

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No. 6091 of 2007

BETWEEN:

AND: REMAX INTERNATIONAL CORPORATION LIMITED Plaintiff

THE PROPRIETORS, STRATA PLAN No. 147 Defendants

WRIT OF SUMMONS

TO: The Proprietors
Strata Plan No. 147
No. 5 Regent Court
Britannia
PO Box No. 10049
Grand Cayman KY1-1001



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, PO Box 495, George Town, Grand Cayman KY1-1106, the accompanying Acknowledgment of Service Form 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 5th 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No. of 2007

BETWEEN:

REMAX INTERNATIONAL CORPORATION LIMITED Plaintiff

AND:

THE PROPRIETORS, STRATA PLAN No. 147 Defendants

STATEMENT OF CLAIM

1. The Plaintiff is a company incorporated under the laws of the Cayman Islands and was at all material times the owner of Villa 711 (“the Villa”), one of the residential units which together with the common parts (together “the premises”) comprise the strata corporation known as Britannia Villas, Phase II, registered as Strata Plan No. 147 in the Cayman Islands Land Register (“the premises”).
2. The Defendants are the proprietors of Strata Plan 147, a strata corporation established under the laws of the Cayman Islands, and at all material times acted by an executive committee (“the committee”) composed of proprietors.
3. The committee had a mandatory statutory duty at all times to keep the premises insured against damage and destruction for the full reinstatement value.
4. The committee had *inter alia* the following express, alternatively implied, duties under the by-laws of the said strata corporation: -
 - (i) to apply the proceeds of the insurance referred to in paragraph 3 hereof strictly in accordance with the said by-laws;
 - (ii) to act expeditiously in reinstating the premises if the same were damaged;

- (iii) not by its members, its servants or agents deliberately or negligently to mislead the proprietors;
 - (iv) at all times to act fairly, reasonably and in the interests of the proprietors as a whole.
5. In September 2004, the premises and, in particular, the Villa sustained severe exterior and interior damage, caused by Hurricane Ivan.
6. In breach of the duties referred to in paragraph 4 hereof, the committee, by itself, its servants and/or agents: -
- (i) failed to apply the insurance proceeds received following the strata corporation's claim in relation to the hurricane damage referred to in paragraph 5 hereof in accordance with the by-laws of the strata corporation and/or fairly and reasonably and/or in a manner consistent with the interests of the proprietors as a whole.
 - (ii) failed to act expeditiously in reinstating the premises and, in particular, the Villa;
 - (iii) misrepresented to the Plaintiff the nature, quality, value and timing of the remedial works to the Villa to be carried out by the contractor employed by strata corporation;
 - (iv) caused or permitted substandard remedial works to be carried out to the Villa;
 - (iv) compelled the Plaintiff to execute a release and reinstatement agreement (to the full terms of which the Plaintiff will refer at the trial of this action) as a condition for payment to the Plaintiff or for its benefit of the insurance proceeds referred to in paragraph 6 (i) hereof.

PARTICULARS OF BREACHES OF DUTY AND MISREPRESENTATIONS

- (1) Instead of raising a special assessment payable by the proprietors *pro rata*, the committee used insurance proceeds designated for the reinstatement of residential units and, in particular, the Villa to reinstate common parts of the premises. (The Plaintiff is unable to give better particulars of this allegation until discovery herein.)
- (2) In December 2004 by its servant or agent, one Nelson Crance (the Strata Manager), the committee represented to Michael Ford, the sole director of the Plaintiff (knowing or believing that the Plaintiff would rely upon the said representation) that only the contractor employed by the strata corporation was authorised to carry out the works necessary to reinstate the Villa; that the works necessary to reinstate the Villa would be completed by the said contractor by or before the end of March 2005; and that by the end of March 2005 the Villa would be in suitable repair for letting by the Plaintiff. In fact, the said representations were incorrect and/or made recklessly or negligently in as much as the contractor employed by the strata corporation was not exclusively authorised to carry out the said remedial works; the said contractor failed to carry out the said remedial works by or before the end of March 2005; and the Villa was not in suitable repair for letting by the end of March 2005.
- (3) On or about 15th June 2005, one Alan Roffey, a committee member, informed the said Michael Ford that the committee would not release any insurance monies attributable to the Plaintiff's claim unless the release and reinstatement agreement referred to in paragraph 6 (iv) hereof was executed and represented that if the Plaintiff executed the said release and reinstatement agreement, the contractor employed by the strata corporation would carry out all necessary repairs to the Villa, including

replacing or repairing the Villa's windows and patio to a value of CI\$5,225 and replacing the Villa's front door to a value of CI\$1,500 and further represented that the Plaintiff's account with the strata corporation would be credited with the value of any remedial works not carried out by the said contractor. In reliance on the said representations, the Plaintiff executed the release and reinstatement agreement. In the event, the said contractor did not carry out the said remedial works to the Villa's windows, patio and front door and the committee did not credit the Plaintiff's account with the sum of CI\$6,725.

- (4) The committee failed to take any or any adequate steps to ensure that the necessary remedial works to the Villa were carried out expeditiously or at all or to the required standard.
 - (5) Despite repeated requests by the Plaintiff, the committee has failed or refused to supply the Plaintiff with an account explaining in detail: -
 - (a) how precisely the insurance proceeds received by the strata corporation were applied by the committee; and
 - (b) what remedial works precisely were funded by the special assessment issued by the committee dated 1st January 2005, the value of which remedial works the committee purported to deduct from the insurance proceeds payable to the Plaintiff or for its benefit.
7. By reason of the Defendants' aforesaid breaches of duty and/or misrepresentations, the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

- (i) The Plaintiff was obliged to engage its own contractor, who carried out the necessary repairs to the Villa's windows and patio at the Plaintiff's expense.
- (ii) The Plaintiff's account has not been credited with the value of the works not carried out by the contractor employed by the strata corporation.
- (iii) All drywall installed in the Villa by the contractor employed by the strata corporation was not of the thickness required by Building Regulations and had to be replaced by the Plaintiff at a cost to the Plaintiff of CI\$3,917.
- (iv) But for the misrepresentation referred to in subparagraph 6(2) hereinabove, the Plaintiff would have employed a contractor in December 2004 to carry out all necessary remedial works to the Villa and would have let the Villa by 1st April 2005 at a monthly rent of CI\$4,500. When by the end of March 2005 no remedial works had been carried out to the Villa, the Plaintiff at its own expense employed a contractor who completed the necessary remedial works by June 2005, allowing the Plaintiff to let the Villa from 1st July 2005 at a monthly rent of CI\$4,500. As a result of the Defendants' said misrepresentations, the Plaintiff lost 3 month's rent and incurred monthly sewage, cable television and water charges which would otherwise have been borne by a tenant of the Villa.
- (iv) The cost to the Plaintiff of reinstating the Villa exceeded the amount of insurance proceeds allocated by the committee to the Plaintiff or for its benefit. The shortfall was the result of the committee using insurance

funds allocated for remedial works to the Villa to reinstate common parts of the premises and/or was the result of the committee failing to ensure that the contractor employed by the strata corporation carried out all the works necessary to reinstate the Villa to an appropriate standard. (The Plaintiff is unable to give better particulars of this allegation until discovery herein.)

8. The Plaintiff is entitled to and claims interest on such sums as may be awarded to it pursuant to Section 34(1) of the Judicature Law (2004 Revision) at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFF CLAIMS: -

- (1) Damages;
- (2) An Account;
- (2) Interest, pursuant paragraph 8 hereof;
- (3) Costs.



Bodden & Bodden
Attorneys for the Plaintiff

**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 495GT, 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 (ie., 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 installments 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 of 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 his 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. of 2007

BETWEEN:

REMAX INTERNATIONAL CORPORATION LIMITED

Plaintiff

AND:

THE PROPRIETORS, STRATA PLAN No. 147

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.

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

THE PROPRIETORS, STRATA PLAN No. 147

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2. State whether the Defendant intends to contest or otherwise participate in 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 of Summons is acknowledged accordingly.

Attorney for the Defendant

Address for service:

Notes on address for service:

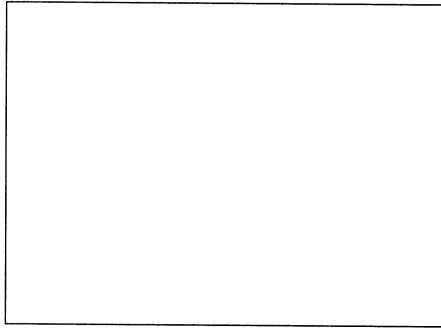
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

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 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.

Bodden & Bodden Attorneys-at-Law PO Box 10335 George Town Grand Cayman KY1-1003 Cayman Islands T: 345 943 0202

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

A large, empty rectangular box with a thin black border, intended for the indorsement of the defendant's name, address, and reference.