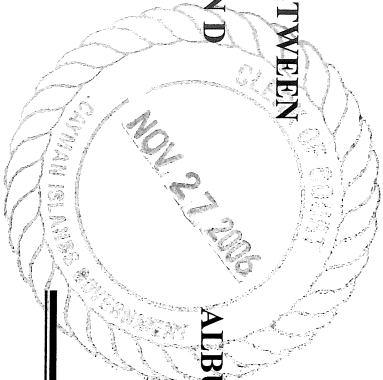


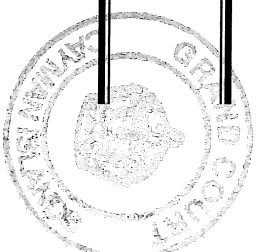
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ⁵⁰⁵ OF 2006

BETWEEN MALIN E. RATCLIFFE PLAINTIFF
AND AUBUN (AL) ATHINGTON WHITTAKER JR. DEFENDANT
t/a HERITAGE & HINTON LTD. t/a HERITAGE & HINTON LTD.



WRIT OF SUMMONS



TO: Mr Albun Athington Whittaker Jr.
t/a Heritage & Hinton Ltd.
P.O. Box 1569 GT
Grand Cayman, KY1-1110
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 495 GT, 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 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 November, 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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

- 1) At all material times the Plaintiff was employed as a real estate agent by **ALBUN (AL) ATHINGTON WHITTAKER** principal and sole trader of Heritage & Hinton (the "Defendant").
- 2) The Defendant is and was at all material times a sole trader in the business of carrying out real estate sales. The Defendant entered into a contract with a seller of property to market and negotiate to sell the sellers property to a purchaser in return for which the Defendant would receive an agreed percentage of the sale price, usually between 5-7% ("Seller's Commission"). The Defendant would also arrange for buyers who approached it to help them find a suitable property to buy to be introduced to sellers, or their real estate agents. In that case if a sale resulted then the Defendant would share in the Seller's Commission earned by the seller's agent 50:50.
- 3) By an oral agreement (the "Contract") made on March 1st 1997 between the Plaintiff and the Defendant the Defendant employed the Plaintiff as an agent of his firm to market and sell properties for the Defendant's clients or assist them in finding a suitable property to purchase. The Defendant agreed to pay the Plaintiff a specified percentage of the Sellers Commission received by the Defendant in relation to properties of the Defendant's clients which she arranged to market, and of which she negotiated the sale or in regards to which she introduced buyers who bought a property("Agent's Commission").
- 4) It was an initial agreed term of the Contract that the Plaintiff would be paid Agents' Commission at the rate of 50% of the Seller's Commission at the beginning of her employment. However the Defendant and Plaintiff later agreed to the Agents

- Commission rate being varied and it increased to 70% of the Sellers Commission by the last year of the Plaintiffs employment with the Defendant in 2005.
- 5) Pursuant to the terms of the Contract commission became payable by the Seller to the Defendant and hence from the Defendant to the Plaintiff at two stages:
- (i) 50% upon payment made by the purchaser at the pre-construction phase (“Commencement Payment”); and
 - (ii) The remaining 50% upon payment by the purchaser at the completion of construction of the interior walls phase (“Interior Wall Payment”).
- 6) In September 2005 the seller, a Strata Corporation registered as Strata Plan No 22, entered into a contract with the buyer, Farmers International Ltd, to sell some of its villa units which formed part of a condominium development of some 40 villas known as The Beachcomber development on land located at West Bay Beach South Block 12C, Parcel 15. So far as it is relevant to these proceedings, the seller’s agent is Butler Properties Limited (Butler Properties).
- 7) On the 30 September 2005 the Plaintiff secured the sale of Unit No. 24 which formed part of a condominium development owned by the seller of some 40 villas known as The Beachcomber development on land located at West Bay Beach South Block 12C, Parcel 15 (the “Villa 24”) at a price of US\$1,875,000. The sale was arranged by the Plaintiff.
- 8) A second sale was also reached on the 30 September 2005 in relation to Unit No. 35 which formed part of the same condominium development referred to at paragraph 7 above as owned by the seller located at West Bay Beach South Block 12 C, Parcel 15 (the “Villa 35”) for a sale figure of US\$1,905,000.00. Again, the sale was arranged by the Plaintiff.

- 9) By the agreement between the seller and Butler Properties and subsequent agreement between Butler Properties and the defendant the Plaintiff became entitled to the commission on sales arranged and negotiated and concluded during the period covered by the Plaintiff's employment with the Defendant where those sales had been concluded as a result of the Plaintiff's arrangements and completion of the sales of pre-construction condominium units.
- 10) Pursuant to paragraph 5 above, commission payments became due to the Plaintiff in two tranches with 50 per cent of her commission to be paid when the seller's agent, in this case Butler Properties, paid the Defendant the first tranche of commission monies due to the Defendant and the remaining 50 per cent at the time of completion of the sale when the second tranche of commission monies became due to the Defendant from Butler Properties. It was common practice for the Plaintiff to wait until the seller or seller's agent paid the Defendant before the Plaintiff would make a claim for her commission monies due.
- 11) On or about the 21 March 2006 Butler Properties made payment to the Defendant in the sum of US\$23,437,50 representing the first tranche payable to the Defendant in relation to the sale of Villa 24.
- 12) On or about the 21 March 2006 Butler Properties made payment to the Defendant in the sum of US\$23,812.50 representing the first tranche payable to the Defendant in relation to the sale of Villa 35.
- 13) Following payment to the Defendant as per paragraphs 11 and 12 above, the Plaintiff submitted her claim to the Defendant of the monies now due to her as Agent's Commission as follows:-

- (1) The sale figure of Villa 24 was US\$1,875,000.00 which entitled the Plaintiff to US\$ 16,406.25 commission as per the following breakdown:
 - (1) US\$93,750.00 representing total commission received by Butler Properties and the Defendant which is reached by taking 5% of the sale figure;
 - (2) US\$46,875.00 representing the division of commission monies between Butler Properties and the Defendant;
 - (3) US\$23,437.50 representing division of commission monies between Butler Properties and the Defendant on signing and completion;
 - (4) US\$16,406.25 representing 70% of commission monies paid to the Defendant by Butler Properties.
- 14) The sale figure of Villa 35 was US\$ 1,905,000.00 which entitled the Plaintiff to US\$16,668.75 commission as per the following breakdown:
 - (1) US\$95,250.00 representing total commission received by Butler Properties and the Defendant which is reached by taking 5% of the sale figure;
 - (2) US\$47,625.00 representing the division of commission monies between Butler Properties and the Defendant;
 - (3) US\$23,812.50 representing the division of commission monies between Butler Properties and the Defendant on signing and completion;
 - (4) US\$16,668.75 representing 70% of commission monies paid to the Defendant by Butler Properties.

- 15) Contrary and in breach of the agreement between the parties the Defendant has failed to pay any sums that are due to the Plaintiff as detailed above.
- 16) As a result of the completion of sales of the units the Plaintiff is entitled to be paid commission by the Defendant in the sum of US\$33,075.00.
- 17) In respect of such amounts as the Court orders the Defendant to pay the Plaintiff, an order for payment of interest thereon pursuant to Section 34 of the Judicature Law (1995 Revision) or such other rates and for such period as the Court deems just.
- 18) The Plaintiff therefore claims under paragraphs 13 (1) and (2) above the sum of US\$16,406.25 and US\$16,668.75 for a total of US\$33,075.00 and interest at the rate of $7\frac{1}{4}\%$ or such other rate the Court deems fit.

AND THE PLAINTIFF claims:

- 1) The sum of US\$16,406.25 from the 21 day of March 2006 with interest thereon at the rate of $7\frac{1}{4}\%$.
- 2) The sum of US\$16,668.75 from the 21 day of March 2006 with interest thereon at the rate of $7\frac{1}{4}\%$.
- 3) Costs
- 4) Such further and other relief as this Honourable Court deems fit.

Dated the 27 day of November 2006



SOLOMON HARRIS
ATTORNEYS FOR THE PLAINTIFF

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of US\$33,075.00 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.



(Signature of Plaintiff or his Attorney)

THIS WRIT was **ISSUED** by **SOLOMON HARRIS** of 2nd Floor, FirstCaribbean House, P.O. Box 1990 GT, Grand Cayman, KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Plaintiff whose address for service is that of her said Attorneys-at-law.

**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 acting in person.
- 2) After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.
- 3) 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).
- 4) 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 acknowledgment service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.
- 5) 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.
- 6) If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.
- 7) 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 installments or otherwise.

See over for notes for guidance

Please complete overleaf

- 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 authorized 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 I 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: ⁵⁰⁵ OF 2006

BETWEEN MALIN E. RATCLIFFE PLAINTIFF
AND ALBUN (AL) ATHINGTON WHITTAKER JR. DEFENDANT
t/a HERITAGE & HINTON LTD.

ACKNOWLEDGEMENT OF SERVICE OF
WRIT OF SUMMONS

Important. Read the accompanying Delay may result in judgment being entered directions and notes for guidance carefully against a Defendant whereby he may have to before completing this form. If any pay the costs of applying to set it aside. information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

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 liquidation 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

Service of the Writ is acknowledged accordingly

(Signed) _____
Attorney-at-Law
[DEFENDANT IN PERSON]

Address for service: []

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.

Solomon Harris
Attorneys-at-law
2nd Floor, First Caribbean Bank House
P.O. Box 1990 GT
Grand Cayman
Cayman Islands

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