 1979 ("the 1979 Agreement") it was agreed that because of the default by the Defendants in making payments due under the 1977 Agreement the parties agreed to determine the 1977 Agreement with certain monies being returned to the Defendants and the Defendants thereafter occupying Parcel 229 as tenants on a monthly basis.

21. The Plaintiff Company will refer to the 1979 Agreement which was not known to the said Aileen Macdonald the sole shareholder and director of the Plaintiff Company at the time that the Consent Order referred to in paragraph 17 above was entered into and was only discovered by her in an old filing cabinet containing some documents of her late husband which had been in her son's house on or about 13th April 2004.

22. The Plaintiff Company will refer to this 1979 Agreement at the Trial of this action for its full terms and legal effect but the operative parts of the said 1979 Agreement are as follows: -

"WHEREAS by agreement made 13th April 1977, Donalds purchased the furnishings in the house that exists on Parcel 229 on Block 20D in the George Town East Land Registration Section and agree to purchase the said house but have been in default under such agreement for most of the time since making

the same and are now in arrears of interest alone exceeding \$3,000.00 and the whole balance of approximately \$18,000.00 is more than one year overdue.

NOW THEREFORE THIS DEED WITNESSETH THAT:

- (1) Donalds acknowledge receipt of the sum of CI\$3,500.00 from the Company;
- (2) Donalds acknowledge that they have no claim to or interest in the furnishings in that certain house existing on Parcel 229, Block 20D in the George Town East Land Registration Section the same having been delivered and returned to the Company free of full claims by the Donalds, Donalds warranting that they have not encumbered the same;
- (3) The parties hereto acknowledge that the agreement made between them the 13th April 1977 relating to the said Parcel 229 has been determined and at end and that each of the parties has released the other from any and all claims actions or causes of action arising out of or in connection with the said agreement or the subject matter thereof;
- (4) Donalds acknowledge that for all purposes it shall be deemed that vacant possession of the said Parcel 229 has been surrendered to the Company and that they, the Donalds, have now taken occupancy thereof as tenants from month to month at a rental of CI\$250 payable monthly in advance the first and every month commencing May 1, 1979 and that they are

responsible for all repairs and maintenance of the said property and all outgoings with respect to their occupancy of the said property".

23. The 1979 Agreement clearly shows: -
- (1) that the 1977 Agreement had come to an end;
 - (2) that the Donalds had no further beneficial interest in Parcel 229; and
 - (3) that the Donalds had no legal basis for maintaining the Caution.
24. Had the said Aileen Macdonald the sole shareholder and director of the Plaintiff Company been aware of the existence of the said 1979 Agreement when she entered into the compromise agreement to pay the Defendants CI\$30,000.00 in exchange for the release of the Caution she would not have entered into such a compromise agreement. There would have been no need to do so because the legal basis for maintaining the Caution by the Defendants would not have existed.
25. Furthermore, had this 1979 Agreement been available at the hearing before the Registrar of Lands he could not have arrived at the decision to which he came to and which was recorded in his letter dated 25th February 2002 and an appeal to the Grand Court against his decision would not have been necessary.
26. The Plaintiff Company therefore appealed to the Court of Appeal against the Consent Order which had been entered into on 13th January 2005 and after hearing submissions from counsel on behalf of the Plaintiff Company and counsel on behalf of the Defendants, the Court of Appeal made the following

order which is contained in a certificate signed by the Registrar of the Court of Appeal under the seal of the Court and is dated 20th April 2005 that,

- (1) Appeal allowed;
- (2) Leave granted. The 1979 document is admitted as further evidence;
- (3) The Order of the Grand Court dated 13th January 2005 is vacated;
- (4) The Originating Motion stands dismissed without prejudice to the right of Cayman Homes Ltd to bring an action to recover the money paid as a result of the Grand Court Order;
- (5) The Court does not rule as to the validity of the 1979 Deed; and
- (6) No Order as to costs below and on appeal.

27. The Plaintiff Company, pursuant to the order of the Court of Appeal, now brings these proceedings to recover the sum of CI\$30,000.00 paid to the Defendants together with interest thereon.

28. The Plaintiff Company says that it is entitled to recover this money as the payment was made to secure removal of a Caution which the Defendants had no right to maintain and was therefore paid under a mistake either of fact or law or both and as such is repayable to the Plaintiff Company by the Defendants as money had and received by the Defendants.

29. Further and/or alternatively, the Plaintiff Company says that the Defendants must have known that the 1979 Agreement existed since it was a deed under seal executed by both of them and that they wrongfully and/or fraudulently

misrepresented both before the Registrar of Lands and before the Grand Court that they were entitled to maintain this Caution and that the Agreement of 1977 still existed and suppressed the existence of the 1979 Agreement. The Plaintiff Company therefore says that the said sum of CI\$30,000.00 is repayable by the Defendants as damages for fraudulent misrepresentation.

30. In the premises the Plaintiff claims against the Defendants: -

- (1) The sum of CI\$30,000.00;
- (2) Interest on the said sum of CI\$30,000.00 from 13th January 2005 until repayment of the said sum by the Defendants;
- (3) The costs of and incident to these proceedings including the costs of the proceedings before the Registrar of Lands and before the Grand Court;
- (4) Such further and/or other relief as may seem just to this Honourable Court.

Dated this 4th November 2005

Ramon D. Alberga Q.C.

Ritch & Conolly

Ritch & Conolly
Attorneys at Law
for the Plaintiff

TO: The Clerk of the Court
AND TO: The Defendants

This Writ of Summons was filed by Ritch & Conolly, Attorneys-at-Law, for and on behalf of the Plaintiff whose address for service is P.O. Box 1994GT, Queensgate House, 113 South Church Street, George Town, Grand Cayman, Cayman Islands, B.W.I.

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

Ritch & Conolly P.O. Box 1994GT Grand Cayman Ref: RHJ/8608

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

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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, 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.