

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁴⁴³ OF 2007

BETWEEN:

MOST LIMITED

1ST PLAINTIFF

WENDI BARTLE

2ND PLAINTIFF

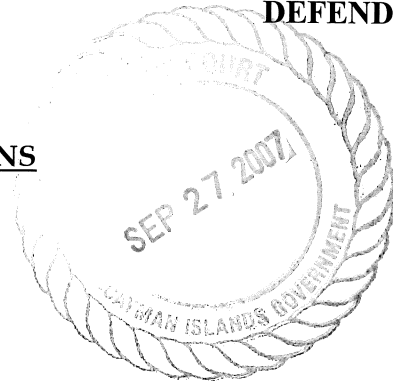
AND

THE PROPRIETORS, STRATA PLAN NO. 43

DEFENDANT

WRIT OF SUMMONS

TO: The Proprietors, Strata Plan No. 43
Treasure Island Condominiums
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 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

ISSUED this 27th day of 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 re-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 Defendant is the Strata Corporation for Strata Plan No 43, commonly known as Treasure Island Condominiums ("the Strata").
2. The First Plaintiff ("Most") is the registered proprietor of Strata Units 104 and 123. The Second Plaintiff ("Ms. Bartle") is the registered proprietor of Strata Unit 119.
3. The Defendant was, at all times material to this claim, governed by the terms of the By-laws of the Proprietors, Strata Plan No. 43 (as amended January 11, 2003) (hereinafter referred to as "By-laws").
4. Sub-regulation 36(h) of the By-laws states as follows:

"The Corporation shall:

on written request of the proprietor or registered chargee of the Strata Lot, produce to such proprietor or chargee or any person authorized in writing by such proprietor or chargee, the policy of or policies of insurance effected by the Corporation and the receipt or receipts for the last premiums in respect thereof; all which such policies of insurance shall be taken out in the names of the Corporation and such of those the proprietors and registered chargee 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 any such policies of 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 for every such payment;”

5. Most had, on numerous occasions, requested for it and its chargee to be named as additional insureds but the Strata has refused to do so. Contrary to sub-regulation 36(h) of the By-laws, the Strata, at all times material to this claim, took out insurance in the name of the Strata alone.
6. The Strata has at all material times been insured against certain types of damage where damage to buildings is subject to a deductible of US\$100,000 for each and every claim while loss of rent is subject to a deductible of US\$2,500 for each and every claim.
7. In or about January 1997, by reason of there being such deductibles, the Strata instituted an “insurance reserve fund” (“the Fund”) to pay claims under US\$100,000 and to cover the deductibles in respect of claims made under the Policy. The Fund is financed by assessments levied upon all proprietors of strata units.
8. It is the Plaintiffs’ contention that:
 - (i) When a claim is made by the Strata under the Policies in respect of damage to one or more units, the Strata holds the proceeds of such claim in trust to pay the same to the proprietor or proprietors of the units to which the claim relates; Alternatively, such proprietors have a contractual claim against the Strata in respect of such proceeds or the relevant part thereof.
 - (ii) When such a claim is made under the Policies, the amount of the deductible is payable out of the Fund, if sufficient; and by a special assessment to all owners if the Fund is inadequate.

- (iii) When a claim is made against the Fund in circumstances where, but for the deductible, the claim would be payable under the Policy, the Strata is obliged to pay the insured the amount of such claim to the proprietor of the relevant strata unit.
- (iv) Had the Strata adhered to its By-Law 36 (h), the insurance proceeds would have been paid directly to the respective strata unit owners who suffered loss. The Strata is obligated to pay strata unit owners the full insurance proceeds allocated to their respective units.

Property Damage Claim

- 9. On or about 31 October 2001, Most's Unit 123 sustained water damage to, inter alia, the structure, fixture and fittings by reason of a burst pipe in the Unit. Such damage is a covered peril under the Policy.
- 10. On 20 November 2001, JEC Building Consultants Ltd. estimated the cost of remedial works for the water damage at CI\$4,500. Despite being made aware of such estimate, the Strata failed to pay the claim, or any part of it, out of the Fund. Most undertook the repairs, which included the replacement of all of the kitchen cabinets at a cost in excess of US\$5,500.
- 11. The Strata's refusal to pay for the damages in this instance is wrong, especially since it had paid out similar claims to other unit owners in the past from the Fund. Where a claim made by a Unit owner is a covered peril under the Strata's insurance policies, the Strata has to pay the claim out of the Fund.
- 12. On or about 4 November 2001, as a consequence of Hurricane Michelle, the interior of Most's Strata Unit 104 (as well as interiors of other units) suffered extensive damage due to the ingress of water. The interior of Unit 104 was declared a "total loss" by both the Strata's Loss Adjustors and Managing Agents.

13. The Strata made a claim under the Policy then in force in respect of all units affected including Unit 104. The final award attributable to Unit 104 was assessed at US\$95,927.73 and the insurer (Royal and Sun Alliance) paid the Strata the total sum of US\$1,115,007.37, which included the sum of US\$95,927.73 due to Most.
14. Approximately US\$500,000 of the proceeds payable under the Policy were, in breach of trust and without the approval of Unit owners, diverted by the Strata to fund other projects including major capital improvements of the common areas in excess of the compensation amounts assessed for the common areas.
15. The Strata failed to pay Most the assessed sum of US\$95,927.73 and instead arbitrarily paid only US\$41,500.00. There remains payable to Most the sum of US\$54,427.73, which sum is payable either out of the proceeds paid under the Policy or, insofar as it is attributable to Most's proportion of the deductible, out of the Fund.
16. Also as a consequence of Hurricane Michelle, the Strata claimed under the Insurance Policy in respect of loss of rental income in relation to certain units including Most's Unit 104. The claim in respect of Unit 104 amounted to US\$22,870.68 and this amount was paid to the Strata by the insurers. The Strata, however, only paid to Most the sum of US\$16,277.16. There remains payable to Most the sum of US\$6,593.52 which sum is payable either out of the proceeds paid under the Policy or, insofar as it is attributable to Most's proportion of the deductible, out of the Fund.
17. In or about May 2002, the Second Plaintiff Ms. Bartle's Unit 119 sustained water damage due to a burst pipe in the master bath within the concrete. The cost of rectifying the damage was CI\$4,295 and this amount was advanced by Ms. Bartle. The Strata failed to reimburse this cost out of the Fund despite Ms. Bartle's requests.

18. In January 2003, the Ms. Bartle's Unit 119 suffered external flooding which damaged the floor covering which she replaced at a cost of CI\$1,229. The Strata failed to reimburse this cost out of the Fund despite Ms. Bartle's requests.
19. On or about 27 June 2003, Ms. Bartle's Unit 119 suffered further damage caused by external flooding. The remedial cost of this was, in August 2003, estimated to be CI\$2,729. The attempts of the Strata's agents to dry out Unit 119 resulted in the failure of an air conditioning air-handling unit which caused additional damage estimated at CI\$9,000. The total cost of repair was approximately \$20,000. The Strata failed to reimburse this cost out of the Fund despite Ms. Bartle's requests.
20. On or about 12 September 2004, as a result of Hurricane Ivan, the interior of most of the ground floor units sustained extensive damage due to the ingress of water. The interior of Most's Unit 123 and Ms. Bartle's Unit 119 were declared a "total loss" by both the Strata's Loss Adjustors and the Managing Agents.
21. The Strata made a claim under the policy in respect of all the units affected including those owned by the Plaintiffs as identified above. The final award attributable to the each unit was, according to the Strata:

Interior repairs	US\$44,217.00
Air conditioner repairs	US\$ 3,256.10
Supervision and Management (15%)	US\$ 7,120.97
Total Claim Award	US\$54,594.07

22. The Strata, despite holding these monies on trust for the proprietors of the units, merely offered to pay the Plaintiffs US\$1,800 for the air conditioner repairs and US\$39,000 for the building repairs. This was short by US\$13,794.07 of the insurance settlement, which sums have been withheld or, in breach of trust, diverted for other uses.

23. The Strata, however, paid a number of Unit owners sums that exceeded their respective insurance claims where at least three of whom were Executive Committee Members of the Strata at the time of payment. The Executive Committee Members have a duty of trust towards the Strata and Unit owners, and they had, effectively, in breach of trust, paid themselves and others more monies to the detriment of the other Unit owners such as the Plaintiffs. Some of such payments went to the following individuals:

Unit#/Name	Crawford Allowance (Per Strata)	Strata Payment
114/ Arch <i>(a board member at the time)</i>	\$39,000.00	\$46,473.17
217/ Sturm	\$4,401	\$6,972.87
213/ Mathis <i>(a board member at the time)</i>	AC \$1800	\$2,212.20
214/ Denbo <i>(a board member at the time)</i>	\$837.07	\$2,102.70
311 Reitchly	\$2,794.00	\$17,120.02
315 Applegate	\$3,724.09	\$15,317.07
<u>Total</u>	<u>\$52,556.16</u>	<u>\$90,198.03</u>

24. The Strata has a duty to recover the excess funds paid out as described in Paragraph 23 above.

Loss of Rent Claim

25. The Strata provided the Unit owners with an advice of settlement in relation to the Loss of Rent Claim from Hurricane Ivan, where the claim award was the

maximum US\$500,000. The total claim made by the Strata (on behalf of Unit owners and itself) was US\$668,174. The portion recovered under the Insurance policy was \$500,000 or approximately 75%. The Strata, in breach of trust, deducted its claim of US\$125,176 at 100% in addition to subtracting the deductible of US\$25,000 and refunded itself US\$5,000 for the Loss of Rental Insurance premium before allocating funds to unit owners. Both of these amounts should have been paid out of Strata general funds or by special assessment the same as was done with the property loss claim.

26. Each Unit owner with a Loss of Rent claim, including the Strata, should have received the same amount, percentage-wise based on their actual rental loss. While the Strata allocated and paid some owners Loss of Rent from 12 September 2004 to 30 April 2005 (7.5 months), other owners were paid from 12 September 2004 to 30 September 2004 only.
27. Plaintiff Most earned Rent on its Unit 104 from 1 February 2004 to 31 October 2004 at an average of US\$206 per day. Most's loss of rent on its Unit 104 was \$10,500 (12 September 2004 to 31 October 2004, i.e. 50 days @ \$206). Most's Loss of Rent on its Unit 123 was from 12 September 2004 to 30 April 2005 at US\$2,750 a month. This amounted to US\$21,092. Most claims 75% of its Loss of Rent, which amounts to US\$7,875 for its unit 104. It has received US\$2,452 in payment so far and claims the balance of US\$5,423. Most claims US\$15,819 for its Unit 123. It has received \$8,003 so far and claims the balance of US\$7,816.
28. Ms. Bartle's Loss of Rent on her Unit was from 12 September 2004 to 30 April 2005 at US\$1,860 per month. This amounted to US\$14,248. She claims 75% of her Loss of Rent, which amounts to US\$10,686. She has received US\$8,992 in payment so far and claims the balance of US\$1,694.

AND THE FIRST PLAINTIFF CLAIMS

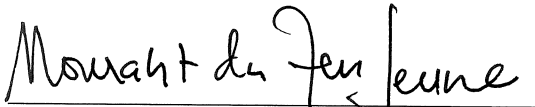
1. Damages totaling US\$86,460.35;
2. Interest pursuant to the Judicature Law on each amount claimed calculated from the date such monies ought to have been released to the Plaintiff;

3. Costs; and
4. Such further or other relief as the Court deems fit.

AND THE SECOND PLAINTIFF CLAIMS

1. Damages totaling US\$35,272.10;
2. Interest pursuant to the Judicature Law on each amount claimed calculated from the date such monies ought to have been released to the Plaintiff;
3. Costs; and
4. Such further or other relief as the Court deems fit.

Dated this 27th day of September 2007


MOURANT DU FEU & JEUNE
Attorneys-at-Law for the Plaintiffs

To: The Clerk of the Court

And To: The Proprietors, Strata Plan No. 43
Treasure Island Condominiums
P.O. Box 871
Grand Cayman, KY1-1103
Cayman Islands

This Writ was filed by Mourant du Feu & Jeune, Attorneys-at-Law for the Plaintiffs, whose address for service is Third Floor, Harbour Centre, PO Box 1348, Grand Cayman KY1-1108.

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 installments or otherwise.

See over for notes for guidance

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 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. 44³ OF 2007

BETWEEN:

MOST LIMITED

1ST PLAINTIFF

WENDI BARTLE

2ND PLAINTIFF

AND

THE PROPRIETORS, STRATA PLAN NO. 43

DEFENDANT

ACKNOWLEDGMENT OF SERVICE

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

Service of the Writ 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 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.

Messrs. Mourant Du Feu & Jeune
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
Grand Cayman

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

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