

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 187 OF 2007

BETWEEN:

STANLEY THOMAS

-and-

- (1) RONALD ZIMMER
- (2) CELITA ZIMMER
- (3) SEASIDE REALTY LTD

Plaintiff

Defendants

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WRIT OF SUMMONS AND STATEMENT OF CLAIM

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**TO:** Ronald Zimmer and Celita Zimmer of  
P.O. Box 181, West Bay, Grand Cayman KY1-1301 and  
P.O. Box 10428, Frank Sound, Grand Cayman KY1-1004

**AND TO:** Seaside Realty Ltd c/o its registered office  
Giglioli & Company, P.O. Box 2505, 4<sup>th</sup> Floor, Kirk House,  
Panton Place, Albert Panton Street, George Town,  
Grand Cayman KY1-1104

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claim indorsed hereon and attached hereto.

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 4<sup>th</sup> day of May 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. 187 OF 2007**

**B E T W E E N:**

**STANLEY THOMAS**

**Plaintiff**

**-and-**

**(1) RONALD ZIMMER  
(2) CELITA ZIMMER  
(3) SEASIDE REALTY LTD**

**Defendants**

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**STATEMENT OF CLAIM**

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1. The Plaintiff ("Mr. Thomas") was at all material times a well-known property developer based in Atlanta, Georgia in the United States.
2. The Defendants ("Mr. and Mrs. Zimmer") are residents of the Cayman Islands and Mrs. Zimmer owns and manages a real estate agency in the Cayman Islands.
3. The Third Defendant ("Seaside") is a company wholly owned and/or controlled by Mr. and/or Mrs. Zimmer.

4. Mr. Thomas met Mr. and Mrs. Zimmer in about 2000 when he rented their house in the Cayman Islands and struck up an acquaintance. Mr. Zimmer subsequently visited Mr. Thomas in Atlanta.
5. In or about late 2000 or early 2001 Mr. Zimmer telephoned Mr. Thomas and suggested they meet to discuss a property development proposal which he had and said he could not take on by himself.
6. Thereafter several meetings and discussions took place at which the following was orally discussed and agreed:
  - 6.1. Mr. Zimmer had an opportunity to undertake a real estate development project in an area known as "Frank Sound", involving the medical school on the Cayman Island, St Matthews University ("St Matthews") campus, which would require construction of a number of good quality condominiums which could be leased through St Matthews or marketed to foreign students. The project became known as "Avonlea".
  - 6.2. Mr. Zimmer did not have the funds to purchase the land needed for the development in order to commence the Avonlea project. He said he needed Mr. Thomas' help to make initial land acquisitions but represented that this could be repaid quickly since he had provisionally agreed sufficient bank lending to re-finance the development once the project was under way and leases were executed with St Matthews.
  - 6.3. Mr. Zimmer and Mr. Thomas thereafter agreed as follows, namely that:
    - (i.) Mr. Thomas would provide the initial capital for the land purchases and certain initial expenditures for the Avonlea Project by way of a start-up loan;

- (ii.) Mr. Thomas would be repaid the funds so lent within 90 days of payment of funds and be entitled to charge daily simple interest of 8% p.a.;
- (iii.) Until the loan was repaid any properties acquired with loans provided by Mr. Thomas would belong entirely to Mr. Thomas and Mr. Zimmer would have no right to them; and
- (iv.) Upon the loan being repaid Mr. Zimmer and Mr. Thomas would take an equal 50:50 share in the Avonlea development and the properties initially acquired with the loans from Mr. Thomas.

6.4. It is contended that the agreement referred to in paragraph 6.3 was in the nature of a partnership.

- 7. The Avonlea condominiums were to be designed by Andrés Duany of Duany Plater-Zyberk & Company a well known firm of architects in Florida. Mr. Zimmer requested and Mr. Thomas agreed to retain that firm to commence work on the project. Pursuant to the Agreement Mr. Thomas paid US\$161,386.55 to that firm between 9 January and 2 May 2003.
- 8. In about August or September 2002 Mr. Zimmer represented to Mr. Thomas and Mr. Thomas accepted that it was not possible under the laws of the Cayman Islands for Mr. Thomas to hold a 100% interest in any property under his sole name.
- 9. Accordingly, Mr. Zimmer proposed and Mr. Thomas agreed that legal title to the properties would be acquired by Seaside but that this would not alter the arrangement between them or affect the terms on which they had agreed that the beneficial interests in the property would be held.

10. The following properties (referred to collectively hereinafter as “the Frank Sound Properties”) were acquired in the name of Seaside with the funds provided by Mr. Thomas as aforesaid as part of the Avonlea project, namely:
  - 10.1. In about July 2002 deposits were paid and contracts of sale agreed between Seaside and the vendors in relation to the ca. 55 acres of land known as 59A Midland East Plots No 37, 68 and 217.
  - 10.2. In about November 2002 deposits were paid and contracts of sale agreed between Seaside and the vendors of various parcels of land known as High Rock No 64A, the “Dutch complex”.
  - 10.3. Completion of the acquisition of Midland East Plot No 37 took place on about 10 October 2002. The total purchase price including government fees and legal fees was US\$225,000.
  - 10.4. Completion of the acquisition of the remaining Midland East plots No 68 and 217 took place on about 29 January 2003. The total purchase price including government fees and legal fees was US\$285,296.89.
  - 10.5. Completion of the acquisition of the various parcels of land within the Dutch Complex took place between January and December 2003. The total purchase price including government fees and legal fees was US\$1,417,513.
11. In late 2002 Mr. Thomas told Mr. Zimmer that he wanted to secure the beach front parcel of land at Frank Sound, High Rock Plot No.s 64A No.s 6, 7 and 142, known as “The Roost” for his own private use and asked for this to be taken out of the Avonlea Project. Mr. Zimmer agreed to arrange this.

12. Completion of the acquisition of the Roost took place in about January 2003 in the name of Seaside. The total acquisition cost including government fees and legal fees was US\$1,501,064.02 and Mr Thomas paid this sum between 16 August 2002 and 7 July 2003.
13. Completion on the acquisition of all the said properties was made with funds provided by Mr. Thomas at Mr. Zimmer's direction. From about October 2002 Mr. Thomas (or companies under his control on his behalf) advanced US\$3,489,195.58 for the acquisition of the Frank Sound Properties and the Roost. Full particulars of this are set out in the attached Schedule.
14. By reason of the matters aforesaid the Frank Sound Properties were held on terms that Mr. Thomas would have full beneficial title to them until the funds provided by him by way of loan had been repaid and that at that point those properties would be held for the partnership consisting of Mr. Thomas and Mr. and/or Mrs. Zimmer and/or Seaside in which Mr. Thomas would have a 50% interest.
15. By reason of the aforesaid, Seaside has at all material times held all its interest in the Roost on a bare trust for Mr. Thomas or as his agent or nominee and Mr. Thomas has since then been entitled to call for the transfer to him of the title to the Roost. Alternatively, the Roost was one of the Frank Sound Properties.
16. In about late 2003 St Matthews decided not to proceed with the offer being made in relation to the Avonlea Project. As a result the principal purpose for which the Frank Sound Properties (other than the Roost) had been acquired became impossible to achieve and/or there was a total failure of substratum.
17. In consequence Seaside has at all material times since at least early 2004 held all the Frank Sound Properties on a trust for sale on terms that Mr. Thomas would receive any proceeds remaining after repayment of his loan together with interest.

18. Alternatively, there having been a total failure of substratum Mr. Thomas is entitled to a dissolution of the partnership between him and Mr. Zimmer and an account of what is due to him upon such dissolution and/or after repayment of the monies advanced by way of loan together with interest.
19. In the further alternative, the purpose for which the funds had been advanced having failed, Seaside holds such funds or the Frank Sound Properties together with any increase in value on resulting trust for Mr. Thomas.
20. Further, the sums of money advanced by Mr. Thomas or on his behalf by way of loan as set out in paragraph 13 above in order to enable Seaside to purchase the Frank Sound Properties have never been repaid to him despite a request for repayment made by Ritch & Connolly on 16 November 2006. He is entitled to be repaid the sums lent by him together with 8% interest since the date of payment.
21. Mr. Thomas will give credit for such funds as were advanced by Mr. and/or Mrs. Zimmer and/or Seaside between July 2002 and December 2003 in the acquisition of the Avonlea Project properties when Mr. and Mrs. Zimmer provide a proper and true account of such sums. Mr. Thomas believes that the sum may have been around US\$200,000.
22. Since about September 2003 Mr. and Mrs. Zimmer have been in occupation of the Roost and/or they or Seaside have let out certain of the Frank Sound Properties and/or the Roost but have not accounted to Mr. Thomas for such sums as were received or paid any occupation rent in respect of such properties.
23. In the premises the Defendants and/or each of them are liable to account to Mr. Thomas for all sums received in respect of the Frank Sound Properties and/or the Roost and/or to pay an occupation rent in respect thereof.

24. Mr. Thomas claims interest on all sums due to him at the rate of 8% of alternatively interest at such other rate and for such period as may seem to the Honourable Court to be just pursuant to Section 34(1) of the Judicature Law (2004 Revision) and sections 4 and/or 5 of the Judgment Debts (Rates of Interest) Rules 1995 (as amended from time to time) or at such rate and/or for such period as the Court finds to be just or alternatively equitable interest under the inherent jurisdiction of the Court.

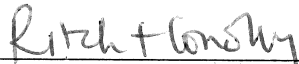
#### **AND THE PLAINTIFF CLAIMS**

1. A declaration that Seaside holds the Frank Sound Properties on a trust for sale or resulting trust for Mr. Thomas or alternatively a declaration as to the terms upon which Seaside holds title to such properties and as to the extent of Mr. Thomas' interest therein.
2. An Order requiring repayment by Seaside and/or the partnership and/or Mr. and Mrs. Zimmer of the loans provided by Mr. Thomas as set out in paragraph 13 together with interest at the rate of 8% per annum since the date of payment.
3. A declaration that the Roost is held by Seaside on a bare trust for Mr. Thomas together with an order that Seaside and/or the Defendants do transfer title to the same to Mr. Thomas or to a person nominated by him.
4. Alternatively a declaration as to the terms upon which Seaside holds title to the Roost and as to the extent of Mr. Thomas' interest therein.
5. An order for the dissolution of the partnership between Mr. Thomas and Mr. and/or Mrs. Zimmer and/or Seaside and an order for the taking of all necessary accounts and inquires upon such dissolution.

6. An order for an account or inquiry as to what is due to Mr. Thomas by way of account or occupation rent in respect of the Frank Sound Properties and/or the Roost.
7. All necessary accounts and inquiries.
8. Further or other Relief.
9. Interest.
10. Costs pursuant to the Judicature Law (2002 Revision) and to the Cayman Islands Grand Court Rules 1995.

DATED this 4<sup>th</sup> day of May 2007

SETTLED: THOMAS LOWE  
Wilberforce Chambers  
8 New Square, Lincoln's Inn  
London WC2A 3QP

  
RITCH & CONOLLY  
Attorneys-at-Law for the Plaintiff; Stanley Thomas

TO: The Clerk of the Court  
Courts Office, Grand Cayman

AND TO: Ronald Zimmer and Celita Zimmer of  
P.O. Box 181, West Bay, Grand Cayman KY1-1301 and  
P.O. Box 10428, Frank Sound, Grand Cayman KY1-1004

AND TO: Seaside Realty Ltd c/o its registered office  
Giglioli & Company, P.O. Box 2505, 4<sup>th</sup> Floor, Kirk House,  
Panton Place, Albert Panton Street, George Town,  
Grand Cayman KY1-1104

This Writ and Statement of Claim is filed by Ritch & Conolly, Attorneys-At-Law, for and on behalf of the Plaintiff herein whose address for service is that of Queensgate House, 113 South Church Street, P.O. Box 1994, George Town, Grand Cayman KY1-1104

X:\Clients\T\Thomas, Stanley E. 10293\Court documents\Thomas v Zimmer SoC Clean 4May2007.doc

## PAYMENTS BY MR. THOMAS

		Midland East 59A, 217 & 68	Midland East 59A 37	High Rock Block 64a Parcels 81, 88, 66-79, 102-120, 80 86REM1	High Rock Block 64A 65 & 89	High Rock 64A 6, 7 & 42	
	Total Wire Amt	55 acre University Y	Comm 11 Acres Y	Dutch Lots Y	Duplex & White House Y	The Roost Y	TOTAL
Lawsuit							
08/16/2002 Coldwell Banker Cayman Island Realty	14,000.00					14,000.00	14,000.00
08/16/2002 Thompson Realty US Escrow	20,000.00		20,000.00				20,000.00
09/13/2002 Coldwell Banker Cayman Island Realty	126,000.00					126,000.00	126,000.00
09/16/2002 Giglioli & Company	271,546.89	271,546.89					271,546.89
09/27/2002 Giglioli & Company	218,937.81		218,937.81				218,937.81
10/29/2002 Coldwell Banker Cayman Island Realty	100,000.00					100,000.00	100,000.00
12/02/2002 Coldwell Banker Cayman Island Realty	100,000.00					100,000.00	100,000.00
12/23/2002 Giglioli & Company	662,500.00				662,500.00		662,500.00
12/30/2002 Coldwell Banker Cayman Island Realty	108,833.33					108,833.33	108,833.33
01/29/2003 Giglioli & Company	1,046,527.45					1,046,527.45	1,046,527.45
03/24/2003 Giglioli & Company	114,493.15			114,493.15			114,493.15
06/23/2003 Giglioli & Company	111,712.33			111,712.33			111,712.33
07/07/2003 Giglioli & Company to Reimburse Celita L Zimmer	121,021.70	10,000.00	3,579.27	150,893.92	33,160.00	9,666.66	207,299.85
09/23/2003 Giglioli & Company	109,452.03			109,452.03			109,452.03
12/23/2003 Giglioli & Company	281,856.16			281,856.16			281,856.16
		281,546.89	292,517.08	768,407.59	695,660.00	1,501,064.02	3,489,195.58

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CAUSE NO. OF 2007

BETWEEN:

STANLEY THOMAS

Plaintiff

-and-

- (1) RONALD ZIMMER
- (2) CELITA ZIMMER
- (3) SEASIDE REALTY LTD

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.

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

2. State whether the Defendant intends to contest or otherwise participate in the proceedings (tick appropriate box)

yes

no

Service of the Writ of Summons is acknowledged accordingly

(Signed).....

[Attorney] for

[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 principal office.

Please complete overleaf

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  
PO Box 1994  
Grand Cayman KY1-1104

Ref: CB/10293

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

[Empty box for defendant's Attorney endorsement]

**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.