

IN THE GRAND COURT OF THE CAYMAN ISLANDS

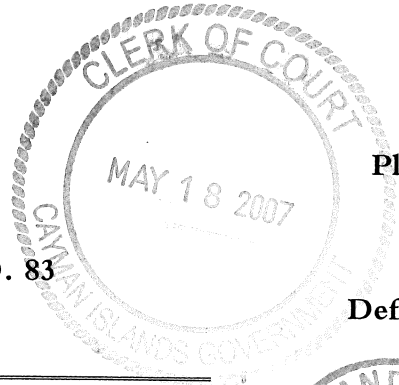
CAUSE NO: 210 OF 2007

BETWEEN:

1. ROBERT EDWARD ROWE
2. BERYL TRUCE ROWE

AND

THE PROPRIETORS, STRATA PLAN NO. 83



Plaintiffs

Defendant

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WRIT OF SUMMONS

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TO: **The Proprietors, Strata Plan No. 83**  
P.O. Box 871  
Grand Cayman KY1-1103  
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, PO Box 495, Grand Cayman, KY1-1106 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 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 18<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 Acknowledgement of Service are given with the accompanying form.

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**STATEMENT OF CLAIM**

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1. The Plaintiffs are co-proprietors of Block OPY Parcel 45H1 and reside at South Landing, Etchden Rd. Great Chart, Ashford, Kent United Kingdom, TN23 33BZ. Their address for service is in care of their attorneys, Appleby, of PO Box 190, Grand Cayman KY1-1104, Cayman Islands.
2. The Defendant is a strata corporation formed pursuant to the Strata Titles Registration Law and has an address for service of P.O. Box 871, Grand Cayman KY1-1103, Cayman Islands.
3. The Defendant is bound by its by-laws registered 30 September 1986 with the Lands and Surveys Department of the Cayman Islands.
4. In or about April 2004, the Plaintiffs acquired Block OPY Parcel 45H1 (the "Plaintiffs' Strata Lot") and their registered interest was recorded on or about 20 April 2004.
5. In relation to the acquisition of the Plaintiffs' Strata Lot, the Plaintiffs were provided with a copy of the Defendant's by-laws.
6. The duties of the Defendant owed pursuant to the Strata Titles Registration Law (as amended) relevant to this proceeding include:

- a. At section 6(1)(a)

To insure and keep insured the building to the replacement value thereof against fire, earthquake, hurricane and such other risks as may be prescribed, unless the proprietors by unanimous resolution otherwise determine;

- b. At section 6(1)d)

Subject to section 23(2) and (3) and to such conditions as may be prescribed, to apply insurance moneys received by it in respect of damage to the building in rebuilding and reinstating the building so far as it may be lawful to do so;

c. At section 21(7)

Bye-laws for the time being in force shall bind every corporation and the proprietors to the same extend as if such bye-laws had respectively been signed and sealed by such corporation and each proprietor and contained covenants on the part of such corporation with each proprietor and on the part of each proprietor with every other proprietor and with such corporation to observe and perform all the bye-laws.

7. The duties of the Defendant owed pursuant to the by-laws relevant to this proceeding include:

a. At paragraph 35(f)(1)

The [strata] corporation shall [i]nsure the office development (which, for avoidance of doubt, shall, for this purpose, include each and every strata lot for the time being contained therein together with the common property and all erections, buildings, and installations now or hereafter standing or installed thereon or therein but excluding furniture, contents and personal effects on or in any strata lot) and keep it insured against loss or damage by riot, civil commotion, fire, explosion, storm, hurricane, earthquake, flooding, impact or damage caused by aircraft or anything falling or dropping therefrom, and such other risks as it shall from time to time think fit, with such insurance company of repute as it may decide, in an amount or amounts equal to the full replacement value thereof, plus surveyor's, architects and lawyers fees.

b. At paragraph 35(f)(2)

The [strata] corporation shall [t]ake out and keep in force a policy of insurance in an insurance office of repute covering liability for injury to persons in or about the office development (as in sub-paragraph (1) of this sub-paragraph hereinbefore defined) and against such other risks and in such a sum as it shall from time to time consider reasonable, all which such policies of insurance shall be taken out in the name of the corporation and such of those proprietors and registered chargees of the strata lots whose names appear on the relevant registers maintained by the Registrar of Lands at the time of taking out such policies and at the time of any renewals thereof, PROVIDED ALWAYS that upon receipt of written notification from the transferee or chargee of any such strata lot during the currency of the any such policies or insurance, it will forthwith apply to have the interests of such transferee or chargee noted upon such policies of insurance, and shall make all payments necessary for these purposes within fourteen days after the same shall become payable and shall produce to the proprietors or their chargees upon demand the policies of such insurance and the receipts of every such payment.

8. The Plaintiffs took out contents insurance for their personal effects not included in the items required to be insured by the Defendant pursuant to paragraph 35(f)(1) of the by-laws. The Plaintiffs did not take out insurance, in reliance on the by-laws, for installations in the Plaintiffs' strata lot.
9. The Defendant did obtain an insurance policy with RoyalStar Assurance for the strata development for the period from 2 August 2004 to 1 August 2005, inclusive, for perils including damage due to hurricane. The policy included coverage for:
  - a. indemnification of covered loss or replacement of insured buildings with the sum insured being US\$5,462,621; and,
  - b. loss of rent in favour of the respective proprietors with the sum insured being US\$490,875.

10. On or about 11 and 12 September 2004, an insurable loss was sustained by the Defendant and the proprietors of the strata corporation including the Plaintiffs. The Plaintiffs suffered loss by way of damage to their strata lot and loss of rental income for the period commencing October 2004 through to December 2005, inclusive.

#### **Loss of Rent Claim**

11. As a result of the damage to the Plaintiff's strata lot, they were unable to rent their strata lot and sustained loss of rental income as follows:

<b>Period of Rent Claim</b>	<b>Due or Paid</b>
Total claim from 1 October 2004 to 31 December 2005 based on loss of rent of US\$39,250 per annum.	US\$49,062.50
Less Paid	(US\$10,175.35)
Net Claim Due	US\$38,887.15

12. The Defendant, or agents on its behalf, submitted and negotiated claims on the behalf of the proprietors, including the Plaintiffs, for loss of rent. The Plaintiffs provided supporting documentation in support of their loss of rent claim and as of the date of the commencement of this proceeding, has not received full payment on this claim.
13. On or about 19 October 2006, the Defendant settled the property and loss of loss of rent claims. The Defendant holds monies received from the insurer in regard to the loss of rent claim on the behalf of the Plaintiff as it relates to their strata lot. The Defendant has failed to pay the Plaintiffs the sum of US\$38,887.15 due to them for the loss of rent claim or provide a lawful reason for the failure to make such payment.
14. Alternatively, if the Defendant does not hold the settlement monies on behalf of the Plaintiffs for their loss of rent claim, it is in breach of its duty to collect the settlement funds from the insurer for this claim and disburse such funds to proprietors on whose behalf the Defendant claimed and negotiated settlement.

15. As a result of the above, the Defendant owes the Plaintiffs the sum of US\$38,887.15 which it received and holds on behalf of the Plaintiff.
16. Alternatively, the Defendant is under an obligation to collect funds due by the insurer in relation to the settlement of the Plaintiffs' loss or rent claim and disburse such funds to the Plaintiffs.

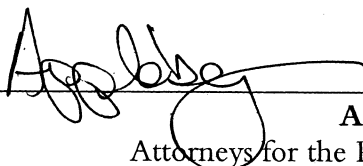
### **Reinstatement Costs**

17. The Defendant claims to have incurred CI\$60,400.57 (US\$73,659.23) for reinstatement costs of the Plaintiffs' strata lot for works relating to the repair of damage from Hurricane Ivan. The Defendant has demanded payment for this sum together with US\$4,335.00 in legal fees.
18. The Plaintiffs state that the reinstatement costs referred to above, relate to losses which the Defendant was obligated to insure against pursuant to the Strata Titles Registration Law (as amended) and the terms of the by-laws. Further, the Defendant was obligated to apply insurance proceeds to pay for the reinstatement of the Plaintiff's strata lot.
19. The Defendant did not obtain insurance coverage for damage to the interior of the Plaintiffs' strata lot, such failure to insure was a breach of duty owed by the Defendant:
  - a. Pursuant to the Strata Titles Registration Law (as amended) as pleaded above; and/or,
  - b. Pursuant to s 35(f)(1) of the by-laws.
20. The costs of reinstatement of US\$73,659.23 is the responsibility of the Defendant as the cost was not covered by insurance due to the Defendant's failure to comply with its statutory and by-law obligations as pleaded above. Had the Defendant properly arranged insurance in compliance with the Strata Titles Registration Law and the by-laws, the reinstatement costs would have been covered by insurance and the reinstatement expenses would have been paid from insurance proceeds.

21. Notwithstanding the Plaintiffs informing the Defendant that the reinstatement costs ought to have been an insured loss had the Defendant complied with its insurance obligations, the Defendant continues to claim such sums are due from the Plaintiffs.
22. As a result of the above, the Plaintiffs assert that they are not responsible for reinstatement costs relating to their strata lot and are entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF claims:

- a) US\$38,887.15 being the loss of rent due to the Plaintiffs;
- b) Alternatively, an accounting of the insurance settlement negotiated by the Defendant as it relates to claims for loss of rent made on behalf of the Plaintiffs;
- c) Alternatively, an order requiring the Defendant to collect from the insurer funds due for the loss of rent claim and disburse such funds to the Plaintiffs;
- d) A declaration that the Defendant failed to comply with its duties to insure pursuant to the Strata Titles Registration Law (as amended) and the by-laws, as pleaded;
- e) A declaration that the reinstatement costs of US\$73,659.23 and US\$4,335.00 for legal costs arise as a result of the breach of duties to insure and are not due by the Plaintiffs;
- f) Pre and post judgment interest in accordance with the *Judicature Law (2004 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
- g) Costs on an indemnity basis or standard basis in accordance with the Court Costs Rules 2001; and,
- h) Such further and other relief as this Court may deem just.

  
\_\_\_\_\_  
APPLEBY  
Attorneys for the Plaintiffs

**INDORSEMENT**

The principal amount claimed in respect of the debt is US\$38,887.15 plus interest of US\$1,629.80 as of the date of filing. The amount of the filing fees to commence the proceeding is US\$243.90 plus ad valorem fees of US\$266.92. If, within the time for returning the acknowledgement of service, the defendant pays the plaintiff or its attorneys-at-law the total amount claimed in principal, interest and the costs of issuing the Writ of Summons, further proceedings will be stayed. The money must be paid to the plaintiff or to its attorneys-at-law.

**INDORSEMENT REGARDING INTEREST**

1. The contractual term upon which interest is claimed is pursuant to the *Judicature Law (2004 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
2. The prescribed rate of interest is 7¼% pursuant to the *Judicature Law (2004 Revision)* and the Judgment Debt (Rates of Interest) Rules as amended from time to time;
3. The date from which interest is payable is 19 October 2006;
4. The total interest claimed as at 17 May 2007 is US\$1,629.80; and,
5. The amount of interest accruing due each day is US\$7.72.

This WRIT OF SUMMONS was filed by Appleby, Attorneys-at-Law, for and on behalf of the Plaintiff whose address for service is Clifton House, 75 Fort Street, PO Box 190, Grand Cayman, KY1-1104, Cayman Islands (ref: WAS/11087.001)

**Acknowledgment of service of writ of summons (O.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 each Defendant or by each Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495 GT, 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 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 Acknowledgement 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.

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CAUSE NO: OF 2007

BETWEEN:

- 1. ROBERT EDWARD ROWE
- 2. BERYL TRUCE ROWE

Plaintiffs

AND

THE PROPRIETORS, STRATA PLAN NO. 83

Defendant

---

**ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS**

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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  
 [Defendant in person]

Address for service:

*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 communication 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.

Appleby  
Attorneys-at-Law  
75 Fort Street  
PO Box 190  
Grand Cayman KY1-1104  
CAYMAN ISLANDS  
  
Ref: WAS/11087.001

Indorsement 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 indorsement]