

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 412 OF 2007

BETWEEN: ROD HARBECK

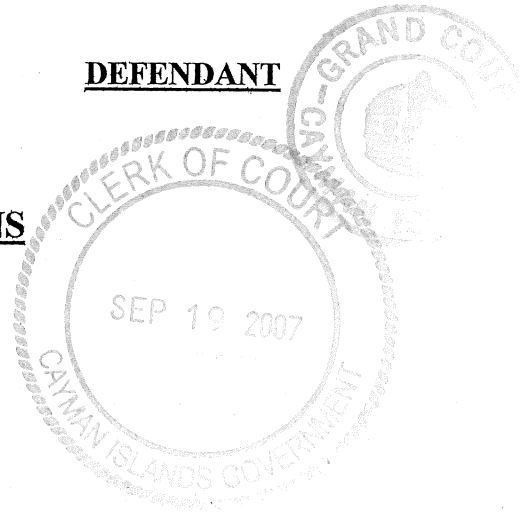
PLAINTIFF

AND: V. A. BOWKER LIMITED

DEFENDANT

WRIT OF SUMMONS

TO: The Defendant
P.O. Box 10505
George Town
Grand Cayman
Cayman Islands, KY1-1005



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, P.O. Box 495GT, 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: 18 September 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 since 2000, the registered proprietor of an apartment numbered 2 in the strata development known as Cocoloba in South Sound, Grand Cayman (registered as Strata Plan 107), and being more fully described as South Sound, Block 15E, Parcel Number 194 H2 (the "Plaintiff's Apartment").
2. The Defendant is a company incorporated and registered under the Companies Law of the Cayman Islands and was at all material times the registered proprietor of an apartment numbered 4 in the strata development known as Cocoloba in South Sound, Grand Cayman (registered as Strata Plan 107), and being more fully described as South Sound, Block 15E, Parcel Number 194 H4 (the "Defendant's Apartment").
3. On or about 14 August 2006 the water heater tank and/or pipes wholly located within the Defendant's Apartment failed. Water escaped therefrom and penetrated the Plaintiff's Apartment causing inundation, flooding and damage to the Plaintiff's Apartment, furniture, fixtures and fittings. The leak and consequent inundation, flooding and said damage were caused by the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE

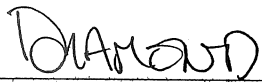
- (a) Failure to inspect, repair or maintain the said water heater tank and/or pipes adequately or at all;
- (b) Failure to repair, maintain use or enjoy his strata lot including the said water heater tank and/or pipes or keep it or them in a good state of repair adequately or at all or as specifically required by cl. 31(4), (5) and (6) of the By-laws of Strata Plan 107;
- (c) Failure to pay the cost of repairing any damage to any other Strata Lot caused by the negligence of the Defendant adequately or at all or as specifically required by cl.31(15) of the By-laws of Strata Plan 107;

- (d) Failure to be responsible for any and all damage occasioned through the bursting of pipes caused by the negligence of the Proprietor adequately or at all or as specifically required by cl. 31(17) of the By-laws of Strata Plan 107.
 - (e) Failed to take any or any reasonable and proper precautions to prevent damage to the Plaintiff's Apartment caused by the bursting, overflowing or leaking of any water pipes, tanks cisterns or apparatus in the Defendant's Apartment adequately or at all or as specifically required by cl.31(27)(a) of the By-laws of Strata Plan 107;
 - (f) Failure to observe or adhere to said water heater tank's and/or pipe's manufacturer's operational, safety and maintenance instructions adequately or at all;
 - (g) Failure to install any or any reasonable precautions to impede, divert or prevent inundation, flooding and said damage from such leakage from the said water heater tank and/or pipes;
 - (h) Storing items around the said water heater tank and/or pipes in such a manner that they detracted from the operating efficiency and integrity of the said water heater tank and/or pipes and contributed to the failure thereof and the inundation and flooding and said damage to the Plaintiff's apartment;
 - (i) *Res ipsa loquitur*; and
 - (j) The Plaintiff also relies upon the principle of strict liability as held in Rylands –v– Fletcher.
4. By letter dated 17 July 2007 the Defendant was requested *inter alia* to compensate the Plaintiff for the Loss incurred as a result of the Defendant's negligence.
5. To date, and in continuing breach of its duties (express and implied) to the Plaintiff, the Defendant has neglected, failed or refused to take any or any adequate action to provide compensation to the Plaintiff as requested above or at all.

6. By reason of the above the Plaintiff has suffered injury, loss and damage as particularized in the Schedule attached hereto and would also be entitled to damages for, but not limited to, not less than the rental income unable to be earned by the Plaintiff for the period August 2006 through April 2007.

AND THE PLAINTIFF claims:-

- (1) Damages as particularized in the Schedule attached hereto;
- (2) Interest pursuant to the Judicature Law (2004 Revision) s.34 on such sums and at such rate as the Court shall think fit; and
- (3) The costs of and incidental to these proceedings.



DIAMOND LAW ASSOCIATES
Attorneys for the Plaintiff

SCHEDULE OF LOSS & DAMAGE

<u>Coccoloba Unit 2</u>	
Difference between actual loss vs. insurance recovery	579.00
Consequential Damage Loss of Rent @ \$3,100 pcm for 33 Weeks	23,543.00
Reinstatement Costs Incurred (incl. labour & expenses)	3,000.00
Increased premium (est. 15%)	105.00

CI\$Total: 27,227.00

Acknowledgement of service of writ of summons (0.12, 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 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.

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BETWEEN: ROD HARBECK

PLAINTIFF

AND: V. A. BOWKER LIMITED

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.

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

2. State whether the Defendant intends to contest 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 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.

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

DIAMOND LAW ASSOCIATES
4th Floor
Cardinal Plaza
Cardinall Avenue
PO Box 2887
George Town
Cayman Islands
Ref: SND/1237

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]