

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0165 OF 2008

LEGAL AID NO. 189 OF 2007



BETWEEN:

JEREMY DUFOUR

Plaintiff

-AND-

NEWLANDS LTD

Defendant

WRIT OF SUMMONS



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 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 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 26th day of March 2008

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 an individual whose address is 67 Lake Willow Drive Unit 9, Newlands, Grand Cayman.
2. The Defendant is a company incorporated under the laws of the Cayman Islands whose registered office is Thompson Development, Galleria Plaza, P.O. Box 30596 SM Grand Cayman, Cayman Islands.
3. The Defendant is the developer and vendor of a development known as Willow Lake, which is contained on the properties contained with Registration Section Savannah Block 28B Parcel 299 (the "Development"). The Development consists of sixteen different parcels, Registration Section Savannah Block 28B Parcel 299 H1 through H16.
4. At the material time, the Defendant employed Century 21 Thompson Realty ("Century 21") to act as its real estate agent for the sale of the properties in the Development. Mr. Kel Thompson is the owner and/or director of Century 21 and the sole director of the Defendant. Mr. Brian Braggs is a real estate agent employed with Century 21 and at all material times was an agent of the Defendant.
5. On or about the 21st of December 2005, the Plaintiff met with Mr. Braggs at a property in the Development known as Registration Section Savannah Block 28B Parcel 299 H9 (the "Property"). As the Plaintiff was interested in possibly purchasing the Property he met with Mr. Braggs to inspect the Property prior to making any offer.
6. The Plaintiff informed Mr. Braggs that he was interested in a quiet location due to the shift work he did as a police officer. The Plaintiff was particularly attracted to the Property by virtue of its location at the southern end of the Development. The location of the Property was such that the only roadway near the Property was the access road, which terminated at the Property itself. The land surrounding the Property consisted of two other housing lots in the Development, one small parcel that was allocated to be common property of the Development, and a large undeveloped parcel to the southwest that at that time consisted of wetlands.
7. During the inspection the Plaintiff asked Mr. Braggs what development was planned for the neighboring land to the southwest. Mr. Braggs represented to the Plaintiff that there were no plans for development of that land and that they would remain wetlands (the "Wetlands").

8. Acting on the faith and trust of the said oral representations and induced thereby the Plaintiff then executed an offer to purchase the Property and provided the corresponding deposit. The offer to purchase was subject to two conditions: the Plaintiff obtaining financing within 21 days of acceptance and the Purchaser conducting a satisfactory walk-through of the house within 14 days of acceptance.
9. In early January 2006 the Plaintiff traveled to the offices of the Defendant to meet with Mr. Thompson to query the intentions of the Defendant with respect to the fencing of the Property. During that meeting the Plaintiff told Mr. Thompson and Mr. Brags that he liked the Property due to its quiet location and the fact that there was no development around it. The Plaintiff asked Mr. Thompson whether the Defendant owned the Wetlands and if so whether there was any intention to develop that land. Mr. Thompson stated that the Defendant did not own the Wetlands and that to the best of knowledge it was going to stay the way it was.
10. Acting of the faith and trust of the said oral representations and induced thereby the Plaintiff confirmed the satisfaction of the conditions and on or about February 28th 2006 the Plaintiff completed the purchase of the Property.
11. The Plaintiff has since discovered and the fact is that the representations were untrue in that:
 - (a) On or about February 2007 the National Roads Authority commenced construction of the East-West Arterial Road Corridor, a major highway (the "Highway"), on the Wetlands;
 - (b) The route of the Highway had been fixed prior to the Defendant obtaining planning permission to construct the Development.
 - (c) The Defendant at all material times had been aware of the construction of the Highway as:
 - i) The application by the Defendant for planning permission to construct the Development had resulted in amendments to the route of the Highway; and
 - ii) Mr. Thompson had several meetings with the Public Works Department with respect to the route the Highway would take; and
 - iii) In order to allow for the construction of the Highway at its present location the Defendant surrendered, alternatively sold or transferred, the land to the Government. The arrangements and/or agreement with respect to the Defendant providing the land to the Government was made prior to December 2005.

- (d) Construction of the Highway has been substantially completed on the Wetlands. The Highway has been constructed approximately 11 feet from the master bedroom on the Property.
12. The Defendant made the said representations fraudulently and either well knowing that they were false and untrue or recklessly not caring whether they were true or false.
13. Further or in the alternative, if the said representations were not made fraudulently, the Plaintiff will rely upon the provisions of section 13 of the Contracts Law (1996 Revision) as entitling him in the premises to the relief claimed herein.
14. Further or in the alternative, the Agreement was subject to an express term, alternatively an implied term, that the home on the Property would be constructed and sold in accordance with the Development and Planning Law (2003 Revision) (the "Law").
15. In breach of the said term, the Property was not constructed and sold in accordance with the Law. Contrary to the Law the Property was not constructed in accordance with the plans approved by the Planning Authority (the "Approved Plans"). Contrary to the Law and the Approved Plans the Property was significantly altered and reoriented with the result that the home was constructed 11 feet from the parcel to the rear. The home on the Property was accordingly constructed in violation of the mandatory rear setback of 20 feet as prescribed by the Law. The Property is accordingly an unauthorized development and is potentially subject to enforcement action.
16. By reason of the matters aforesaid the Plaintiff has suffered loss and damage. The property is located 11 feet from a major highway, is an unauthorized development and may be subject to enforcement action. The Property is significantly less appealing and of a lesser value than had it been constructed in accordance with the Agreement and/or had the representations been true. Further the proximity of the home to the Highway makes the Property potentially dangerous. Apart from the purchase price of the Property (CIS\$ 184,000) the Plaintiff has incurred substantial expenses associated with the purchase and improvements made to the Property. As of August 23, 2007 the expenses incurred along with the interest on the funds borrowed to purchase the Property was CIS\$ 46,679.96. The Plaintiff's losses in this respect are ongoing.
17. The Plaintiff also claims Pre-Judgment and Post-Judgment interest on any damages found to be due in accordance with Section 34 of the Judicature Law (2007 Revision).

AND THE PLAINTIFF CLAIMS

- (1) Rescession of the said Agreement;
- (2) In addition or alternatively damages;
- (3) Interest;
- (4) Costs;
- (5) Such further or other relief as may be deemed just by this Honourable Court.

Dated this ^{26th} day of March 2008

BROADHURST BARRISTERS
Broadhurst Barristers
Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim was issued by Broadhurst Barristers, Attorneys-at-Law for the Plaintiff, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, George Town, Grand Cayman, Cayman Islands, British West Indies.

**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 or sent by post 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 *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 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 not 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 Acknowledgement 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 instalments 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 "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.
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 the proceedings without an Attorney acting on its behalf.
6. 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*.
7. A Defendant acting in person may obtain help in completing the form at the Courts Office.
- 8.

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 GT
GEORGE TOWN, 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.