

IN THE GRAND COURT OF THE CAYMAN ISLANDS

24 9/  
CAUSE NO. \_\_\_\_ OF 2007

BETWEEN:

K COAST DEVELOPMENT LTD.

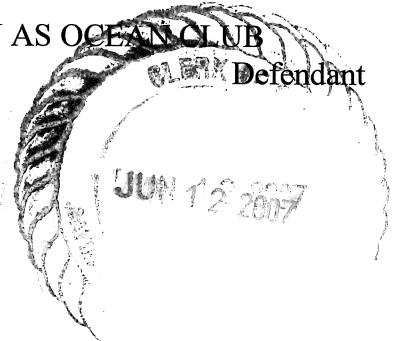
Plaintiff

AND:

THE PROPRIETORS, STRATA PLAN 55, KNOWN AS OCEAN CLUB  
Defendant



WRIT OF SUMMONS



To:

The Proprietors, Strata Plan No. 55, Known as Ocean Club  
PO Box 437 SAV, Grand Cayman  
Cayman Islands, BWI

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 Fourteen days [14] 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, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 12 day of June 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 and was at all material times, a corporation known as K Coast Development Ltd. ("K Coast").
2. The Defendant ("Ocean Club") is and was at all material times, a corporation known as The Proprietors, Strata Plan No.55, known as Ocean Club.
3. By a contract dated 11<sup>th</sup> November 2005 (the "Contract") made between K Coast (as "Contractor") and Ocean Club (as "Owner") K Coast agreed, on behalf of Ocean Club, to carry out restoration and new construction works (the "Work") located at Registration Section Spotts Block 25B Parcel 388 known as Ocean Club.
4. Ocean Club had suffered substantial damage as a result of Hurricane Ivan and the Contract entailed a substantial Scope of Work dated 30<sup>th</sup> June 2005 prepared by Continental Adjusters Grand Cayman Ltd., the insurance adjusters assigned to review, assess and calculate the insurance claim by the insurers of Ocean Club.
5. There were terms of the Contract as follows:
  - a. By Article 5.1.2 - "Subject to the provisions of the Contract Documents and subject to a holdback of ten percent (10%) up to a maximum of five percent (5%) of the Contract Price the Owner shall in Cayman Islands funds make progress payments to the Contractor on account of the Contract Price when due in the amount certified by the Quantity Surveyor";
  - b. By Article 5.3.1 - "Should either party fail to make payments as they become due under the terms of the Contract or in an award by arbitration or court, interest at three percent (3%) per annum above the bank rate on such unpaid amounts shall become due and payable until payment. The bank rate shall be the rate established by Scotiabank & Trust (Cayman) Ltd as the prime rate to its most favoured customers";
  - c. By General Condition 2.2.3 - "Based on the Quantity Surveyor's observations and evaluation of the Contractor's application for payment, the Quantity Surveyor shall determine the amounts owing the Contractor under the Contract and will issue certificates for payment as provided in Article A-5 of the Agreement - PAYMENT, GC 5.3 [sic] ...";
  - d. By General Condition 5.2.2 - "The Owner shall make payment to the Contractor on account as provided in Article A-5 of the Agreement -

PAYMENT no later than 3 days after the date of the certificate for payment issued by the Quantity Surveyor”.

6. The Quantity Surveyor for the purposes of the Contract was C&M Services.
7. The Work commenced and progressed.
8. By email dated 29<sup>th</sup> March 2007 the Quantity Surveyor advised Ocean Club that it wished K Coast to pay Sub-Contractors in the sum of CI\$222,000. Also on 29<sup>th</sup> March 2007 the Quantity Surveyor issued Payment Certificate No. 20 in the sum of CI\$222,000.
9. Accordingly by Article 5.1.2 and General Conditions 2.2.3 and 5.2.2 of the Contract Ocean Club was liable to pay K Coast the amount shown in the Certificate no later than 2<sup>nd</sup> April 2007.
10. In purported compliance with the Contract Ocean Club drew and delivered on 3<sup>rd</sup> April 2007 Cheque No 000190 (“the Cheque”) drawn on First Caribbean International Bank (Cayman) Limited (“First Caribbean”) A copy of the Cheque is attached and marked “A”.
11. On 4<sup>th</sup> April 2007 K Coast deposited the Cheque in its bank account at Cayman National Bank (“CNB”) and was given same day credit for the sum of CI\$222,000.
12. On 11<sup>th</sup> April 2007 upon due presentation of the Cheque by CNB to First Caribbean for payment, Ocean Club stopped payment of the Cheque and CNB debited the sum of CI\$222,000 plus charges to K Coast’s account and notified K Coast of the Stop Payment. The notation on the Cheque was “Stop Payment”.
13. Notice of Dishonour pursuant to the Bills Of Exchange Law (1997 Revision) (the “Law”) was initially dispensed with as payment of the Cheque had been countermanded by Ocean Club. Notice of Dishonour was in fact given on 8<sup>th</sup> May 2007 on behalf of K Coast.
14. Despite repeated requests and demands by K Coast and on its behalf, the Cheque has not been replaced, and the sum of CI\$222,000 remains due and owing as a result of the dishonoured cheque.
15. Further, K Coast seeks, pursuant to s. 57 (a) of the Law or alternatively pursuant Article 5.3.1 of the Contract, contractual interest on the amount of CI\$222,000 at the rate of three (3) per cent per annum above the bank rate as established by Scotiabank & Trust (Cayman) Ltd as the prime rate to its most favoured customers, currently 8 ¼ %, from 3<sup>rd</sup> April 2007 to the date of issue herein in the sum of CI\$4,789.73 and hereafter at a daily rate of CI\$68.42.

AND THE PLAINTIFF CLAIMS

Against the Defendant

- 1) Payment in the sum of CI\$222,000, together with
- 2) Interest pursuant to s. 57 (a) of the Law or alternatively pursuant Article 5.3.1 of the Contract, at the rate of three (3) per cent per annum above the bank rate as established by Scotiabank & Trust (Cayman) Ltd as the prime rate to its most favoured customers until payment amounting to CI\$4789.73 at the date hereof and continuing at the rate of CI\$68.42 per day.

Alternatively:

- 3) the sum of CI\$222,000 as the price of services rendered as certified by the Quantity Surveyor in Payment Certificate No 20, together with interest pursuant Article 5.3.1 of the Contract, at the rate of three (3) per cent per annum above the bank rate as established by Scotiabank & Trust (Cayman) Ltd as the prime rate to its most favoured customers until payment amounting to CI\$4789.73 at the date hereof and continuing at the rate of CI\$68.42 per day.
- 4) Costs on an indemnity basis.
- 5) Such further or other relief as the Court thinks just.

Dated this 12<sup>th</sup> day of June 2007.

  
**BROADHURST BARRISTERS**  
Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim was filed by Broadhurst Barristers whose address for service is Broadhurst Barristers, Attorneys-at-Law, P.O. Box 2503, George Town, Grand Cayman K1-1104, Cayman Islands, British West Indies, Attorneys for the Plaintiff.

"A"

Strata Plan #55 Ocean Club  
Insurance Premiums A/C  
P.O. Box 437 Sav  
Grand Cayman  
PH# 947-1812

ADDRESSED  
TELEPHONE NO 106  
EIGHT AVENUE

"stop payment"

000190

PAY TO THE  
ORDER OF

K Coast Development Ltd

DATE 3 April 2007

CIS 222,000.00

Two Hundred + Twenty Two Thousand <sup>00</sup>/<sub>100</sub> DOLLARS

FIRST CARIBBEAN INTERNATIONAL BANK (CAYMAN) LIMITED  
Main St., Grand Cayman, Cayman Islands

FOR PROGRESS TO DATE PAYMENT

*[Handwritten Signature]*

⑈000190⑈ ⑆24690⑈010⑆ 88⑈18215⑈ ⑆0022200000⑈

 **Cayman National Bank**  
Cayman National Bank Ltd.  
PO Box 1097 GT, Grand Cayman, BWI

DEBIT  
ADVICE

DATE DAY MONTH YEAR  
APR 11 2007

AMOUNT KYD222,000 00

WE HAVE DEBITED YOUR ACCOUNT AS FOLLOWS: RETURN CHEQUE  
BANK: FCIB  
REASON: Stop Payment  
BANK FEES: \$20.00

# [ ] - 0 1 1 - 0 6 3 0 0

K Coast Development Ltd.  
P.O.Box 30058  
Grand Cayman KY1-1201

*[Handwritten Signature]*  
AUTHORIZED SIGNATURE

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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 to the Law Courts, PO Box 495, George Town, Grand Cayman.

2. A Defendant *who states in his Acknowledgement of Service that he intends to contest the proceedings also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is not endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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.

**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 fourteen (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 "Palmer 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 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 steps in proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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. 249 OF 2007

BETWEEN:

K COAST DEVELOPMENT LTD.

Plaintiff

AND:

THE PROPRIETORS, STRATA PLAN 55, KNOWN AS OCEAN CLUB

Defendant

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**ACKNOWLEDGEMENT 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 [ ]

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Service of the Writ is acknowledged accordingly

(signed) \_\_\_\_\_

[Attorney] for

[Defendant in Person]

Address for service:

*Please see 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 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.*

**BROADHURST BARRISTERS**  
ATTORNEYS-AT-LAW  
40 LINWOOD STREET  
PO BOX 2503  
GEORGE TOWN K1-1104, GRAND CAYMAN  
CAYMAN ISLANDS, BRITISH WEST INDIES

*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]