

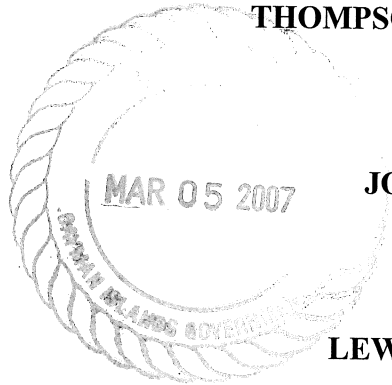
IN THE GRAND COURT OF THE CAYMAN ISLANDS

**BETWEEN:**

**THOMPSON REALTY LTD**

**Plaintiff**

**AND:**



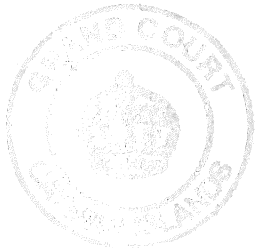
**JOHN MAY**

**First Defendant**

**AND:**

**LEWIS EBANKS**

**Second Defendant**



**WRIT OF SUMMONS**

TO: JOHN MAY, P.O. Box 30021, 802 West Bay Road, Grand Cayman KY1-1201,  
Cayman Islands.

AND TO: LEWIS EBANKS, P.O. Box 10009, Grand Cayman KY1-1001, 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 28 days after the service of this Writ on you, counting the day of service, you  
must either satisfy the claim or return to Court Office, P.O. Box 495, George Town,  
Grand Cayman KY1-1106, Cayman Islands the accompanying Acknowledgement of  
Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the service of this Writ 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 5<sup>th</sup> day of March 2007.

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 Plaintiff is in the business of real estate brokerage carrying on business from Galleria Plaza on West Bay Road. The Plaintiff is more commonly known as Century 21.
2. The First Defendant is a former employee of the Plaintiff.
3. At all material times the Second Defendant was a customer and/or client of the Plaintiff.

### **First Defendant's Contract of Employment**

4. The First Defendant commenced employment with the Plaintiff on or around 1 December 2000.
5. The First Defendant was employed by the Plaintiff as a sales executive. Such role included negotiating sales with customers of the Plaintiff in respect of properties that had been listed for sale with the Plaintiff by its clients and in respect of which the Plaintiff would receive a commission in the event of such properties being sold. A property so listed shall be referred to herein as a "Listing" and the expression "to list" should be construed accordingly. The First Defendant's role included seeking and obtaining Listings for the Plaintiff.
6. At all material times the express terms of the Defendant's contract of employment ("the Contract of Employment") were set out in a written statement of working conditions ("the Statement of Working Conditions") a copy of which was provided by the Plaintiff to the First Defendant in early February 2001.

7. The following were (inter alia) express terms of the Contract of Employment (where the “Employer” and the “Company” is the Plaintiff and the “Employee” is the First Defendant):

7.1. As set out at clause 1 of the Statement of Working Conditions:

*“(C) The Employee may not work for or represent any other company or firm, serve as a director or work in any other professional business capacity either paid or unpaid. He/she shall devote the whole of his/her time and attention and abilities during normal business hours and at such other times as the Employer or his/her duties may reasonably require to the business and affairs of the Company unless prevented by ill health from so doing.*

*(D) The Employee shall perform the duties and exercise the powers which the Board of Directors of their designee may from time to time assign to him/her. The Employee shall report to and keep the Chairman of the Board of Directors of the Employer, or his designee, fully informed of his/her conduct and business affairs and provide explanations in writing if so requested.*

*(E) Employee’s sales activity should be in accordance with the Company’s sales and marketing policies in effect from time to time.”*

7.2. As set out at clause 12 of the Statement of Working Conditions:

*“Confidentiality and Ownership of Information*

*12 (A) The Employee shall not divulge to anyone, without the express written consent of the Employer, any information received by him/her during the course of his/her employment with regard to the personal, financial or other affairs of the Employer or any director, shareholder, employee, agent or customer thereof, all of which information, including Employer’s method of transacting business, all leads, addresses, client lists and sources of business, is hereby declared to be unique and proprietary to the Employer and is considered to be confidential information and to be kept as such by the Employee. The Employee shall also not divulge or reveal to anyone any information regarding the Employer’s procedures, methods of operation, suppliers, clients, customers, agents, agreements, business forms or any other trade secret or insider information nor shall he/she use any such information for*

*himself/herself or any other person in the same or any similar employment.*

*(B) The information with which Employee works on a day to day basis and all information, leads, addresses and sources of business which come to his/her knowledge during the term of his/her employment remain the property of the Employer and the disclosure of which could be extremely damaging to the Employer. As a condition to employment, the Employee agrees that he/she will not for a period of two years after the expiration or termination of this agreement contact, solicit or engage in real estate business with any of Employer's clients or customers."*

8. The following were (inter alia) implied terms of the Contract of Employment:
  - 8.1. The First Defendant was under a duty to serve the Plaintiff faithfully and not to act against its interests. Such term was implied to give business efficacy to the Contract of Employment.
  - 8.2. Any Listings sought and/or obtained by the First Defendant would be so sought and/or obtained exclusively for the Plaintiff. Such term formed part of the First Defendant's duty of fidelity (set out at paragraph 8.1 above); alternatively such term was implied to give business efficacy to the Contract of Employment, or by way of trade custom, in particular the customary practice of the Cayman Islands Real Estate Brokers Association of which both the First Defendant and the Plaintiff were members, or by the usual practice of the Plaintiff; alternatively such term arose by virtue of clause 12(A) and/or clauses 1(C)-(E) of the Statement of Working Conditions (set out at paragraphs 7.1 and 7.2 above).
9. Pursuant to the Contract of Employment, the First Defendant undertook work for the Plaintiff and received remuneration and exercised other rights including (inter alia) in respect of commission, profit share and vacation pay in accordance with the terms of the Contract of Employment as set out in the Statement of Working Conditions.

**Somerset Villas Development and Contract between Plaintiff and Second Defendant**

10. In or around March or April 2004 the First Defendant approached the Broker of the Plaintiff, Kel Thompson (“Mr Thompson”), in respect of the purchase and development of a plot of land situated on the Canal Point Road constituting the remainder and undeveloped part of Parcel 12C 352 and now known as Somerset Villas (“Somerset Villas”). The First Defendant requested:
  - 10.1. Financial participation for the purpose of purchasing the said plot with a view to developing thereon a residential complex comprising approximately 30 apartments (“the Units”).
  - 10.2. The participation of the Plaintiff and/or Mr Thompson as majority shareholder in a company to be incorporated under the laws of the Cayman Islands for the purpose of such purchase and development of Somerset Villas.
11. Mr Thompson declined such requests but indicated that he would contact an investor in respect of the proposed purchase and development. The basis on which Mr Thompson was prepared to make such contact was that any Listings arising in respect of the Units to be developed at Somerset Villas would be placed with the Plaintiff. The First Defendant was aware of and agreed to such requirement.
12. At a meeting in or around April or May 2004 between Mr Thompson and the Second Defendant, it was orally agreed between Mr Thompson acting on behalf of the Plaintiff and the Second Defendant (“the Ebanks Contract”) that Mr Thompson would introduce the Second Defendant to an opportunity for an investment in a property development, provided that, if the investment proceeded, the Second Defendant would list the entirety of such development with the Plaintiff and the Plaintiff would then promote the development. It was a term of

such agreement, implied to give it business efficacy, that having so listed the development with the Plaintiff the Second Defendant would not remove or allow to be removed the same from the Plaintiff without the Plaintiff's agreement.

13. Pursuant to the Ebanks Contract in or around April or May 2004 Mr Thompson introduced the First Defendant to the Second Defendant at a meeting which took place in the Plaintiff's conference room at its offices.
14. At the time of such introduction and throughout the purchase and development of Somerset Villas up until 31 December 2004 the First Defendant was acting in the course of his employment and remained subject to the terms of the Contract of Employment. After leaving the employment of the Plaintiff, the First Defendant remained subject to the term of the Contract of Employment set out at paragraph 7.2 above (second sentence of clause 12(B) of the Statement of Working Conditions).
15. Alternatively, if, contrary to the Plaintiff's primary contention, the First Defendant was at any time prior to 31 December 2004 acting outside the scope of the Contract of Employment, then any such departure from or variation of its terms was only agreed to by the Plaintiff in consideration of the requirement that the Listings for the Units developed at Somerset Villas would be placed with the Plaintiff and the Plaintiff would then promote the Somerset Villas development, the First Defendant agreeing to the same ("the Listing Requirement").
16. At a date unknown to the Plaintiff, J.E.L. Ltd was incorporated under the laws of the Cayman Islands. To the best of the Plaintiff's knowledge, J.E.L. Ltd was so incorporated for the purpose of effecting the development of Somerset Villas. To the best of the Plaintiff's knowledge, the First Defendant and Second Defendant together had and have a controlling shareholding in J.E.L. Ltd.

17. It was a term of J.E.L. Ltd's shareholders' agreement, which the First Defendant showed to Mr Thompson during the Summer of 2004 at the Plaintiff's offices, that any Listings in respect of the Units to be developed at Somerset Villas would be placed with the Plaintiff and the First Defendant would be named as the listing agent in respect of the same acting on behalf of the Plaintiff.
18. On or around 24 April 2004 the First Defendant or an assignee of the First Defendant contracted to purchase Parcel 12C 352. The contract was completed on or before 23 February 2005. The development of Somerset Villas was subsequently effected. Approximately 30 Units were constructed as part of such development.
19. Some time prior to June 2004 pursuant to the Contract of Employment, alternatively the Listing Requirement, alternatively the Ebanks Contract, the First Defendant and/or Second Defendant arranged for the Somerset Villas development to be listed with the Plaintiff and for the Plaintiff to promote such development.
20. The Plaintiff promoted the Somerset Villas development in a number of ways.
  - 20.1. The development was promoted in the June 2004 edition of the Plaintiff's magazine at pages 25 and 30 thereof. Such edition of the magazine was posted to every post office box in Grand Cayman and distributed across Grand Cayman to over 60 locations. 20,000 copies of the said edition of the magazine were printed and distributed.
  - 20.2. The Somerset Villas development was featured on the Plaintiff's website.
  - 20.3. The Somerset Villas development was featured in the window display at the Plaintiff's offices.

- 20.4. Flyers exclusively featuring the Somerset Villas were printed and posted to every post office box in the Cayman Islands.
21. In or around December 2004 the First Defendant gave notice to the Plaintiff of his intention to leave the Plaintiff's employment.
22. At a date unknown to the Plaintiff, the Listings in respect of the Units at Somerset Villas were placed with Capital Realty Ltd ("Capital Realty"), a company engaged in the business of real estate brokerage controlled by the First Defendant and in respect of which the First Defendant was and is the broker of record. Such Listings included those which had previously been listed with the Plaintiff (as set out at paragraph 19 above) the same having been removed by the First Defendant and/or Second Defendant from the Plaintiff's portfolio and transferred to Capital Realty without the Plaintiff's agreement.
23. The First Defendant's employment with the Plaintiff came to an end on or around 31 December 2004.
24. To the best of the Plaintiff's knowledge the Units have been sold by Capital Realty at an average price of CI\$ 269,000.00 each. Such sales have resulted in profits estimated at CI\$ 2,598,500.00, such sum being divided between the First Defendant and the Second Defendant plus payment of commission amounting to CI\$ 564,900.00 going to the First Defendant and/or Capital Realty.

**Breach of contract**

25. In the circumstances, the First Defendant has acted in breach of contract.

## PARTICULARS

- (1) The First Defendant sought and/or obtained Listings for a party other than the Plaintiff, namely Capital Realty. This amounted to a breach or breaches of the terms of the Contract of Employment set out above at paragraph 8.2 and/or 8.1 and/or 7.1 (clauses 1(C)-(E) of the Statement of Working Conditions), alternatively a breach of the Listing Requirement.
  - (2) The First Defendant transferred to Capital Realty the Listings for the Units that had previously been placed with Plaintiff. This amounted to a breach or breaches of the terms of the Contract of Employment set out above at paragraph 8.2 and/or 8.1 and/or 7.1 (clauses 1(C)-(E) of the Statement of Working Conditions), alternatively a breach of the Listing Requirement.
  - (3) The First Defendant was involved with the Second Defendant in the development of Somerset Villas and the sale of the Units in the period immediately subsequent to the expiration of the First Defendant's employment with the Plaintiff. This amounted to the First Defendant engaging in real estate business with a client and/or customer of the Plaintiff prior to the expiry of two years from the expiration of the Defendant's employment with the Plaintiff in breach of the term of the Contract of Employment set out at paragraph 7.2 above (second sentence of clause 12(B) of the Statement of Working Conditions).
26. Further or alternatively, the Second Defendant has acted in breach of the Ebanks Contract.

## **PARTICULARS**

- (1) Having providing to the Plaintiff the Listings in respect of the Units, the Second Defendant removed, further or alternatively allowed to be removed, further or alternatively took no steps to prevent the removal of, the said Listings from the Plaintiff, such removal being without the Plaintiff's agreement. This amounted to a breach or breaches of the term or terms set out in the first and/or second sentence of paragraph 12 above.

### **Loss**

27. As a result of the aforesaid matters, the Plaintiff has suffered loss and damage.

## **PARTICULARS**

- (1) Commission from Listings in respect of 30 Units at Somerset Villas (based on an average price of CI\$ 269,000.00 per Unit and commission of 7%): CI\$ 564,900.00.
28. The Plaintiff claims interest and is entitled to interest on such sums as it may be awarded pursuant to section 34(1) of the Judicature Law (2004 Revision) at the prescribed rate, alternatively pursuant to the inherent jurisdiction of the Court, for such periods as the Court thinks fit.

### **AND THE PLAINTIFF CLAIMS:**

- (1) Damages for breach of contract against the First Defendant;
- (2) Further or alternatively, damages for breach of contract against the Second Defendant;

- (3) Further or alternatively, against the First Defendant an account of all sales of the Units and of sums received by the First Defendant and/or Capital Realty in relation to such sales together with an order for payment of such sums as may be found due to the Plaintiff;
- (4) Further or alternatively, against the Second Defendant an account of all sales of the Units and of sums received by the Second Defendant in relation to such sales together with an order for payment of such sums as may be found due to the Plaintiff;
- (5) Interest as pleaded at paragraph 28 above;
- (6) All necessary further accounts, inquiries and directions;
- (7) Further or other relief;
- (8) Costs.

*Ritch & Conolly*

**Ritch & Conolly**  
**Attorneys for the Plaintiff**

5<sup>th</sup> March 2007

This WRIT OF SUMMONS and STATEMENT OF CLAIM was issued by Ritch & Conolly, Attorneys-at-Law for the Plaintiff, whose address for service is that of its said attorneys; namely, P.O. Box 1994, 4<sup>th</sup> Floor, Queensgate House, South Church Street, George Town, Grand Cayman KY1-1104.

CAUSE NO. OF 2007

IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN:

THOMPSON REALTY LTD

Plaintiff

AND:

JOHN MAY

First Defendant

AND:

LEWIS EBANKS

Second 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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes  no

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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

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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.

Messrs. Ritch & Conolly P.O. Box 1994 4 <sup>th</sup> Floor Queensgate House 113 South Church Street George Town Grand Cayman KY1-1104  Ref: AHP/10428
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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, Grand Cayman KY1-1106.

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.