

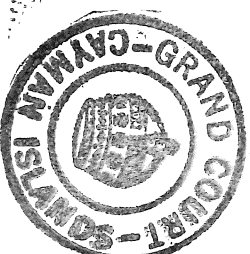
**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

CAUSE NO: *284* OF 2006

**BETWEEN (1) GARY HOWZE**

**(2) DARLA HOWZE**

**PLAINTIFFS**



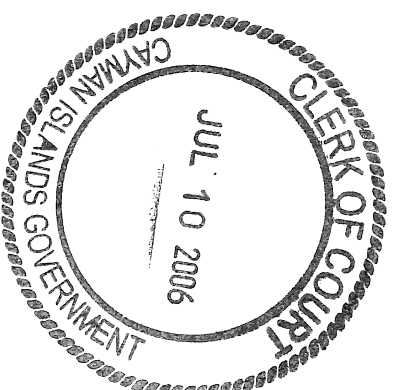
**AND GRAND CAYMAN PROPERTY  
MANAGEMENT LIMITED (T/A CAYMAN VILLAS)**

**DEPENDANT**

**WRIT OF SUMMONS**

**TO: The Defendant  
Grand Cayman Property Management Limited  
T/a Cayman Villas  
PO Box 10678 APO  
Grand Cayman  
Cayman Islands**

**C/- Ogier  
Queensgate House  
PO Box 1234GT  
Grand Cayman  
Cayman Islands**



**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 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

Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this    day of June 2006.

**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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**STATEMENT OF CLAIM**

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A. In this Statement of Claim a reference to the "Plaintiffs" shall include a reference to the "Plaintiffs and each of them".

**The Parties**

1. The Plaintiffs are and were at all material times the joint owners with title absolute of premises known as "Sea Haven", #283, N W Point Road, and situate at Block 2C, Parcel 85 (hereinafter the 'Property').
2. The Defendant, at all material times, carried on (*inter alia*) the business in the Cayman Islands of providing property management services to owners of real property in the Islands. Full particulars of the services provided to the Plaintiffs by the Defendants in respect of the said Property under the contracts pleaded in this Statement of Claim will be provided after discovery and inspection herein.

**The Original Contract**

3. By an agreement in writing dated the 26<sup>th</sup> July 2001 and made between the Plaintiffs on the one hand and the Defendant on the other the Defendant agreed to provide to the Plaintiffs the property management services more specifically described in paragraph 2 hereof;
4. The Plaintiffs will refer at the trial hereof to the said agreement for its full terms and effect.

**The “Further Agreement”**

5. In or about June 2003 the Plaintiffs and Mrs. Penny Cumber acting for and on behalf of the Defendant entered into a further agreement or alternatively a variation of the Original Agreement (hereinafter the “Further Agreement”) the principal terms of which were as follows:
  1. That the Plaintiffs would pay to the Defendant a monthly Bookkeeping Fee of C1\$50.00 by way of additional consideration for the terms and obligations of the Further Agreement;
  2. That in consideration of the payment of the Bookkeeping Fee by the Plaintiffs to the Defendant, the Defendant agreed (inter alia):
    1. To retain the rental income due to the Plaintiffs from the letting of the Property under the Original Agreement and to pay certain bills from the said retained income; and,
    2. To pay the premium in respect of the insurance policy for the said Property when due. The Policy for the Property had been in effect since the 21<sup>st</sup> May 2003 and the last premium paid prior to the Plaintiffs and the

Defendant entering into the Further Agreement was paid in or about May 2003;.

3. To use her best endeavours to keep the Plaintiff's property fully rented

6. The Plaintiffs will refer at the trial of this action to the said Further Agreement for its full terms and effect.

7. Pursuant to the Further Agreement the Defendant confirmed to the Plaintiffs by emails sent on the 5<sup>th</sup> March 2004 and the 28<sup>th</sup> May 2004, and by delivery of the financial statement dated 15<sup>th</sup> April 2004 (hereinafter the "Financial Statement") that the Defendant would pay or had paid the insurance premium as agreed for the calendar year commencing on the 21<sup>st</sup> May 2004.

8. The Plaintiff will rely on the said representation for its full legal and evidential effect at the trial of this action.

9. The Plaintiffs will rely on the Financial Statement dated the 15<sup>th</sup> April 2004 in which the Defendant purports to state that the Defendant had in fact paid the insurance premium as agreed in the Further Agreement for its full legal and evidential effect.

### **Breach of the Further Agreement and Negligent Misstatement**

10. Wrongfully and in breach of the term of the Further Agreement pleaded in paragraph 5.2.2 of this Statement of Claim, the Defendant failed to pay the annual insurance premium as agreed or at all whereby the Plaintiffs have suffered the loss and damage as hereinafter set out.

11. The representations and statements of the Defendant dated the 4<sup>th</sup> May 2004 and the 28<sup>th</sup> May 2004 and the representations contained in the Financial Statement prepared by the

Defendant and dated the 15<sup>th</sup> April 2004 that the insurance premium in relation to the Plaintiff's Property had been paid by the Defendant were false and/or misleading and were made recklessly and/or negligently.

**Breach of contract and misrepresentation**

12. Unlawfully and in breach of the said express/implied term pleaded in paragraph 5.2.2 hereof the Defendant or alternatively negligently failed to use reasonable skill and care by failing to effect the said contract of insurance in respect of the said Property whereby the Plaintiffs have suffered injury, loss and damage.
13. By reason of the misrepresentation and misstatements pleaded in paragraph 11 of this Statement of Claim the Plaintiffs have suffered injury, loss and damage as hereinafter particularised.

PARTICULARS OF INJURY LOSS AND DAMAGE

1. By reason of the Defendant's breach of contract and/or negligence, the Property was not covered by a policy of insurance from the 21<sup>st</sup> May 2004 against such risks as had been covered under the policy specifically referred to in paragraph 5.2.2 hereof.
2. Between the 11<sup>th</sup> September 2004 and the 13<sup>th</sup> September 2004 the Property suffered severe damage by reason of the impact of Hurricane Ivan which struck the Cayman Islands on the said dates. The risks covered by the policy which, but for the Defendant's breach of contract and/or negligence, would have covered the injury, loss and damage to the Property and the Plaintiffs as hereinafter pleaded.

3. The Plaintiffs are entitled to such remedies and relief as will put them into the position they would have been in had the contract been properly performed by the Defendant or had the Defendant not made the negligent misrepresentations regarding the payment of the insurance premium as hereinbefore pleaded.
4. The loss and damage suffered and/or incurred by the Plaintiffs is therefore the amount of the payment to the Plaintiffs which the Plaintiffs would have received from their insurers, n.e.m. [west indies] insurance limited, pursuant to the claim made in respect of the loss and damage suffered or incurred by the Plaintiffs to the Property and personal effects and otherwise arising as a consequence of the said Hurricane Ivan had the premium been properly paid by the Defendant.

PARTICULARS OF DAMAGE TO THE PROPERTY

3. Full particulars of the loss and damage suffered by the Plaintiffs' Property will be served during Discovery herein but in general consists of the following:

Loss of Buildings	US\$341,000.00
Pool and Decking	US\$ 60,000.00
Contents	US\$ 30,000.00
Debris Removal	US\$ 32,500.00
Total	<u>US\$465,500.00</u>

4. In addition, the Plaintiffs would have been entitled to claim the loss of rental income suffered by reason of the said property damage.
5. Full particulars of the amount which the Plaintiffs' insurers would have paid to the Plaintiffs under the terms of the policy (if in force) by reason of the matters aforesaid will be served on the Defendant after Discovery herein.

14. Pursuant to the Judicature Law (2004 Revision) the Plaintiffs are entitled to and so claim interest on such sum as may be awarded herein, at such rate and for such period as the Court thinks fit

**AND THE PLAINTIFFS AND EACH OF THEM CLAIM:**

1. Damages to be assessed under paragraph 13 hereof;
2. That Defendant do pay interest to the Plaintiff as pleaded in paragraph 14 on such amounts as are herein adjudged to be due to him for such period as the Court thinks fit and at a commercial rate of compound interest calculated on a daily basis at three monthly rests
3. That Defendant do pay the Plaintiff's costs of this action on the indemnity basis to be taxed if not agreed;

STEPHEN HALL-JONES

DIAMOND LAW ASSOCIATES

THIS WRIT OF SUMMONS was issued by DIAMOND LAW ASSOCIATES, Attorneys-at-Law for the Plaintiff, whose address for service is 4<sup>th</sup> Floor, Cardinal Plaza, Cardinal Avenue, Po Box 2887 GT, George Town, Grand Cayman (Ref: 1047).

**Acknowledgement of service of writ of summons (0.12, r.3)**

**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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 284 OF 2006

BETWEEN (1) GARY HOWZE

(2) DARLA HOWZE

PLAINTIFFS

AND GRAND CAYMAN PROPERTY MANAGEMENT LIMITED 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.

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

DIAMOND LAW ASSOCIATES 4 <sup>th</sup> Floor, Cardinal Plaza Cardinal Avenue Po Box 2887 GT George Town Grand Cayman
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Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

OGIER Queensgate House P.O. Box 1234GT Grand Cayman Cayman Island
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